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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: February 17 at 9:00 am and 1:30 pm
WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

TUCSON, AZ

WHEN: March 23 at 9:00 am
WHERE: University of Arizona Medical School, DuVal Auditorium, 1501 N. Campbell Avenue, Tucson, AZ
RESERVATIONS: Federal Information Center 1–800–359–3997 or in the Tucson area, call 602–290–1616

OAKLAND, CA

WHEN: March 30 at 9:00 am
WHERE: Oakland Federal Building, 1301 Clay Street, Conference Rooms A, B, and C, 2nd Floor, Oakland, CA
RESERVATIONS: Federal Information Center 1–800–726–4995

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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers and **Federal Register** finding aids is available on 202–275–1538 or 275–0920.

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Presidential Documents

Title 3—

The President

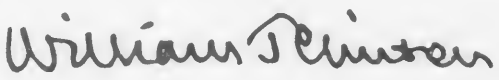
Presidential Determination No. 94–8 of January 5, 1994

Procurement of Trident II Missiles

Memorandum for the Secretary of Defense

Pursuant to the authority vested in me by the Department of Defense Appropriations Act for the fiscal year ending September 30, 1994, Public Law 103–139, I hereby certify that proposing "detubing" of nuclear powered ballistic missile submarines (SSBNs) as an option for eliminating submarine-launched ballistic missile (SLBM) launchers under the START treaties to the other START Treaty signatories in the Joint Compliance and Inspection Commission (JCIC) would not be in the national interest.

You are hereby authorized and directed to notify the Congress of this determination and to publish it in the **Federal Register.**



THE WHITE HOUSE,
Washington, January 5, 1994.

[FR Doc. 94–3810
Filed 2–15–94; 2:27 pm]
Billing code 3195–01–M

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket 91–155–12]

Mediterranean Fruit Fly; Addition to the Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by adding a portion of Riverside County, CA, to the list of quarantined areas. This action is necessary on an emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the United States.

DATES: Interim rule effective February 14, 1994. Consideration will be given only to comments received on or before April 18, 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. 91–155–12. 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 Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

We established the Mediterranean fruit fly regulations (7 CFR 301.78 through 301.78–10; referred to below as the regulations) and quarantined the Hancock Park area of Los Angeles County, CA, in an interim rule effective on November 5, 1991, and published in the **Federal Register** on November 13, 1991 (56 FR 57573–57579, Docket No. 91–155). The regulations impose restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the spread of the Medfly to noninfested areas of the United States. We have published a series of interim rules amending these regulations by adding to or removing from the list of quarantined areas certain portions of Los Angeles, Santa Clara, Orange, San Bernardino, and San Diego Counties, CA. Amendments affecting California were made effective on September 10, and November 12, 1992; and on January 19, July 16, August 3, September 15, October 8, November 22, and December 16, 1993; and on January 10, 1994 (57 FR 42485–42486, Docket No. 91–155–2; 57 FR 54166–54169, Docket No. 91–155–3; 58 FR 6343–6346, Docket No. 91–155–4; 58 FR 39123–39124, Docket No. 91–155–5; 58 FR 42489–42491, Docket No. 91–155–6; 58 FR 49186–49190, Docket No. 91–155–7; 58 FR 53105–53109, Docket No. 91–155–8; 58 FR 63027–63031, Docket No. 91–155–9; 58 FR 67627–67630, Docket No. 91–155–10; and 59 FR 2281–2283, Docket No. 91–155–11).

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that an additional infestation of Medfly has been discovered in the Corona area of Riverside County, CA.

The regulations in § 301.78–3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which the Medfly has been found by an inspector, in which the Administrator has reason to believe that the Medfly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the Medfly has been found.

In accordance with these criteria and the recent Medfly findings described above, we are amending § 301.78–3 by adding an area in Riverside County of approximately 62 square miles. The new quarantined area is as follows:

Riverside County

That portion of Riverside County bounded by a line drawn as follows: Beginning at the intersection of Interstate Highway 15 and Bellegrave Avenue; then southwest along Bellegrave Avenue to its intersection with the Riverside/San Bernardino County line; then southwest along the Riverside/San Bernardino County line to its intersection with State Highway 71; then southeast along State Highway 71 to its intersection with State Highway 91; then south from this intersection along an imaginary line to its intersection with the Corona City limit; then west, south, and east along the Corona City limit to its intersection with State Street; then north along State Street to its intersection with Chase Drive; then southeast along Chase Drive to its intersection with El Cerrito Road; then northeast along El Cerrito Road to its intersection with Temescal Canyon Road; then northeast from this intersection along an imaginary line to the intersection of Magnolia Avenue and State Highway 91; then northwest from this intersection along an imaginary line to the intersection of California Avenue and 6th Street; then west along 6th Street to its intersection with Interstate Highway 15; then north along Highway 15 to the point of beginning.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Mediterranean

fruit fly from spreading to noninfested areas of the United States.

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 interim rule has been reviewed under Executive Order 12866.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

This interim rule affects the interstate movement of regulated articles from the Corona area of Riverside County, CA. There are approximately 93 small entities that could be affected, including 66 fruit sellers, 14 nurseries, 6 growers, 4 vendors, and 3 swapmeets.

These small entities comprise less than 1 percent of the total number of similar small entities operating in the State of California. In addition, most of these small entities sell regulated articles primarily for local intrastate, not interstate, movement, and the sale of these articles would not be affected by this interim regulation.

In the new quarantined area in Riverside County, the effect on those few small entities that do move regulated articles interstate from parts of the quarantined areas will be minimized by the availability of various treatments that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost. Also, many of these entities sell other items in addition to the regulated articles so that the effect, if any, of this regulation on these entities should be minimal. Further, the number of affected entities is small compared with the thousands of small entities that move these articles interstate from nonquarantined areas in California and other States.

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.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for our conclusion that implementation of integrated pest management to achieve eradication of the Medfly would not have a significant impact on human health and the natural environment.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Copies of the environmental assessment and finding of no significant impact are available for public inspection 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. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

The information collection and recordkeeping requirements contained in subpart 301.78 have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) under OMB control number 0579–0088.

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 7 CFR 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).

2. In § 301.78–3, paragraph (c), the designation of the quarantined areas is amended by adding an entry for Riverside County in alphabetical order to read as follows:

§ 301.78–3 Quarantined areas.

* * * * *

(c) * * *

California

* * * * *

Riverside County. That portion of Riverside County beginning at the intersection of Interstate Highway 15 and Bellegrave Avenue; then southwest along Bellegrave Avenue to its intersection with the Riverside/San Bernardino County line; then southwest along the Riverside/San Bernardino County line to its intersection with State Highway 71; then southeast along State Highway 71 to its intersection with State Highway 91; then south from this intersection along an imaginary line to its intersection with the Corona City limit; then west, south, and east along the Corona City limit to its intersection with State Street; then north along State Street to its intersection with Chase Drive; then southeast along Chase Drive to its intersection with El Cerrito Road; then northeast along El Cerrito Road to its intersection with Temescal Canyon Road; then northeast from this intersection along an imaginary line to the intersection of Magnolia Avenue and State Highway 91; then northwest from this intersection along an imaginary line to the intersection of California Avenue and 6th Street; then west along 6th Street to its intersection with Interstate Highway 15; then north along Highway 15 to the point of beginning.

Done in Washington, DC, this 14th day of February 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–3615 Filed 2–16–94; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–209–AD; Amendment 39–8814; AD 94–03–07]

Airworthiness Directives; Boeing Model 767 Series Airplanes Equipped With Carbon Brakes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error in an existing airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes. That AD currently requires inspections of the brake rod inner cylinder bolts on the main landing gear (MLG) wheels and brakes; inspections of certain MLG bushings; installation of retainer plates at each MLG brake disconnect; inspection and modification of the brake rod pin assembly at each MLG wheel; repair or replacement of discrepant parts; and revision of the Airplane Flight Manual (AFM), as necessary. This action corrects a column heading in a table that appeared in the rule. This action is necessary to ensure that affected operators are aware of the correct accellerate-stop distances to observe when complying with certain requirements of the rule.

DATES: Effective February 18, 1994.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of February 18, 1994 (59 FR 5074, February 3, 1994).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. 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: Kristin Larson, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–1760; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: On January 27, 1994, the FAA issued AD 94–03–07, Amendment 39–8814 (59 FR 5074, February 3, 1994), which is applicable to Boeing Model 767 series airplanes equipped with carbon brakes. That AD requires inspections of the brake rod inner cylinder bolts on the main landing gear (MLG) wheels and brakes; inspections of certain MLG bushings; installation of retainer plates at each MLG brake disconnect; inspection and modification of the brake rod pin assembly at each MLG wheel; repair or replacement of discrepant parts; and revision of the FAA-approved Airplane Flight Manual (AFM), as necessary. That action was prompted by numerous reports of brake failure during landing and during a low energy rejected takeoff. The actions required by that AD are intended to prevent failure of two or more MLG brakes, which could adversely affect the stopping performance of the airplane.

Recently, the FAA has become aware of the fact that the version of this AD that was published in the Federal Register contained a typographical error in paragraph (f). That paragraph requires that the AFM be revised to include information concerning two-brake-deactivated performance decrements that must be observed until certain inspections and installation actions required by paragraphs (a) through (b)(3) of the AD have been accomplished.

That AFM revision contains three "options" with which affected operators may comply. "Option 3" of this AFM revision information contains a table specifying "Corrected Accelerate Stop Distances" (Section 4.3 of the AFM) that operators who elect to comply with "Option 3" are to observe when calculating the maximum allowable takeoff weight of the airplane. In the portion of the AD published in the Federal Register, the headings of two columns ["Corrected Accel-Stop Distance (feet)" and "Adjusted Corrected Accel-Stop Distance (feet)"] in this table were inadvertently transposed. With such a transposition, the material appearing in the respective columns could be misleading to operators attempting to comply with this portion of the rule.

The FAA has determined that it is appropriate to take action to correct AD 94–03–07 to correctly label the columns of material appearing in the table included under "Option 3" of paragraph (f).

Action is taken herein to correct the error and to correctly add the AD as an amendment to § 39.13 of the Federal Aviation Regulations (FAR). The effective date of the rule remains February 18, 1994.

The final rule is being reprinted in its entirety for the convenience of affected operators.

Since this action only corrects columnar headings in a table related to an optional method of compliance with a rule, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary.

List of Subjects in 14 CFR Part 39

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

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations 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 correctly adding the following airworthiness directive (AD):

94–03–07 Boeing: Amendment 39–8814. Docket 93–NM–209–AD.

Applicability: Model 767 series airplanes equipped with carbon brakes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of two or more MLG brakes, which could adversely affect the stopping performance of the airplane, accomplish the following:

(a) Except as provided in paragraph (f) of this AD, within 60 days after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD in accordance with Boeing Service Bulletin 767–32A0116, Revision 1, dated January 13, 1994:

(1) Perform a surface temper etch inspection and a fluorescent magnetic particle inspection to detect cracks or thermal damage of the brake rod inner cylinder bolts on the main landing gear (MLG) wheels and brakes in accordance with the service bulletin. As a result of these inspections, accomplish either paragraph (a)(1)(i) or (a)(1)(ii) of this AD, as applicable:

(i) If cracking or thermal damage is found on any bolt: Prior to further flight, replace the existing bolt with a new or serviceable bolt in accordance with the service bulletin. Repeat the inspections thereafter at intervals not to exceed 800 flight cycles.

(ii) If cracking or thermal damage is not found on any bolt: Apply finish and reinstall

the bolt in accordance with the service bulletin. Repeat the inspections thereafter at intervals not to exceed 800 flight cycles.

(2) Perform a visual inspection to detect cracking of the inner cylinder fork lug bushings and the brake rod bushings at the inner cylinder fork lug end in accordance with the service bulletin. Repeat that inspection thereafter at intervals not to exceed 800 flight cycles.

(b) For airplanes having line positions 132 through 518, inclusive: Except as provided in paragraph (f) of this AD, within 60 days after the effective date of this AD, accomplish paragraphs (b)(1), (b)(2), and (b)(3), as follows:

(1) Install the retainer plates at each MLG brake disconnect; and adjust the torque of the "B"-nut on the hydraulic line connection to the disconnect fitting; in accordance with Boeing Alert Service Bulletin 767–32A0125, dated November 11, 1993.

(2) Remove the cross bolt from the brake housing and brake rod pin assembly at each MLG wheel; remove the brake rod pin assembly; perform a visual inspection of the brake rod pin assembly to detect cracks, bronze transfer, corrosion, chrome discoloration, and areas of missing chrome plate; prior to further flight, replace any damaged brake rod pin assembly with a new or serviceable assembly; modify the brake rod pin assembly; install the modified brake rod pin into the brake housing and brake rod; and install a new brake attach pin retainer configuration; in accordance with Boeing Service Bulletin 767–32A0126, Revision 1, dated January 13, 1994.

(3) Perform a one-time visual inspection to detect cracking, deformation, and/or a missing piece in the bushings in the brake housing, and the bushings in the end of the brake rod, in accordance with Boeing Service Bulletin 767–32A0126, Revision 1, dated January 13, 1994.

(c) For any bushing that is found broken and/or any bushing that is found having a piece missing during the inspection(s) required by paragraphs (a)(2) and/or (b)(3) of this AD, accomplish the requirements of either paragraph (c)(1) or (c)(2), as follows:

(1) Within 10 flight cycles after detection, repair or replace the bushing in accordance with the appropriate service bulletin. No performance decrements are required within the first 10 flight cycles since detection. Or

(2) If the affected bushing has not been replaced within 10 flight cycles after detection, observe one-brake-deactivated performance decrements in accordance with the FAA-approved Airplane Flight Manual (AFM) until replacement of the affected bushing is accomplished. Operation must be performed with all brakes and the antiskid system fully functional, while operating with one-brake-deactivated performance decrements for broken bushings and/or a bushing with a missing piece.

(d) For any bushing that is found to be cracked or deformed during the inspection(s) required by paragraphs (a)(2) and/or (b)(3) of this AD, accomplish the requirements of either paragraph (d)(1) or (d)(2), as follows:

(1) Within 100 flight cycles since detection, repair or replace the bushing in accordance with the appropriate service bulletin. No performance decrements are required within the first 100 flight cycles since detection. Or

(2) If the affected bushing(s) has not been replaced within 100 flight cycles since detection, observe one-brake-deactivated performance decrements in accordance with the FAA-approved AFM until replacement of the affected bushing is accomplished. Operation must be performed with all brakes and the antiskid system fully functional, while operating with one-brake-deactivated performance decrements for cracked bushings.

(e) Operators may operate beyond 60 days after the effective date of this AD with one-brake-deactivated performance decrements for cracked or broken bushings, provided that the actions required by paragraphs (a) through (b)(3) of this AD have been accomplished.

(f) Revise the Limitations and Flight Performance sections of the FAA-approved AFM (or computer generated takeoff weight tables) to include the following information. (This may be accomplished by inserting a copy of this AD in the AFM.) If the actions required by paragraphs (a) through (b)(3) of this AD have not been accomplished within 60 days after the effective date of this AD, the following two-brake-deactivated performance decrements must be observed until the actions required by paragraphs (a) through (b)(3) of this AD have been accomplished. The following adjustments reflect takeoff and landing performance, assuming failure of two brakes. Operation must be performed with all brakes operative and the anti-skid system operative.

Option 1

(1) Subtract 70,000 LB (31,750 KG) from the takeoff limited weight (the most limiting (lowest) of maximum certified, obstacle clearance, tire speed, brake energy, climb, or field length limited weight). No adjustment to the takeoff speeds for the resulting weight is required.

(2) Landing Field Length—Section 4.13 of the Airplane Flight Manual: Multiply 'all brakes operative' FAR landing field length by a factor of 1.26.

(3) Maximum Quick Turnaround Weight—Section 4.13 of the Airplane Flight Manual: No change from the 'all brakes operative' value.

Option 2

(1) Field Length Limited Weight—Section 4.4 of the Airplane Flight Manual: Reduce the 'all brakes operative' field length limited weight by 10,500 LB (4,750 KG). The maximum allowable takeoff weight is the most limiting (lowest) of maximum certified, climb, obstacle clearance, tire speed, or this adjusted field length limited weight.

(2) Reference $V_{1(mcg)}$ Limited Accelerate-Stop Distance—Section 4.8 of the Airplane Flight Manual: Increase the reference $V_{1(mcg)}$ limited accelerate-stop distance by 1000 FT.

(3) Takeoff Decision Speed, V_1—Section 4.7 of the Airplane Flight Manual: Reduce V_1 by the following:

Weights below 330,000 LB (150,000 KG): Subtract 4 knots

Weights at or above 330,000 LB (150,000 KG): Subtract 3 knots

If the resulting V_1 is less than $V_{1(mcg)}$, takeoff is permitted with V_1 set equal to $V_{1(mcg)}$ provided the corrected accelerate-stop distance available exceeds the adjusted reference $V_{1(mcg)}$ limited accelerate-stop distance from Step 2.

(4) Brake Energy Limits—Section 4.7 of the Airplane Flight Manual: Reduce the maximum brake energy speed allowed with all brakes operative by 30 knots. Verify the scheduled V_1 is less than the reduced V_{MBE}. If not, then takeoff weight must be reduced.

(5) Landing Field Length—Section 4.13 of the Airplane Flight Manual: Multiply 'all brakes operative' FAR landing field length by a factor of 1.20.

(6) Maximum Quick Turnaround Weight—Section 4.13 of the Airplane Flight Manual: No change from the 'all brakes operative' value.

Option 3

Once the following adjustments to corrected accelerate-stop distance and V_{MBE} are determined, the takeoff weights should be calculated in the normal fashion (using these adjusted data) to determine the maximum allowable takeoff weight.

(1) Corrected Accelerate Stop Distance—Section 4.3 of the Airplane Flight Manual: Use the following table to adjust the corrected accelerate-stop distance.

Corrected accel-stop distance (feet)	Adjusted corrected accel-stop distance (feet)	Corrected accel-stop distance (feet)	Adjusted corrected accel-stop distance (feet)
4000	3420	13,000	11,552
5000	4312	14,000	12,470
6000	5206	15,000	13,391
7000	6104	16,000	14,315
8000	7005	17,000	15,241
9000	7908	18,000	16,171
10,000 ..	8815	19,000	17,104
11,000 ..	9724	20,000	18,039
12,000 ..	10,637	.....	.....

Linearly interpolate for accelerate-stop distance values between those shown.

(2) Reference $V_{1(mcg)}$ Limited Accelerate-Stop Distance—Section 4.8 of the Airplane Flight Manual: Increase the reference $V_{1(mcg)}$ limited accelerate-stop distance by 500 FT.

If V_1 is less than $V_{1(mcg)}$, takeoff is permitted with V_1 set equal to $V_{1(mcg)}$ provided the corrected accelerate-stop distance available exceeds this adjusted reference $V_{1(mcg)}$ limited accelerate-stop distance.

(3) Brake Energy Limits—Section 4.7 of the Airplane Flight Manual: Use the following table to adjust the maximum brake energy speed allowed with all brakes operative after correcting for runway slope and wind.

All brake op V_{MBE}—KIAS	Adjusted V_{MBE}—KIAS	All brake op V_{MBE}—KIAS	Adjusted V_{MBE}—KIAS
100	84.2	170	141.4
110	92.4	180	149.6
120	100.6	190	157.8

All brake op V_{MBE}—KIAS	Adjusted V_{MBE}—KIAS	All brake op V_{MBE}—KIAS	Adjusted V_{MBE}—KIAS
130	108.7	200	166.0
140	116.9	210	174.2
150	125.1	220	182.3
160	133.3	.....	.....

Linearly interpolate for V_{MBE} values between those shown.

(4) Landing Field Length—Section 4.13 of the Airplane Flight Manual: Multiply 'all brakes operative' FAR landing field length by a factor of 1.20.

(5) Maximum Quick Turnaround Weight—Section 4.13 of the Airplane Flight Manual: No change from the 'all brakes operative' value."

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

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

(h) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(i) The actions shall be done in accordance with Boeing Service Bulletin 767–32A0116, Revision 1, dated January 13, 1994; Boeing Alert Service Bulletin 767–32A0125, dated November 11, 1993; and Boeing Service Bulletin 767–32A0126, Revision 1, dated January 13, 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, as of February 18, 1994 (59 FR 5074, February 3, 1994). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. 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.

(j) This amendment becomes effective on February 18, 1994.

Issued in Renton, Washington, on February 10, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–3581 Filed 2–16–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–NM–97–AD; Amendment 39–8821; AD 94–04–03]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Boeing Model 727 series airplanes, that currently requires repetitive inspections to detect cracks in the slat track roller bearing bolts, and replacement, if necessary. This amendment adds an inspection of the positional plates installed on certain airplanes, and replacement, if necessary; reduces the compliance time for the initial inspection; and cites the latest revision to the service bulletin as the appropriate service information source. This amendment is prompted by a report that certain positional plates may not stop rotation of the roller bearing bolts. The actions specified by this AD are intended to prevent jamming of the affected slat or separation of the slat from the airplane.

DATES: Effective March 21, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 21, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. 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: Walter Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2774; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 90–18–02, Amendment 39–6708 (55 FR 34699, August 24, 1990), which is applicable to all Boeing Model 727 series airplanes, was published in the **Federal Register** on August 23, 1993 (58 FR 44466). The action proposed to require repetitive inspections to detect cracks in the slat track roller bearing bolts, and replacement, if necessary; and an inspection of the positional plates installed on certain airplanes, and replacement, if necessary.

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

One commenter supports the proposed rule.

One commenter requests that the compliance time of 2,500 flight cycles, as specified in paragraphs (b) and (d) of the proposal, be reduced to 2,000 flight cycles to coincide with the interval expressed in Boeing Service Bulletin 727–57–0172, which is cited in the proposed rule.

The FAA does not concur with the commenter's request to shorten the proposed compliance time In developing an appropriate compliance time, the FAA considered the safety implications, parts availability, and normal maintenance schedules for timely accomplishment of the modifications. Further, this AD supersedes an existing AD that specified a compliance time of 2,500 flight cycles. The FAA has received no reports to date of any problem encountered as a result of that compliance time. To reduce the compliance time of the proposal would necessitate (under the provisions of the Administrative Procedure Act) reissuing the notice, reopening the period for public comment, considering additional comments received, and eventually issuing a final rule; the time required for that procedure may be as long as four additional months. In light of these considerations, and in consideration of the amount of time that has already elapsed since issuance of the original notice, the FAA has determined that further delay of this final rule action is not warranted.

The Air Transport Association (ATA) of America, on behalf of its members, requests that the FAA review existing approvals of alternative methods of compliance for AD 90–18–02 and determine if these approvals remain valid for this AD and, if so, either place a "NOTE" in the final rule or convey that information to affected operators through individual notices. ATA contends that including such a "NOTE" in this AD would expedite AD handling and reduce processing costs for both operators and the FAA.

The FAA has reviewed existing approvals of alternative methods of compliance for AD 90–18–02 and finds that these approvals would not necessarily be acceptable for this AD, since the actions required by the

existing AD do not adequately address the unsafe condition. However, if an operator believes its existing approval also should be considered acceptable for this AD, that operator should resubmit its request for approval from the FAA in accordance with the provisions of paragraph (f) of this AD.

One ATA member suggests that, in lieu of being superseded, AD 90–18–02 should be revised or amended so that operators with approvals of alternative methods of compliance for that AD would not be required to resubmit requests for such approvals for this AD. The FAA does not concur. The FAA has determined that the actions required by AD 90–18–02 do not adequately address the specified unsafe condition. Consequently, issuance of this AD is necessary to require additional actions in order to fully address the unsafe condition. The FAA's normal policy in this regard is that when an AD requires additional actions, the existing AD is superseded by being removed from the system and a new AD added.

One commenter requests that the FAA include an initial implementation period of 2,500 flight cycles in the final rule to allow operators that are currently performing inspections in accordance with the requirements of AD 90–18–02 additional time to "transition over" to the use of Revision 3 of Boeing Service Bulletin 727–57–0172. The commenter states that, as written, the proposed rule would require that those operators begin accomplishing the inspections in accordance with Revision 3 immediately after the effective date of this AD.

The FAA does not concur with the commenter's request. The FAA infers that the commenter's request for an implementation period to "transition over" refers to a need for additional time to update records and plan/schedule subsequent inspections. The FAA finds that additional time to begin accomplishing the inspections in accordance with Revision 3 of the service bulletin is not warranted.

Paragraphs (a) and (b) of the final rule are purposefully redundant with the exception of the inspection thresholds specified. The intent of paragraph (b) is to reduce the inspection threshold from that specified in paragraph (a) and to require that operators accomplish the inspection in accordance with Revision 3 of the service bulletin. Revision 3 of the service bulletin does not contain significant changes from other issues of the service bulletin. Further, operators have been provided ample notice through the proposed AD of the FAA's intent to require that Revision 3 of the service bulletin be used for any inspection accomplished after the effective date of this final rule. Operators will also receive 30 additional days after publication of this final rule in the **Federal Register** before this AD will become effective.

The FAA has revised paragraph (a) of this AD to clarify its intent that operators currently accomplishing the repetitive inspections required by AD 90–18–02 continue to perform those inspections in accordance with Revision 3 of the service bulletin until the first inspection required by paragraph (b) of this AD has been accomplished. In addition, paragraph (b) of this AD has been revised to specify that accomplishment of the repetitive inspections in accordance with Revision 3 of the service bulletin terminates the repetitive inspections required by paragraph (a) of this AD.

One commenter requests that paragraph (d) of the proposal be revised to indicate that no further action is required if a "checking tool" is used to ensure that a functionally acceptable positional plate was installed per Boeing Drawing 65C31395. The commenter indicates that it has developed a tool for checking the dimensions of the positional plate in accordance with the Boeing drawing. The commenter states that, since it has used a functionally acceptable solution to the problem and since this solution is recognized by Boeing as being equivalent to the procedures described in Revision 3 of the service bulletin cited in the proposal, the FAA should also recognize this procedure as an acceptable method of complying with the proposed requirements of this AD.

The FAA does not concur with the commenter's request to revise paragraph (d) of this AD to indicate that no further action is required if a "checking tool" is used. Paragraph (d) of this AD requires that the gap between the roller bolt head and the positional plate be measured in accordance with Revision 3 of Boeing Service Bulletin 727–57–0172. However, that service bulletin does not specify the use of any particular tool when performing the measurement. The FAA has no data available to evaluate the validity of the tool referenced by the commenter. In addition, the FAA does not find it necessary to limit the methods available to operators to accomplish the requirements of paragraph (d) of this AD. Since the service bulletin does not specify the use of any particular tool, the FAA considers that any measuring tool that allows operators to determine if the gap between the roller bolt head and the positional plate is within specified limits meets the intent of paragraph (d) 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 previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 1,635 Model 727 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,047 airplanes of U.S. registry will be affected by this AD, that it will take approximately 18 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,036,530, or $990 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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 14 CFR part 39 of the Federal Aviation Regulations 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 39–6708 (55 FR 34699, August 24, 1990), and by adding a new airworthiness directive (AD), amendment 39–8821, to read as follows:

94–04–03 Boeing: Amendment 39–8821. Docket 93–NM–97–AD. Supersedes AD 90–18–02, Amendment 39–6708.

Applicability: All Model 727 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking of the roller bearing bolts and subsequent jamming of the affected slat or separation of the slat from the airplane, accomplish the following:

(a) Prior to the accumulation of 12,000 total flight cycles, or within 2,500 flight cycles after September 30, 1990 (the effective date of AD 90–18–02, Amendment 39–6708), whichever occurs later: Accomplish paragraph (a)(1) or (a)(2) of this AD, as applicable, in accordance with Boeing Service Bulletin 727–57–0172, Revision 1, dated October 12, 1989; Revision 2, dated June 27, 1991; or Revision 3, dated March 19, 1992. After the effective date of this AD, the inspection shall be accomplished only in accordance with Revision 3 of the service bulletin. Repeat the inspection thereafter at intervals not to exceed 5,000 flight cycles until the inspection required by paragraph (b) of this AD is accomplished.

(1) For airplanes equipped with roller bearing bolts made from CRES material: Perform a fluorescent particle inspection of the slat track roller bearing bolts to detect cracks.

(2) For airplanes equipped with roller bearing bolts not made from CRES material: Perform a magnetic particle inspection of the slat track roller bearing bolts to detect cracks.

(b) Prior to the accumulation of 8,000 total flight cycles, or within 2,500 flight cycles after the effective date of this AD, whichever occurs later, unless accomplished previously within the last 2,500 flight cycles prior to the effective date of this AD: Accomplish paragraph (b)(1) or (b)(2) of this AD, as applicable, in accordance with Boeing Service Bulletin 727–57–0172, Revision 3, dated March 19, 1992. Repeat this inspection thereafter at intervals not to exceed 5,000 flight cycles. Accomplishment of this inspection terminates the repetitive inspection requirement of paragraph (a) of this AD.

(1) For airplanes equipped with roller bearing bolts made from CRES material: Perform a fluorescent particle inspection of the slat track roller bearing bolts to detect cracks.

(2) For airplanes equipped with roller bearing bolts not made from CRES material: Perform a magnetic particle inspection of the slat track roller bearing bolts to detect cracks.

(c) If any cracked bolt is found during any inspection required by this AD, prior to further flight, replace the cracked bolt with a serviceable bolt and inspect the associated roller to detect seizure, in accordance with Boeing Service Bulletin 727–57–0172, Revision 1, dated October 12, 1989, Revision 2, dated June 27, 1991, or Revision 3, dated March 19, 1992. If the roller is seized or does not turn smoothly, prior to further flight, replace the defective roller with a serviceable roller in accordance with the service bulletin.

(d) For airplanes having positional plates installed in accordance with Boeing Service Bulletin 727–57–0172, dated September 6, 1985, Revision 1, dated October 12, 1989, or Revision 2, dated June 27, 1991: Prior to the accumulation of 5,000 flight cycles since modification, or within 2,500 flight cycles after the effective date of this AD, whichever occurs later, measure the gap between the roller bolt head and the positional plate in accordance with Boeing Service Bulletin 727–57–0172, Revision 3, dated March 19, 1992.

(1) If the gap measures 0.020 inch or less, no further action is required by this AD.

(2) If the gap measures more than 0.020 inch, prior to further flight, replace the positional plate with a new positional plate in accordance with Figure 3 of the service bulletin.

(e) Modification of the bolts and slat tracks in accordance with Boeing Service Bulletin 727–57–0172, Revision 3, dated March 19, 1992, constitutes terminating action for the actions required by paragraphs (a), (b), and (d) of this AD.

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

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

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The inspections, replacements, gap measurement, and modification shall be done in accordance with Boeing Service Bulletin 727–57–0172, Revision 1, dated October 12, 1989; Boeing Service Bulletin 727–57–0172, Revision 2, dated June 27, 1991; and Boeing Service Bulletin 727–57–0172, Revision 3, dated March 19, 1992. 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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. 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.

(i) This amendment becomes effective on March 21, 1994.

Issued in Renton, Washington, on February 4, 1994.

N. B. Martenson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–3103 Filed 2–16–94; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–58–AD; Amendment 39–8825; AD 89–02–12 R1]

Airworthiness Directives; Gulfstream Model G–IV Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain Gulfstream Model G–IV airplanes, that currently requires deactivating instrument landing systems (ILS) that utilize dedicated Bendix radios. This amendment provides for an optional terminating action, which, if accomplished, allows reactivation of the Bendix ILS systems. This amendment is prompted by the development of a modification that positively addresses the identified unsafe condition. The actions specified by this AD are intended to prevent the hazardous deviations from the intended course.

DATES: Effective March 21, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 21, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–2206. 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, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Steve Flanagan, Aerospace Engineer, Airframe Branch, ACE–120A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta,

Georgia 30349; telephone (404) 991–2910; fax (404) 991–3606.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by revising AD 89–02–12, Amendment 39–6155 (54 FR 11165, March 17, 1989), which is applicable to certain Gulfstream G–IV airplanes, was published in the **Federal Register** on October 27, 1993 (58 FR 57756). That action proposed to revise AD 89–02–12 to continue to require deactivating the instrument landing systems (ILS) utilizing dedicated Bendix radios and modifying the electronic display controller wiring. That action also proposed to provide for an optional terminating action, which consists of modifying the ILS receivers hardware and TCAS symbol generators software for the #1 and #2 electronic display controllers.

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

The commenter supports the proposed rule.

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 there are approximately 95 Model G–IV airplanes of the affected design in the worldwide fleet. The FAA estimates that 59 airplanes of U.S. registry will be affected by this action.

The actions currently required by AD 89–02–12 take approximately 3 work hours per airplane to accomplish, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of that AD on U.S. operators is estimated to be $9,735, or $165 per airplane.

This revision of AD 89–02–12 will add no new additional costs to operators, since it merely provides for an optional terminating action. Should an operator elect to accomplish the terminating action, the associated modification will take approximately 6 work hours per airplane to accomplish. The relocation and certification of a new AM/FM entertainment antenna will take approximately 120 work hours per airplane to accomplish. The average labor charge is $55 per work hour. All required parts will be provided free of charge by the manufacturer. Based on these figures, the total cost of accomplishing the optional terminating action is estimated to be $6,930 per airplane.

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 14 CFR part 39 of the Federal Aviation Regulations 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 39–6155 (54 FR 11165, March 17, 1989), and by adding a new airworthiness directive (AD), amendment 39–8825, to read as follows:

89–02–12 R1 Gulfstream: Amendment 39–8825. Docket 93–NM–58–AD. Revises AD 89–02–12, Amendment 39–6155.

Applicability: Modal G–IV airplanes, as listed in Gulfstream Aircraft Service Change No. 110, dated January 24, 1989, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: Paragraphs (a) and (b) of this AD merely restate the requirements of paragraphs A. and B. of AD 89–02–12, Amendment 39–6155. As allowed by the phrase, "unless accomplished previously," if those requirements of AD 89–02–12 have already been accomplished, paragraphs (a) and (b) of this AD do not require that those actions be repeated.

To prevent hazardous deviations from the intended course, accomplish the following:

(a) Prior to further flight after April 3, 1989 (the effective date of AD 89–02–12, Amendment 39–6155), discontinue use of the Bendix instrument landing system (ILS) radios for any type of approach. Pull both circuit breakers (C/B) on the co-pilot's C/B panel labeled "ILS #1" and "ILS #2." Tie-wrap the C/B's out, using TY23M or equivalent tie-wraps. Affix placards (Gulfstream decal #1159F40000–911 or equivalent) to the control heads and the C/B's, labeling them "INOP."

(b) Within 10 hours of airplane operation after April 3, 1989 (the effective date of AD 89–02–12, Amendment 39–6155), modify the wiring to the #1 and #2 electronic display controllers, in accordance with Gulfstream Aircraft Service Change No. 110, dated January 24, 1989.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small 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, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

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

(e) Accomplishment of the actions specified in both paragraphs (a)(1) and (e)(2) of this AD constitutes terminating action for the requirements of this AD:

(1) Modify the Bendix ILS systems in accordance with Gulfstream Aircraft Service Change No. 110A, dated April 9, 1993; and

(2) Prior to further flight after accomplishing the actions specified in paragraph (a)(1) of this AD, reactivate the Bendix ILS systems after relocating the forward radome mounted AM/FM entertainment antenna system in accordance with a method approved by the Manager, Atlanta ACO, FAA, Small Airplane Directorate.

(f) The modifications shall be done in accordance with Gulfstream Aircraft Service Change No. 110, dated January 24, 1989, and Gulfstream Aircraft Service Change No. 110A, dated April 9, 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 Gulfstream Aerospace Corporation, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–2206. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1669 Phoenix

Parkway, suite 210C, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on March 21, 1994.

Issued in Renton, Washington, on February 7, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-3235 Filed 2-16-94; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 93-NM-131-AD; Amendment 39-8816; AD 94-03-09]

Airworthiness Directives; Lockheed Model L-1011-385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Lockheed Model L-1011-385 series airplanes, that requires inspection, modification, and replacement, if necessary, of the flap vane lugs. This amendment is prompted by reports of failure of flap vane lugs due to stress corrosion. The actions specified by this AD are intended to prevent failure of the flap vane lugs, which could lead to separation of flap vane from the airplane and cause injury to people or damage to property on the ground.

DATES: Effective March 21, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 21, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Lockheed Western Export Company, Attn: Commercial and Customer Support, Dept. 693, Zone 0755, 86 South Cobb Drive, Marietta, Georgia 30063. 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, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas B. Peters, Aeronautical Engineer, Flight Test Branch, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; telephone (404) 991-3915; fax (404) 991-3606.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to Lockheed Model L-1011-385 series airplanes was published in the **Federal Register** on September 21, 1993 (58 FR 48984). That action proposed to require inspection, modification, and replacement, if necessary, of the flap vane lugs.

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

Two commenters support the proposal.

Two commenters request that the compliance time for the inspection of the flap vane lugs be extended from the proposed 1,800 flight hours to at least 3,500 flight hours, in order to accommodate regularly scheduled "C" check intervals for the majority of the affected fleet. The commenters point out that, in the preamble to the proposal, the FAA indicated that the intent of the specified compliance time of the rule was to allow operators "ample time for the inspection to be accomplished coincidentally with scheduled major airplane inspection and maintenance activities (i.e., 'C' checks)." The commenter states that revising the compliance time to match the scheduled maintenance interval will enable affected operators to procure adequate necessary parts or manufacture them locally, thus minimizing costs and logistical considerations. The FAA concurs that the compliance time should be extended. Although the compliance time published in the notice was "1,800 flight hours," the intended compliance time was actually "1,800 flight cycles." This latter figure was meant to translate to approximately 3,600 flight hours, which is the average interval for scheduled "C" checks within the affected fleet. The final rule has been revised to specify a compliance time of 1,800 flight cycles.

One commenter requests that the proposal be revised to allow repetitive inspections to be accomplished in accordance with part I ("Preparation and Inspection") of the service bulletin, rather than the proposed one-time inspection and follow-on rework in accordance with part II ("Vane Lug Rework for Lugs Without a Crack/Corrosion Indication"). The commenter suggests that the rework procedures of part II could serve as terminating action for the repetitive inspections. This would allow operators that have inspected but not reworked the lug bores more time to accomplish the rework. It would also allow operators more flexibility in complying with the AD. The FAA does not concur. The inspection procedure specified in part I of the service bulletin and paragraph (a) of this AD is neither designed as nor intended to be an interim or on-going inspection to detect cracking or corrosion. The purpose of that inspection is only to determine the scope of the rework of the lug bores that is necessary. As for providing additional time for conducting the rework procedures, as discussed previously, the final rule has been revised to specify a longer compliance time than was proposed. This longer interval will provide sufficient time for operators to perform both the one-time inspection and the necessary rework within normal maintenance schedules.

One commenter requests that the proposed rule be revised to provide some flexibility in the use of materials for bushing fabrication. The commenter notes that the Lockheed service bulletin referenced in the notice calls out "QQ-C-645, CQ-Alloy 642, Drawn Annealed and Cadmium Plated" material for such fabrication. However, the commenter stocks a bushing material made of a different alloy, which it uses in its fleet in flight control and landing gear applications. The commenter requests to be permitted to use this different material rather than the material specified in the service bulletin. The FAA does not concur. There currently are no FAA-approved data that would allow for the use of the commenter's specific alloy in a flap vane lug application. However, under the provisions of paragraph (e) of this AD, the commenter may submit a request to use this material as an alternative method of compliance with the AD, provided that substantiating data are included to demonstrate that this material will provide an acceptable level of safety in this particular application.

This same commenter requests that the proposed rule be revised to include a part-marking procedure different from that called out in the referenced service bulletin. The procedure contained in the service bulletin specifies that the letter "A" is to be added to the end of the part number on each modified (reworked) vane fitting. The commenter requests that the rule include an alternative procedure to permit adding the letter "A" after the part number of the top assembly (the complete vane assembly) instead. The commenter states that this

alternative procedure will simplify changes to its stock number assignments under its parts tracking system. The FAA cannot specifically concur with this request. The FAA does not consider that the inclusion of such changes as the one requested is appropriate in this AD. However, as stated previously, under the provisions of paragraph (e) of this AD, the commenter may submit a request to use an alternative marking procedure as an alternative method of compliance with the 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 change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 241 Model L–1011–385 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 117 airplanes of U.S. registry will be affected by this AD, that it will take approximately 96 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. On the basis of these figures, the total cost impact of the AD on U.S. operators is estimated to be $617,760, or $5,280 per airplane.

However, the FAA has been advised that 56 of the affected U.S.-registered airplanes have been inspected in accordance with the requirements of this AD. Therefore, the future economic cost impact of this rule on U.S. operators is now only $322,080.

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 14 CFR part 39 of the Federal Aviation Regulations 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:

94–03–09 Lockheed: Amendment 39–8816. Docket 93–NM–131–AD.

Applicability: All Model L–1011–385 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the flap vane lugs, which could ultimately lead to separation of the flap vane from the airplane and pose a danger to persons and property on the ground, accomplish the following:

(a) Within 1,800 flight cycles after the effective date of this AD, inspect the inboard and outboard lug of each flap vane to detect cracks and corrosion, in accordance with Lockheed TriStar L–1011 Service Bulletin 093–57–199, Revision 1, dated May 5, 1993.

Note: Inspections and rework previously accomplished prior to the effective date of this AD in accordance with the original issue of Lockheed TriStar L–1011 Service Bulletin 093–57–199, dated January 21, 1988, are considered in compliance with this paragraph and do not need to be repeated.

(b) For any lug that shows no evidence of cracks or corrosion, prior to further flight, rework the lug bore in accordance with part II of the service bulletin.

(c) If any lug has corrosion or cracking that is within the limits specified in the service bulletin, prior to further flight, accomplish the rework procedures in accordance with Part III of the service bulletin.

(d) If any lug has corrosion or cracking that exceeds the limits specified in the service bulletin, prior to further flight, replace the lug with a new or serviceable part in accordance with the service bulletin.

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

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

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The inspection, rework, and replacement procedures shall be done in accordance with Lockheed TriStar L–1011 Service Bulletin 093–57–199, Revision 1, dated May 5, 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 Lockheed Western Export Company, Attn: Commercial and Customer Support, Dept. 693, Zone 0755, 86 South Cobb Drive, Marietta, Georgia 30063. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(h) This amendment becomes effective on March 21, 1994.

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–2411 Filed 2–16–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–NM–112–AD; Amendment 39–8815; AD 94–03–08]

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes and Model KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC–10 series airplanes and Model KC–10A (military) airplanes, that currently requires certain structural modifications and inspections. This amendment requires additional structural modifications and inspections. This amendment is prompted by an evaluation by the Model DC–10 Task Group, which identified additional modifications for mandatory action. The actions specified by this AD are intended to prevent degradation in the structural capabilities of the affected

airplanes. This action also reflects the FAA's decision that long-term continued operational safety should be assured by actual modification of the airframe, where feasible, rather than only repetitive inspections for known service problems.

DATES: Effective March 21, 1994.

The incorporation by reference of McDonnell Douglas Report No. MDC–K1571, "DC–10/KC–10 Aging Aircraft Service Action Requirements Document," Revision B, dated March 24, 1993, as listed in the regulations, is approved by the Director of the Federal Register as of March 21, 1994.

The incorporation by reference of McDonnell Douglas Report No. MDC–K1571, "DC–10/KC–10 Aging Aircraft Service Action Requirements Document," Revision A, dated February 28, 1990, as listed in the regulations, was approved previously by the Director of the Federal Register as of September 10, 1990 (55 FR 31816, August 6, 1990).

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 90–16–04, Amendment 39–6613 (55 FR 31816, August 6, 1990), which is applicable to McDonnell Douglas Model DC–10 series airplanes and Model KC–10A (military) airplanes, was published in the **Federal Register** on October 12, 1993 (58 FR 52717). The action proposed to supersede AD 90–16–04 to require additional structural modifications and inspections.

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

The commenters support the proposed rule.

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 as proposed.

There are approximately 426 Model DC–10 series airplanes and Model KC–10A (military) airplanes of the affected design in the worldwide fleet.

The FAA estimates that 194 airplanes of U.S. registry were originally affected by AD 90–16–04. The requirements of that AD were estimated to take approximately 360 work hours at a current average labor rate of $55 per work hour. The cost for required modification kits was estimated to be $9,600 per airplane. Based on these figures, the FAA estimated that the total cost impact of AD 90–16–04 on U.S. operators would be $5,703,600, or $29,400 per airplane, over the initial 4-year time period. (These figures do not include the cost of downtime, planning, set-up, familiarization, or tool acquisition.)

The FAA estimates that a total of 269 airplanes of U.S. registry will be affected by the new requirements specified in this AD. This increase in the number of affected airplanes is due to various reasons, including transfer of ownership and the fact that additional airplanes have accumulated time-in-service since the issuance of AD 90–16–04 and have now reached the threshold for modification/inspection. The new additional requirements contained in this AD action will take approximately 796 additional work hours per airplane to accomplish, at an average labor rate of $55 per work hour. Required parts will cost an additional $101,900 per airplane. Based on these figures, the total additional cost impact of this AD on U.S. operators is estimated to be $39,187,920, or $145,680 per airplane, over a 4-year time period. (These figures do not include the cost of downtime, planning, set-up, familiarization, and tool acquisition.)

The figures discussed above are based on the assumption that no operator has yet accomplished the currently required or the newly required requirements of this AD action. However, the FAA has been advised that various modifications that are required by this AD have previously been accomplished on many of the affected airplanes. Therefore, the future total cost impact of this AD is less that the figure shown.

Additional airplanes will be affected as they accumulate time-in-service and reach the threshold for modification/inspection.

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 14 CFR part 39 of the Federal Aviation Regulations 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 39–6613 (55 FR 31816, August 6, 1990), and by adding a new airworthiness directive (AD), amendment 39–8815, to read as follows:

94–03–08 McDonnell Douglas: Amendment 39–8815. Docket 93–NM–112–AD. Supersedes AD 90–16–04, Amendment 39–6613.

Applicability: Model DC–10–10, –10F, –15, –30, –30F, –40, and –40F series airplanes and Model KC–10A (military) airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: Paragraphs (a) and (c) of this AD restate the requirements for an initial inspection and the repetitive inspections contained in paragraphs A. and C. of AD 90–16–04. Therefore, for operators who have previously accomplished at least the initial inspection in accordance with AD 90–16–04, paragraphs (a) and (c) of this AD require that the next scheduled inspection be performed within the specified repetitive inspection interval after the last inspection performed in accordance with paragraphs A. and C. of AD 90–16–04.

Note 2: Paragraphs (b) and (d) of this AD restate the modification requirements of paragraphs B. and D. of AD 90–16–04. As allowed by the phrase, "unless accomplished previously," if the requirements of paragraphs B. and D. of AD 90–16–04 have been accomplished previously, paragraphs (b) and (d) of this AD do not require that they be repeated.

To prevent structural failure, accomplish the following:

(a) For service bulletins other than those identified in paragraph (c) of this AD, within the threshold for inspections specified in the service bulletins listed in Table 2.1 of McDonnell Douglas Report No. MDC–K1571, "DC–10/KC–10 Aging Aircraft Service Action Requirements Document," Revision A, dated February 28, 1990 (hereafter referred to as the "SARD, Revision A"), or Revision B, dated March 24, 1993 (hereafter referred to as the "SARD, Revision B"), or within one repetitive inspection period specified in those service bulletins after September 10, 1990 (the effective date of AD 90–16–04, Amendment 39–6613), whichever occurs later, inspect for cracks in accordance with those service bulletins. Repeat these inspections thereafter at the intervals specified in the service bulletins listed in Table 2.1 of the SARD, Revision A or Revision B.

(1) If any crack is found as a result of any inspection, prior to further flight, either accomplish the terminating modification in accordance with the applicable service bulletin, or repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note 3: Detection of any discrepancies other than cracking necessitates appropriate corrective action in accordance with the provisions of part 43 of the Federal Aviation Regulations (FAR).

(2) Modification in accordance with paragraph (b) of this AD terminates the individual inspection requirements of the applicable service bulletin.

(b) For service bulletins other than those identified in paragraph (c) of this AD, prior to reaching the incorporation thresholds listed in the SARD, Revision A or Revision B, or prior to four years after September 10, 1990, whichever occurs later, accomplish the structural modifications specified in the service bulletins listed under "S/B No. Rev." in Table 2.1 of the SARD, Revision A or Revision B.

Note 4: The service bulletin revision levels listed under "Recommended Modification" in Table 2.1 of the SARD, Revision B, are acceptable revisions for modifications accomplished prior to September 10, 1990.

Note 5: The modifications required by this paragraph do not terminate the inspection requirements of any other AD unless that AD specifies that any such modification constitutes terminating action for the inspection requirements.

(c) For McDonnell Douglas Service Bulletins A30–37, 30–38, 53–16, 53–19, 53–25, 54–11, 54–27, 54–33, 55–2, and 57–7, listed in Table 2.1 of the SARD, Revision A; and for McDonnell Douglas Service Bulletins A30–37, 30–38, 53–16, 53–19, 53–25, 54–11, 54–27, 55–2, and 57–7, listed in Table 2.1 of the SARD, Revision B: Within the threshold for inspections listed under "S/B Change Required" in Table 2.1 of the SARD, Revision A or Revision B, or within one repetitive inspection period specified under "S/B Change Required" in Table 2.1 of the SARD, Revision A or Revision B, after September 10, 1990, whichever occurs later, inspect for cracks in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Repeat these inspections thereafter at the intervals specified under "S/B Change Required" in Table 2.1 of the SARD, Revision A or Revision B.

(1) If any crack is found during any inspection, prior to further flight, either accomplish the terminating modification in accordance with the applicable service bulletin, or repair in accordance with a method approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate.

(2) Modification in accordance with paragraph (d) of this AD terminates the individual inspection requirements of the applicable service bulletin.

(d) Prior to four years after September 10, 1990, accomplish the structural modifications stipulated in the service bulletins specified in paragraph (c) of this AD.

(e) Within the threshold for inspections specified in the service bulletins listed in Table 2.2 of the SARD, Revision B, or within one repetitive inspection period specified in those service bulletins after the effective date of this AD, whichever occurs later, inspect for cracks in accordance with those service bulletins. Repeat these inspections thereafter at the intervals specified in the service bulletins listed in Table 2.2 of the SARD, Revision B.

(1) If any crack is found during any inspection, prior to further flight, either accomplish the terminating modification in accordance with the applicable service bulletin, or repair in accordance with a method approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate.

(2) Modification in accordance with paragraph (f) of this AD terminates the individual inspection requirements of the applicable service bulletin.

(f) Prior to reaching the incorporation thresholds listed in the SARD, Revision B, or within four years after the effective date of this AD, whichever occurs later, accomplish the structural modifications specified in the service bulletins listed in Table 2.2 of the SARD, Revision B.

Note 6: The service bulletin revision levels listed under "Recommended Modification" in Table 2.2 of the SARD, Revision B, are acceptable revisions for modifications accomplished prior to the effective date of this AD.

Note 7: The modifications required by this paragraph do not terminate the inspection requirements of any other AD unless that AD specifies that any such modification constitutes terminating action for the inspection requirements.

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

Note 8: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(h) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(i) The inspections, and modification shall be done in accordance with McDonnell Douglas Report No. MDC–K1571, "DC–10/KC–10 Aging Aircraft Service Action Requirements Document," Revision A, dated February 28, 1990; or McDonnell Douglas Report No. MDC K1571, "DC–10/KC–10 Aging Aircraft Service Action Requirements Document", Revision B, dated March 24, 1993, which contains the following list of effective pages:

Page No.	Revision sym shown on page	Date shown on page
Pages xiii and xiv.	(Not shown on these pages).	March 24, 1993.

The incorporation by reference of McDonnell Douglas Report No. MDC K1571, "DC–10/KC–10 Aging Aircraft Service Action Requirements Document", Revision B, dated March 24, 1993, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The incorporation by reference of McDonnell Douglas Report No. MDC–K1571, "DC–10/KC–10 Aging Aircraft Service Action Requirements Document," Revision A, dated February 28, 1990, was approved previously by the Director of the Federal Register in accordance 5 U.S.C. 552(a) and 1 CFR part 51 as of September 10, 1990 (55 FR 31816, August 6, 1990). Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long

Beach, California 90801–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on March 21, 1994.

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–2412 Filed 2–16–94; 8:45 am]

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14 CFR Part 39

[Docket No. 93–NM–107–AD; Amendment 39–8824; AD 94–04–06]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires replacement of the existing ground/flight microswitches located in the main landing gear with improved microswitches, and installation of an anti-skid system ON/OFF switch in the flight compartment. This amendment is prompted by an incident involving loss of braking, which was caused by mechanical ground/flight microswitches that froze while in the flight position. The actions specified by this AD are intended to prevent loss of braking below 40 miles per hour, when the anti-skid system is activated.

DATES: Effective March 21, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 21, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. 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: Timothy 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 to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published in the **Federal Register** on September 1, 1993 (58 FR 46139). That action proposed to require replacement of the existing left- and right-hand ground/flight microswitches with new, improved microswitches at the MLG downlock, temperature sensor, and anti-skid harness positions. The proposed rule would also require installation of an anti-skid system ON/OFF switch in the flight compartment, for certain airplanes.

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

One commenter supports the proposed rule.

The Air Transport Association (ATA) of America, on behalf of one of its members, requests withdrawal of the proposal. The commenter notes that the proposed replacement and installation has already been accomplished on all 14 airplanes affected by this proposal in the U.S.-registered fleet. Therefore, the commenter does not believe that an AD is necessary. The commenter also asserts that issuance of the proposal would only add to an administrative paperwork burden. The FAA does not agree. Issuance of this AD is necessary to ensure accomplishment of the requirements on any affected airplane currently of foreign registry that is purchased by a U.S. operator and placed on the U.S. register in the future. The FAA has determined that issuance of this AD should only result in a minor administrative burden, since the required actions have already been accomplished.

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 as proposed.

The FAA estimates that 14 airplanes of U.S. registry will be affected by this AD. The FAA has been advised that all 14 affected airplanes have been modified in accordance with the requirements of this AD. Therefore, currently, this AD action imposes no additional economic burden on any U.S. operator.

However, should an unmodified airplane be imported and placed on the U.S. Register in the future, it will take approximately 113 work hours per airplane to accomplish the proposed actions, at an average labor rate of $55 per work hour. Required parts would cost approximately $1,800 per airplane. Based on these figures, the total cost impact of the AD is estimated to be $8,015 per airplane.

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 14 CFR part 39 of the Federal Aviation Regulations 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:

94-04-06 Fokker: Amendment 39-8824. Docket 93-NM-107-AD.

Applicability: Model F28 Mark 0100 series airplanes; serial numbers 11244 through 11265 inclusive, 11268 through 11283 inclusive, 11286, 11289, 11291, 11293, 11295, 11297, 11300, and 11303; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of braking below 40 miles per hour, when the anti-skid system is activated, accomplish the following:

(a) For all airplanes: Within 3 months after the effective date of this AD, replace the existing Dowty Electronics left- and right-hand ground/flight microswitches, part number 620602801, issue 1, with new, improved microswitches, part number 620602801, issue 2, at the main landing gear (MLG) downlock, temperature sensor, and anti-skid harness positions, in accordance with Fokker Service Bulletin SBF100-32-060, dated October 20, 1992.

(b) For airplanes having serial numbers 11244 through 11265 inclusive, 11268 through 11275 inclusive, 11277, and 11279: Within 12 months after the effective date of this AD, install an anti-skid system ON/OFF switch in the flight compartment in accordance with Fokker Service Bulletin SBF100-32-060, dated October 20, 1992.

(c) As of the effective date of this AD, no person shall install a Dowty Electronics left- and/or right-hand ground/flight microswitch, part number 620602801, issue 1, on any airplane.

(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, 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

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

(f) The replacement and installation shall be done in accordance with Fokker Service Bulletin SBF100-32-060, dated October 20, 1992. 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 Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. 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.

(g) This amendment becomes effective on March 21, 1994.

Issued in Renton, Washington, on February 7, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-3236 Filed 2-16-94; 8:45 am]

BILLING CODE 4910-13-U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93-247; RM-8328]

Radio Broadcasting Services; Pauls Valley, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Washita Broadcasting, Inc., substitutes Channel 249C3 for Channel 249A at Pauls Valley, Oklahoma, and modifies the license of Station KGOK to specify operation on the higher class channel. See 58 FR 51603, October 4, 1993, Channel 249C3 can be allotted to Pauls Valley in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.5 kilometers (3.4 miles) southwest, at coordinates North Latitude 34-42-14 and West Longitude 97-15-46, to accommodate petitioner's desired transmitter site. With this action, this proceeding is terminated.

EFFECTIVE DATE: April 4, 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. 93-247, adopted January 25, 1994, and released February 9, 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, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 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 Oklahoma, is amended by removing Channel 249A and adding Channel 249C3 at Pauls Valley.

Federal Communications Commission

John A. Karousos,

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

[FR Doc. 94-3587 Filed 2-16-94; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 59, No. 33
Thursday, February 17, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 772

RIN 3206–AF76

Interim Relief

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is publishing a proposed change to regulations reflecting administrative case law on taking personnel actions to provide interim relief under the Whistleblower Protection Act of 1989. These changes also reflect OPM's initiative to sunset the Federal Personnel Manual.

DATES: Comments must be received on or before April 18, 1994.

ADDRESSES: Written comments may be sent or delivered to Marjorie A. Marks, Chief, Family Programs and Employee Relations Division, Office of Labor Relations and Workforce Performance, U.S. Office of Personnel Management, room 7412, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Gary D. Wahlert (202) 606–2920.

SUPPLEMENTARY INFORMATION: The Whistleblower Protection Act of 1989 (WPA), Public Law 101–12 codified at 5 U.S.C. 7701(b)(2)(A), provided that prevailing parties in an appeal to the Merit Systems Protection Board (MSPB) shall be granted the relief provided in the decision, and remaining in effect pending the outcome of any petition for review. OPM published final regulations on this subject in the **Federal Register** on January 31, 1992 (57 FR 3707–3715). The final regulations authorized agencies to take interim personnel actions to provide a prevailing applicant or employee the interim relief ordered in an MSPB initial decision. Interim personnel actions include, but are not limited to, interim appointments, interim repromotions after demotions, and interim within-grade increases.

After these regulations were published, the Merit Systems Protection Board (MSPB) issued an administrative decision in *Leonard Ginocchi* v. *Department of Treasury*, DC315I8910527, February 19, 1992, which explained MSPB's interpretation of the WPA with regard to interim relief. In *Ginocchi*, the Board ruled that it would not look behind the agency's determination under 5 U.S.C. 7701(b)(2)(A) that returning an employee to the workplace would be unduly disruptive. It also held that an agency making a determination of undue disruption did not have to keep the employee on excused absence (administrative leave), but could place the employee in other duties. OPM believes this facet of *Ginocchi* is a reasonable and persuasive interpretation of the WPA. Since this interpretation is inconsistent with a portion of OPM's regulations (which was based on a more restrictive interpretation), OPM is proposing to delete that portion of the regulations—section 772.102(d). This change will help reduce any confusion by practitioners before the Board about their respective rights and responsibilities regarding interim relief.

In addition, OPM notes that guidance on preparing official documentation to effect an interim personnel action is currently located in Federal Personnel Manual Supplement 296–33. The current regulations provide that interim relief actions need to be prepared in accordance with that guidance and other guidance contained in FPM Chapter 296. Consistent with OPM's initiative to sunset the FPM, OPM proposes to delete references in the regulation to the FPM.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it applies only to Federal employees.

List of Subjects in 5 CFR Part 772

Administrative practice and procedure; Government employees.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM proposes to amend part 772 of title 5 of the Code of Federal Regulations as follows:

PART 772—INTERIM RELIEF

1. The authority citation for part 772 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302, and 7301; Pub. L. 101–12.

§ 772.102 [Amended]

2. Section 772.102 is amended by removing paragraphs (d) and (g); redesignating paragraphs (e) and (f) as paragraphs (d) and (e) respectively; and by removing the semicolon and the word "and" at the end of redesignated paragraph (e) and inserting a period in its place.

[FR Doc. 94–3617 Filed 2–16–94; 8:45 am]

BILLING CODE 6325–01–M

FEDERAL RESERVE SYSTEM

12 CFR Part 212

[Regulation L; Docket No. R–0825]

Management Official Interlocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of Governors of the Federal Reserve System is proposing to amend its regulations that implement the Depository Institution Management Interlocks Act (Interlocks Act or Act). The Interlocks Act generally prohibits certain management official interlocks between depository institutions, depository holding companies, and their affiliates. The proposed amendment would create limited exemptions to the prohibition on management official interlocks between certain depository organizations located in the same community or relevant metropolitan statistical area (RMSA). These exemptions would permit management official interlocks between depository organizations that together control only a small percentage of the total deposits in the community or RMSA. These exemptions are based on the Board's belief that these management interlocks would not threaten to inhibit or restrict

competition among depository organizations. In addition, the Board is soliciting comment generally on revisions to the existing Interlocks Act regulations that the Board should consider, including the addition of other exemptions. The Board also is proposing amendments to implement certain provisions of the Management Interlocks Revision Act of 1988.

DATES: Written comments must be received on or before April 11, 1994.

ADDRESSES: Comments, which should refer to Docket No. R-0825, may be mailed to Mr. William Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. Comments addressed to Mr. Wiles may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room MP-500 between 9:00 a.m. and 5:00 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Thomas M. Corsi, Senior Attorney (202/452-3275), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551

SUPPLEMENTARY INFORMATION:

Background—Exemptions to the Interlocks Act

The general purpose of the Interlocks Act is to foster competition among depository organizations[1] by prohibiting certain management interlocks that might contribute to anticompetitive practices. The primary concern is that interlocking management may enable certain depository institutions to control the flow and availability of credit in the markets in which they operate.

The Act prohibits a management official of a depository organization from serving at the same time as a management official of an unaffiliated depository organization located in the same community[2] or RMSA.[3] 12 U.S.C. 3202. Congress designated RMSAs as appropriate regions within which to restrict management interlocks because RMSAs are "economic trade areas and reflect the area in which financial institutions compete." S. Rep. No. 323, 95th Cong., 1st Sess. 14 (1977).[4]

In the Interlocks Act, Congress authorized the Federal depository institutions regulatory agencies (the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, and the Office of the Comptroller of the Currency, hereinafter the "Agencies") to implement rules and regulations to carry out the Act, including rules or regulations which permit service by a management official that would otherwise be prohibited by the Act. 12 U.S.C. 3207. The legislative history of the Act indicates that the Agencies may exercise this rulemaking authority to exempt management official interlocks that otherwise might be prohibited by the statute if they establish that the exemption has a pro-competitive effect. H.R. Rep. No. 1383, 95th Cong., 2d Sess. 15 (1978).

Pursuant to this rulemaking authority, the Board, along with the other Agencies, previously established exceptions for institutions located in low- and moderate-income areas, minority- and/or women-owned organizations, newly-chartered institutions, and institutions facing conditions endangering their safety and soundness. *See* 12 CFR 212.4(b). These exceptions are all available on a temporary basis upon a demonstration that the exempted management official interlock is necessary to provide management or operating expertise to the requesting institution.

The Agencies are publishing their proposed rule notices separately. The Board now seeks comment on a proposal to establish additional exemptions from the prohibitions of the Act. These exemptions would be available to depository organizations that between them control a small percentage of deposits in a community or RMSA. The Board also proposes an amendment to exempt honorary and advisory directors that serve institutions with less than $100 million in assets from the definition of a "management official" in the Interlocks Act. This change is consistent with a provision of the Management Interlocks Revision Act of 1988 (Pub. L. 100-650, 102 Stat. 3819 (1988)).

In addition to the proposed new exemption to the Interlocks Act, the Board, together with the other Federal depository institutions regulatory agencies, is considering a more comprehensive revision of the regulations implementing the statute. Any such revision would seek to simplify the regulations, revise existing exemptions, and consider new exemptions that would foster competition in relevant RMSAs and communities and thus minimize unnecessary regulatory burden while still fulfilling the requirements of the Interlocks Act. The Board therefore is using this notice of proposed rulemaking as an opportunity to solicit additional comment on the question of the improvement of its Interlocks Act regulations.

The Small Market Share Exemption

The Interlocks Act prevents two competing institutions from conspiring through common management officials to adversely impact competition in the products and services they offer. Where two depository institutions dominate a large portion of the market, these risks are real. But when a particular market is served by many institutions, the risks diminish that two depository institutions with interlocking management can adversely affect the credit products and services available in their market.

The Board believes that analysis of the combined deposit holdings of two institutions provides a meaningful assessment of the capacity of the two institutions to control credit and related services in their market. This proposal reflects the view that two depository institutions that control a small portion of the market they serve are not capable of exerting sufficient market influence to materially restrict the terms and availability of credit in their market. For institutions located in a RMSA, the RMSA constitutes the relevant market.

Some depository institutions compete in smaller markets either within or

[1] A depository organization means a depository institution or a depository holding company. *See* 12 CFR 212.2(g).

[2] Community is defined as a city, town, or village, or contiguous or adjacent cities, towns, or villages. 12 CFR 212.2(c)

[3] An RMSA includes a primary metropolitan statistical area, a metropolitan statistical area, or a consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas as defined by the Office of Management and Budget. *See* 12 CFR 212.2(n); 58 FR 27443 (May 18, 1993).

[4] The prohibitions apply if both organizations are depository institutions, each with an office in the same RMSA; if offices of depository institution affiliates of both organizations are located in the same RMSA; or if one organization is a depository institution that has an office in the same RMSA as a depository institution affiliate of the other organization. The RMSA prohibition does not apply to depository institutions with less than $20 million in assets. *See* 12 CFR 212.3.

outside of RMSAs. The Interlocks Act provides that the relevant market for these organizations and organizations with total assets of $20 million or less that are located within a RMSA, is the city, town, or village and contiguous and adjacent areas in which the organizations are located. 12 U.S.C. 3202.

The Proposal

The Board is proposing to amend the management interlocks regulations to permit two depository organizations that serve the same RMSA to share management officials in circumstances where organizations control a small portion of the deposits in that market. Specifically, this proposal would permit two competing depository organizations, each with assets in excess of $20 million, to share management officials if the organizations together control no more than 20 percent of the deposits in the RMSA. Additionally, the depository organizations could control no more than 20 percent of the deposits in any other RMSA whether they compete directly, through offices, or through affiliated depository institutions.

Under the proposal, depository organizations located in RMSAs would look to appropriate deposit share data available from the relevant Federal Reserve Bank in order to determine whether they are entitled to the exemption in reliance upon this information. Depository institutions would not have to apply to the appropriate Federal depository institution regulatory agency for permission to engage in the interlock.

The Board would treat management interlocks between institutions with assets of less than $20 million that are located within an RMSA and all depository institutions located outside of an RMSA in a similar manner. Specifically, the amendment would exempt any management interlock between two depository organizations located in a community, as defined by § 212.2 of the regulation, if the depository organization's combined share of the total deposits in the community is no more than 20 percent. Similarly, to be exempt, the organizations may not together control more than 20 percent of the deposits in any community in which they or their depository institution affiliates are located.

The proposal would provide an exemption only if management interlocks between the two organizations are not otherwise prohibited by the Act. For example, 12 U.S.C. 3203 provides that a depository institution or a depository holding company with assets in excess of $1 billion may not enter into a management interlock with a depository institution or a depository holding company with assets in excess of $500 million. No exemption would be available for interlocks that fall within this prohibition. The exemption is effective as long as the organizations meet the conditions. If the level of deposit control exceeds 20 percent of deposits in the community or RMSA, as measured annually, the depository organizations shall have up to 15 months to address the prohibited interlock by shrinking the deposit base, terminating the interlock, or taking any other action to correct the violation.

No prior Board approval is required. The exemption is intended to be self-implementing. Management is responsible for compliance with the terms of the exemption and maintaining sufficient supporting documentation.

Determining Deposit Share of the Relevant Market

Using the total deposit data reported by depository institutions to the Federal Deposit Insurance Corporation (FDIC) in the Summary of Deposits addendum to the Report of Condition and Income, the depository organizations will determine for themselves whether the exemption is available. The FDIC compiles the collected deposit data into a summary and makes the deposit summary available annually. The FDIC's annual deposit summary breaks-out the total deposits of every insured depository institution by branch.[5] This deposit data can be sorted by RMSA, and by community as that term is defined by the Act, to provide to depository organizations the necessary information to determine deposit share by the relevant market.

The FDIC provides this deposit summary to each of the Agencies. Under the proposal, the Board will make the deposit data available to all bank holding companies and state member banks.[6] Each of the Agencies will make the same data available to the other depository organizations. The process would involve neither an application nor an approval from any of the Agencies but, the burden of determining the applicability of the exemption falls upon the depository organizations that seek it. Depository organizations located in an RMSA would simply look to the deposit share data for the total deposits of the RMSA. Then, both interlocking depository organizations would determine whether their combined share of the total deposits exceeds 20 percent. If the combined share of deposits is no more than 20 percent of the market, the interlock is exempt.

The Board intends this exemption to be available to community-based depository organizations in the same manner as for organizations whose relevant market is the RMSA. However, while the deposit share data can be pre-sorted and made readily available by RMSA, the deposit share data cannot be pre-sorted by community. For example, two community-based depository organizations seeking to rely on the small market share exemption must first determine the total deposits in their community. To do this, the depository organizations must request deposit share data from the Board with sufficient specificity to delineate the community defined by the Interlocks Act that both the interlocking institutions will serve. Only then can they calculate the portion of the deposits in the market that they would be deemed to control if they engage in the interlock.

Whether within or outside of an RMSA, the depository organizations will be required to retain records supporting the applicability of the exemption, and to reconfirm, on an annual basis, that the interlock is eligible for the exemption. The most recent deposit share data made available to the depository organizations by the Agencies will determine whether organizations are entitled to the small market share exception. When new data demonstrates that the two interlocking institutions' combined control of deposits exceeds 20 percent of deposits in the community or RMSA, the affected depository organizations have up to 15 months to correct the prohibited interlock.

Pro-competitive Results

The Board believes this proposal will have a pro-competitive effect. Since the deposit base of the exempted interlocking institutions is small, the risk of anticompetitive control over the market is remote. To provide to these particular institutions this limited relief from the management interlock

[5] The data do not include the deposits held by federally-chartered credit unions, which are insured by the National Credit Union Share Insurance Fund, and state-chartered credit unions. Typically, these credit union deposits comprise only a small part of the total deposits in a relevant market. If included, the deposit figures for a particular market would be slightly increased. As such, the data will not include the credit union deposits, but will still serve as a reliable approximation of the total deposits in the relevant market.

[6] For the purpose of ascertaining whether depository organizations qualify for the exception, deposit information regarding specific counties and RMSAs will be available at each Federal Reserve Bank.

restrictions enlarges the pool of experienced management talent upon which they may draw and enhances their operational effectiveness. The result will be better managed, more competitive, and healthier depository institutions.

Request for Comment

In addition to any relevant comments on this proposal, the Board specifically requests comment on the following:

1. Whether 20 percent or less of the deposits of a community or RMSA is an appropriate threshold for the exemption, or whether a different level is more appropriate.

2. Should the community and RMSA exemptions rely on the same or a different threshold level?

3. Should the exemption require depository organizations to demonstrate that they control no more than 20 percent of the deposits of communities within an RMSA? For example, if two depository organizations with more than $20 million in assets operate in a community within a RMSA, should the exemption require that the depository organizations control no more than 20 percent of the deposits in the community and no more than 20 percent of the deposits in the RMSA? Consider depository organizations that compete in several communities within a RMSA.

4. Whether and how the proposed procedure to employ the deposit data collected by the FDIC in connection with the Report of Condition and Income will permit depository organizations to determine easily and effectively whether they qualify for the small market share exception.

5. Whether the exemption for community-based institutions will be easy to use, or whether these institutions might be better served by another approach to the exemption.

6. Whether the exemption would enable depository organizations to subvert the purposes of the Interlocks Act by establishing multiple interlocks involving several individuals. For example, the Board is concerned that each of several directors of one depository organization could serve as a director of a different unaffiliated depository organization, facilitating diminished competition among the several depository organizations. The Board seeks comment on whether this concern is justified, and if so, whether it is exacerbated by the fact that the threshold limit for the exemption is set at 20 percent of the deposits in the RMSA or community, rather than a smaller percentage.

In addition to this proposal, the Board plans a comprehensive revision of the regulations implementing the Interlocks Act. The Board intends to simplify the regulation, revise the interlocks prohibitions and exemptions, and consider new exemptions that promote competition without fostering anticompetitive practices. The comprehensive revision will eliminate unnecessary regulatory burden in a manner consistent with the Interlocks Act and the stated objectives of the Board.

Toward this end, the Board solicits comment on how to clarify and improve the entire rule in a manner consistent with the Interlocks Act.

Paperwork Reduction Act

The collection of information contained in this proposed rule will be reviewed by the Board under Office of Management and Budget (OMB) delegated authority pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Comments regarding the accuracy of the burden estimate, and suggestions for reducing the burden, should be addressed to Mr. William Wiles, Secretary, Board of Governors of the Federal Reserve System at the address noted above and should refer to Docket No. R-0825.

The collection of information in this proposed rule is found in § 212.4(d), and takes the form of records maintained by depository organizations which are sufficient to support their determination that the interlocking relationships which they have established are exempt under this section. Such depository organizations must also maintain records which demonstrate that they have subsequently reconfirmed such determinations on an annual basis. The information will be used to provide state and federal examiners of depository institutions with documentation which will allow them to ascertain whether depository organizations are eligible for the exemption.

The estimated annual recordkeeping burden for the collection of information requirement in this proposed rule is summarized as follows:

Number of Recordkeepers: 70
Annual Hours per Recordkeeper: 3
Total Recordkeeping Hours: 210

Regulatory Flexibility Act

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Board hereby certifies that this proposed rule, if adopted as a final rule, will not have a significant economic impact on a substantial number of small entities. The effect of the rule, if adopted as proposed, would be to reduce the compliance requirements imposed upon small entities by creating a regulatory exemption to the prohibition on management interlocks between certain organizations. Furthermore, the proposed exemption would affect only the management structure of only a few institutions.

List of Subjects in 12 CFR Part 212

Antitrust, Banks, banking, Holding companies, Management official interlocks.

Accordingly, for the reasons set forth in the preamble, the Board of Governors of the Federal Reserve System proposes to amend 12 CFR part 212 as follows:

PART 212—MANAGEMENT OFFICIAL INTERLOCKS (REGULATION L)

1. The authority citation for part 212 continues to read as follows:

Authority: 12 U.S.C. 3201 *et seq.*, 15 U.S.C. 19.

2. Section 212.2 is amended by revising paragraph (h) to read as follows:

§ 212.2 Definitions.

* * * * *

(h)(1) *Management official* means:

(i) An employee or officer with management functions (including a branch manager);

(ii) A director (including an advisory or honorary director, except in the case of a depository institution with total assets of less than $100,000,000);

(iii) A trustee of a business organization under the control of trustees (e.g. a mutual savings bank); or

(iv) Any person who has a representative or nominee serving in any such capacity.

(2) *Management official* does not include:

(i) A person whose management functions relate exclusively to the business of retail merchandising or manufacturing;

(ii) A person whose management functions relate principally to the business outside the United States of a foreign commercial bank; or

(iii) Persons described in the provisos of section 202(4) of the Interlocks Act (12 U.S.C. 3201(4)).

* * * * *

3. Section 212.4 is amended by adding a new paragraph (d) to read as follows:

§ 212.4 Permitted interlocking relationships.

* * * * *

(d) *Small market share exemption—* (1) *Depository organizations controlling no more than 20 percent of the deposits in a community or RMSA.* A management official may serve two unaffiliated depository organizations in a capacity which would otherwise be prohibited by § 212.3(a) or (b) of this part if the following conditions are met:

(i) The interlock is not prohibited by § 212.3(c) of this part; and

(ii) The two depository organizations hold in the aggregate no more than 20 percent of the deposits, as reported annually in the Summary of Deposits, in each RMSA or community in which the depository organizations have offices, or in which depository institution affiliates of both depository organizations are located.

(2) *Confirmation and records.* Depository organizations must maintain records sufficient to support their determination that the interlocking relationship is exempt under this section and must reconfirm that determination on an annual basis.

(3) *Termination.* An interlock permitted by this exemption may continue as long as the conditions of this section are satisfied. Any increase in the aggregate deposit holdings of the depository organizations as reported annually in the Summary of Deposits, that causes the interlock to become prohibited will be treated as a change in circumstances under § 212.6 of this part.

By order of the Board of Governors of the Federal Reserve System, February 4, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-3090 Filed 2-16-94; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–CE–52–AD]

Airworthiness Directives: de Havilland DHC–6 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to de Havilland DHC–6 series airplanes. The proposed action would require repetitively inspecting the horizontal stabilizer center hinge bracket for cracks, and replacing any cracked center hinge bracket. Several reports of cracks in the horizontal stabilizer center hinge bracket flange on the affected airplanes prompted the proposed action. The actions specified by the proposed AD are intended to prevent separation of the elevator control support from the airplane as a result of a cracked horizontal stabilizer center hinge bracket, which could result in reduced controllability of the airplane.

DATES: Comments must be received on or before April 22, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–52–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 de Havilland, Inc., 123 Garratt Boulevard, Downsview, Ontario, Canada, M3K 1Y5. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791–6220; facsimile (516) 791–9024.

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. 93–CE–52–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. 93–CE–52–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Transport Canada, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on de Havilland DHC–6 series airplanes. Transport Canada reports that the horizontal stabilizer center hinge bracket has cracked on several of the above referenced airplanes.

De Havilland has issued Service Bulletin (SB) 6/512, dated October 25, 1991, which specifies procedures for (1) inspecting the horizontal stabilizer center hinge bracket for cracks; and (2) replacing this center hinge bracket. Transport Canada classified this service bulletin as mandatory and issued Transport Canada AD CF–92–05, dated February 7, 1992, in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, 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 de Havilland DHC-6 series airplanes of the same type design, the proposed AD would require repetitively inspecting the horizontal stabilizer center hinge bracket for cracks, and replacing any cracked center hinge bracket. The proposed action would be accomplished in accordance

with the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland SB 6/512, dated October 25, 1991.

The FAA estimates that 169 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 inspection, 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 $9,295. This figure only includes the cost for the initial inspection and does not include replacement costs if a center hinge bracket was found cracked nor does it include repetitive inspection costs. The FAA has no way to determine how many center hinge brackets may be cracked or how many 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 14 CFR part 39 of the Federal Aviation Regulations 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 AD to read as follows:

De Havilland: Docket No. 93–CE–52–AD.

Applicability: Models DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 airplanes (all serial numbers), certificated in any category.

Compliance: Required within the next 250 hours time-in-service (TIS), unless already accomplished, and thereafter at intervals not to exceed 1,200 hours TIS.

To prevent separation of the elevator control support from the airplane as a result of a cracked horizontal stabilizer center hinge bracket, which could result in reduced controllability of the airplane, accomplish the following:

(a) Inspect the horizontal stabilizer center hinge bracket for cracks in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland Service Bulletin 6/512, dated October 25, 1991, except that where dye penetrant inspections are specified, accomplish visual inspections with a strong light source and 10X magnifying glass. If any cracks are found, prior to further flight, replace the center hinge bracket in accordance with the referenced service bulletin.

Note 1: The repetitive inspection requirement of this AD still applies if the center hinge bracket is replaced.

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

(c) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, New York Aircraft Certification Office (ACO), FAA, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to de Havilland, Inc., 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5 Canada; or may examine this document 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 February 11, 1994.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Office.

[FR Doc. 94–3576 Filed 2–16–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–CE–61–AD]

Airworthiness Directives: Piper Aircraft Corporation PA24, PA28R, PA30, PA32R, PA32RT, PA34–200, PA34–200T, PA39, and PA44 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The Federal Aviation Administration (FAA) recently became aware of an incident in England where the left main landing gear (MLG) collapsed on a Piper Aircraft Corporation (Piper) Model PA34–200T airplane because of swivel pin failure. At that time, the FAA found no service difficulty reports on airplanes of this type design that are certificated for operation in the United States. The FAA has since reviewed service difficulty reports of all Piper airplanes that have retractable MLG with the swivel pin configuration (certain PA24, PA28R, PA30, PA32R, PA32RT, PA34–200, PA34–200T, PA39, and PA44 series airplanes), and found two incidents of cracked swivel pins. The purpose of this advance notice is to seek comments from interested persons regarding the best action (if any) to take in order to correct any possible problems with retractable MLG swivel pins. All comments and ideas will be evaluated by the FAA and the FAA will research the situation to decide whether rulemaking is needed.

DATES: Comments must be received on or before May 10, 1994.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–61–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.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; telephone (404) 991–2910; facsimile (404) 991–3606.

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. 93–CE–61–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this ANPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–61–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA is currently investigating a possible unsafe condition on Piper PA24, PA28R, PA30, PA32R, PA32RT, PA34–200, PA34–200T, PA39, and PA44 series airplanes that have retractable main landing gear (MLG) with a swivel pin configuration.

The MLG collapsed on a Piper Model PA34–200T airplane that is certificated for operation in England because of MLG swivel pin failure. At that time, the FAA found no service difficulty reports of this type on airplanes of this type design that are certificated for operation in the United States. The FAA has since reviewed service difficulty reports of all Piper airplanes that have retractable MLG with the swivel pin configuration (certain PA24, PA28R, PA30, PA32R, PA32RT, PA34–200, PA34–200T, PA39, and PA44 series airplanes), and found two incidents of swivel pin failure.

Discussions with operators that utilize these type airplanes under 14 CFR part 135 reveal that regular maintenance inspections require inspections in this area every 200 hours time-in-service (TIS), and that there have been no problems with the retractable MLG swivel pins.

The inspection procedures in Piper's maintenance manual of the referenced airplanes calls for inspecting the MLG assembly every 100 hours TIS. The inspection procedures do not specifically address a teardown inspection of this assembly. At this time, the FAA has determined that there is no basis to establish a threshold or repetitive teardown inspection interval of this assembly based on the information obtained.

In order to adequately make a determination as to what type of action to take (if any), the FAA is issuing this advance notice of proposed rulemaking (ANPRM) to provide an opportunity for the general public to participate in the decision whether to initiate rulemaking. Interested persons are encouraged to provide information that describes what they consider the best action (if any) to be taken to correct the possible problem. In this regard, the FAA is especially interested in comments and viewpoints on the following:

1. How often do you have the retractable MLG swivel pins inspected and in what detail, i.e., visual, dye penetrant, etc.?

2. Does the checklist in the procedures you utilize during the MLG swivel pin inspections include removal of the swivel pins?

3. Have you ever replaced the swivel pin?

a. If so, please list the hours TIS replaced and the reason why for each instance?

b. If not, how many hours TIS have you accumulated on your airplane?

4. Do you feel that the current inspection requirements are adequate, i.e., 14 CFR part 43, your checklist, Piper's maintenance manual, etc.? Please list any specific recommendations that you may have concerning current or future inspection requirements.

5. Please include the model and serial number of your airplane, and the part number of the retractable MLG swivel pin with this correspondence.

6. Please provide any other information that you feel is pertinent in helping the FAA determine what type of action (if any) needs to be taken. The following figure (Figure 1) depicts the retractable MLG assembly, including the swivel pin.

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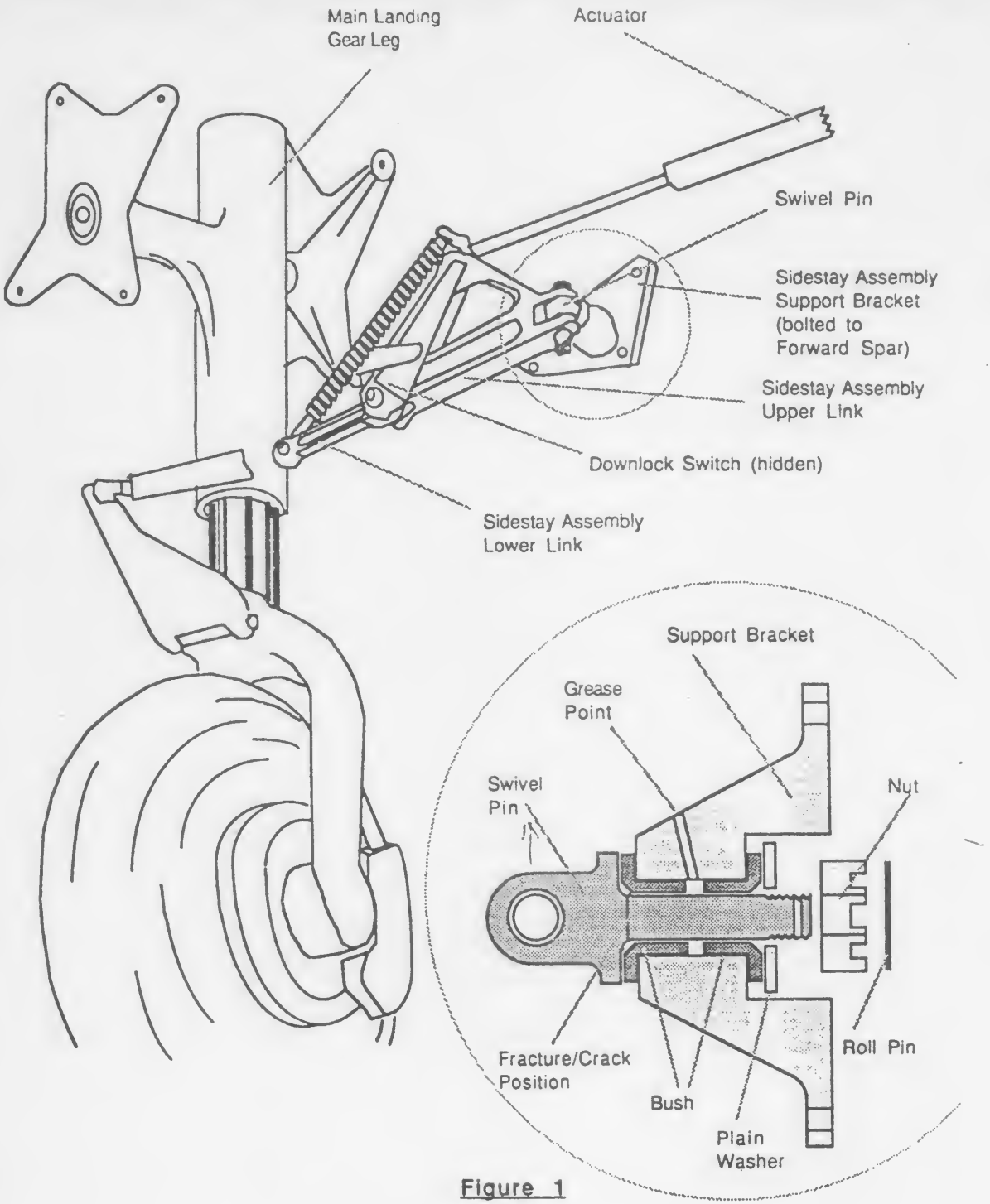

Figure 1

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Issued in Kansas City, Missouri, on February 11, 1994.

Mickael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–3575 Filed 2–16–94; 8:45 am]

BILLING CODE 4910–13–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34–33608; International Series Release No. 635; File No. S7–24–91]

RIN 3235–AE42

Large Trader Reporting System

AGENCY: Securities and Exchange Commission.

ACTION: Reproposed rulemaking.

SUMMARY: The Commission is reproposing Rule 13h–1 and Form 13H under Section 13(h) of the Securities Exchange Act of 1934 ("Exchange Act"). Rule 13h–1 was initially proposed by the Commission in Exchange Act Release No. 29593 (August 22, 1991), 56 FR 42550 (August 28, 1991). Reproposed Rule 13h–1 would establish an activity-based identification, recordkeeping, and reporting system for large trader accounts and transactions. Reproposed Rule 13h–1 also would establish a definition for large traders and require such large traders to file Form 13H with the Commission. Registered broker-dealers would be required to maintain transaction records for each large trader account and report transactions upon the request of the Commission or a self-regulatory organization ("SRO") designated by the Commission. Reproposed Rule 13h–1 would fulfill the goals of the Market Reform Act of 1990 ("Market Reform Act") by providing the Commission with the information necessary to reconstruct trading activity in periods of market stress and for enforcement or other regulatory purposes, without imposing undue burdens or costs on market participants.

DATES: Comments must be received on or before April 18, 1994.

ADDRESSES: Persons wishing to submit written comments should file three copies with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. All comment letters should refer to File No. S7–24–91. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Julio A. Mojica, Assistant Director, (202) 272–7497, Nicholas T. Chapekis, Special Counsel, (202) 272–3115, or Cameron D. Smith, Staff Attorney, (202) 272–5418, Division of Market Regulation, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission is reproposing Rule 13h–1 to implement the large trader reporting provisions of the Market Reform Act [1] and section 13(h) of the Exchange Act.[2] The Large Trader Reporting System that would be established by reproposed Rule 13h–1 was initially proposed in Securities Exchange Act Release No. 29593 (August 22, 1991), 56 FR 42550 (August 28, 1991) ("Proposing Release").

The Proposing Release chronicled the fundamental changes in participants, information systems, and investment techniques that have shaped the securities markets during the last decade.[3] As a result of these changes, today's securities markets are global in nature and characterized by large foreign and domestic investors that rapidly trade large quantities of securities, for themselves and others, throughout the world. During this period of change, the securities markets have experienced an increase in activity and the potential for volatility.

The legislative history accompanying the Market Reform Act noted the Commission's limited ability to analyze the causes of the significant market declines of October 1987 and 1989.[4] The Commission's inability to analyze trading activity was attributed to its lack of specific statutory authority to gather broad-based samples of investor trading information. To resolve this problem, Congress provided the Commission with specific authority to establish a large trader reporting system.

In the Proposing Release, the Commission proposed rules that defined the term large trader, required the disclosure of a large trader's identity and accounts to the Commission or others, and provided for the assignment of unique identifying numbers to large traders. The proposed rule also required broker-dealers that carry large trader accounts to maintain records of identified large trader transactions as well as transactions of those persons who have not identified themselves, but whom the broker-dealer knew or had reason to know were large traders. In addition, the proposed rule required broker-dealers to report large trader transactions in machine-readable form through the industry's existing electronic bluesheet system to the Commission upon request.

The Commission solicited comments on various aspects of the proposed rule, including the definition of a large trader, the identifying and reporting activity thresholds, exemptions, Form 13H filing requirements, execution time recordkeeping and reporting, and the proposed rule's application to foreign entities. The Commission was particularly sensitive to the burdens imposed by the proposed system and sought alternatives that would reduce such burdens and still accomplish the objectives of the Market Reform Act.

The Commission received 77 written comments on the proposed rule.[5] In addition, members of the Division of Market Regulation met on numerous occasions with the Securities Industry Association ("SIA"), the American Bankers Association, the Intermarket Surveillance Group ("ISG"), the Securities Industry Automation Corporation ("SIAC"), and two broker-dealers, to answer questions and discuss issues related to the operation of the proposed system and its impact on market participants.[6]

While generally supportive of the goals of the Market Reform Act,[7] the commenters expressed concern that the proposed rule would be unduly burdensome and costly. The commenters generally sought clarification of "who" would be a large trader, "what" information must be disclosed on Form 13H, and "when" Form 13H or trade report information must be submitted. These concerns were manifested in specific questions and

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[1] Public Law 101–432, 104 Stet. 963 (1990).

[2] 15 U.S.C. 78m(h) (1990).

[3] See Proposing Release, 56 FR 42550.

[4] See generally Senate Comm. on Banking, Housing, end Urban Affairs, Report to eccompany the Merket Reform Act of 1990, S. Rep. No. 300, 101st Cong. 2d Sess. (May 22, 1990) (reporting S. 648) ("Senate Report") and House Comm. on Energy end Commerce, Report to accompany the Securities Market Reform Act of 1990, H.R. Rep. No. 524, 101st Cong. 2d Sess. (June 5, 1990) (reporting H.R. 3657) ("House Report").

[5] The comment letters and the Division of Market Regulation's summary thereof have been placed in the Commission's public files. See SEC File No. S7–24–91.

[6] Memorenda summarizing the Division of Market Reguletion's meetings with these entities have been placed in the Commission's public files. See SEC File No. S7–24–91.

[7] Comments were received from seven types of market participants end regulatory orgenizations, which may be grouped es follows: 12 broker-dealers; 24 investment edvisers; 13 industry or professional essociations; 8 banks or trust companies; 6 reguletory organizations; 4 lew firms; end 9 other affected market participants.

comments regarding the rules for aggregation, the definitions of ownership and control, the scope of Form 13H information, and time frames for filing Form 13H. The commenters also addressed the identifying activity level, exemptions, and the duty to supervise compliance with the proposed rule. Finally, the broker-dealer community raised several concerns regarding the technical aspects of the reporting requirements for execution times, multiple large trader identification numbers ("LTID"), and the time frame for submitting trade reports.

The reproposed rule has been revised to incorporate many of the suggestions made in the comment letters. These provisions are intended to clarify the operation of the reproposed system and reduce the costs associated with all aspects of the reproposed rule. The changes found in the reproposed rule would: (1) Clarify the definition of a large trader and provide a flexible concept of aggregation; (2) increase the identifying and reporting activity levels; (3) reduce the scope of information captured on Form 13H; (4) streamline Form 13H filing and updating requirements that include an inactive filing status; (5) provide more informative and detailed instructions to Form 13H; (6) reduce the recordkeeping and reporting requirements for LTIDs; (7) provide special reporting requirements for execution times; and (8) provide a safe harbor for the duty to supervise.

The reproposed rule also addresses today's complex global trading environment and attempts to maintain a level playing field between broker-dealers and banks, both domestic and foreign. The Commission has endeavored to maintain an equal competitive environment between these entities by imposing requirements on custodians or nominees of omnibus accounts. These duties include: (1) Form 13H filings; (2) confidential and limited disclosures to the Commission or others; and (3) limited duties to disaggregate and assure compliance with omnibus account identification requirements.

Essentially, the reproposed large trader reporting system would require that a person that falls within the definition of a large trader would file Form 13H with the Commission. Upon receipt of Form 13H, the Commission would assign an LTID to the large trader. After receiving a LTID, large traders would contact their broker-dealers and inform them of their number and all accounts to which it applies. Thereafter, the large trader only would be required to file an updated Form 13H annually. The broker-dealers carrying the large trader's accounts would maintain records of the trades for the account. These broker-dealers would electronically report transactions upon receiving a request from the Commission. Broker-dealers also would be required to supervise compliance with the reproposed rule by their customers.

Fundamentally, the burdens that would be imposed on large traders by the reproposed rule would include: (1) Filing Form 13H (See Sections III.B.1. and 2.); (2) disclosing it's LTIDs to broker-dealers (See Section III.B.3.); (3) updating Form 13H annually (See Section III.B.1.); and (4) providing additional information when the Commission requests (See Section III.B.5.). The burdens imposed on broker-dealers would include: (1) Maintaining records of transactions effected for large trader accounts (See Section III.C.); (2) electronically reporting large trader transaction information when the Commission requests (See Section III.D.); and (3) supervising their customers' compliance with the reproposed rule (See Section III.E.).

The specific changes to the proposed rule and several examples of how they would affect the reproposed system are discussed below. The Commission believes that the reproposed rule accomplishes the objectives of the Market Reform Act by creating an effective market reconstruction tool, minimizing burdens and costs, and maintaining a fair competitive environment among markets and market participants.

II. Solicitation of Comments

The Commission believes that the modifications and additions found in the reproposed rule would significantly reduce the burdens and costs of the proposed system without impeding its effectiveness and, therefore, would accomplish the objectives of the Market Reform Act. As discussed below, the Commission staff has engaged in extended discussions with market participants and securities information processors, and many alternatives have been identified. The Commission has incorporated in the reproposed rule those alternatives that it believes would accomplish the objectives of the Market Reform Act.

Because the changes to the proposed rule are significant, the Commission seeks comments on any aspect of the reproposed rule and, specifically, comments that relate to the: (1) The identifying activity level; (2) other means to assure that natural persons who were not intended to be large traders are not affected by the reproposed rule; (3) the use of the Depository Trust Company's ("DTC") Institutional Delivery System ("ID System"); (4) the rules for aggregation of accounts; (5) Form 13H and Schedules; (6) the supervisory safe harbor; and (7) the plan for implementing the transaction reporting system. Finally, the Commission invites comments as to whether there are more cost-effective alternatives to the reproposed rule or system that would provide similar benefits, including particular alternatives that adopt a different structure. The Commission also continues to solicit specific comments that explore the relative costs and benefits of the reproposed system generally, or any other alternatives. Furthermore, because of the time that has elapsed, comments that identify any new information technologies that accomplish the objectives of the Market Reform Act and minimize costs to a greater extent would be appreciated.

With respect to the reproposed identifying activity level, the Commission solicits comments on the appropriateness of the new thresholds. The new identifying activity level, combined with certain exemptions from the definition of a transaction and the new inactive status, were designed to minimize the impact of the reproposed rule on natural persons that infrequently trade in a magnitude that may warrant imposing the added regulatory burdens of the reproposed system. The Commission would welcome comments regarding any other means for eliminating the impact of the reproposed rule on these types of persons. In particular, the Commission solicits comments on whether a separate identifying activity level for natural persons or an exemption for natural persons that effect less 1,000,000 shares or fair market value of $25 million in a calendar day, would be a more appropriate means for minimizing the impact of the Rule.

The ID System is an electronic communications and book-entry settlement system through which most large institutional investors, their brokers or advisers, or their custodians or nominees confirm and settle trades.[8]

[8] See DTC Participant Operating Procedures, Section M, ID System Procedures (April 1983). DTC also has established a similar system for international institutional activity called the International Institutional Delivery System ("IID System"). See Securities Exchange Act Release No. 27545 (December 18, 1989) 54 FR 53017 (December 26, 1989). The IID System varies from the ID System in that it does not provide a mechanism for

As discussed below, the ID System has been incorporated into the reproposed rule to reduce its burdens in three respects. Under the reproposed rule, the use of numbers assigned by DTC to ID System participants would: (1) Be incorporated into the Schedules to Form 13H by permitting their use in lieu of LTIDs; (2) minimize the amount of communication among members of an investment complex that would be necessary to complete Form 13H and fulfill the LTID disclosure requirements; and (3) establish a limit on the number of identification numbers that would be required to be maintained for each account, and reported for each transaction, by broker-dealers.

The Commission specifically solicits comments on the appropriateness and feasibility of these proposed uses of the ID System. The Commission would welcome comments that identify other ID System information or procedures that would reduce the burden of the reproposed rule without diminishing its effectiveness for accomplishing the objectives of the Market Reform Act.

With respect to the reproposed rules for aggregation of accounts and Form 13H, the Commission solicits comments on additional simplification or means for reducing the burden of determining who is a large trader and completing Form 13H. The Commission also solicits comments on the appropriateness of the supervisory safe harbor. Finally, the Commission solicits comments on whether a proposed plan for implementing the transaction reporting requirements would be feasible.

III. Discussion of the Reproposed Rule

A. Application and Scope

The fundamental scope and application of the reproposed rule is established by the definition of a large trader. The definition of a large trader and its separately defined terms were found in paragraph (f) of the proposed rule. These definitions have been reorganized into paragraph (a) of the reproposed rule in order to clarify the fundamental application and scope of the reproposed rule. As mentioned above, many of the comments raised concerns that generally may be described as a question of "who is a large trader." The terms of the reproposed rule essentially would provide that every person who effects aggregate transactions reaching the identifying activity level, through accounts carried by a registered broker-dealer, which are aggregated based on ownership or control, would be a large trader.

1. Definition of a Large Trader

The term large trader, as defined in paragraph (a)(1) of the reproposed rule, would mean every person who, for an account that he owns or controls, effects transactions for the purchase or sale of any publicly traded security or securities by use of any means or instrumentality of interstate commerce or of the mails, or of any facility of a national securities exchange, directly or indirectly by or through a registered broker or dealer in an aggregate amount equal to or in excess of the identifying activity level. The reproposed definition of a large trader closely tracks the definition provided in Section 13(h)(8)(A) of the Exchange Act.[9]

The reproposed rule varies from the proposed rule and statutory definition only to the extent that the phrase "* * * for an account that he owns or controls * * *" has replaced the phrase "* * * for his own account or an account for which he exercises investment discretion * * *".[10] The Commission believes that this modification does not change the proposed definition of a large trader, but merely clarifies the interrelationship between the definition of a large trader and its separately defined terms.

The definition of a large trader remains dependent upon the definitions of a person, account, ownership, control, publicly traded security, transaction, the identifying activity level, and the rules for aggregation. The Commission believes that the modifications to the proposed definitions of these terms address the questions raised by the commenters, clarify the proposed rule, and narrow the proposed definition of a large trader.

a. *Definition of a person.* The definition of a person found in paragraph (a)(2) of the reproposed rule varies only slightly from the proposed definition.[11] The lone modification to this definition would be the deletion of the term "trust" and the addition of the phrase "persons, entities, partnerships, or other groups acting as a trustee." The addition of this phrase addresses a legal issue raised by a private pension trust, which asserted that a trust may not be deemed a person because it does not have a present ability to act (*e.g.*, effect transactions) separate from its trustee. The Market Reform Act intended that trusts of all types be included in the definition of a large trader.[12] The definition of a person contained in paragraph (a)(2) of the reproposed rule would assure that all trusts, through their trustees, are included within the definition of a person and thus may be large traders.

b. *Definition of an account.* Paragraph (a)(3) of the reproposed rule would add a definition for the term "account or accounts." This term was not defined in the proposed rule and the comments received from banks, investment advisers, and other non-broker-dealer market participants exhibited substantial confusion in this respect. The Commission believes that this confusion led the commenters to incorrectly interpret "who" the Commission intended to be included within the definition of a large trader. These commenters appear to have believed, incorrectly, that the accounts of "small" trust or advisory customers would become large traders, with all of the duties attendant thereto, by virtue of the fact that a large trader exercised control over such accounts.

The Commission, therefore, is proposing new paragraph (a)(3) that would define the term account or accounts to mean each proprietary and customer account maintained or carried by a registered broker or dealer, which is disclosed or undisclosed to such broker or dealer as to ownership, and for which books and records are required to be kept in accordance with the provisions of Rule 17a–3 under the Exchange Act. This definition would clarify that only accounts maintained or carried by broker-dealers under the Exchange Act would be subject to the reproposed rule.

c. *Definition of ownership.* The definition of ownership would be narrowed and reorganized in paragraph (a)(4) of the reproposed rule. The apparent breadth of this definition received extensive comments, especially with respect to its impact on the proposed rules for aggregation and the information required to be provided on Form 13H.[13] The Commission also received many comments on the proposed inclusion of custodians or nominees within the definition of ownership.

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automated book-entry settlement. DTC has proposed enhancements to the ID System that would unify existing ID and IID Systems into an "Interactive ID System." See Securities Exchange Act Release No. 33010 (October 4, 1993), 58 FR 53007 (October 13, 1993); and DTC An Interactive Option for the Institutional Delivery System, Memorandum to Participants and Other ID Users (March 31, 1993).

[9] See 15 U.S.C. 78m(h)(8)(A) (1990).

[10] See Proposing Release, 56 FR 42561 (proposed text).

[11] *Id.*

[12] See Proposing Release, 56 FR 42552, at n. 26 and accompanying text.

[13] See *infra* Sections III.A.2. and III.B.2., for a discussion of the reproposed rules pertaining to aggregation and Form 13H, respectively.

The Commission believes that the commenters failed to understand that the concept of ownership is focused on the "accounts of a person." The Commission, however, acknowledges that the proposed definition of ownership, combined with the rules for aggregation, may support some of the sweeping interpretations of the proposed definition of a large trader expressed in the comments. These commenters broadly interpreted the proposed definition of ownership and the rules for aggregation to require: (1) The aggregation of individual accounts of all employees, officers, directors, controlling shareholders, and partners with their large trader corporation, trust, or partnership, irrespective of such individual's role in the trading decisions of the large trader entity; (2) the accounts of all parent, subsidiary, and affiliated companies within a holding company structure to be aggregated by and with each parent, subsidiary, or affiliate; and (3) the accounts of wholly unrelated large trader entities to be aggregated due to common directors, controlling shareholders, partners, or trustees. In response to these comments, the Commission has revised the proposed definition of ownership.

i. *General definition.* The definition of ownership, as reproposed in paragraph (a)(4), would provide that an account of a person shall be deemed to be owned or under common ownership of the person in whose name an account is maintained, or custodian or nominee that maintains an omnibus account, and any other person who has more than a 10 percent financial interest in the equity in the account or accounts of such person. This reproposed definition of ownership would incorporate existing rules, procedures, and practices that require broker-dealers to maintain the name and address of the beneficial owner of an account and would be interpreted consistently with such rules, procedures, and practices.[14]

The reproposed rule states that "an account of a person" would be deemed to be owned or under common ownership, thus emphasizing that the primary focus of the concept of ownership would be the "accounts of a person," and not ownership of the person itself. Accordingly, under the reproposed rule, accounts maintained in the name of a parent, subsidiary, or affiliate would be deemed to be owned by that parent, subsidiary, or affiliate. This focus would be made evident in the reproposed Schedules 6a and 6b to Form 13H.

The focus on accounts also would address those comments that deemed the accounts of employees, officers, directors, controlling shareholders, and partners to be owned by their respective corporation or partnership, irrespective of such individual's role or lack thereof, in the trading decisions of the large trader entity. The reproposed rule would eliminate the sweeping nature of the proposed definition by providing that an account is owned or under common ownership of the entity.

ii. Custodians or nominees. As discussed in the Proposing Release, institutional investors engage the services of different investment advisers and executing broker-dealers, yet the trades effected by these persons may be settled and the investment assets may be deposited centrally with one custodian bank, trust company, or broker-dealer that is sometimes referred to as a prime broker.[15] The Commission believes, based upon its experience with broad-based trade reconstructions, that the increased size and specialization of market participants has led to the increased use of these multi-layered accounts. Typically, these accounts fragment or obscure the information about large trader accounts and activity that the Commission needs to analyze market trading.

Substantial comments were received with respect to the inclusion of custodians or nominees within the definition of ownership. The commenters all questioned the appropriateness of including passive custodians or nominees. These commenters argued that passive custodians or nominees, which merely act as a conduit for delivery/receipt versus payment ("DVP/RVP") settlement of transactions, should not be included within the definition of a large trader. However, the comments regarding custodians and nominees acknowledged that many custodians or nominees act as a discretionary agent or fiduciary for the execution of trades and thus may be large traders that control accounts owned by other persons.

The inclusion of custodians and nominees also caused broker-dealers, banks, and trust companies to question the capture of multiple LTIDs for a single account or transaction. These commenters asserted that the cost of keeping and reporting multiple LTIDs, for a single account or trade, would be unduly burdensome.[16] It also was suggested that the capture of multiple LTIDs may cause duplication or distortion of total reconstructed trade activity. Many of these commenters also noted the possible applications of the ID System. Lastly, the commenters confirmed that, in these multi-layered accounts, the participants usually do not have knowledge of each other's activities and, individually, none of the participants may know or have access to all of the information that the Commission needs to analyze market trading activity.

The Commission believes that the inclusion of custodians and nominees in the definition of ownership would serve three important purposes. First, it would assure that banks and broker-dealers, both foreign and domestic, are treated consistently under the reproposed rule. Second, it would assure disclosure of the appropriate LTIDs for each account. Finally, the inclusion of custodians and nominees would enable the Commission to efficiently characterize trading activity.

The problem that the Commission has sought to address with respect to custodians and nominees is its inability to obtain information about the ultimate or actual beneficial owners and controllers of omnibus accounts or accounts otherwise undisclosed as to ownership. Although the number of these accounts may be small in relation to fully disclosed accounts, the Commission believes that the nature of large trader activity causes a significant percentage of this activity to be effected through these accounts. Accordingly, the definition of ownership in the reproposed rule would include only those custodians or nominees that maintain omnibus accounts or accounts otherwise undisclosed as to ownership.

These changes would work in conjunction with the other modifications to the definition of ownership to assure that the fully disclosed owner of an account, or the custodian or nominee of an omnibus account, is deemed to be the owner of that account, not the broker-dealer, bank, or trust company that acts only as an agent for settlement of transactions effected through a fully disclosed account. Moreover, reproposed Schedule 8 to Form 13H has been designed to capture information about a custodian or nominee large trader and the undisclosed large traders that effect trades in or through his omnibus accounts, not small or otherwise

[14] See Rule 17a–3(a)(9)(i) under the Exchange Act, 17 CFR 240.17a–3(a)(9)(i).

[15] See Proposing Release, 56 FR 42554, at nn. 47–49 and accompanying text.

[16] See *infra* Section III.C.2. and III.D.3., for discussions of the reproposed LTID recordkeeping and reporting requirements, respectively.

infrequent traders whose trades may be effected through such accounts. Reproposed Schedule 8 is designed in a manner that the Commission believes would approximate existing ID System practices and procedures for maintaining such information.[17]

The Commission believes that the revisions to the reproposed definition of ownership would significantly clarify the obligations of persons that own and/or act as custodians or nominees for large trading accounts. The Commission also believes that the reproposed definition of ownership would minimize the burden of the identification requirements on such large traders.

d. *Definition of control.* As with the definition of ownership, the commenters uniformly criticized the sweeping impact of the proposed definition of control when combined with the proposed rules for aggregation. Some commenters questioned whether merely controlling the accounts or trading of a large trader would, by itself, cause such controller to be a large trader.

Many of the commenters also indicated that the persons or entities that control trading activities usually have the most knowledge of large trader accounts, activity, or objectives and, therefore, should be the focus of the identification requirements. Finally, one commenter questioned the appropriateness of the inclusion of limited discretionary investment authority within the definition of control. This commenter asserted that the definition of limited discretion would force broker-dealers to aggregate the activity of all customers for whom they executed not held orders.[18]

The definition of control has been modified in paragraph (a)(5) of the reproposed rule.[19] These revisions would emphasize that the focus of the reproposed concept of control is "control of the accounts of a person," not control of the person itself. The reproposed rule also would provide that the owner of an account, as well as any person with full or limited discretion over an account, is deemed to control that account.

The reproposed rule would clarify that a person's mere exercise of control over a large trader's accounts or transactions, without effecting the requisite level of transactions, would not cause such person to be a large trader under the reproposed rule. Additionally, new paragraphs (a)(5)(i) and (ii) of the reproposed rule would add the definitions of full and limited discretionary investment authority suggested in the Proposing Release.[20] With respect to the execution of not held orders, the Commission would interpret their execution to not fall within the reproposed definition of control.

Finally, the reproposed rule would acknowledge that persons who control accounts usually are in possession of most of the information required by Form 13H and required to be disclosed to broker-dealers. Accordingly, reproposed Schedules 7a and 7b to Form 13H and the reproposed LTID disclosure requirements would be specifically designed to capture and disclose information regarding fully disclosed or omnibus accounts controlled by a large trader.

The Commission believes that these requirements take into account the existing industry practices and procedures for the maintenance of such information. The Commission also believes that the changes to the proposed definition of control would clarify the obligations of large traders who control accounts owned by others and would minimize their burdens.

e. *Definition of a transaction.* The definition of a transaction or transactions provided in paragraph (a)(7) of the reproposed rule, also would clarify and narrow the scope of the definition of a large trader. The modifications to this definition address technical issues raised in the comments regarding the inclusion of cancellations, corrections, and exercises or assignments of option contracts, within the meaning of the term transaction or transactions.

The reproposed rule states that the term transaction or transactions would mean all transactions in publicly traded securities, including cancellations, corrections, exercises, and assignments.[21] The definition of publicly traded securities found in reproposed paragraph (a)(6) would be unchanged, and would mean any national market system security as defined in Rule 11Aa2–1 under the Exchange Act.[22]

New paragraph (a)(7)(i) of the reproposed rule was added to exclude from the term "transaction" certain activity commonly posted to customer accounts by clearing broker-dealers and passive custodians or nominees. This paragraph would exclude from the definition of a transaction any journal or bookkeeping entry made to an account to record or memorialize the receipt or delivery of funds or securities pursuant to the settlement of a transaction.

Three new exclusions to the term transaction also have been added in paragraphs (a)(7)(v), (vi), and (vii) of the reproposed rule. These exclusions track the trading objectives or characteristics, identified in the Proposing Release, of small or otherwise infrequent traders that the Commission did not intend to be included in the definition of a large trader.[23] These new exclusions would include: (1) Transactions effected by a court appointed executor, administrator, or fiduciary pursuant to the distribution of a decedent's estate; (2) transactions effected pursuant to a court order or judgment for distribution of property in a marital proceeding; and (3) a qualified plan or trust rollover afforded favorable tax treatment under section 402(a)(5) of the Internal Revenue Code.[24]

It should be noted that the exclusion for transactions of a decedent or marital estate would include only those transactions effected pursuant to the distribution or liquidation of such estates and would not include transactions effected pursuant to the

[17] Essentially, the ID System captures information regarding the capacity of the participants to a multi-layered account. Participants are grouped and numbered as agents, broker-dealers, institutions, and interested parties. The term "Agent" is defined as the entity appointed by the buyer and seller to clear their trades. The term "Broker-dealer" means the entity that executes a trade on behalf of the buyer or seller. The term "Institution" means those parties that initiate the trade as buyer or seller, on its own behalf or on behalf of another. Finally, the term "Interested Party" is defined as those entities, other than the Agent or Institution, which receive a confirmation because they have a role to play in the settlement of a trade. It is important to note that these capacities are not mutually exclusive and one participant may perform the tasks associated with any number of these capacities. See ID System Directory, Volume X, Number 9, September 1992.

[18] Not held orders relieve the executing broker of responsibility with respect to the time and price of execution, if the broker uses "brokerage judgment" when executing the order. See *e.g.*, New York Stock Exchange ("NYSE") Rule 123A.44, NYSE Guide (CCH) ¶2123A. Not held orders may be characterized as: (1) defensive orders required by brokers in times of unusual market volatility (*i.e.*, fast markets); or (2) consideration provided by a customer to a broker for the commitment of capital or expertise in the execution of large "block trades." See *e.g.*, NYSE Rule 127.10, NYSE Guide (CCH) ¶2127 (definition of block trade).

[19] See Proposing Release, 56 FR 42561 (proposed text).

[20] See Proposing Release, 56 FR 42553, at nn. 34 and 35.

[21] See *infra* text accompanying n. 67, for the impact of this definition on the trade reporting requirements of the reproposed rule.

[22] 17 CFR 240.11Aa2–1. A national market system security is any security that is subject to an effective real-time transaction reporting plan filed with the Commission, and includes all securities listed on a national securities exchange and all National Association of Securities Dealers, Inc., Automated Quotation System ("NASDAQ"), National Market System ("NMS") securities. See Proposing Release, 56 FR 42552, at text accompanying nn. 16–19.

[23] See Proposing Release, 56 FR 42551, at n. 12 and accompanying text.

[24] 26 U.S.C. 402(a)(5) (1988).

continuing administration or investment of such estate's assets. The distinction drawn between the distribution and the administration of an estate pursuant to a court order acknowledges that court appointed fiduciaries may be authorized to invest and reinvest in securities for many years. The Commission believes that the exclusion of such estates from the identification requirements of the reproposed rule would be inappropriate.

The Commission believes that these new exclusions from the definition of a transaction would indirectly exempt a significant number of those small or otherwise infrequent traders that were not intended to be large traders under the Market Reform Act. Moreover, the Commission believes that the definition of a transaction would reduce the impact of the reproposed rule on registered broker-dealers.

f. *Identifying activity level.* The Commission expressly solicited comment on the appropriateness of the volume, market value, exercise value, and time period proposed for the identifying activity level. Generally, the commenters felt that the threshold was too low and recommended higher levels that ranged from a low of 200,000 shares and $10 million, to a high of 5 million shares and $50 million. A few commenters suggested that only market value should determine large trader status, while others suggested that market price, rather than exercise price, would be more appropriate for valuing options. Finally, many of the commenters expressed support for a calendar day measure because of the inherent difficulty of aggregating transactions effected in different time zones.

The definition of the identifying activity level contained in paragraph (a)(8) of the reproposed rule would increase and change the thresholds contained in the proposed rule from 100,000 shares to 200,000 shares and fair market value of $2 million, and from a fair market value of $4 million to $10 million. The Commission believes that the addition of the $2 million fair market value requirement to the fundamental share volume threshold would act as a floor to minimize the impact of the reproposed rule on those persons that effect transactions in lower priced securities. The Commission solicits comments on whether this new element of the identifying activity level would be appropriate. The Commission also sclicits comments regarding the effectiveness of the new identifying activity level for minimizing the impact of the reproposed rule on natural persons that infrequently trade large amounts of publicly traded securities.

The time period for aggregating transactions also would be changed from a 24 hour period to "a calendar day where the account is located." The Commission would deem a calendar day to be a 24-hour period starting at 12 a.m. and ending at 11:59 p.m. An account would be deemed to be located at the principal place of business of the broker-dealer, not where the customer or registered representative servicing the account is located. Finally, the provisions regarding program trading are reproposed without changes in paragraphs (a)(9) and (10).[25]

The Commission continues to believe that the capture of significant trading activity concurrently with program trading activity is essential for accomplishing the purposes of the Market Reform Act. The Commission has balanced this need against the burden of capturing the information and believes that the reproposed identifying activity level would strike an appropriate balance. The Commission also believes that the reproposed identifying activity level would establish a relatively simple and bright-line threshold that would be squarely within the activity-based mandate of the Market Reform Act.

2. Aggregation of Accounts and Transactions

Section 13(h)(3) of the Exchange Act authorizes the Commission to prescribe rules governing the manner in which transactions and accounts shall be aggregated, including the basis of ownership or control.[26] The commenters uniformly criticized the proposed rules for aggregation as overly broad and inflexible. Generally, these criticisms were levied by diversified financial service holding companies whose affiliates, subsidiaries, and divisions engage in related and unrelated trading activities. As discussed above, much of this criticism emanated from the definitions of ownership and control.

These commenters argued that the mandatory nature of the proposed rules would cause overlapping and duplicative aggregation among the various entities within a holding company structure. The commenters made a variety of recommendations, including a flexible approach, approaches designed to meet the needs of the specific commenter, an "acting in concert" approach, and the elimination of the concept of aggregation. The comments regarding aggregation highlight the complexity of designing a simple and efficient large trader system that accommodates the different corporate structures and business practices of large traders. The proposed aggregation requirements, however, were intended to deter non-compliance by prohibiting a persen or group of persons from splitting activity among many broker-dealers, accounts, and transactions for the purpose of avoiding the identification requirements of the proposed rule.

a. *General Description.* The rules for aggregation have been reorganized into paragraphs (c)(1) and (2) of the reproposed rule to distinguish the requirements for the aggregation of accounts and the aggregation of transactions, respectively. The rules for the aggregation of transactions found in reproposed paragraph (c)(2) contain only minor changes that reflect the reorganization of the proposed rules.[27]

The focus of the reproposed rule would be the "aggregation of accounts owned or controlled by a person." Paragraph (c)(1)(i) of the reproposed rule would implement a new flexible approach to the aggregation of accounts by permitting, but not requiring, the aggregation of accounts that are owned or controlled or under common ownership or control of a person, which independently would be a large trader. Conversely, paragraph (c)(1)(ii) of the reproposed rule would require aggregation of accounts of a person who independently would not be a large trader.

In order to assure compliance and deter the use of this flexible approach to circumvent the reproposed rule, new paragraph (c)(1)(iii) would provide that, under no circumstances, shall a person or group of persons acting in concert toward a common investment objective be permitted to disaggregate accounts in order to avoid the identification requirements of the reproposed rule. Finally, reproposed Form 13H and Schedules have been redesigned to explain and facilitate the various choices that large traders may make with respect to aggregation.

b. *Disaggregation.* The concept of disaggregation would be reorganized into paragraph (c)(3)(i) of the reproposed rule. The reproposed rule provides that the Commission may require a large trader to disaggregate accounts or transactions in any manner and authorizes the Commission to require the submission of additional transaction or other information relating to transactions reported under the reproposed rule. To assure that the

[25] See Proposing Release, 56 FR 42552, at text accompanying n. 15.

[26] See 15 U.S.C. 78m(h)(3) (1990).

[27] See Proposing Release, 56 FR 42561 (proposed text).

Commission's requests for disaggregation are reasonable, however, the reproposed rule would require the Commission to consider the operational capabilities of the large trader when making a request for disaggregation.

The Commission's efforts to assure the credibility of the reproposed system would require the imposition of certain duties on omnibus large traders. These duties would include supplying information that would facilitate analysis of market trading activity. The duties would arise from, and pertain to, the disaggregation and identification requirements.[28] These duties are found in paragraph (c)(3)(ii) of the reproposed rule and would only apply to those large traders that maintain, or effect transactions through, omnibus accounts carried by a registered broker-dealer. The obligations imposed on these large traders would be to establish systems and procedures designed to assure compliance with the disaggregation and identification requirements and, in particular, assure that the information regarding omnibus accounts, disclosed to the Commission on reproposed Schedules 7b and 8, is accurate and complete.

Systems and procedures designed to assure compliance with the identification and disaggregation requirements that are substantially comparable to those described in reproposed paragraph (f) would be deemed to be in compliance with reproposed paragraph (c)(3)(ii). Systems and procedures designed to assure that Schedules 7b and 8 are accurate and complete may include recordkeeping procedures triggered by the opening of new accounts and prescribing how, or for whom, a given omnibus account may be used. These systems and procedures are not intended to affect the existing disclosure practices and procedures between broker-dealers and banks or trust companies.[29]

The need to impose these duties on omnibus large traders results from the undisclosed nature of omnibus accounts. The Commission believes that the obligations found in reproposed paragraph (c)(3)(ii) would be necessary to assure the effectiveness and credibility of the large trader system. The Commission also believes that these requirements would establish consistent duties with respect to omnibus accounts maintained by banks or broker-dealers.

c. *Aggregation examples.* A diversified financial services holding company, for example, may engage in all forms of banking, corporate finance, and trust services in addition to the full range of broker-dealer activities, such as proprietary trading, market making, brokerage execution, and clearing services for retail and institutional customer accounts. This holding company also may provide discretionary and non-discretionary investment management services for retail and institutional customers, as well as for affiliated and unaffiliated investment companies, pension funds, and insurance companies.

Under the reproposed rules for the aggregation of accounts, the holding company is permitted to formulate its own methodology for filing of Form 13H.[30] For example, it may file a single Form 13H that would include accounts of all its owned or controlled and commonly owned or controlled persons, divisions, subsidiaries, and affiliates. In the alternative, the holding company may file separate Form 13Hs for its divisions, subsidiaries, and affiliates that independently would be a large trader. Finally, the holding company may file a separate Form 13H for individual traders or trading desks which also would independently qualify as a large trader.

In another example, a diversified broker-dealer that engages in investment banking, proprietary trading, discretionary and non-discretionary investment management services, and clearing and custody services may also adopt its own methodology for the filing of Form 13H. First, the broker-dealer could file a single Form 13H for all of its activities. Second, the broker-dealer could file separate forms by dividing its activities along the three large trader capacities and then further subdivide each capacity in a fashion that best suits its business needs. Accordingly, this broker-dealer may wish to file one Form 13H for each proprietary trader due to operational considerations, two Form 13Hs for its investment management subsidiary due to confidentiality considerations (*e.g.*, one for affiliated investment company accounts and one for other managed accounts), and for supervisory considerations, one Form 13H for all of the omnibus accounts for which it acts as custodian/nominee only.

The Commission believes that this flexible approach to aggregation would accommodate the needs of the greatest number of large traders in the least burdensome manner possible. The Commission also believes that the reorganization and revision of the reproposed rules for aggregation would clarify the reproposed definition of a large trader. Nevertheless, the Commission solicits comments on whether there are other more effective means for aggregating accounts that would accomplish the objectives of the Market Reform Act.

B. Identification Requirements for Large Traders

Section 13(h)(1) of the Exchange Act authorizes the Commission to prescribe identification requirements for large traders for the purpose of monitoring the impact of large transactions on securities markets and to assist the Commission in the enforcement of the Exchange Act.[31] The Commission is specifically authorized to require large traders to provide it with the information deemed necessary or appropriate to identify large traders and all accounts in or through which large traders effect transactions.[32] The Commission also is authorized to require large traders to disclose their large trader status to the registered broker-dealers that carry the accounts through which they effect transactions.[33] The Commission is reproposing Rule 13h–1(b) and Form 13H to implement these provisions of Section 13(h)(1) of the Exchange Act.

1. Form 13H Filing Requirements

Paragraph (b)(1) of the reproposed rule provides that each large trader shall file Form 13H with the Commission in accordance with the instructions contained therein. The filing requirement for Form 13H is the most significant burden imposed on large traders by the reproposed rule. The time for filing Form 13H is contained in new paragraphs (b)(1) (i) and (ii) of the reproposed rule.

The Commission recognizes that, due to the nature of many large trader's business activities, much of the information required by the proposed form may change daily. Accordingly, new paragraph (b)(1) of the reproposed rule would eliminate the proposed requirement that a large trader file a Form 13H every time the "information contained therein becomes inaccurate for any reason."

[28] See *infra* Section III.E., for a discussion of the supervisory safe harbor for broker-dealers.

[29] Custodian or nominee large traders generally are required to maintain and report information to their respective regulatory authorities that is similar to that required on these Schedules. These large traders, however, are not normally required to disclose proprietary information (*e.g.*, customer lists) to competitors or other non-primary regulatory authorities.

[30] See *infra* Section III.B.2., for a discussion of Form 13H and instructions.

[31] *See* 15 U.S.C. 78m(h)(1) (1990).

[32] *See* 15 U.S.C. 78m(h)(1)(A) (1990).

[33] *See* 15 U.S.C. 78m(h)(1)(B) (1990).

Paragraph (b)(1) of the reproposed rule would require a large trader to file Form 13H within 10 business days after it first effects transactions that reach the identifying activity level and within 60 calendar days after the end of each full calendar year thereafter. It should be noted, however, that a large trader would still be required to disclose its LTID or ID System number when a new account is opened during a calendar year.[34] The Commission believes that the reproposed Form 13H filing requirements would substantially reduce the frequency of filings and accomplish the purposes of the Market Reform Act.

2. Form 13H and Instructions

The Commission received many negative comments about Form 13H. The majority of the commenters argued that the proposed Form 13H and Schedules were duplicative or burdensome, and would be required to be filed too frequently. The commenters made various suggestions to eliminate or reduce the burdens of the proposed form. These suggestions included: (1) eliminating the listing of certain types of accounts;[35] (2) incorporating information contained in other Commission filings by reference; (3) limiting the number of officers, directors, and partners for whom information must be provided; and (4) redesigning the proposed Schedules to capture the particular information possessed by each of the three basic types of large trader (*i.e.*, owner, controller, or custodian/nominee).

a. *General description.* The Commission is reproposing a substantially revised Form 13H, Schedules, and Instructions. The revisions to proposed Form 13H reflect the modifications to the definition of a large trader and LTID disclosure requirements and incorporate other recommendations made in the comments. As discussed in the Proposing Release, the information disclosed on Form 13H would be exempt from disclosure under the Freedom of Information Act ("FOIA") pursuant to Section 13(h)(7) of the Exchange Act.[36] A few commenters questioned the apparent lack of a similar exemption for the transaction information reported under the proposed rule. Section 13(h)(7) provides that "any information required to be kept or reported" is exempt from disclosure under FOIA. Therefore, transaction information reported under the reproposed rule also would be exempt from disclosure under FOIA. The Commission believes that the non-disclosure of such information also may be covered by other existing Commission rules.[37]

The cover page to reproposed Form 13H would remain substantially unchanged except for the exclusion of the amended filing requirement, the addition of an inactive filing status, and the capture of applicable LTID or ID System numbers. Item 1 to Form 13H also would be unchanged, except for minor changes that conform with the reproposed definition of a person.[38] The remaining Items and Schedules of the proposed form have been substantially revised in the reproposed Form 13H.

Reproposed Item 2 to Form 13H would implement a new exemption from the filing requirements of reproposed Item 4 for persons and entities regulated by the Commission by allowing the incorporation by reference of information already on file with the Commission. The Commission anticipates that some of the most common registrations or filings that large traders may list in reproposed Item 2 would include: Form BD; Form ADV; Forms 3, 4, or 5; Form 10–K or 10–Q; and Form U–4.

The Instructions to reproposed Item 2 also would inform large traders that the listed registrations and filings should reflect the registrations of all other large traders and persons whose accounts the large trader has decided to aggregate into its Form 13H. Finally, the reproposed Instructions would inform large traders that Item 4 and the appropriate Schedule must be filed for those persons who are not registered with the Commission and whose accounts have been aggregated with a "registered person."

The Schedules to reproposed Item 4 also have been refined to capture only minimal descriptive information about the persons who own or control a large trader corporation, partnership, limited partnership, or trust. For the most part, the collection of addresses, telephone and facsimile numbers, and regulatory information has been eliminated. The terms "officer and partner" also have been changed in the reproposed Schedules 4b and 4c to "executive officer" and "limited partner that is the owner of more than a 10 percent financial interest in the accounts of the large trader." The term "executive officer" would be deemed to mean "policy-making officer" and otherwise would be interpreted in accordance with Rule 16a–1(f) under the Exchange Act.[39] As suggested in the comments, these changes should substantially reduce the number of persons for whom such Schedules must be prepared and filed under the reproposed rule.

Reproposed Item 5 to Form 13H would facilitate the new flexible rules for aggregation. Item 5(a) would require the large trader to list all commonly owned or commonly controlled persons whose accounts are aggregated into the particular Form 13H that independently would be a large trader (*i.e.*, aggregated accounts). Conversely, Item 5(b) would require the large trader to list all other commonly owned or controlled large traders that independently filed Form 13H and that could have been, but were not, aggregated into the particular large trader's Form 13H (*i.e.*, disaggregated accounts). Again, the reproposed Instructions would caution large traders that the information supplied in Item 5 must accurately reflect their choice for aggregation or disaggregation of accounts.

The reproposed Schedules to new Items 6 through 8, which gather account information, address the concerns expressed in the comments and reorganize, substantially reduce, or eliminate much of the information regarding a large trader's accounts that may have been captured by the proposed Schedules. These reproposed Schedules have been completely redesigned to require the identification of only one contact person for each Schedule and establish a "single-line-item" type of account listing. The reproposed Instructions indicate that the proposed qualifications for designated contact persons would be retained without meaningful changes. The reproposed Instructions also advise large traders that they may submit internally produced lists of accounts, provided that such lists contain all required information in a format substantially similar to the applicable Schedule.

The new account Schedules also have been reorganized to track the three capacities in which a large trader may act with respect to a given account (*i.e.*, owner, controller, or custodian/

[34] See *infra* Section III.B.3., for a discussion of the duty to disclose large trader status.

[35] These comments argued that the proposed Schedules, especially proposed Schedule 5, should not require a large trader that controls accounts to list the fully disclosed accounts of small or otherwise infrequent traders that it controls or the undisclosed sub-accounts of persons for whom trades are effected through an omnibus account.

[36] 15 U.S.C. 78m(h)(7) (1990). See Proposing Release, 56 FR 42554 at text accompanying nn. 50–52

[37] See *e.g.*, 17 CFR 200.80(b)(3), (4)(iii), (5), (7), and (8).

[38] See *supra* Section II.A.1.a., for a discussion of the addition of persons or entities acting as a trustee to the definition of a person.

[39] 17 CFR 240.16a–1(f).

nominee). The reproposed Schedules would capture different combinations of large trader capacities, based upon the large trader's knowledge of accounts and the extent of beneficial ownership disclosure made to the carrying broker-dealer. Reproposed Schedules 6a and 6b would be used by those market participants who own accounts.

Reproposed Schedules 7a and 7b would be used by market participants who control accounts owned by others. These Schedules have been redesigned to indicate that accounts controlled by the large trader that are owned by small or otherwise infrequent traders would not be required to be specifically listed on these Schedules. Instead, reproposed Item 2 of Schedule 7a would capture general information about fully disclosed "non-large trader" accounts controlled by the large trader (*i.e.*, the total number of such accounts and broker-dealers carrying them). If applicable, information regarding other large traders whose activity may be controlled by the large trader through one of the listed accounts would be provided in reproposed Item 3 of Schedule 7a and Item 2 of Schedule 7b.

Lastly, Schedule 8 would be used by those broker-dealers, banks, and trust companies that market their clearing or depository services independently from their other brokerage or investment management services. It should be noted that reproposed Schedules 7b and 8 incorporate the ID System to the extent that they permit a large trader to list the applicable ID System numbers or LTIDs of the custodian or nominee for an omnibus account and other interested parties (*i.e.*, owners and controllers). The Commission believes that, due to the wide-spread use and automated nature of the ID System, most of these numbers are routinely communicated among, and maintained in an automated fashion by, market participants. The disclosure of other large traders required by these Schedules would provide an important and common basis for disaggregation.

Rarely would a large trader be required to complete all five of these reproposed Schedules. The Commission believes that such a filing probably would occur only if a diversified financial services company decided to aggregate the accounts of all of its divisions, subsidiaries, or affiliates into a single Form 13H filing.

The complexity of the Form 13H disclosures under the reproposed rules would be greatest for a single aggregated filing and would become progressively less complex for multiple Form 13H filings. Generally, the large trader's organizational structure and business practices, combined with the reproposed requirements of Item 2, Item 5, and the account Schedules, would dictate the complexity of a Form 13H filing.

The number of LTIDs that would be assigned varies directly with the number of Form 13H filings. The commenters indicate that some broker-dealers and large traders may prefer to be assigned many LTIDs for supervisory purposes while others may prefer a single LTID for confidentiality reasons. In this respect, the SIA suggested that a broker-dealer be permitted to use its LTID for the confidential numbered accounts of its customers. Similarly, a few commenters, primarily foreign financial services holding companies or universal banks, asserted that the LTID disclosure requirements may cause them to breach "Chinese Walls" between investment banking, investment advisory, market making, or brokerage units. The Commission believes that these entities would be able to avoid this result under the reproposed rules by carefully aggregating or disaggregating accounts.

The Commission acknowledges that excessive aggregation or disaggregation of commonly owned or controlled accounts may increase the overall costs and burdens on large traders and the Commission. The probability of receiving a request for disaggregation, and the cost thereof, also would vary directly with the extent of aggregation chosen by a large trader. The Commission would remind all market participants to evaluate their business practices and weigh the costs and benefits of aggregation or disaggregation in light of all the considerations outlined above.

The Commission believes that perhaps the most important revisions to proposed Form 13H are the reproposed set of General and Special Instructions.[40] These new Instructions provide answers to many of the specific questions raised in the comments. The Instructions provide all of the pertinent definitions, the rules for aggregation, and examples of who would be a large trader and what information must be provided on Form 13H. The reproposed Instructions also provide guidance and cross-references to the reproposed rule, other related instructions, and particular burden reducing features or alternatives of reproposed Form 13H. Accordingly, the Commission would encourage all market participants to carefully review the reproposed General and Special Instructions for Form 13H before completing and filing Form 13H.

b. *Form 13H Examples.* Assume a trustee for a large pension fund is not registered with the Commission and personally manages 75% of the pension's assets. Assume further that the pension trustee delegates full discretionary investment authority over the remaining 25% of the pension's total assets to several investment advisers (*e.g.*, a growth stock adviser, an index arbitrager, and a portfolio hedging strategist).

This pension trustee would be required to complete one of the reproposed Schedules to Item 4 depending on the organizational type of the trustee (*i.e.*, individual, corporation, or partnership). With respect to the 75% of the pension's total assets that the pension fund trustee personally manages, he would be deemed to own and control the accounts and would know the carrying broker-dealers and account numbers. The pension fund trustee, therefore, would list these accounts on reproposed Schedule 6a.

Depending on the nature of the delegations of authority to each of the advisers, the pension trustee may not know the broker-dealers the advisers use to execute trades or maintain accounts. Accordingly, reproposed Schedule 6b has been designed to capture the information that the pension trustee knows (*i.e.*, the advisers' names, addresses, numbers, and type of delegation), and reproposed Schedules 7a and 7b would capture the information in the possession of the adviser (*i.e.*, carrying broker-dealer, account number, disclosure of ownership, and other large traders).

Assuming that the advisers are large traders and were registered with the Commission, they would list Form BD or ADV in Item 2 of their Form 13Hs, and therefore, would be exempt from the requirements of Item 4. It should be noted that if any of these advisers is not a large trader, then such adviser would not file Form 13H under the reproposed rules. In such cases, the Commission would be able to identify and contact the non-large trader adviser, if necessary, through the information provided by the pension trustee on its Schedule 6b to Form 13H.

In addition, assume that the trustee of the pension fund also engages the services of a prime broker, bank, or trust company to act only as the custodian or nominee for omnibus accounts that are owned and controlled by the pension trustee or owned by such trustee and controlled by the different advisers. In this case, the pension fund trustee would list on its Form 13H the omnibus

[40] See *infra* Appendix A.

accounts for which he or she is the owner and controller on Schedule 6a and the delegations of investment discretion on Schedule 6b. The advisers that control the pension fund's trading through the omnibus accounts would list such accounts on Schedule 7b of their Form 13Hs.

The prime broker, bank, or trust company acting only as custodian or nominee for all of the omnibus accounts (*i.e.*, the custodian or nominee large trader) would list such accounts, carrying broker-dealer, and the relevant controllers on reproposed Schedule 8. It should be noted that if the omnibus account custodian or nominee also controlled these accounts, in whole or in part, then it would complete Schedule 7b instead.[41] The custodian or nominee large trader would be in possession of the information required by Schedule 7b or 8, for the following reasons. First, it is the carrying broker-dealer's customer with respect to the omnibus accounts and, therefore, would be required to complete a new account application and provide all other information requested by the broker-dealer with respect to settlement instructions and the persons authorized to effect transactions through the accounts. Second, the various advisers and the trustee of the pension fund, to the extent that he or she controls transactions, would be required by the reproposed rule to disclose such information to the prime broker, bank, or trust company acting as custodian or nominee.[42] Finally, if the custodian bank or trust company was an issuer of publicly-traded securities, it may list Form 10–K or 10–Q in Item 2 and would not be required to complete Item 4 on its Form 13H.

Another example of how the reproposed Schedules to Form 13H may be applied would be where a registered investment adviser for a mutual fund complex chooses to file one Form 13H, covering all of the accounts controlled for affiliated or unaffiliated investment companies. Assuming that each mutual fund independently would be a large trader, they would be listed in Item 5(a) of the adviser's Form 13H. The Form ADV of the adviser and each investment company's registration statement or periodic reports also would be listed in Item 2 of the adviser's Form 13H. If the accounts through which the adviser effects transactions are fully disclosed as to ownership by a particular investment company within the fund complex, the adviser would complete Schedule 7a. Alternatively, if such accounts do not disclose the particular investment company for whom the adviser is effecting transactions (*i.e.*, are maintained on an omnibus basis), then the adviser would complete Schedule 7b.

The Commission believes that the revisions to the reproposed Form 13H and Instructions would dispel many of the misconceptions regarding the information that would be required to be disclosed on Form 13H. The revised Schedules to Form 13H also minimize the burdens of the reproposed rule by utilizing existing ID System practices and procedures for disclosure and maintenance of information among large traders and other parties to multi-layered accounts. The Commission specifically solicits comments on the appropriateness of all the changes found in reproposed Form 13H and Schedules.

3. Disclosure of Large Trader Status

Many of the commenters expressed concerns that the proposed disclosure requirements would cause overlapping, confusing, or unnecessary disclosures by more than one large trader for a given account. The broker-dealer commenters also indicated that the cost of modifying automated brokerage accounting systems to maintain and report multiple LTIDs for a single account or trade would be substantial.

The reproposed rule would retain the proposed LTID assignment system[43] and would modify the duty of large traders to disclose their LTIDs and accounts to broker-dealers. The reproposed rule also would require similar disclosures of information to custodians or nominees and large traders that control transactions.

Reproposed paragraph (b)(2)(i) would require a large trader who controls a fully disclosed account or the custodian or nominee for an omnibus account to disclose its LTID and accounts to the carrying broker-dealers. Hence, under the reproposed rules, each large trader account should have only one LTID number associated with it, namely the LTID number of the controlling large trader or of the custodian or nominee large trader.

The Commission notes that the reproposed definition of control states that an account would be controlled by the owner of the account. Consequently, if an account is controlled only by its owner, then the owner would be required to disclose its LTID to the carrying broker-dealer. This duty also would apply to fully disclosed accounts of small or otherwise infrequent traders whose accounts are controlled by large traders, even though these accounts would not be listed on the reproposed Schedules to Item 7.

Paragraph (b)(2)(i) of the reproposed rule would effectively eliminate the majority of situations where multiple LTIDs would be disclosed to a broker-dealer for a single account. The Commission believes that the only situation where more than one LTID would be disclosed to a broker-dealer for a single account would be where more than one large trader controls transactions in an account that is fully disclosed as to ownership. These situations would include fully disclosed accounts controlled by their owner and another adviser or such accounts controlled by two or more advisers.

Reproposed paragraph (b)(2)(ii) would require a large trader who controls omnibus accounts to disclose its LTID or ID System number to the broker-dealer or large trader acting as the custodian or nominee for such account. Similarly, reproposed paragraph (b)(2)(iii) would require a large trader that owns accounts but has delegated full or limited discretionary investment authority to another person to disclose its LTID or ID System number to such person. These duties are coordinated with the filing requirements for Schedules 7a, 7b, and 8 to reproposed Form 13H.[44]

The Commission acknowledges that reproposed paragraphs (b)(2) (ii) and (iii) may cause multiple LTIDs or ID System numbers to be disclosed to custodian or nominee and controlling large traders, respectively. The Commission believes that these required disclosures of large trader status would not be overlapping or unnecessarily burdensome and would utilize existing ID System practices and procedures. The Commission also believes that these disclosure requirements would minimize the amount of communication among members of an investment complex that would be necessary to complete Form 13H. Moreover, these changes to the proposed rule would conform with the various rules and regulations that require financial

[41] Of course, if the pension trustee retained the prime broker, bank, or trust company to act only as agent for settlement of its fully disclosed accounts, then such agent would not be deemed to own such account and would not be a large trader required to file Form 13H and Schedule 8.

[42] See infra Section III.B.3., with respect to this required disclosure under reproposed paragraph (b)(2)(ii).

[43] Upon filing Form 13H a large trader would be assigned an LTID by the Commission. See Proposing Release, 56 FR 42553, at text immediately following n. 37.

[44] See supra Section III.A.2.b., for a discussion of the omnibus account identification and disaggregation duties that attach to the filing of Schedules 7b and 8.

institutions of all types to identify the beneficial owners of accounts, confirm trades, and maintain possession and control of customer funds and securities.

The Commission believes that the revisions to the reproposed rules for disclosure of large trader status incorporate many of the recommendations made by the commenters and reduce the burdens imposed on market participants. The Commission solicits comment on this use of the ID System and whether other ID System procedures or information would further the purposes of the Market Reform Act.

4. Inactive Filing Status

In the Proposing Release, the Commission specifically solicited comments on various means of minimizing the impact of the proposed rule on small or otherwise infrequent traders. The Commission received many comments in this respect and all were supportive of minimizing the impact of the proposed system on small or otherwise infrequent traders. Many of the commenters suggested that an annual activity threshold could be used to limit the impact of the proposed system on infrequent large traders. The commenters did not identify any common trading objectives or characteristics of small or infrequent traders that may inadvertently become large traders, other than those suggested in the Proposing Release.[45]

The reproposed rule would implement a new "inactive filing status," pursuant to paragraph (b)(3) of the reproposed rule. This new paragraph provides that large traders whose aggregate transactions during the previous full calendar year, which do not reach the identifying activity level and an aggregate calendar year total of 2,000,000 shares or fair market value of $30,000,000, shall become inactive upon filing Form 13H. This threshold would incorporate the identifying activity threshold and would add an "aggregate calendar year activity threshold." Aggregate calendar year activity would be computed in accordance with the rules for aggregation of transactions found in paragraph (c)(2) of the reproposed rule.

The reproposed Instructions explain that this new inactive status would be invoked by checking the appropriate box on the cover page when filing an annual Form 13H for the calendar year in which the large trader was inactive. Once a large trader has made an "inactive filing," he would be exempt from the reproposed annual filing requirements contained in paragraph (b)(1)(ii) and the LTID disclosure requirements of paragraph (b)(2). However, if an inactive large trader subsequently effects transactions that reach the identifying activity level, then the large trader again would be required to reactivate its large trader status by filing Form 13H within 10 business days. The reproposed Instructions indicate that such "reactivated large traders" would retain the LTID initially assigned to them by the Commission.

The Commission believes that this new inactive filing status would eliminate the burdens of the identification requirements on small or otherwise infrequent traders and, therefore, would accomplish the objectives of the Market Reform Act. Nevertheless, the Commission solicits comments on whether this new provision would adequately reduce or eliminate the impact of the reproposed rule on natural persons that infrequently effect large trades. The Commission also solicits suggestions for other means of eliminating the burden of the reproposed rule on natural persons.

5. Other Information

Paragraph (b)(4) of the reproposed rule has been added to the identification requirements to assure that the Commission has the authority to obtain, from time to time, other descriptive or clarifying information regarding accounts, or transactions effected through accounts, identified on Form 13H. This new paragraph would provide the Commission with the express authority to obtain other information from large traders that is not otherwise disclosed on Form 13H and may be crucial for understanding or analyzing information collected through the system. The Commission believes that the reproposed rule would not be unduly burdensome and would assure that the Form 13H filing requirements accomplish the objectives of the Market Reform Act.

C. Recordkeeping Requirements for Brokers and Dealers

Section 13(h)(2) of the Exchange Act authorizes the Commission to prescribe recordkeeping requirements for large trader activity that it deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.[46] The Commission also is authorized to conduct reasonable periodic, special, or other examinations of all records required to be made and kept pursuant to the Rule.[47] Paragraph (d) of the reproposed rule would implement the recordkeeping provisions of section 13(h)(2) of the Exchange Act.

1. General Requirements

The general recordkeeping requirements, which contain minor changes from the proposed rule,[48] would provide that every registered broker-dealer that carries accounts for itself or others shall make and keep records of transactions effected directly or indirectly by or through such broker or dealer for all large traders. In addition, as specifically authorized by the Market Reform Act, the reproposed rule also would require that broker-dealers keep records of transactions for each person such broker or dealer knows or has reason to know is a large trader based on transactions effected by or through such broker or dealer. Further, paragraph (d)(4) of the reproposed rule would provide that such records shall be kept for a period of three years, the first two in an accessible place, in accordance with Rule 17a-4(b) under the Exchange Act.[49]

The reproposed rule would explicitly provide that only registered broker-dealers that carry accounts for themselves or others would be affected. The term "registered broker-dealer" is defined in Section 3(a)(48) of the Exchange Act as a broker or dealer registered or required to be registered pursuant to Section 15 or 15B of the Exchange Act.[50] Executing broker-dealers and prime brokers that do not carry large trader accounts would not be subject to the recordkeeping requirements of paragraph (d) of the reproposed rule, notwithstanding that these persons may perform other specific tasks for large traders and may be large traders. The Commission believes that these modifications would clarify the applicability of the general recordkeeping requirements of the reproposed rule.

2. Elements of Transaction Information

Paragraph (d)(2) of the reproposed rule would provide the elements of information required to be maintained for all transactions. The Commission believes that these elements incorporate, to the extent possible, existing recordkeeping requirements under the Exchange Act and SRO rules for the electronic bluesheet system and,

[45] See Proposing Release, 56 FR 42551, at nn. 12–14 and accompanying text.

[46] See 15 U.S.C. 78m(h)(2) (1990).

[47] See 15 U.S.C. 78m(h)(4) (1990).

[48] See Proposing Release, 56 FR 42560 (proposed text).

[49] 17 CFR 240.17a-4(b).

[50] See 15 U.S.C. 78c(a)(48) (1988).

thereby, minimize the burdens imposed on registered broker-dealers.

Due to changes to the LTID disclosure requirements, the recordkeeping requirement for LTIDs found in paragraph (d)(2)(x) of the reproposed rule would now require a broker-dealer to maintain only the LTID of the controllers of a fully disclosed account, or the custodian or nominee of an omnibus account. In addition, paragraphs (d)(2)(v) and (d)(2)(vii) of the reproposed rule have been modified to incorporate suggestions made by the commenters. Paragraph (d)(2)(v) has been modified to include the designation of exercises or assignments of option contracts. Paragraph (d)(2)(vii) has been modified to clarify that the personal accounts of officers, directors, or employees of a broker-dealer are not required to be aggregated with accounts owned or controlled by such broker-dealer.

In addition, the reproposed rule includes three new elements that the Commission believes are necessary to reduce the burden of maintaining multiple LTIDs and execution times. First, paragraph (d)(2)(xi) of the reproposed rule would provide that broker-dealers must maintain the ID System numbers of agents, broker-dealers, institutions, and other interested parties otherwise maintained for the account for which a transaction is effected.[51] The use of ID System numbers would have the effect of limiting the number of LTIDs that a broker-dealer must maintain and report with respect to a given account. The Commission understands that broker-dealers currently maintain these ID System numbers in their automated name and address records.[52] The Commission specifically solicits comments on the appropriateness of the use of ID System numbers and whether other information, systems, or procedures may further reduce the burden of multiple LTID recordkeeping.

Second, paragraph (d)(2)(xii) of the reproposed rule would provide that broker-dealers must maintain the code, identification, or sequence number assigned to a transaction that was routed or effected through an automated order routing system maintained by an SRO, such as the NYSE SuperDOT system. These numbers are uniformly maintained and used by broker-dealers and SROs to route reports of executed transactions to the appropriate broker-dealer branch offices or to research the status of unexecuted orders. The Commission would use these numbers to "link or match" transaction reports to the applicable SRO audit trail, in order to determine or verify the reported execution time.

Finally, paragraph (d)(2)(xiii) of the reproposed rule would establish a miscellaneous or unspecified field that would provide the Commission with flexibility to accommodate future changes or problems. This flexibility also could be used to facilitate specific requests that would reduce the burdens of the reproposed system for a given broker-dealer. The Commission believes that the reproposed recordkeeping requirements would assure that the information necessary to accomplish the objectives of the Market Reform Act would be maintained. The Commission also believes that these reproposed requirements would reduce burdens substantially.

D. Trade Reporting Requirements of Brokers and Dealers

Section 13(h)(2) of the Exchange Act specifically authorizes the Commission to require registered broker-dealers to report transactions that equal or exceed the reporting activity level effected by or through such broker-dealer for persons who they know are large traders, or any persons who they have reason to know are large traders on the basis of transactions effected by or through such broker-dealers.[53] The Commission also is authorized to require broker-dealers to report transactions to the Commission or an SRO designated by the Commission on the morning following the day on which the transactions were effected or otherwise immediately upon request of the Commission or designated SRO. Further, the Commission is authorized to require that such transaction reports be transmitted in any format that it may prescribe, including machine-readable form. The Commission is reproposing paragraph (e) to implement the transaction reporting provisions of Section 13(h)(2) of the Exchange Act.

1. General Requirements

The general reporting requirement would provide that every registered broker-dealer that carries accounts for large traders, or other persons for whom records must be maintained, shall electronically report transactions in machine-readable form and in accordance with instructions issued by the Commission. Transaction reports would be required to contain all elements of information for transactions effected through accounts carried by such broker-dealer for large traders and other persons for whom records must be maintained, which equal or exceed the reporting activity level. The Commission continues to propose that transaction reports be transmitted through the existing electronic bluesheet system.[54] The special reporting requirement for trades of "unidentified large traders," has been reorganized without changes into paragraph (e)(5) of the reproposed rule.

2. Reporting Activity Level

The Commission expressly solicited comment on the appropriateness of the proposed reporting activity level. Generally, the commenters felt that the threshold was too low, and eight recommended higher levels that ranged from a low of 5,000 shares and $200,000 to a high of 100,000 shares and $5 million. In response to these comments, the proposed reporting activity level has been modified.

The reporting activity level contained in paragraph (e)(2)(i) of the reproposed rule would increase the thresholds contained in the proposed rule from 1,000 to 2,000 shares, and from a fair market value of $40,000 to $100,000. The reproposed rule also would add a "calendar day where the account is located" time frame, which would address today's global trading environment.[55] As noted in the Proposing Release, the reproposed rules

[51] See *supra* n. 17, describing ID System participants.

[52] These automated records, and the ID System numbers contained therein, provide the data processing mechanism for the automated issuance of affirmations (i.e., confirmations) to the respective parties to an ID System trade. Under the proposed Interactive ID System, a Standing Instructions Database ("SID") is planned to be implemented. This database would establish a standing repository for customer account and settlement information furnished by institutions, agents, and broker-dealers. This information would include the customer name, agent for the customer, the agent's internal account number, and interested parties. When entering trade data to the ID System, a broker-dealer could simply refer to account designations contained in the SID, and the system would automatically add details (e.g., customer name, agent, and interested parties) to the confirmations of the trade. The Commission notes that, absent large trader recordkeeping and reporting requirements, the proposed SID may eliminate the need for broker-dealers to maintain this information in their internal records. See Securities Exchange Act Release No. 33010 (October 4, 1993), 58 FR 53007 (October 13, 1993).

[53] 15 U.S.C. 78m(h)(2) (1990).

[54] See Proposing Release, 56 FR 42557, at text accompanying nn. 85–86.

[55] For example, a registered investment company whose portfolio is composed of international securities may enter orders to effect transactions in domestic, European, and Asian securities markets. These orders may be effected on different calendar days where the account is located because of the various time zones in which the markets are located. As a consequence, the Commission notes that it may need to request 13H transaction reports for the calendar days immediately preceding or following the calendar day on which a significant market event occurred.

for aggregation would not apply to the reporting activity level.[56]

In addition, the reproposed rule would recognize that broker-dealers may prefer to report or "dump" all transactions in a given security.[57] In this regard, new paragraph (e)(2)(ii) of the reproposed rule would be added to permit broker-dealers to report transactions that are less than 2,000 shares or fair market value of $100,000. Finally, paragraph (e)(2)(iii) of the reproposed rule clarifies the proposed reporting provision for program trades and states that each transaction that is part of a program trade shall be reported regardless of share quantity or fair market value. The Commission believes that the reproposed reporting activity level would reduce the burden of the transaction reporting requirements.

3. Multiple Large Trader Identification Numbers

The broker-dealer and bank commenters indicated that significant costs would be incurred for enlarging systems and manually loading multiple LTIDs into their automated name and address records.[58] This concern was a direct result of the proposed definition of a large trader and broad requirements for disclosure, recordkeeping, and reporting of LTIDs of persons who own and control a given account. This concern was compounded with respect to the proposed treatment of omnibus accounts.[59] The commenters generally suggested that tax identification numbers or ID System numbers be used to alleviate this burden.

The Commission has sought to reduce the burden of multiple LTIDs. The Commission has chosen to accomplish this objective through a narrowed definition of a large trader, reduced Form 13H information, limited disclosure of LTIDs, the use of ID System numbers, and trade reporting requirements that incorporate these changes.

The SIA generally expressed its concurrence with this solution to the concerns with the multiple LTID reporting requirements.[60] The Commission, however, specifically solicits comments on the transaction reporting aspects of the reproposed use of ID System numbers and any other information, systems, or procedures that would more effectively accomplish the objectives of the Market Reform Act.

4. Execution Times

Due to the anticipated burden of automating execution times, the Commission proposed and solicited comments on a two year plan to phase-in the automation of execution time reporting requirements. The Commission received substantial comments from broker-dealers regarding the proposed execution time reporting requirements. One commenter acknowledged that automated execution times were essential for reliable time-sequenced trading reconstructions and expressed support for the proposed two year phase-in plan. However, the majority of the commenters asserted that the development and implementation of automated systems for maintaining and reporting execution times would be costly.

The commenters generally explained that in order to comply with the proposed rule, broker-dealers would be required to develop and implement so-called "automated order match systems." These order match systems would automatically link or match the execution time recorded on customer order tickets with the execution time recorded on the corresponding trade tickets prepared on the floor of an exchange. Without these systems broker-dealers would be required to manually research and identify the execution time for each customer trade.

Five broker-dealers and the SIA, on behalf of its members, supplied cost estimates. These cost estimates ranged from a high of $8.5 million to a low of $17,000.[61] These cost estimates included many different items, some of which were not intended by the proposed rule. For example, many of these estimates included the cost of developing sophisticated systems that would fulfill the obligation of broker-dealers to supervise compliance with the proposed rule. These systems presumably would identify related accounts that may be required to be aggregated, through computer systems that employ forms of "artificial intelligence."

During the review of these cost estimates, it appeared to the Commission that the magnitude of the cost may be dependent upon the type of business conducted by a broker-dealer. The SIA acknowledged that broker-dealers with large retail client bases, branch networks, or widely marketed clearing services would be more likely to have implemented an order match system as a necessary cost of doing such business. Conversely, broker-dealers that primarily have institutional clients and few branches would be less likely to have automated order match systems and the ability to enhance their automated systems in a cost-effective manner.

The commenters also indicated that "average price" trades and accounts compound their execution time concerns exponentially.[62] In addition, the commenters noted that a Commission request for transaction reports would likely come at times of severe market stress, which typically stretch broker-dealer trade processing capabilities to their limits. Finally, as a result of the proposed next business day reporting time frame, the commenters indicated that automation would be the only feasible means to assure compliance.

A few commenters suggested alternatives for reducing this burden that included requesting execution times on a need-to-know basis, lengthening the reporting time frame, and postponing the effectiveness of the requirements to see how frequently the data would be required. From the outset, the Commission has sought alternative solutions that would minimize this burden while achieving the fundamental purpose of the large trader reporting provisions of the Market Reform Act. The Commission staff, SIA, and SIAC have not identified existing industry systems that would gather execution times for investor

[56] See Proposing Release, 56 FR 42556, at n. 68.

[57] See Proposing Release, 56 FR 42556, at n. 74.

[58] See Memoranda to SEC File No. S7–24–91 from the Division of Market Regulation dated March 20, 1992, which outline this issue as discussed at meetings with the SIA and the American Bankers Association.

[59] See Proposing Release, 56 FR 42557, at text accompanying n. 79.

[60] See Memoranda to SEC File No. S7–24–91 from the Division of Market Regulation dated June 8, 1992 and June 11, 1992 outlining discussions with the American Bankers Association and the SIA, respectively. See also *supra* n. 52, however, describing the Standing Instructions Database features of the proposed Interactive ID System and the potential elimination of the need for broker-dealers to maintain such information.

[61] At the request of the Division of Market Regulation, 16 broker-dealers subsequently submitted cost estimates ranging from $8.6 million to $100,000.

[62] Average price trades usually entail the execution of one large order, for one or more customers, through many small trades at varying prices throughout a given day. Customers who employ a broker-dealer, bank, or trust company as their centralized custodian and agent for settlement typically request that trades be confirmed and submitted for settlement as one trade at an average price In order to minimize the "ticket charges or fees" levied by the custodian. For example, a 150,000 share order may be filled through the execution of 100 trades of 1,500 shares each, at 50 different prices, and beginning at 9:30 a.m. and ending at 4:00 p.m. This average price trade may be posted to the customer account, and settled, as one "ticket" for 150,000 shares at an average price, without any indication of the many smaller lots, different prices, or actual execution times.

trading activity in a simple and accurate manner.

Three alternatives that would require the development of new systems, however, were proposed. First, it was suggested that "branch or DOT" sequence numbers could be used in conjunction with SRO audit trail data. While this suggestion appeared to be workable with respect to "system orders," [63] the SIA and SIAC agreed that this proposal would still require some form of automated order match system and may be considered by some broker-dealers to be equally as burdensome with respect to "manual orders." [64]

Second, after acknowledging that system order execution times did not pose a significant problem, the SIA proposed the development of computer algorithms that would match "order entry times" with SRO audit trail data to determine the execution time of manual orders. Third, the Division of Market Regulation proposed a hybrid of these alternatives that bifurcates the execution time reporting requirements along the lines of system and manual orders.[65]

After carefully weighing costs and benefits, the Commission has decided to repropose the Division's alternative for reducing the burdens of the execution time reporting requirements. The reproposed reporting requirements are found in new paragraphs (e) (3) and (4).

Paragraph (e)(3) of the reproposed rule would provide that with respect to system orders, all transaction information required to be maintained under the reproposed rule, including execution time, would be required to be reported to the Commission or an SRO designated by the Commission before the close of business on the day specified in a request for such information. As indicated in the Proposing Release, the Commission would not require reports to be submitted prior to trade comparison and would consider pertinent market conditions as well as the capabilities of the industry's trade processing facilities.[66] Moreover, under the reproposed rule, the Commission may require the transmission of transaction reports after final settlement because of the inclusion of cancellations and corrections within the definition of a transaction.[67]

Paragraph (e)(4)(i) of the reproposed rule would provide that with respect to manual orders, all transaction information required to be maintained, except execution time, would be required to be reported before the close of business on the day specified in a request for such information. Lastly, new paragraph (e)(4)(ii) of the reproposed rule would provide that the execution times of manual order transactions, which were initially reported without execution times, would be required to be reported within 15 calendar days after a subsequent request for such information. It should be noted that the Commission may request that broker-dealers provide such information for entire transaction report submissions, individual transactions, or a group of related transactions. Further, these manual order execution times would be required to be transmitted electronically, in machine-readable form, with all of the previously reported information regarding each of the manual order transactions for which execution times were requested.

The Commission would carefully use these new reporting requirements to minimize the extent of extraneous information gathered through the system. The combination of the reporting requirements for execution times and sequence numbers would enable the Commission to generate accurate reconstructions of all large trader activity. Although these new provisions may slow down the completion of trading reconstructions, the Commission believes that the resulting analyses of trading reconstructions will be superior to any previous efforts in terms of accuracy, completeness, and timeliness. The SIA expressed its concurrence with this solution to the execution time reporting requirement concerns.[68]

The Commission believes that the reporting requirements contained in the reproposed rule incorporate all existing information or systems and would minimize associated burdens. Further, the Commission believes that these requirements would strike a fair and reasonable balance between the costs of such reporting and the Commission's need to obtain execution times. Finally the Commission believes that the reproposed reporting requirements would establish an efficient means for analyzing multi-layered accounts.

E. Supervisory Safe Harbor

Section 13(h)(2) of the Exchange Act provides a mechanism for supervision of the large trader reporting system by authorizing the Commission to establish rules for recordkeeping and reporting of transactions effected by persons a broker-dealer "knows or has reason to know" is a large trader, based on transactions effected directly or indirectly by or through such broker-dealer.[69] As proposed, the duty to supervise would apply to compliance with the identification requirements and would be imposed on all broker-dealers and other large traders that effect transactions through, or maintain omnibus accounts with, broker-dealers.[70]

A number of comments on this aspect of the proposed rule were received from broker-dealers and banks. These comments revolved around the scope of this duty and sought clarification concerning the steps to be taken to avoid liability for their customers' intentional or unintentional failure to comply with the identification requirements of the proposed rule.[71] Many of the commenters focused on the lack of automated systems for cross-referencing or aggregating accounts that may be commonly owned or controlled. The commenters extrapolated from this premise that the development of automated systems for this purpose would be extremely expensive and unduly burdensome. The commenters also suggested that the principal compliance burden should be placed on large traders and that an objective standard or "safe harbor" should be created.

The Commission emphasizes that the reproposed rule places the principal burden of compliance with the identification requirements on large traders. The Commission, however, also believes that some form of supervisory requirements and systems, which are consistent with the self-regulatory framework of the Exchange Act, are

[63] "System orders" are those orders that are routed and reported through SRO order routing systems end are automatically posted to back-office accounting systems by the system. These orders, generally, may be characterized as orders for small individuel Investors or program trades.

[64] "Manuel orders" are those orders that are routed and reported manually over the telephone or telegreph end are manuelly posted to back-office accounting systems by broker-dealer personnel. These orders, generally, may be characterized as large block trades for institutlonal investors.

[65] See Memorande to SEC File No. S7–24–91 from the Division of Market Reguletion deted April 16, 1992, May 7, 1992, end June 11, 1992 outlining meetings where these proposals were discussed.

[66] See Proposing Releese, 56 FR 42557, et n. 84 end eccompanying text.

[67] See supra Section III.A.1.e., for a discussion of the definition of e trensaction.

[68] See Memorandum to SEC File No. S7–24–91 from the Division of Market Regulation deted June 11, 1992 indicating the SIA's concurrence.

[69] 15 U.S.C. 78m(h)(2) (1990).

[70] See Proposing Release 56 FR 42554, at text accompanying nn. 44–46, 53–54, and 108.

[71] See Proposing Release, 56 FR 42554, et n. 46, for the administretive remedies that the Commission mey impose for e failure to supervise. The Commission also notes that it mey institute proceedings and impose eny other remedies that it may deem eppropriate.

necessary to assure that the objectives of the Market Reform Act are fulfilled.

Paragraph (f) of the reproposed rule would clarify and minimize the burden of the duty to supervise imposed by the "reason to know" provisions of Section 13(h)(2) of the Exchange Act. This duty to supervise would apply to registered introducing or correspondent broker-dealers that clear their transactions on an omnibus basis through a self-clearing broker-dealer. Absent other indications, self-clearing broker-dealers would not normally be expected to supervise compliance by such broker-dealers or their customers for whom transactions are effected through omnibus accounts.

The Commission acknowledges that this duty to supervise would impose additional burdens on broker-dealers. Accordingly, paragraph (f) of the reproposed rule would establish a "safe harbor" for the supervisory duty. This new paragraph would initially provide that registered broker-dealers would not be deemed to know or have reason to know that a person is a large trader if it does not have actual knowledge that a person is a large trader and has established policies and procedures reasonably designed to assure compliance with the identification requirements of the reproposed rule. Paragraphs (f) (1) and (2) of the reproposed rule provide the specific elements that would be required for the supervisory safe harbor.

Paragraph (f)(1) of the reproposed rule requires the establishment of systems "reasonably designed to detect and identify" persons who have not complied with the identification requirements. This paragraph incorporates the "reason to know" standard and clarifies that, with respect to groups of accounts that may be identified as large traders (i.e., commonly owned or controlled accounts), policies and procedures would be within the safe harbor if they are reasonably designed to detect and identify such groups of accounts based on account name, tax identification number, or other readily available information.

The Commission would deem "other readily available information" to include, for example, those instances where a single customer effects the requisite transactions through a single registered representative, trading desk, or branch office in his or her personal accounts, accounts of family members, or accounts of others, pursuant to written trading authorizations. Similarly, customer authorization to transfer funds or securities among accounts in order to receive approval for trading activities, meet margin requirements, or to settle transactions, may be deemed other readily available information.

Paragraph (f)(2) of the reproposed rule also would require that broker-dealer supervisory policies and procedures contain systems reasonably designed to inform persons and large traders of their obligations to file Form 13H and disclose their large trader status. In this respect, questions and informative disclosures on new account applications, as well as annual notices to identified and unidentified large traders, among other things, would be deemed by the Commission to fulfill this element of the safe harbor.

The Commission notes that the elements of the safe harbor do not specifically require automated systems, employee training programs, or any other systems or procedures. The adequacy of supervisory procedures would depend on the nature and characteristics of a broker-dealer's business. The Commission believes that many different systems or procedures may be effective for accomplishing the objectives of the supervisory duties and, therefore, would satisfy the requirements of the safe harbor.

Paragraph (f) of the reproposed rule incorporates many of the suggestions contained in the comments for reducing the burdens attendant to supervision of the system. The Commission believes that these new paragraphs add detail and objectivity to the reason to know requirements of the Market Reform Act and, therefore, reduce the burden of the supervisory scheme of the reproposed rule. The Commission also believes that these provisions are consistent with the general supervisory obligation imposed on broker-dealers by the Exchange Act.[72] The Commission, however, specifically solicits comments on the reproposed supervisory scheme and whether other more effective means exist, within the limitations provided by the Market Reform Act, for assuring the accuracy or reliability of information collected through the reproposed system and maintaining a level playing field between broker-dealers and banks.

F. Exemptions

Section 13(h)(6) of the Exchange Act authorizes the Commission to exempt any person or class of persons or any transaction or class of transactions, either conditionally, upon specific terms and conditions, or for stated periods. The Commission may provide for such exemptions through rules or orders that are consistent with the purposes of the Exchange Act.[73]

The commenters did not express objections to the proposed exemptions, which were based upon the capture of similar information by SROs or involve activity generally deemed not to affect markets for publicly traded securities. The commenters, however, suggested additional classes of persons and transactions that should be exempt. These suggested exemptions included: (1) Introducing broker-dealers; (2) foreign and domestic market makers; (3) certain custodian banks; (4) small investment managers; (5) unit investment trusts; (6) issuer repurchases; and (7) after-hours foreign trading activity.

Paragraph (g)(1) of the reproposed rule would specifically provide that certain broker-dealers are exempt from the identification, recordkeeping, and reporting requirements of the Rule. The reproposed rule would retain the exemptions proposed (*i.e.*, specialists, option market makers, and floor brokers) and add market makers registered by a national securities association to the extent that they are acting in their market making capacity.

Paragraph (g)(2) of the reproposed rule would exempt certain transactions and introducing broker-dealers from the reporting requirements. The specific transactions that would be exempt from the reporting requirements only include those transactions effected by specialists, option market makers, and other market makers in the publicly traded securities for which they are registered. In addition, paragraph (g)(2)(iii) has been added to definitively exempt introducing broker-dealers that do not carry accounts for themselves or others from the reporting requirements of the reproposed rule.

The Commission believes that the comprehensive exemptions for entities that are subject to similar SRO recordkeeping and reporting requirements would establish an equal competitive environment between all forms of market professionals that are registered with an SRO. The Commission also believes that these exemptions would assure that the reproposed system collects the appropriate information from the appropriate registered broker-dealers.

With respect to other suggested exemptions, the Commission believes that some have been incorporated in portions of the reproposed rule. For instance, the reproposed definition of a large trader, reduced scope of Form 13H, and inactive filing status, would

[72] See e.g., Sections 15(b)(4)(E) of the Exchange Act, 15 U.S.C. 78o(b)(4)(E) (1988).

[73] See 15 U.S.C. 78m(h)(6) (1990).

implicitly exempt or significantly reduce the burden on custodian banks or trust companies, foreign market makers, and unit investment trusts.[74] On the other hand, the Commission believes that some of the other suggested exemptions would not be consistent with the purposes of the large trader reporting provisions of the Exchange Act.[75]

The exemptive provisions of the reproposed rule acknowledge the existing systems for collecting similar information. The Commission believes that these exemptions accomplish the purposes of the Market Reform Act and minimize the number of persons affected by the various aspects of the reproposed rule.

G. Application to Foreign Entities

In the Proposing Release, the Commission discussed the application of the proposed rule to foreign entities.[76] The Commission was, and continues to be, concerned that excluding foreign entities and persons would leave domestic markets and exchanges at a competitive disadvantage relative to foreign markets and exchanges. Moreover, the Commission is concerned that the exclusion of foreign intermediaries (*i.e.*, broker-dealers and banks) that maintain omnibus accounts with domestic broker-dealers would competitively disadvantage domestic intermediaries that perform omnibus trade execution or custodial functions for large traders. The Commission believes that the preservation of a fair competitive environment is fundamental to the accomplishment of the purposes of the Market Reform Act.

The Commission solicited comments from foreign and domestic market participants and foreign regulatory agencies regarding the application of the proposed rule and, specifically, alternative means for filing Form 13H, maintaining Form 13H information, and assigning LTIDs. The Commission received 15 comments from foreign entities.[77] These commenters questioned the extent to which the proposed rule would apply and asserted that compliance with the proposed rule may cause breaches of certain local confidentiality requirements.

Many of these commenters generally asserted, without explanation, that the application of the proposed rule was unacceptable. A few of the commenters acknowledged the existence of memoranda of understanding ("MOUs"), however, none offered specific ideas or sought further discussions regarding alternatives or the development of "MOU-type" understandings. It should be noted that, in an enforcement context, the Commission would continue to obtain information from foreign regulatory authorities pursuant to existing MOU protocols.

As discussed above, the application and scope of the reproposed rule would be established by the definition of a large trader, which closely tracks Section 13(h)(8)(A) of the Exchange Act.[78] The Commission also notes that foreign broker-dealers would not be subject to recordkeeping or transaction reporting requirements of the reproposed rule. Accordingly, only foreign entities that are large traders would be subject to the reproposed rule. The duties and burdens imposed on all large traders include: (1) Filing Form 13H; (2) disclosing large trader status; (3) providing other information about accounts and reported transactions; and (4) if the foreign large trader maintains or controls transactions in an omnibus account carried by a registered broker-dealer, and the duty to assure compliance with the identification and disaggregation requirements of the reproposed rule.

A foreign entity or person would be a large trader, thus subject to the reproposed rule, only if the following four elements are present: (1) A person owns or controls an account or aggregated accounts; (2) such person effects aggregate transactions in publicly traded securities that reach the identifying activity level; (3) such transactions are effected directly or indirectly by or through accounts maintained by a registered broker-dealer; and (4) such transactions are effected by use of any means or instrumentality of interstate commerce or the mails or any facility of a national securities exchange.

The various combinations of these elements are too numerous to discuss at length. However, the bounds of the application of the reproposed rule may be explored through the analysis of two typical examples of securities activity that may be referred to as "foreign activity." First, assume that a foreign bank maintains an omnibus account with a domestic registered broker-dealer. Through this omnibus account, the foreign bank effects trades in publicly traded securities on a national securities exchange for its foreign customers (*i.e.*, citizens of, or persons domiciled in, a foreign country) that reach the identifying activity level. In this case, the foreign bank would be a custodian or nominee large trader and would be required to: (1) File Form 13H and Schedules 7b and/or 8; (2) disclose its LTID and all such accounts to the registered broker-dealers carrying such accounts; (3) assure compliance with the disaggregation and identification requirements as well as the accuracy of Schedules 7b or 8; and (4) if requested, disaggregate accounts or transactions.

As noted above, the foreign bank large trader would not be required to disclose on its Form 13H the non-large trader foreign customers whose trades are effected through its omnibus accounts. However, the reproposed rules would require the foreign bank large trader to assure that the information contained on Schedules 7b and 8 is accurate and complete. Accordingly, the foreign bank large trader would be required to disclose to the Commission the LTID or IID System numbers of its identified large trader customers.

In addition, if the foreign bank large trader effects transactions through such omnibus accounts for one of its customers and such transactions reach the identifying activity level, then in order to assure compliance with the disaggregation and identification requirements of the reproposed rule, the foreign bank large trader would have a duty to advise such foreign customer of its duty to file Form 13H and disclose its status in accordance with the reproposed rule. This duty would apply to the foreign bank large trader whether the customer's transactions were effected on a discretionary or non-discretionary basis.

For a second example, assume that a registered broker-dealer carries the account of a domestic or foreign customer, and it effects a program trade

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[74] Unit investment trusts, and similar "closed-end mutuel funds," essentially are fixed portfolios of securities assembled by e sponsor and held for the life of the trust. Typically, these entities investments are static end, therefore, the identification or reporting requirements of the reproposed rule may be triggered only et their inception and terminetion. The new inactive status wes designed, in part, with these entities in mind end would effectively eliminate the ongoing burdens of the reproposed rule on these entities.

[75] These suggested exemptions would include: (1) "small" investment advisers thet control "large transactions" (*i.e.*, transactions that reach the identifying ectivity level); (2) issuer repurchases; end (3) efter-hours foreign trading ectivity.

[76] See Proposing Release, 56 FR 42558, at text eccompanying nn. 105–109.

[77] Of these 15 comments, 12 were submitted by regulatory organizations or industry associetions, including: the Ambassador of Frence, London Stock Exchenge, British Department of Trade and Industry, Germen Ministry of Finance, Association of German Banks, British Merchent Banking and Securities House Associetion, Delegation of the Commission of the European Communities, Institutional Fund Managers Association, Institute of International Benkers, Swiss Bankers Association, Hong Kong Associetion of Banks, end Thesaurier-Generaal of the Netherlands.

[78] 15 U.S.C. 78m(h)(8)(A) (1990).

in publicly traded securities in a foreign over-the-counter market or exchange. In order to effect the trade, the registered broker-dealer transmits the order information by facsimile to a foreign broker-dealer affiliate. Further, assume that the affiliated foreign broker-dealer effects the transaction for an omnibus account which it carries in the name of the domestic broker-dealer.

This activity would cause the foreign or domestic customer to be a large trader because it owned accounts, had effected the requisite trades indirectly through an account maintained by a registered broker-dealer, and through the means or instrumentality of interstate commerce.

Alternatively, if the foreign broker-dealer exercised control over the transaction then it also would be a large trader because it would have controlled accounts and effected the requisite trades by or through an account carried by a registered broker-dealer. Conversely, neither the customer or foreign broker-dealer would be large traders if the trade was effected exclusively by or for an account owned or controlled by the foreign or domestic customer and carried by the foreign broker-dealer, because the transaction would not be effected directly or indirectly by or for an account carried by a registered broker-dealer.

As discussed above, the identification requirements would significantly clarify and narrow the scope of the reproposed rule and, thereby, reduce the associated burdens on all large traders. Accordingly, the Commission believes that the burdens imposed on foreign large traders are necessary and appropriate, not unduly burdensome, and are imposed uniformly on domestic and foreign markets, exchanges, intermediaries, and investors.

H. Proposed Implementation

The Commission proposes that the transaction reporting requirements contained in paragraph (e) of the reproposed rule become effective 18 months after adoption of the final rule. The Commission believes that this time frame would provide sufficient time for the securities information processors and broker-dealers to plan, design, and implement all of the various enhancements to existing transaction reporting systems required by the reproposed rule. During this implementation period, the Commission would conduct periodic tests of the trade reporting system and work closely with broker-dealers, SIAC, and the ISG to develop all of the technical data processing software required by the reproposed rule.

The Commission believes that this implementation objective would facilitate the cost-effective development of the transaction reporting systems required by the reproposed rule. The Commission specifically solicits comments on whether the proposed 18 month period would be feasible.

I. Statutory Authority

Section 13(h)(5) of the Exchange Act requires the Commission, when exercising its rulemaking authority for large trader reporting, to consider: (1) Existing reporting systems; (2) the costs associated with keeping and reporting large trader information; and (3) the relationship between United States and international securities markets. The Commission considered these requirements when formulating the proposed rule and firmly believed that, notwithstanding certain elements of the proposed rule that may cause market participants to incur additional costs, the proposed system minimized costs in virtually every respect. The additional costs acknowledged by the Commission, included: (1) Preparation, filing, and updating Form 13H; (2) maintenance and reporting of large trader transaction information; (3) maintenance and reporting of LTIDs and execution times; and (4) development and implementation of supervisory systems and procedures.

The reproposed rule reflects the Commission's commitment to work with market participants to incorporate all existing industry systems that would minimize the costs associated with the reproposed system. The reproposed rule also reflects the Commission's conscious decision to shift substantial portions of the burdens imposed by the proposed rule from market participants to the Commission. Further, the foreign application of the reproposed rule has been carefully considered in light of its impact on the relationship between foreign and domestic securities markets, intermediaries, and investors.

The Commission believes that the comments on the proposed rule highlight the complexity of designing a simple and efficient large trader system that accommodates many different types of large traders as well as business practices and procedures. Faced with these conflicting needs and practices, the Commission is reproposing rules that it believes would minimize the costs and burdens imposed on the greatest number of affected market participants.

The Commission believes that the reproposed rule narrows and clarifies the definition of a large trader, and thus reduces the costs and burdens of the system. The revisions to the identification requirements, through the various definitions and rules for aggregation, have significantly reduced the number of persons who would be subject to the identification requirements of the reproposed rule. The inactive filing status, and the other filing or disclosure requirements, have been revised to incorporate other existing information and eliminate unnecessary information.

The Commission believes that the information captured and disclosed under the reproposed identification requirements would be the minimum necessary for creating an effective large trader reconstruction tool. Moreover, the Commission believes that such information would be collected or disclosed in a fashion that approximates existing systems, practices, and procedures commonly used by all forms of large traders.[79]

The modifications and additions to the recordkeeping and reporting requirements of the reproposed rule would significantly clarify their application and reduce technical burdens. The Commission believes that the reproposed rule's additional elements of transaction information, combined with the new reporting requirements for multiple LTIDs and system or manual order execution times, incorporate existing recordkeeping and reporting practices, procedures, and systems for customer trade information. As a result, the Commission believes that the reproposed recordkeeping and reporting requirements would provide the least burdensome method of collecting large trader transaction information.

The supervisory provisions of the reproposed rule would clarify the duty to supervise. The supervisory obligations also would assure the credibility of the reproposed system and a level playing field between broker-dealers and other omnibus large traders to the greatest extent permitted by the Market Reform Act. The Commission believes that the new safe harbor provision provides meaningful detail and objectivity that would considerably reduce the burden of the supervisory duties. The Commission also believes that the reduced burdens of the identification requirements may foster

[79] The Commission reiterates its belief that the reproposed rule is consistent with the intent of the Market Reform Act and only requires identification or disclosure of large traders whose transactions are effected through omnibus accounts, and not "small beneficial owners" whose trades are effected through such accounts. See Proposing Release, 56 FR 42553, at n. 41 (citing the Senate Report); and House Report, supra n. 4, at 25.

greater compliance with the reproposed rule and indirectly reduce the supervisory burden of broker-dealers and omnibus large traders.

The Commission believes that the reproposed rule's application to foreign entities and persons would accomplish the objectives of the Market Reform Act by maintaining uniformity between domestic and foreign markets, exchanges, intermediaries, and investors. Finally, the Commission believes that the proposed plan for implementing the transaction reporting system would facilitate its cost-effective development.

IV. Conclusion

The Commission is reproposing Rule 13h–1 and Form 13H, which would establish an activity-based identification, recordkeeping, and reporting system for large trader accounts and transactions. This system would enable the Commission to gather large trader information in a timely manner and in the form necessary to reconstruct trading activity in periods of market stress and for surveillance, enforcement, and other regulatory purposes. The Commission believes that the reproposed rule achieves the objectives of the Market Reform Act and would establish an effective market reconstruction tool that minimizes costs.

V. Effects on Competition and Regulatory Flexibility Analysis

Section 23(a) of the Exchange Act[80] requires that the Commission, when proposing rules under the Exchange Act, consider the effects on competition of such rules, if any, and balance any anti-competitive impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission is of the view that the Rule will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Pursuant to the requirements of the Regulatory Flexibility Act,[81] the Commission previously prepared an Initial Regulatory Flexibility Analysis ("IRFA"), concerning the proposed rule. The IRFA indicated that the proposed rule may impose some additional costs on small broker-dealers, small investment advisers, and small investors. The Commission has prepared a revised IRFA that details the changes to the proposed rule found in the reproposed rule. The Commission believes that the reproposed rule has been structured in a manner that further minimizes the costs of the reproposed system and fulfills the requirements of the Market Reform Act and section 13(h) of the Exchange Act. A copy of the revised IRFA may be obtained from Cameron D. Smith, Staff Attorney, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, (202) 272–5418.

[80] 15 U.S.C. 78w(a) (1988).

[81] 5 U.S.C. 604 (1988).

VI. List of Subjects in 17 CFR Parts 240 and 249

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. By adding § 240.13h–1 to read as follows:

§ 240.13h–1 Large trader reporting system.

(a) *Definitions.* For purposes of this section—

(1) The term *large trader* means every person who, for an account that he owns or controls, effects transactions for the purchase or sale of any publicly traded security or securities by use of any means or instrumentality of interstate commerce or of the mails, or of any facility of a national securities exchange, directly or indirectly by or through a registered broker or dealer in an aggregate amount equal to or in excess of the identifying activity level.

(2) The term *person* shall mean those persons and entities specified in Section 3(a)(9) of the Securities Exchange Act of 1934, two or more persons acting as a partnership, limited partnership, syndicate, or other group, but does not include a foreign central bank, and also includes such persons, entities, partnerships, or groups acting as a trustee.

(3) The term *account* or *accounts* means each proprietary and customer account maintained or carried by a registered broker or dealer, which is disclosed or undisclosed to such broker or dealer as to ownership, and for which books and records are required to be made and kept in accordance with the provisions of § 240.17a–3.

(4) *Ownership.* An account of a person shall be deemed to be owned or under common ownership of the person in whose name an account is maintained, or a custodian or nominee that maintains an omnibus account or accounts otherwise undisclosed as to ownership, and any other person who has more than a 10 percent financial interest in the equity in the account or accounts of such person.

(5) *Control.* An account of a person shall be deemed to be controlled or under the common control of the owner of such account, and any other person that has received or been assigned full or limited investment discretion from the owner of such account. For purposes of this section:

(i) The term *full discretionary investment authority* means the discretion to enter orders for an account owned by another person, for the purchase or sale of any publicly traded security or securities, of any size, and at any time or price, without prior instruction or approval of the owner of such account; and

(ii) The term *limited discretionary investment authority* means the discretion to enter orders for an account owned by another person, for the purchase or sale of any publicly traded security or securities, limited only to the price or time of execution, upon the express prior instruction or approval of the owner of such account.

(6) The term *publicly traded security* means any equity security, option on an equity security, or an option on a group or index of equity securities (or based on the value thereof) listed, or admitted to unlisted trading privileges, on a national securities exchange and all other national market system securities as defined in § 240.11Aa2–1.

(7) The term *transaction* or *transactions* means all transactions in publicly traded securities, including cancellations, corrections, and exercises or assignments of option contracts, except for the following transactions:

(i) Any journal or bookkeeping entry made to an account in order to record or memorialize the receipt or delivery of funds or securities pursuant to the settlement of a transaction;

(ii) Any transaction that is part of an offering of securities by or on behalf of an issuer, or by an underwriter on behalf of an issuer, or an agent for an issuer, whether or not such offering is subject to registration under the Securities Act of 1933, *provided, however,* That this exemption shall not include an offering of securities effected

through the facilities of a national securities exchange;

(iii) Any transaction effected in reliance on § 230.144A of this chapter;

(iv) Any transaction that constitutes a gift;

(v) Any transaction effected by a court appointed executor, administrator, or fiduciary pursuant to the distribution of a decedent's estate;

(vi) Any transaction effected pursuant to a court order or judgment for distribution of property in settlement of a marital proceeding;

(vii) Any transaction effected pursuant to a rollover of qualified plan or trust assets subject to section 402(a)(5) of the Internal Revenue Code (26 U.S.C. 402(a)(5)); or

(viii) Any transaction between an employer and its employee(s) effected pursuant to the award, allocation, sale, grant or exercise of a publicly traded security, option or other right to acquire securities at a pre-established price pursuant to a plan which is primarily for the purpose of an issuer benefit plan or compensatory arrangement.

(8) The term *identifying activity level* means:

(i) Aggregate transactions in publicly traded securities, effected during a calendar day where the account is located, that are equal to or greater than the lesser of 200,000 shares and fair market value of $2,000,000, or fair market value of $10,000,000; or

(ii) Any transaction or transactions that constitute program trading.

(9) The term *program trading* means either index arbitrage or any trading strategy involving the related purchase or sale of a group or basket of 15 or more publicly traded securities that have a total fair market value of $1,000,000 or more.

(10) The term *index arbitrage* means a trading strategy involving the purchase or sale of a group or basket of publicly traded securities in conjunction with the purchase or sale, or intended purchase or sale, of one or more cash-settled option or futures contracts on a group or index of equity securities (or based on the value thereof), or options on such futures contracts (collectively, derivative index products) in an attempt to profit from a difference between the price of a group or basket of equity securities and the price of a derivative index product through transactions that need not be executed contemporaneously.

(b) *Identification requirements for large traders.*—(1) *Form 13H.* Each large trader shall file Form 13H (17 CFR 249.327) with the Commission, in accordance with the instructions contained therein:

(i) Within 10 business days after first effecting aggregate transactions, or after effecting aggregate transactions subsequent to becoming inactive pursuant to paragraph (b)(3) of this section, which equal or exceed the identifying activity level; and

(ii) Within 60 calendar days after the end of each full calendar year thereafter.

(2) *Disclosure of large trader status.* Each large trader that:

(i) Controls an account, or acts as a custodian or nominee for an omnibus account, shall disclose its large trader identification number and all of its owned or controlled accounts to any registered broker or dealer that carries such accounts;

(ii) Controls an omnibus account, shall disclose its large trader identification number or Depository Trust Company Institutional Delivery System number to the custodian or nominee of such omnibus account; or

(iii) Owns an account for which it has assigned control to another person, shall disclose its large trader identification number or Depository Trust Company Institutional Delivery System number to such other person.

(3) *Inactive Status.* A large trader that has not effected aggregate transactions during the previous full calendar year that equal or exceed the identifying activity level and an aggregate calendar year total of 2,000,000 shares or fair market value of $30,000,000, shall become inactive upon filing and shall not be required to file Form 13H or disclose its large trader status thereafter.

(4) *Other Information.* Large traders shall provide the Commission with such other descriptive or clarifying information it may request from time to time regarding accounts, or transactions effected through accounts, identified on Form 13H.

(c) *Aggregation of accounts and transactions.*—(1) *Accounts.* For the purpose of determining whether a person is a large trader, the following shall apply:

(i) All accounts through which transactions are effected directly or indirectly by a person that are owned or controlled by, or under common ownership or control with such person, which independently would be a large trader, may be aggregated;

(ii) All accounts through which transactions are effected directly or indirectly by a person owned or controlled by, or under common ownership or control with such person, which independently would not be a large trader, shall be aggregated; and

(iii) Under no circumstances shall a person or group of persons acting in concert toward a common investment objective, be permitted to disaggregate accounts owned or controlled by or under the common ownership or control of such person or group of persons, in order to avoid the identification requirements of this section.

(2) *Transactions.* For the purpose of determining whether a person is a large trader, the following shall apply:

(i) The gross volume or fair market value of transactions in equity securities and the gross exercise volume or exercise value of the equity securities underlying transactions in options on equity securities, purchased and sold, shall be aggregated;

(ii) The gross exercise value of transactions in options on a group or index of equity securities (or based on the value thereof), purchased and sold, shall be aggregated; and

(iii) Under no circumstances shall a person or group of persons be permitted to subtract, offset, or net purchase and sale transactions, in equity securities or option contracts, and among or within accounts, when aggregating the volume or fair market value of transactions effected under this section.

(3) *Disaggregation.*—(i) *Generally.* The Commission may require a large trader to disaggregate accounts or transactions in any manner, and provide additional transaction or other information relating to transactions previously reported by a registered broker or dealer, in such cases and upon reasonable terms and conditions considering the operational capabilities of such large trader, when it determines such to be necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of this section.

(ii) *Omnibus accounts.* Large traders that effect transactions through or maintain omnibus accounts with a registered broker or dealer shall establish and maintain policies and procedures reasonably designed to assure compliance with the disaggregation and identification requirements of this section and, in particular, assure the accuracy and completeness of Schedules 7b or 8 to Form 13H. Policies and procedures that are substantially comparable to those described in paragraph (f) of this section shall be deemed to be in compliance with this section.

(d) *Recordkeeping requirements for brokers and dealers.*—(1) *Generally.* Every registered broker or dealer that carries accounts for large traders and persons such broker or dealer knows or has reason to know are large traders, based on transactions effected by or through such broker or dealer, shall maintain records of all elements of

information for all transactions effected directly or indirectly by or through an account carried by such broker or dealer for all large traders and persons that such broker or dealer knows or has reason to know are large traders.

(2) *Specific information.* The elements of information required to be maintained for all transactions, shall include:

(i) Date on which the transaction was executed;

(ii) Account number;

(iii) Identifying symbol assigned to the security;

(iv) Transaction price;

(v) The number of shares or option contracts traded and whether such transaction was a purchase, sale, or short sale, and if an option transaction, whether such was a call or put option, an opening purchase or sale, a closing purchase or sale, or an exercise or assignment;

(vi) The clearing house number of such broker or dealer and the clearing house numbers of the brokers or dealers on the opposite side of the transaction;

(vii) A designation of whether the transaction was effected or caused to be effected for the account of a customer of such broker or dealer, or was a proprietary transaction effected or caused to be effected for the account of such broker or dealer;

(viii) Market center where the transaction was executed;

(ix) The time that the transaction was executed, as required to be reported under paragraph (e) of this section;

(x) The large trader identification number, of the person that controls the account or the custodian or nominee of an omnibus account, for which the transaction was effected;

(xi) The Depository Trust Company Institutional Delivery System numbers of agents, broker-dealers, institutions, and other interested parties otherwise maintained by such broker or dealer for the account for which a transaction is effected;

(xii) The code, identification, or sequence number assigned to a transaction that was routed or effected through an automated order routing system maintained by a self-regulatory organization; and

(xiii) Any other codes, designations, or identifiers that the Commission may deem necessary or appropriate for compliance with the recordkeeping or reporting requirements of this section.

(3) *Retention.* The records and information required to be made and kept pursuant to the provisions of this section shall be kept for such periods of time as provided in § 240.17a–4(b).

(e) *Reporting requirements for brokers and dealers.*—(1) *Generally.* Upon the request of the Commission, or a self-regulatory organization designated by the Commission, every registered broker or dealer that carries accounts for large traders and other persons for whom records must be maintained, shall electronically report in machine-readable form and in accordance with instructions issued by the Commission, all elements of information for all transactions effected directly or indirectly by or through accounts carried by such broker or dealer for large traders and other persons for whom records must be maintained, which equal or exceed the reporting activity level.

(2) The term *reporting activity level* means:

(i) Each transaction in publicly traded securities, effected during a calendar day where the account is located, that is equal to or greater than the lesser of 2,000 shares or fair market value of $100,000;

(ii) Any other transaction in publicly traded securities of lesser amount, that a registered broker or dealer may deem appropriate;

(iii) Each transaction, regardless of share quantity or fair market value, that is part of a group of transactions that constitute program trading; or

(iv) Such other amount that may be established by order of the Commission from time to time.

(3) *System orders.* With respect to transactions routed or effected through an automated order routing system maintained by a self-regulatory organization, registered brokers or dealers shall report, all elements of information for all transactions required to be maintained, including the time that the transaction was executed, before the close of business on the day specified in the request for such transaction information.

(4) *Manual orders.* With respect to transactions that are not routed or effected through an automated order routing system maintained by a self-regulatory organization, registered brokers or dealers shall report:

(i) All elements of information for all transactions required to be maintained, except the time that the transaction was executed, before the close of business on the day specified in a request for such transaction information; and

(ii) The time that each of such transactions were executed, within 15 calendar days after receipt of a specific request for such information.

(5) *Unidentified large traders.* With respect to transactions effected directly or indirectly by or through the account of a person that a registered broker or dealer knows or has reason to know is a large trader, all elements of information for all transactions required to be maintained and such person's name, address, date that the account was opened, and tax identification number(s) shall be reported.

(f) *Supervisory safe harbor.* For the purposes of this section, a registered broker or dealer shall not be deemed to know or have reason to know that a person is a large trader if it establishes policies and procedures reasonably designed to assure compliance with the identification requirements of this section and does not have actual knowledge that a person is a large trader. Policies and procedures shall be deemed to satisfy this section, if they include:

(1) Systems reasonably designed to detect and identify persons that have not complied with the identification requirements of this section, which such broker-dealer knows or has reason to know is a large trader, based upon transactions effected through an account or a group of accounts, that may be identified as a large trader, based on account name, tax identification number, or other information readily available to such broker-dealer; and

(2) Systems reasonably designed to inform large traders of their obligations to file Form 13H and disclose large trader status under this section.

(g) *Exemptions.*—(1) *Comprehensive.* The identification, recordkeeping, and reporting requirements of this section shall not apply to any registered broker or dealer that does not carry accounts for itself or others, and:

(i) Is registered as a specialist or option market maker by a national securities exchange;

(ii) Is a member or allied member of a national securities exchange that exclusively executes transactions on the floor of such national securities exchange; or

(iii) Is registered as a market maker by a national securities association to the extent that it effects transactions in its capacity as a registered market maker.

(2) *Reporting requirements.* The reporting requirements of this section shall not apply to:

(i) Transactions for the account of a specialist or option market maker registered by a national securities exchange, effected in its capacity as a registered specialist or option market maker;

(ii) Transactions for the account of a market maker registered by a national securities association, effected in its capacity as a registered market maker; or

(iii) Any broker or dealer that does not carry accounts for itself or others.

(3) *Written requests.* The Commission may, upon written application, exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any person, large trader, broker or dealer, or class of transactions for which the Commission determines that application of this section is not necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this section.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

4. By adding § 249.327 to read as follows:

§ 249.327 Form 13H, information required of large traders pursuant to section 13(h) of the Securities Exchange Act of 1934 and rules thereunder.

This form shall be used by persons that are large traders required to furnish identifying information to the Commission pursuant to section 13(h)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(h)(1)) and Rule 13h–1(b)) thereunder (§ 240.13h–1(b) of this chapter).

Dated: February 9, 1994.

By the Commission.

Margaret H. McFarland,

Deputy Secretary

Note: Appendix A will not appear in the Code of Federal Regulations.

BILLING CODE 8010–01–M

APPENDIX A

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
FORM 13H

INFORMATION REQUIRED OF LARGE TRADERS PURSUANT TO SECTION 13(h) OF THE SECURITIES EXCHANGE ACT OF 1934 AND RULES THEREUNDER

[ ] INITIAL FILING: DATE IDENTIFYING TRANSACTIONS FIRST EFFECTED_____
[ ] ANNUAL FILING: CALENDAR YEAR ENDING ____ ITEMS AMENDED_____
[ ] INACTIVE FILING: DATE IDENTIFYING TRANSACTIONS LAST EFFECTED_____
[ ] CORRECTED FILING: TYPE AND DATE FILING BEING CORRECTED_____

_____
NAME OF LARGE TRADER LTID TAXPAYER IDENTIFICATION NUMBER

_____
DTC ID SYSTEM NUMBER(S) OF THE LARGE TRADER

_____
BUSINESS ADDRESS (STREET, CITY, STATE, ZIP)

TELEPHONE NO. (__) ___ - ____ FACSIMILE NO. (__) ___ - ____

THE FORM, SCHEDULES, AND CONTINUATION SHEETS MUST BE SUBMITTED BY A NATURAL PERSON WHO EITHER IS THE LARGE TRADER OR IS A PERSON AUTHORIZED BY THE LARGE TRADER TO MAKE THIS SUBMISSION. IF THIS AUTHORIZED PERSON IS ANYONE OTHER THAN THE LARGE TRADER NAMED ABOVE, COMPLETE THE ITEM IMMEDIATELY BELOW:

_____
NAME AND TITLE OF AUTHORIZED PERSON (LAST, FIRST, M.I.)

_____
RELATIONSHIP TO LARGE TRADER

_____
BUSINESS ADDRESS (STREET, CITY, STATE, ZIP)

TELEPHONE NO. (__) ___ - ____ FACSIMILE NO. (__) ___ - ____

ATTENTION
INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS CONSTITUTE FEDERAL CRIMINAL VIOLATIONS. SEE 18 U.S.C. §1001 AND 15 U.S.C. §78f(a). INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS ALSO MAY RESULT IN CIVIL FINES AND OTHER SANCTIONS PURSUANT TO SECTIONS 20 AND 21 OF THE SECURITIES EXCHANGE ACT OF 1934.

THE LARGE TRADER AND AUTHORIZED PERSON SIGNING THIS FORM REPRESENT THAT ALL INFORMATION CONTAINED IN THE FORM, SCHEDULES, AND CONTINUATION SHEETS IS TRUE, CORRECT, AND COMPLETE. IT IS UNDERSTOOD THAT ALL INFORMATION, WHETHER CONTAINED IN THE FORM, SCHEDULES, OR CONTINUATION SHEETS, IS CONSIDERED AN INTEGRAL PART OF THIS FORM AND THAT ANY AMENDMENT REPRESENTS THAT ALL UNAMENDED INFORMATION REMAINS TRUE, CORRECT, AND COMPLETE.

PURSUANT TO THE SECURITIES EXCHANGE ACT OF 1934, THE UNDERSIGNED LARGE TRADER HAS CAUSED THIS FORM TO BE SIGNED ON ITS BEHALF IN THE CITY OF _____ AND THE STATE OF _____ ON THE _____ DAY OF _____, 19__.

_____
SIGNATURE OF PERSON
AUTHORIZED TO SUBMIT THIS FORM

FORM 13H
INFORMATION REQUIRED OF ALL LARGE TRADERS

NAME OF LARGE TRADER _____

ITEM 1. BUSINESS OF THE LARGE TRADER (CHECK ONE OR MORE AS APPLICABLE)

[ ] BROKER OR DEALER
[ ] INVESTMENT ADVISER
[ ] INVESTMENT COMPANY
[ ] GOVERNMENT SECURITIES BROKER OR DEALER
[ ] MUNICIPAL SECURITIES BROKER OR DEALER
[ ] FUTURES COMMISSION MERCHANT
[ ] PRIVATE PENSION TRUSTEE
[ ] PUBLIC PENSION TRUSTEE
[ ] INSURANCE COMPANY
[ ] OTHER FINANCIAL INSTITUTION
[ ] COMMODITIES POOL OPERATOR
[ ] HEDGE FUND
[ ] OTHER (SPECIFY) _____

ITEM 2. SECURITIES AND EXCHANGE COMMISSION REGISTRATION NUMBERS

IS THE LARGE TRADER AN ISSUER OF SECURITIES UNDER THE SECURITIES ACT OF 1933, REGISTERED UNDER THE SECURITIES EXCHANGE ACT OF 1934, THE INVESTMENT COMPANY ACT OF 1940, THE INVESTMENT ADVISERS ACT OF 1940, OR OTHERWISE REQUIRED TO FILE WITH THE SECURITIES AND EXCHANGE COMMISSION INFORMATION SUBSTANTIALLY SIMILAR TO THE INFORMATION REQUIRED IN THE SCHEDULES TO ITEM 4?

[ ] YES [ ] NO

IF NO, COMPLETE ITEM 4 BELOW.

IF YES, YOU ARE NOT REQUIRED TO COMPLETE ITEM 4 IF YOU SPECIFY THE TYPE OF REGISTRATION OR FILING AND APPLICABLE REGISTRATION OR FILE NUMBERS:

--USE CONTINUATION SHEETS IF NECESSARY--

TYPE OF REGISTRATION	SEC FILE NUMBER OR CRD NUMBER
_____	_____
_____	_____
_____	_____
_____	_____

ITEM 3. COMMODITY FUTURES TRADING COMMISSION REGISTRATION NUMBERS

(a) IS THE LARGE TRADER REGISTERED WITH THE CFTC AS A "REGISTERED TRADER" PURSUANT TO SECTIONS 4i AND 9 OF THE COMMODITY EXCHANGE ACT OF 1974?

[ ] YES [ ] NO

IF YES, SPECIFY THE REGISTRATION NUMBER:_____

(b) IS THE LARGE TRADER OTHERWISE REGISTERED UNDER THE COMMODITY EXCHANGE ACT OF 1974? [ ] YES [ ] NO

IF YES, SPECIFY THE TYPE OF REGISTRATION AND NUMBER:

_____
_____
_____
_____

--USE CONTINUATION SHEETS IF NECESSARY--

FORM 13H
INFORMATION REQUIRED OF ALL LARGE TRADERS

NAME OF LARGE TRADER _____

ITEM 4. TYPE OF LARGE TRADER (CHECK ONE ONLY): THIS ITEM IS NOT REQUIRED TO BE COMPLETED IF THE LARGE TRADER CHECKED "YES" AND COMPLETED ITEM 2 ABOVE.

[ ] INDIVIDUAL
[ ] JOINT TENANT
[ ] PARTNERSHIP
[ ] OTHER (SPECIFY) _____
[ ] CORPORATION
[ ] TRUSTEE
[ ] LIMITED PARTNERSHIP

(a) IF THE LARGE TRADER HAS CHECKED INDIVIDUAL, COMPLETE AND SUBMIT SCHEDULE 4a WITH THIS FORM.

(b) IF THE LARGE TRADER HAS CHECKED JOINT TENANT, PARTNERSHIP, OR LIMITED PARTNERSHIP COMPLETE AND SUBMIT SCHEDULE 4b WITH THIS FORM.

(c) IF THE LARGE TRADER HAS CHECKED CORPORATION OR TRUSTEE, COMPLETE AND SUBMIT SCHEDULE 4c WITH THIS FORM.

ITEM 5. AGGREGATION OF ACCOUNTS BY THE LARGE TRADER

(a) HAS THE LARGE TRADER AGGREGATED IN THIS FORM 13H ACCOUNTS OF ANOTHER PERSON THAT ARE OWNED OR CONTROLLED BY OR UNDER COMMON OWNERSHIP OR CONTROL WITH THE LARGE TRADER THAT INDEPENDENTLY WOULD BE A LARGE TRADER?

[ ] YES [ ] NO

IF YES, LIST THE NAME OF THIS OTHER PERSON(S) AND RELATIONSHIP TO LARGE TRADER (e.g., SUBSIDIARY, AFFILIATE, DIVISION, PARTNER):

--USE CONTINUATION SHEETS IF NECESSARY--

NAME	RELATIONSHIP
_____	_____
_____	_____
_____	_____

(b) HAS ANOTHER LARGE TRADER THAT IS OWNED OR CONTROLLED BY OR UNDER COMMON OWNERSHIP OR CONTROL WITH THE LARGE TRADER INDEPENDENTLY FILED FORM 13H AND BEEN ASSIGNED A LARGE TRADER IDENTIFICATION NUMBER BY THE SEC?

[ ] YES [ ] NO

IF YES, SPECIFY THE NAME, LTID, AND RELATIONSHIP TO THE LARGE TRADER OF THIS OTHER LARGE TRADER(S):

--USE CONTINUATION SHEETS IF NECESSARY--

NAME	LTID	RELATIONSHIP
_____	_____	_____
_____	_____	_____
_____	_____	_____

FORM 13H
INFORMATION REQUIRED OF ALL LARGE TRADERS

NAME OF LARGE TRADER _____

ITEM 6. LIST OF ACCOUNTS OWNED BY THE LARGE TRADER

(a) IF THE LARGE TRADER OWNS AND CONTROLS ACCOUNTS, THEN COMPLETE AND SUBMIT SCHEDULE 6a WITH THIS FORM.

(b) IF THE LARGE TRADER OWNS ACCOUNTS THAT ARE CONTROLLED BY ANOTHER PERSON, THEN COMPLETE AND SUBMIT SCHEDULE 6b WITH THIS FORM.

ITEM 7. LIST OF ACCOUNTS CONTROLLED BUT NOT OWNED BY THE LARGE TRADER

(a) IF THE LARGE TRADER CONTROLS ACCOUNTS THAT ARE FULLY DISCLOSED AS TO OWNERSHIP, THEN COMPLETE AND SUBMIT SCHEDULE 7a WITH THIS FORM.

(b) IF THE LARGE TRADER CONTROLS ACCOUNTS THAT ARE UNDISCLOSED AS TO OWNERSHIP, THEN COMPLETE AND SUBMIT SCHEDULE 7b WITH THIS FORM.

ITEM 8. LIST OF ACCOUNTS MAINTAINED BY THE LARGE TRADER AS CUSTODIAN OR NOMINEE THAT ARE UNDISCLOSED AS TO OWNERSHIP

IF THE LARGE TRADER MAINTAINS ACCOUNTS AS CUSTODIAN OR NOMINEE ONLY THAT ARE UNDISCLOSED AS TO OWNERSHIP, THEN COMPLETE AND SUBMIT SCHEDULE 8 WITH THIS FORM.

SCHEDULE 4a TO FORM 13H.
LARGE TRADER INDIVIDUALS

PAGE __ OF __ NAME OF LARGE TRADER _____

ITEM 1. DESIGNATE THE EMPLOYMENT STATUS OF THE LARGE TRADER:

[ ] SELF-EMPLOYED
[ ] OTHERWISE EMPLOYED
[ ] RETIRED OR OTHERWISE NOT EMPLOYED

ITEM 2. PROVIDE THE FOLLOWING INFORMATION REGARDING THE BUSINESS IN WHICH YOU ARE CURRENTLY EMPLOYED, OR IF RETIRED, OF YOUR LAST EMPLOYMENT:

_____
NAME OF BUSINESS OR EMPLOYER

_____
ADDRESS OF BUSINESS OR EMPLOYER (STREET, CITY, STATE, ZIP)

BUSINESS TELEPHONE NO. (___) ___-____

LARGE TRADER'S TITLE AND NATURE OF BUSINESS OR EMPLOYMENT:

_____

THIS SCHEDULE IS NOT REQUIRED IF THE LARGE TRADER CHECKED "YES" AND COMPLETED ITEM 2 TO FORM 13H.

SCHEDULE 4b TO FORM 13H.
LARGE TRADER JOINT TENANTS OR PARTNERSHIPS

PAGE __ OF __ NAME OF LARGE TRADER _____

ITEM 1. ORGANIZATION TYPE (CHECK ONE):

[ ] JOINT TENANCY [ ] PARTNERSHIP [ ] LIMITED PARTNERSHIP

ITEM 2. JURISDICTION IN WHICH THE LARGE TRADER IS REGISTERED OR ORGANIZED:

_____
(CITY, STATE)

ITEM 3. PRINCIPAL PLACE OF BUSINESS:

_____
(STREET, CITY, STATE, ZIP)

ITEM 4. DESCRIBE THE NATURE OF THE LARGE TRADER'S BUSINESS:

_____

ITEM 5. COMPLETE THE FOLLOWING FOR EACH TENANT AND GENERAL PARTNER, AND IN THE CASE OF LIMITED PARTNERSHIPS, EACH LIMITED PARTNER THAT IS THE OWNER OF MORE THAN A 10 PERCENT FINANCIAL INTEREST IN THE ACCOUNTS OF THE LARGE TRADER:

--USE CONTINUATION SHEETS IF NECESSARY--

NAME	STATUS (CHECK ONE FOR EACH)		
_____	[ ] JOINT TENANT	[ ] GENERAL PARTNER	[ ] LIMITED PARTNER
_____	[ ] JOINT TENANT	[ ] GENERAL PARTNER	[ ] LIMITED PARTNER
_____	[ ] JOINT TENANT	[ ] GENERAL PARTNER	[ ] LIMITED PARTNER
_____ ____	[ ] JOINT TENANT	[ ] GENERAL PARTNER	[ ] LIMITED PARTNER
_____ ____	[ ] JOINT TENANT	[ ] GENERAL PARTNER	[ ] LIMITED PARTNER
_____	[ ] JOINT TENANT	[ ] GENERAL PARTNER	[ ] LIMITED PARTNER
_____	[ ] JOINT TENANT	[ ] GENERAL PARTNER	[ ] LIMITED PARTNER
_____	[ ] JOINT TENANT	[ ] GENERAL PARTNER	[ ] LIMITED PARTNER
_____	[ ] JOINT TENANT	[ ] GENERAL PARTNER	[ ] LIMITED PARTNER
_____	[ ] JOINT TENANT	[ ] GENERAL PARTNER	[ ] LIMITED PARTNER

THIS SCHEDULE IS NOT REQUIRED IF THE LARGE TRADER CHECKED "YES" AND COMPLETED ITEM 2 TO FORM 13H.

SCHEDULE 4c TO FORM 13H.
LARGE TRADER CORPORATIONS OR TRUSTEES

PAGE __ OF __ NAME OF LARGE TRADER ________________

ITEM 1. ORGANIZATION TYPE (CHECK ONE):

[ ] CORPORATION [ ] TRUSTEE

ITEM 2. JURISDICTION IN WHICH THE LARGE TRADER IS INCORPORATED OR ORGANIZED:

____
(CITY, STATE)

ITEM 3. PRINCIPAL PLACE OF BUSINESS:

____
(STREET, CITY, STATE, ZIP)

ITEM 4. DESCRIBE THE NATURE OF THE LARGE TRADER'S BUSINESS:

____

ITEM 5. COMPLETE THE FOLLOWING FOR EACH EXECUTIVE OFFICER, DIRECTOR, OR TRUSTEE OF A LARGE TRADER CORPORATION OR TRUST:

--USE CONTINUATION SHEETS IF NECESSARY--

NAME	STATUS (CHECK ONE FOR EACH)		
____________	[ ] OFFICER	[ ] DIRECTOR	[ ] TRUSTEE
____________	[ ] OFFICER	[ ] DIRECTOR	[ ] TRUSTEE
____________	[ ] OFFICER	[ ] DIRECTOR	[ ] TRUSTEE
____________	[ ] OFFICER	[ ] DIRECTOR	[ ] TRUSTEE
____________	[ ] OFFICER	[ ] DIRECTOR	[ ] TRUSTEE
____________	[ ] OFFICER	[ ] DIRECTOR	[ ] TRUSTEE
____________	[ ] OFFICER	[ ] DIRECTOR	[ ] TRUSTEE
____________	[ ] OFFICER	[ ] DIRECTOR	[ ] TRUSTEE

THIS SCHEDULE IS NOT REQUIRED IF THE LARGE TRADER CHECKED "YES" AND COMPLETED ITEM 2 TO FORM 13H.

SCHEDULE 6a TO FORM 13H.
LIST OF ACCOUNTS OWNED AND CONTROLLED BY THE LARGE TRADER

PAGE __ OF __ NAME OF LARGE TRADER _____

ITEM 1. DESIGNATE THE PERSON TO CONTACT FOR INFORMATION REGARDING TRANSACTIONS EFFECTED THROUGH THE ACCOUNTS LISTED ON THIS SCHEDULE:

_____
NAME AND TITLE OF DESIGNATED PERSON

_____
BUSINESS ADDRESS (STREET, CITY, STATE, ZIP)

TELEPHONE NO. (__) ___-____ FACSIMILE NO. (__) ___-____

ITEM 2. LIST AND COMPLETE THE FOLLOWING FOR EACH ACCOUNT OWNED AND CONTROLLED, IN WHOLE OR IN PART, BY THE LARGE TRADER:

--USE CONTINUATION SHEETS IF NECESSARY--

BROKER-DEALER	BROKER-DEALER ACCOUNT NUMBER	ACCOUNT NAME	DTC/ID SYSTEM NO. OR LTID OF OTHER LARGE TRADERS THAT CONTROL THE ACCOUNT

LARGE TRADERS HAVE A DUTY TO DISCLOSE THEIR LTID TO THE BROKER-DEALERS LISTED ON THIS SCHEDULE.

SCHEDULE 6b TO FORM 13H.
LIST OF PERSONS THAT CONTROL ACCOUNTS OWNED BY THE LARGE TRADER

PAGE __ OF __ NAME OF LARGE TRADER _____

ITEM 1. DESIGNATE THE PERSON TO CONTACT FOR INFORMATION REGARDING THE DELEGATION OF INVESTMENT DISCRETION OR AUTHORITY TO THE PERSONS LISTED ON THIS SCHEDULE:

_____
NAME AND TITLE OF DESIGNATED PERSON

_____
BUSINESS ADDRESS (STREET, CITY, STATE, ZIP)

TELEPHONE NO. (__) ___-____ FACSIMILE NO. (__) ___-____

ITEM 2. LIST AND COMPLETE THE FOLLOWING FOR EACH PERSON THAT CONTROLS ACCOUNTS, IN WHOLE OR IN PART, PURSUANT TO A DELEGATION OF INVESTMENT DISCRETION OR AUTHORITY THAT ARE OWNED BUT NOT CONTROLLED BY THE LARGE TRADER:

--USE CONTINUATION SHEETS IF NECESSARY--

NAME OF PERSON THAT CONTROLS ACCOUNTS	DTC/ID SYSTEM NO. OR LTID	ADDRESS	TELEPHONE NUMBER	DISCRETION: FULL (F) OR LIMITED (L)

LARGE TRADERS HAVE A DUTY TO DISCLOSE THEIR LTID TO THE PERSONS LISTED ON THIS SCHEDULE.

SCHEDULE 7a TO FORM 13H.
LIST OF ACCOUNTS CONTROLLED BY THE LARGE TRADER THAT ARE FULLY DISCLOSED AS TO OWNERSHIP

PAGE __ OF __ NAME OF LARGE TRADER _____

ITEM 1. DESIGNATE THE PERSON TO CONTACT FOR INFORMATION REGARDING TRANSACTIONS EFFECTED THROUGH THE ACCOUNTS LISTED ON THIS SCHEDULE:

_____
NAME AND TITLE OF DESIGNATED PERSON

_____
BUSINESS ADDRESS (STREET, CITY, STATE, ZIP)

TELEPHONE NO. (__) __-____ FACSIMILE NO. (__) __-____

ITEM 2. COMPLETE THE FOLLOWING INFORMATION REGARDING ACCOUNTS THAT ARE NOT OWNED BUT ARE CONTROLLED, IN WHOLE OR IN PART, BY THE LARGE TRADER, WHICH ARE FULLY DISCLOSED AS TO OWNERSHIP BY A PERSON THAT IS NOT A LARGE TRADER:

(a) TOTAL NUMBER OF ACCOUNTS: _____
(b) NAMES OF BROKER-DEALERS MAINTAINING OR CARRYING ACCOUNTS:

_____
_____
_____

ITEM 3. LIST AND COMPLETE THE FOLLOWING INFORMATION FOR EACH ACCOUNT THAT IS NOT OWNED BUT IS CONTROLLED, IN WHOLE OR IN PART, BY THE LARGE TRADER, WHICH IS FULLY DISCLOSED AS TO OWNERSHIP BY ANOTHER LARGE TRADER:

--USE CONTINUATION SHEETS IF NECESSARY--

BROKER-DEALER	BROKER-DEALER ACCOUNT NUMBER	ACCOUNT NAME	DTC/ID SYSTEM NO. OR LTID OF OTHER LARGE TRADERS THAT OWN THE FULLY DISCLOSED ACCOUNT

LARGE TRADERS HAVE A DUTY TO DISCLOSE THEIR LTID TO THE BROKER-DEALERS LISTED IN ITEMS 2 AND 3 OF THIS SCHEDULE.

SCHEDULE 7b TO FORM 13H.
LIST OF ACCOUNTS CONTROLLED BY THE LARGE TRADER THAT ARE UNDISCLOSED AS TO OWNERSHIP

PAGE __ OF __ NAME OF LARGE TRADER _____

ITEM 1. DESIGNATE THE PERSON TO CONTACT FOR INFORMATION REGARDING TRANSACTIONS EFFECTED THROUGH THE ACCOUNTS LISTED ON THIS SCHEDULE AND ASSISTANCE WITH A REQUEST FOR DISAGGREGATION:

_____
NAME AND TITLE OF DESIGNATED PERSON

_____
BUSINESS ADDRESS (STREET, CITY, STATE, ZIP)

TELEPHONE NO. (__) ___-____ FACSIMILE NO. (__) ___-____

ITEM 2. LIST AND COMPLETE THE FOLLOWING INFORMATION FOR EACH ACCOUNT THAT IS NOT OWNED BUT IS CONTROLLED, IN WHOLE OR IN PART, BY THE LARGE TRADER, WHICH IS AN OMNIBUS ACCOUNT OR AN ACCOUNT THAT IS OTHERWISE UNDISCLOSED AS TO OWNERSHIP. IF THE LARGE TRADER CONTROLS TRANSACTIONS IN THESE ACCOUNTS FOR OTHER LARGE TRADERS, IDENTIFY THE OTHER LARGE TRADERS WHOSE TRANSACTIONS ARE EFFECTED THROUGH EACH OF THESE ACCOUNTS:

--USE CONTINUATION SHEETS IF NECESSARY--

BROKER-DEALER	BROKER-DEALER ACCOUNT NUMBER	OMNIBUS ACCOUNT NAME AND DTC/ID SYSTEM NO. OR LTID OF THE CUSTODIAN OR NOMINEE	DTC/ID SYSTEM NO. OR LTID OF UNDISCLOSED LARGE TRADERS FOR WHOM TRANSACTIONS ARE CONTROLLED

LARGE TRADERS HAVE A DUTY TO DISCLOSE THEIR LTID TO THE BROKER-DEALERS AND CUSTODIANS OR NOMINEES OF OMNIBUS OR OTHERWISE UNDISCLOSED ACCOUNTS LISTED ON THIS SCHEDULE AND TO ASSURE COMPLIANCE WITH THE IDENTIFICATION AND DISAGGREGATION REQUIREMENTS OF RULE 13h-1.

SCHEDULE 8 TO FORM 13H.
LIST OF ACCOUNTS MAINTAINED BY THE LARGE TRADER
AS CUSTODIAN OR NOMINEE ONLY
THAT ARE UNDISCLOSED AS TO OWNERSHIP

PAGE __ OF __ NAME OF LARGE TRADER _____

ITEM 1. DESIGNATE THE PERSON TO CONTACT FOR ASSISTANCE WITH A REQUEST FOR DISAGGREGATION AND INFORMATION REGARDING TRANSACTIONS EFFECTED THROUGH THE ACCOUNTS LISTED ON THIS SCHEDULE:

_____
NAME AND TITLE OF DESIGNATED PERSON

_____
BUSINESS ADDRESS (STREET, CITY, STATE, ZIP)

TELEPHONE NO. (__) __-____ FACSIMILE NO. (__) __-____

ITEM 2. LIST AND COMPLETE FOR EACH OMNIBUS ACCOUNT MAINTAINED BY, OR CARRIED IN THE NAME OF, THE LARGE TRADER AS CUSTODIAN OR NOMINEE ONLY THAT ARE UNDISCLOSED AS TO OWNERSHIP:

--USE CONTINUATION SHEETS IF NECESSARY--

BROKER-DEALER	BROKER-DEALER ACCOUNT NUMBER	OMNIBUS ACCOUNT NAME AND DTC/ID SYSTEM NO. OR LTID OF THE CUSTODIAN OR NOMINEE	DTC/ID SYSTEM NO. OR LTID OF LARGE TRADERS THAT CONTROL THE ACCOUNT

LARGE TRADERS HAVE A DUTY TO DISCLOSE THEIR LTID TO THE BROKER-DEALERS AND CUSTODIANS OR NOMINEES OF OMNIBUS OR OTHERWISE UNDISCLOSED ACCOUNTS LISTED ON THIS SCHEDULE AND TO ASSURE COMPLIANCE WITH THE IDENTIFICATION AND DISAGGREGATION REQUIREMENTS OF RULE 13h-1.

BILLING CODE 8010-01-C

General Instructions for Form 13h

The following instructions are intended for guidance in completing form 13H and do not provide the full text of the applicable federal laws and regulations. See section 13(h) of the Securities Exchange Act of 1934 [15 U.S.C. § 78m(h)], rule 13h–1 [17 CFR 240.13h–1], and form 13H [17 CFR 249.327] for the full text of the applicable statutes and rules.

A. Persons Required to File Form 13H.

Every person that is a Large Trader must file Form 13H with the U.S. Securities and Exchange Commission (Commission). Upon filing Form 13H, a Large Trader will be assigned a large trader identification number (LTID) by the Commission.

Definition of a Large Trader. The term "Large Trader" means every person who owns or controls an account, that effects transactions for the purchase or sale of a publicly traded securities, by use of any means or instrumentality of interstate commerce or the mails, or any facility of a national securities exchange, directly or indirectly by or through a registered broker or dealer, in an aggregate amount equal to or in excess of the identifying activity level. The term "Person" includes any natural person, trustee, company, government, political subdivision, agency, or instrumentality of a government, except foreign central banks, and also includes two or more persons acting as a partnership, limited partnership, syndicate, or other group. Persons that may be Large Traders include individuals, broker-dealers, mutual funds, private and public pension funds, hedge funds, investment advisers, insurance companies, banks, and trust companies.

Large Trader Accounts. The purpose of Form 13H is to provide a system through which the Commission may efficiently identify large trading accounts and the person or group of persons that own and control large trading accounts. The term "Account" means each proprietary and customer account maintained or carried on the books and records of a registered broker-dealer.

Ownership of Accounts. An account of a person is deemed to be owned or under common ownership of the natural person, company, limited partnership, partnership, and trustee in whose name an account is maintained, or custodian or nominee that maintains an omnibus account or account otherwise undisclosed as to ownership, and any other person who has more than a 10 percent financial interest in the equity in the accounts of the person.

Control of Accounts. An account of a person is deemed to be controlled or under the common control of the owner of the account, and any other person that has received from or been assigned by the owner of an account, full or limited investment discretion or authority to direct transactions for the account. The term "Full Discretionary Investment Authority" means the discretion to enter an order or orders for the account of another of any size, at any time or price, without the prior instruction or approval of the owner of the account.

The term "Limited Discretionary Investment Authority" means the discretion to enter an order or orders for the account of another, limited to time or price only, upon the express prior instruction or approval of the owner of the account.

Large Trader Transactions. The term "Transaction" means all transactions in publicly traded securities, including cancellations, corrections, and exercises or assignments of option contracts, except for certain specific transactions. The excluded transactions, include: journal or bookkeeping entries; offerings of securities under the Securities Act of 1933; gifts; transactions effected under a court order of appointment or distribution of property in a decedents estate or divorce proceeding; a qualified rollover of retirement plan assets; or transactions between employees and employers that are part of an employer benefit or compensatory arrangement. The term "Publicly Traded Securities" includes all exchange listed and other national market system securities that are subject to an effective real-time transaction reporting plan.

Identifying Activity Level. The term "Identifying Activity Level" means aggregate transactions of 150,000 shares or fair market value of $7.5 million, effected during any calendar day where the large trader's account is located, or any transactions that constitute program trading. The term "program trading" means index arbitrage or any strategy involving the related purchase or sale 15 or more securities with a total value of $1 million or more.

Aggregation of Accounts. A person or group of persons may aggregate those accounts that are directly or indirectly owned or controlled, or under common ownership or control of a person or group of persons that independently would be large traders. A person or group of persons, however, must aggregate those accounts that are directly or indirectly owned or controlled, or under common ownership or control of a person or group of persons that independently would not be large traders. An aggregated Form 13H for a group of persons may be filed by any of the commonly owned or controlled persons within the group that independently would be a large trader.

For example, diverse financial service holding companies or partnerships may have divisions, subsidiaries, or affiliated companies or partnerships, which independently are large traders, based on transactions effected by or for the accounts of the division, subsidiary, affiliate, or partner. These companies and partnerships would be permitted, but are not required, to aggregate into a single Form 13H all accounts owned or controlled by each division, subsidiary, affiliate, or partner. Conversely, the accounts of any division, subsidiary, affiliate, or partner that independently would not be a large trader would be required to be aggregated into the Form 13H filing of a parent, subsidiary, affiliate, or partner.

Large Traders and authorized persons preparing and filing Form 13H should note that a person, or group of persons acting in concert toward a common investment objective, are prohibited from using the flexibility afforded by these rules to avoid filing Form 13H or to otherwise avoid the identification requirements of Rule 13h-1. Additionally, a person or group of persons that choose to aggregate accounts of persons that independently would be large traders should note that requests for disaggregation may be received from the Commission.

Aggregation of Transactions. All transactions in publicly traded equity and option securities must be aggregated among or within aggregated accounts, without offsetting or netting purchase and sale transactions, and based upon the gross, unhedged, or absolute value of all purchase and sale transactions. The "gross value of an individual equity option" is either: (i) the number of shares underlying the contract multiplied by the number of contracts purchased and sold; or (ii) the strike price of the contract multiplied by the applicable multiplier and the number of contracts purchased and sold. The "gross value of options on a group or index of equity securities" is the strike price of the contract multiplied by the applicable multiplier and the number of contracts purchased and sold. Transactions in index options are not required to be "burst" into share equivalents for each of the underlying component equities.

The determination of "who" is a large trader and "what" information is to be included on form 13H are dependent upon the accounts or group of accounts that a large trader chooses to aggregate into a particular form 13H. Persons authorized to file form 13H should carefully review all general and special instructions regarding aggregation or disaggregation of accounts before filing form 13H. See special instructions to form 13H—item-5—for further instructions regarding aggregation or disaggregation of accounts by a large trader.

B. Form and Schedules Required to be Filed.

Form 13H and Schedules may be filed manually or electronically in accordance with the rules and regulations the Commission may prescribe. If the filing is submitted manually, the filing shall include three (3) copies of Form 13H and Schedules.

All Large Traders must complete and submit Form 13H and one or more of the Schedules to Items 6, 7, or 8. In addition, all Large Traders that check "NO" in Item 2, because they are not registered by or otherwise required to file information with the Commission, must complete Item 4 and submit one of the following three Schedules:

(1) Individuals: Schedule 4a.

(2) Joint Tenants or Partnerships: Schedule 4b.

(3) Corporations or Trustees: Schedule 4c.

All Large Traders that check "YES" in Item 2, and provide the applicable information regarding other registrations or filings with the Commission, are not required to complete Item 4 or any of the corresponding Schedules.

See special instructions to form 13H—items 2 and 4—for further instructions regarding commission registrations or filings and the applicability of schedules 4a through 4c.

C. Time Required for Filing Form 13H.

Initial Filing. Form 13H and Schedules must be filed with the Commission within 10

business days after a person first effects transactions that reach the identifying activity level.

Annual Filing. Form 13H and Schedules must be filed with the Commission within 60 calendar days after the end of each full calendar-year.

Inactive Filing. A Large Trader may become inactive, thus exempt from the annual filing and disclosure requirements, upon filing its annual Form 13H for the previous full calendar year in which it has *not* effected: (1) aggregate transactions that equal or exceed the Identifying Activity Level; *and* (2) an aggregate calendar year total of 2,000,000 shares or fair market value of $30,000,000. Any inactive large trader that subsequently effects transactions that again reach the identifying activity level must make an initial filing within 10 business days after it effects the "re-identifying transactions."

D. Confidentiality.

All information disclosed on Form 13H may not be compelled to be disclosed under the Freedom of Information Act ("FOIA") because the information is specifically exempted from disclosure by Section 13(h)(7) of the Securities Exchange Act of 1934, and the statute establishes particular criteria for withholding or refers to particular types of information to be withheld. The Commission, however, is not authorized to withhold information from Congress, or any other federal department or agency requesting information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission.

Special Instructions for Form 13H and schedules

A. Instructions for Form 13H—Cover Page.

Type of Filing. Indicate the type of Form 13H filing by checking the appropriate box at the top of the cover page to Form 13H.

If the filing is an "Initial Filing" indicate the first date on which transactions were effected that reached the identifying activity level. An initial filing must include a manually signed Form 13H and all applicable Schedules.

If the filing is an "Annual Filing" indicate the ending date of the appropriate calendar year and list the specific Items or Schedules that are amended or changed. An annual filing must only include a manually signed cover page and those pages of Form 13H or Schedules that have been amended or changed. If no Items or Schedules to Form 13H have been amended or changed, indicate "NONE" in the space provided and only file a manually signed cover page to Form 13H.

If the filing is an "Inactive Filing" indicate the date that the Large Trader last effected aggregate transactions that reached the identifying activity level. A Large Trader shall become inactive, and exempt from the annual filing and LTID disclosure requirements, upon filing.

If the filing is a "Corrected Filing" indicate the type and date of the filing that is being corrected. This type of filing is not required but may be made to correct a previous filing.

All filings should indicate the applicable LTID assigned by the Commission and the Taxpayer Identification Number(s) of the Large Trader. Initial filings will not be required to include a LTID. In addition, all filings should disclose the Depository Trust Company ("DTC") Institutional Delivery System ("ID System") number(s) of the Large Trader that are applicable to the accounts identified in the specific Form 13H. An inactive large trader that effects re-identifying transactions will retain the LTID initially assigned to it by the Commission.

The unchanged or unamended portions of a large trader's form 13H and schedules need not be filed annually.

B. Instructions for Form 13H—Items 1 Through 5.

Item 1. Business of the Large Trader. Specify the type of business of the Large Trader by checking one or more of the listed business types. If the Large Trader is an individual, check "Other" and specify the occupation of such individual. Large Trader banks, trust companies and thrift institutions should check "Other Financial Institution." If the Large Trader is engaged in more than one type of business, check each type that applies to the Large Trader.

The types of businesses checked should reflect the businesses of other large traders whose accounts are aggregated into the Form 13H by the Large Trader. For example, if the aggregated accounts of the Large Trader are accounts owned by other persons but controlled by the Large Trader only as an investment adviser, check only "Investment Adviser," even though the Large Trader may be a division, subsidiary, or affiliate of a broker-dealer that has independently filed Form 13H.

Item 2. SEC Registrations. Indicate whether the Large Trader is an issuer of securities under the Securities Act of 1933, or registered under the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, or otherwise is required to file or report information to the Commission that is substantially similar to the information required in the Schedules to Item 4 (e.g., name, location and nature of the business of individual owners, partners, executive officers, directors, and trustees of the Large Trader). If "Yes" is checked, provide the applicable types of registrations and SEC or Central Registration Depository ("CRD") file numbers.

The types of registrations or filings listed should reflect the registrations of other large traders and persons whose accounts are aggregated into the Form 13H of the Large Trader. Therefore, if all of the persons whose accounts are aggregated into the Form 13H are covered by one of the listed registrations or filings, then the Large Trader is not required to complete Item 4 or any of the corresponding Schedules. However, if any person whose accounts are aggregated into the Form 13H of the Large Trader is not covered by one of the listed registrations or filings, then the Large Trader is required to complete Item 4 and the corresponding Schedule for the "un-registered" person.

SEC file numbers may be obtained by calling the commission's public reference room and CRD number may be obtained by calling the member services office of the National Association of Securities Dealers (NASD), during normal business hours.

Item 3. CFTC Registrations. Indicate whether the Large Trader is registered with the Commodity Futures Trading Commission (CFTC) as a "Reporting Trader" pursuant to Sections 4i and 9 of the Commodity Exchange Act of 1974, or otherwise is registered under the Commodity Exchange Act of 1974. If "Yes" is checked, specify the number and type of registration.

Item 4. Type of Large Trader. If the Large Trader checked "NO" in Item 2, then check one of the listed organization types and complete the applicable Schedule. If any other large traders whose accounts are aggregated into the Form 13H of the Large Trader are not covered by one of the registrations or filings listed in Item 2, then check one of the listed organization types and complete the applicable Schedules for these un-registered persons. The Schedules to Item 4 capture information about the following types of un-registered Large Traders whose accounts are aggregated into Form 13H:

Schedule 4a. Individuals.

Schedule 4b. Joint Tenants or general partners, and in the case of limited partners, each limited partner that is the owner of more than a 10 percent financial interest in the accounts of the Large Trader.

Schedule 4c. Executive officers or directors of a corporation, and all trustees for a private or public trust.

The Large Trader must provide full names, addresses, and all other information required on these Schedules.

Item 5. Aggregation of accounts by the Large Trader.

Aggregated Accounts. Indicate in Item 5(a) whether the Large Trader has aggregated accounts of other persons in its Form 13H, which independently would be large traders. If the Large Trader has aggregated the accounts of other persons, list the name of the other person and its relationship to the Large Trader (e.g., division, subsidiary, affiliate, or partner).

Disaggregated Accounts. Indicate in Item 5(b) whether other Large Traders that are owned or controlled by or under common ownership or control with the Large Trader have independently filed a Form 13H and been assigned LTIDs. If the Large Trader has not aggregated the accounts of other Large Traders, list the name of each other large trader, its LTID, and its relationship to the Large Trader (e.g., division, subsidiary, affiliate, or partner). If the Large Trader does not know the LTIDs of the other large traders at the time of filing, it must provide all of these numbers in its next Annual Filing.

Form 13h—Items 1 Through 5—Must Reflect the Large Trader's Choice for Aggregation or Disaggregation of Accounts of Other Persons and Large Traders. See Special Instructions to Form 13h—Items 6 Through 8—For Further Instructions Regarding Disaggregation By a Large Trader.

C. Instructions for Form 13H—Items 6 Through 8

Lists of Large Trader Accounts. Items 6 through 8 are organized along the three

capacities in which a Large Trader may act with respect to a single account (i.e., owner, controller, or custodian). The Schedules correspond to Items 6 through 8 and are organized to capture different combinations of these capacities, based upon the Large Trader's knowledge of information about accounts and the disclosure of ownership to the broker-dealer carrying the account. The Schedules to Items 6 through 8 require a Large Trader to list information about the following types of accounts:

Schedule 6a. Accounts that are owned and controlled by the Large Trader, in whole or in part.

Schedule 6b. Accounts that are owned but not controlled by the Large Trader, in whole or in part, which are controlled by others.

Schedule 7a. Accounts that are not owned but are controlled by the Large Trader, in whole or in part, which are fully disclosed as to ownership.

Schedule 7b. Accounts that are not owned but are controlled by the Large Trader, in whole or in part, which are undisclosed as to ownership.

Schedule 8. Accounts maintained by the Large Trader as custodian or nominee only, which are undisclosed as to ownership.

Depending on a Large Trader's choice for aggregation of accounts, one or more of these schedules must be filed with Form 13H. The schedules attached to Form 13H must reflect the types of accounts that the Large Trader has chosen to aggregate into its Form 13H.

Information Required in the Schedules. The Large Trader must provide full names, addresses, and all other information required on Schedules 6a through 8. Large Traders may attach internally produced lists of accounts to the Schedules provided that such lists capture all required information in a format substantially similar to each of the Schedules. If the Large Trader does not know the LTID or DTC ID System number of other Large Traders at the time of filing, it must provide all of such numbers in its next Annual Filing.

Qualifications of the Designated Contact Person. The Large Trader is required to designate a contact person for information regarding the accounts listed on each Schedule. The designated contact person must: (i) be a natural person; (ii) be employed by or otherwise affiliated with the Large Trader; (iii) be authorized by the Large Trader to respond to any inquiries or requests from the Commission; (iv) have personal knowledge of all orders and transactions in the accounts listed on the Schedule or be in a position to obtain this information promptly from other persons who have such personal knowledge; and (v) have the authority to provide prompt assistance with the disaggregation of the listed accounts.

Disaggregation of Aggregated and Undisclosed Accounts. In the event that the Commission requests, all broker-dealers or large traders that carry or maintain aggregated or undisclosed accounts may be required to assist in the disaggregation of transactions or accounts. The Commission may request disaggregation in any reasonable manner considering the operational capabilities of each broker-dealer or large trader. For example, the Commission may require the Large Trader to disaggregate accounts or transactions of the other persons and Large Traders listed in Form 13H—Item 5(a). The Commission also may require the Large Trader to disaggregate accounts or transactions of the other Large Traders listed in Schedules 7b and 8.

All Large Traders That Control or Maintain Omnibus or Otherwise Undisclosed Accounts Have a Duty to Supervise These Accounts to Assure that Persons Effecting Transactions Through These accounts Comply with the Identification Requirements of Rule 13h-1 and to Assure That the Information Contained in Schedules 7b AND 8 is Accurate and Complete.

[FR Doc. 94–3427 Filed 2–16–94; 8:45 am]
BILLING CODE 8010–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Chapter I, Subchapter B

[RM93–23–000]

Project Decommissioning at Relicensing; Extension of Time for Reply Comments

February 9, 1994.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of inquiry; extension of time for reply comments.

SUMMARY: On September 15, 1993, the Commission issued a notice of inquiry on a series of related questions that involve the decommissioning of licensed hydropower projects after the original license for the project has expired (58 FR 48991, September 21, 1993). The date for filing reply comments is being extended at the request of an interested commenter.

DATES: The date for filing reply comments is extended to and including March 7, 1994.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Lois D. Cashell, Secretary (202) 208–0400.

Lois D. Cashell,

Secretary.

[FR Doc. 94–3637 Filed 2–16–94; 8:45 am]
BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–4837–9]

Ocean Dumping; Proposed Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to designate a deep ocean disposal site (proposed SF-DODS) located off San Francisco, California, for the disposal of suitable dredged material removed from the San Francisco Bay and other nearby harbors or dredging sites. EPA has tentatively determined that the site designated in the Final EIS as the preferred site will be the site designated as SF-DODS in this proposed rule. The center of the proposed SF-DODS is located approximately 49 nautical miles (91 kilometers) west of the Golden Gate and occupies an area of approximately 6.5 square nautical miles (22 square kilometers). Water depths within the area range between 8,200 to 9,840 feet (2,500 to 3,000 meters). The center coordinates of the oval-shaped site are: 37° 39.0' North latitude by 123° 29.0' West longitude (North American Datum from 1983), with length (north-south axis) and width (west-east axis) dimensions of approximately 4 nautical miles (7.5 kilometers) and 2.5 nautical miles (4.5 kilometers), respectively. This action is necessary to provide an acceptable ocean dumping site for disposal of suitable dredged material, as determined by appropriate sediment testing protocols. The proposed designation of SF-DODS is for a period of 50 years, and a maximum of 6 million cubic yards of dredged material per year. Disposal operations will be prohibited if resources for implementing the site management and monitoring program are not available.

DATES: Comments must be received on or before March 21, 1994.

ADDRESSES: Send comments to: Mr. Allan Ota, Ocean Disposal Coordinator, U.S. Environmental Protection Agency, Region IX (W–7–3), 75 Hawthorne Street, San Francisco, California 94105, telephone (415) 744–1980.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Allan Ota, Ocean Disposal Coordinator, U.S. Environmental Protection Agency, Region IX (W–7–3), 75 Hawthorne Street, San Francisco, California 94105, telephone (415) 744–1980.

SUPPLEMENTARY INFORMATION:

The supporting document for this proposed designation is the *Final Environmental Impact Statement (EIS) for Designation of a Deep Water Ocean Dredged Material Disposal Site off San Francisco, California, August 1993*, which is available for public inspection at the following locations:

EPA, Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street, SW., Washington, DC.

EPA Region IX, Library, 75 Hawthorne Street, 13th Floor, San Francisco, California.

ABAG/MTC Library, 101 8th Street, Oakland, California.

Alameda County Library, 3121 Diablo Avenue, Hayward, California.

Bancroft Library, University of California, Berkeley, California.

Berkeley Public Library, 2090 Kittredge Street, Berkeley, California.

Daly City Public Library, 40 Wembley Drive, Daly City, California.

Environmental Information Center, San Jose State University, 125 South 7th Street, San Jose, California.

Half Moon Bay Library, 620 Correas Street, Half Moon Bay, California.

Marin County Library, Civic Center, 3501 Civic Center Drive, San Rafael, California.

North Bay Cooperative Library, 725 Third Street, Santa Rosa, California.

Oakland Public Library, 125 14th Street, Oakland, California.

Richmond Public Library, 325 Civic Center Plaza, Richmond, California.

San Francisco Public Library, Civic Center, Larkin & McAllister, San Francisco, California.

San Francisco State University Library, 1630 Holloway Avenue, San Francisco, California.

San Mateo County Library, 25 Tower Road, San Mateo, California.

Santa Clara County Free Library, 1095 N. Seventh Street, San Jose, California.

Santa Cruz Public Library, 224 Church Street, Santa Cruz, California.

Sausalito Public Library, 420 Litho Street, Sausalito, California.

Stanford University Library, Stanford, California.

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 *et seq.*, gives the Administrator of EPA authority to designate sites where ocean dumping may be permitted. On October 1, 1986 the Administrator delegated authority to designate ocean dredged material disposal sites (ODMDS) to the Regional Administrator of the EPA Region in which the sites are located. The proposed SF-DODS designation action is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR 228.4) state that ocean dumping sites will be designated by publication pursuant to 40 CFR part 228. Thisproposed site designation is being published as a proposed rulemaking in accordance with § 228.4(e) of the Ocean Dumping Regulations, which permits the designation of ocean disposal sites for dredged material. Interested persons may participate in this proposed rulemaking by submitting written comments within 30 days of the date of this publication to the address given above.

The center of the proposed SF-DODS is located approximately 49 nautical miles (91 kilometers) west of the Golden Gate and occupies an area of approximately 6.5 square nautical miles (22 square kilometers). Water depths within the area range between approximately 8,200 to 9,840 feet (2,500 to 3,000 meters). The center coordinates of the oval-shaped site are: 37° 39.0' North latitude by 123° 29.0' West longitude (North American Datum from 1983), with length (north-south axis) and width (west-east axis) dimensions of approximately 4 nautical miles (7.5 kilometers) and 2.5 nautical miles (4.5 kilometers), respectively. EPA Region IX now proposes to designate SF-DODS as an ocean dredged material disposal site for continued use for a period of 50 years and not to exceed 6 million cubic yards of dredged material in any one year period. Site use is subject to a Site Management and Monitoring Plan (SMMP), of which the goals and objectives are described in the Final EIS and summarized in Section G below. A draft SMMP will be made available for public review through a separate Public Notice process. The draft SMMP, currently under development, incorporates a tiered site monitoring structure and MPRSA section 103 permit review. The SMMP will available from the EPA Region IX office address given above.

B. EIS Development

Section 102(c) of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.*, requires that Federal agencies prepare an environmental impact statement (EIS) on proposals for major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the Agency decision-making process careful consideration of all environmental aspects of proposed actions.

A notice of availability of the Draft EIS was published in the **Federal Register** on December 11, 1992 discussing EPA Region IX's intent to designate a deep water ocean dredged material disposal site off San Francisco (57 FR 58805). EPA Region IX prepared a Draft EIS titled: Draft Environmental Impact Statement (EIS) for San Francisco Bay Deep Water Dredged Material Disposal Site Designation. The comment period ended on January 25, 1993. EPA Region IX received 35 comment letters on the Draft EIS and incorporated changes where appropriate. On September 10, 1993, notice of availability for public review and comment on the Final EIS was published in the **Federal Register** (58 FR 47741). The comment period for the Final EIS ended on October 29, 1993. Anyone desiring a copy of the proposed rule or the Final EIS may obtain them from the EPA Region IX office address given above.

C. Responses to Final EIS Comments

During the public comment period on the Final EIS, which closed on October 29, 1993, EPA Region IX received 9 comment letters. The following substantive comments were discussed in these letters.

1. Fisheries Valuation

The National marine sanctuaries (Gulf of the Farallones National Marine Sanctuary, Cordell Bank National Marine Sanctuary, and Monterey National Marine Sanctuary/North) commented that the values presented in the Final EIS for fisheries valuation were inaccurate.

Response: These fisheries values, extracted from published documents, represented total estimated values for the different fisheries. EPA Region IX recognizes that calculated values for these fisheries will vary according to the methods used. However, the comparison of the alternative sites and selection of the preferred alternative site with respect to fisheries was based on landings (abundance) of all important commercial and recreational fish and did not require the use of assigned fisheries values. EPA Region IX, with concurrence by the California Department of Fish and Game (CDFG), determined that the existing and potential fisheries resources within Alternative Site 5 are minimal and the site is removed from more important fishing grounds located near Alternative Sites 3 and 4.

2. Beneficial Use of Dredged Material

The Department of Water Resources (DWR) commented on the importance of beneficial use of dredged material as an option acknowledged in the Final EIS.

DWR elaborated on the successes of demonstration projects for levee maintenance which showed no adverse impacts on soil and water quality resulting from the placement of marine sediments.

Response: EPA Region IX acknowledges these and other successes and expects that all beneficial use options will be evaluated further by the Long Term Management Strategy (LTMS) through the development of the Policy and Programmatic EIS/EIR. The availability of specific opportunities for beneficial use of dredged material will be evaluated on a case-by-case (permit-by-permit) basis before an ocean disposal permit is issued.

3. Incorporation of the Site Management and Monitoring Plan (SMMP) into the Final EIS

The CDFG commented that the SMMP "be joined to the Final EIS through either the Federal rule-making process or supplemental (NEPA) process."

Response: The purpose of the Final EIS is to analyze alternative disposal sites. EPA Region IX shares the concerns that CDFG, the National Marine Sanctuaries, and other public interest/environmental groups have about adequate management and monitoring of the proposed SF-DODS during disposal activities. It is Region IX's intent to implement a site management and monitoring plan for the life of proposed SF-DODS. EPA Region IX will commit to implementing an adequate SMMP in the rule-making and the Record of Decision.

4. Piecemealing of Project

Coastal Advocates commented that by designating an ocean disposal option in advance of the LTMS completing work on the other disposal alternatives, EPA and the LTMS program have effectively eliminated upland disposal and other options in the near-term. Response: EPA Region IX recognizes that the LTMS continues to evaluate other disposal options, including upland disposal. Nothing in the proposed ocean disposal site designation affects those efforts, or existing disposal sites within San Francisco Bay managed under provisions of the Clean Water Act. In addition, it should be noted that designation of an ocean site does not constitute a permit to dispose any dredged material at that site. Each project will be evaluated for compliance with the Ocean Dumping criteria (40 CFR part 227) before any disposal can occur at the proposed SF-DODS. Furthermore, it is EPA's intent to encourage beneficial use of material wherever possible and approve ocean disposal of suitable material only when necessary.

5. Need for Ocean Dumping

Coastal Advocates commented that the analysis in the Final EIS for the need for ocean dumping was faulty "because it does not take into account the recent military base closures in the Bay Area."

Response: EPA Region IX recognizes that base closures could have a long-term effect on the need for dredging and ocean disposal. However, even if the long-term need for ocean dumping is substantially reduced by base closures, which is speculative, presently available information appears to indicate that the proposed SF-DODS will still be needed. It appears reasonably certain that there will be substantial dredging projects at the various Bay area commercial ports, among other facilities, in the next fifty years which will generate large amounts of dredged material. Present information indicates that a substantial portion of these dredged sediments would be expected to be suitable for ocean disposal. The end result is the overall need for ocean dumping presented in the Final EIS may or may not be significantly affected in the short-term or long-term. In any event, the actual need for ocean dumping is determined on a project-by-project basis at the time of permitting.

6. Current Navy Project Classified as Historical Dumping

Coastal Advocates commented that the Navy's use of the disposal site concurrent with EPA's site designation prejudices the decision process and is a violation of NEPA.

Response: It should be noted that the Navy's use of their disposal site is permitted under section 103 of MPRSA following a NEPA process which included an EIS and Supplemental EIS for their project-specific use only, separate from EPA's site designation activities. Following extensive field studies of the region, the preferred site for long-term use (section 102 of MPRSA) was selected by EPA for several reasons, including the determinations of: a depositional environment and local topographic containment features; no expected significant impacts to other resources or amenity areas, such as national marine sanctuaries; minimal existing and potential fisheries relative to more important fishing grounds located in or near the other alternative sites; lower abundances and biomass of demersal fishes, megafaunal invertebrates, and infaunal invertebrates; no expected significant impacts to surface and midwater dwelling organisms, including seabirds, mammals, and midwater fishes; and previous degradation of the environment within the preferred alternative site as a result of historical disposal of low-level radioactive wastes and chemical and conventional munitions in the vicinity of the preferred alternative site. In accordance with EPA's ocean site selection criteria (40 CFR 228.5(e)), EPA Region IX classified the preferred dredged material disposal site as a historically-used site based in part on the aforementioned historical dumping activities in the vicinity of the preferred site. The proposed selection of the preferred alternative site coincides with the Navy's decision to identify this site as its Preferred Alternative for dredged material disposal. Finally, it is important to note that EPA's proposed Preferred Alternative was presented to the LTMS Ocean Studies Work Group (OSWG) and received the consensus approval of this work group. The OSWG, which has been an integral part of the site designation process, is comprised of Federal and State agencies, and numerous public interest groups, including local recreational and commercial fishing associations and environmental groups. All of these groups have an active interest in the potential impacts of dredged material management within the San Francisco Bay area.

7. Specific Ocean Dumping Criteria

Coastal Advocates commented that EPA did not satisfy specific criteria of the Ocean Dumping Regulations (40 CFR 228.6), including: an inadequate assessment of impacts to recreational tuna fishing (§ 228.6(a)(2)); an inadequate assessment of radioactivity in San Francisco Bay sediments (§ 228.6(a)(4)); inadequate modeling of dredged material disposal plumes § § 228.6(a)(2) and 228.6(a)(8); a flawed assessment of biological effects of dumping of contaminated dredged material (§ 228.6(a)(9); and a lack of consideration of adverse impacts to the microlayer (§ 228.6(a)(9)).

Response: Region IX has carefully considered in the Final EIS the important factors required to satisfy the specific site selection criteria. Site designation does not constitute a permit to dispose of any dredged material. The Corps is the permitting agency for dredged material disposal applications and EPA has a joint approval role in determining the suitability of dredged material proposed for ocean disposal. Proposed dredged sediments are evaluated on a project-by-project basis with a rigorous suite of physical, chemical, and bioassay tests, involving

statistical comparisons to an appropriate uncontaminated reference site. Sediments that fail the testing criteria are deemed unsuitable and are prohibited from ocean disposal. With respect to impacts to recreational tuna fishing, EPA Region IX determined that the impacts of disposal plumes would be transient and insignificant to these highly mobile pelagic fish which usually are abundant in the area only in the fall. The U.S. Navy performed project-midpoint monitoring activities in the vicinity of the Preferred Alternative as required by their MPRSA section 103 permit which confirmed the transient nature of the disposal plumes. Although radioactivity has not routinely been assessed, if historical information or other evidence suggests such contamination, certain radioactive isotope measurements can be required by EPA in addition to the other aforementioned tests to determine suitability of the proposed dredged material. With respect to modelling of the disposal plume and sediment footprint on the seafloor, EPA Region IX used conservative values for model parameters to obtain results under worst case (highly dispersive) conditions. Water column modelling showed that concentrations of sediments in the water column would be within background levels at the boundaries of the marine sanctuaries, while the footprint modelling showed that any deposits of sediment in the marine sanctuaries would be at the limits of detection at best under optimal conditions. Furthermore, the footprint model does not account for biological activity which would mix the deposited sediment into the native seafloor sediments. The Navy's project-midpoint monitoring studies have largely confirmed the predictions of the fate of the plume and footprint. EPA has performed an extensive evaluation of available information on potential impacts to sea surface microlayer (including an experts' workshop), and concluded that the environmental significance of microlayer contamination has not been clearly established even for enclosed waters. The concern for microlayer effects is largely based on theoretical arguments, laboratory bioassays, and limited field studies. The potential for microlayer effects depends largely on: contaminant concentrations, lack of surface turbulence, degree to which the water body is enclosed or restricted, and proximity to important areas containing neustonic populations that may be exposed. Because the potential significance of microlayer contamination has not been clearly established in relatively enclosed water bodies such as Puget Sound, the potential effects are expected to be much less for disposal activities in the more turbulent and unrestricted offshore oceanic environment. In addition, highly contaminated material will not be approved for disposal in ocean waters.

8. Requirements of the Endangered Species Act (ESA)

Coastal Advocates commented that the documents prepared for the ESA coordination in the Final EIS did not comply with section 7(a)(2) of the ESA, 16 U.S.C. 1536(a)(2).

Response: In accordance with the aforementioned ESA, EPA Region IX formally consulted with the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and California Department of Fish and Game to identify any threatened, endangered, or special status species that may be affected by the proposed designation of the SF-DODS. Reviewing all available data, including information from the Final EIS requested by these agencies, concurrence was received from the three agencies that there would be no adverse impacts to local endangered species from the designation of the proposed SF-DODS.

9. Proposed Selection of Preferred Site

Ocean Advocates commented that the preferred alternative is not acceptable for ocean dumping of contaminated material because of: the highly dispersive nature of the waters at the site; its use as a spawning, nursery, feeding and passage area for living resources; its close proximity to three marine sanctuaries; the infeasibility of monitoring; and lack of adequate baseline data.

Response: Site designation does not constitute a permit to dispose of any dredged material. Each project will be evaluated on a case-by-case basis. Rigorous testing of the proposed dredged sediments as described in the response to comment #7 above, will ensure that toxic or highly contaminated dredged materials will not be disposed at the designated disposal site. Although oceanic environments tend to be more dispersive than enclosed water bodies, conservative modeling indicates that there would be insignificant impacts from dredged material disposal, as described in the response to comment #7. EPA's water column modeling predicted that concentrations of dredged materials following disposal would decrease rapidly to background levels and that overall impacts to the local environment would be insignificant. More recent Navy mid-project monitoring has confirmed these expectations of intermittent and short-term impacts. Therefore, impacts to spawning, nursery, feeding and passage areas for living resources are expected to be minor and temporary. The preferred alternative site is located north of the other alternative sites and is the closest to GFNMS and CBNMS. Despite the proximity to the marine sanctuaries, physical oceanographic studies indicate that the predominant currents are north-northwest and are weaker than the currents in the vicinity of the other alternative sites. These oceanographic conditions would be expected to prevent any movement of suspended sediments into the National marine sanctuaries. As described in the response to comment #7, modelling results indicate that suspended sediment transport is insignificant. The recent Navy mid-project monitoring efforts clearly shows that monitoring of the site is feasible, particularly with respect to the most difficult technical tasks related to the deep water depths such as identification of the sediment footprint on the seafloor. With regard to baseline data, EPA Region IX carefully evaluated all of the important relevant data for the region and identified data gaps. An Ocean Studies Plan (OSP) was developed jointly with the regional scientists of the OSWG, and approved by the LTMS Policy Review Committee. The OSP described appropriate field studies necessary to fill those data gaps. The results of these field studies and previous studies in the region provide the most comprehensive collection of data characterizing the Gulf of the Farallones region to date.

D. Alternatives Analysis

The action discussed in this Proposed Rule is the proposed designation of the Preferred Alterative selected in the Final EIS (proposed SF-DODS) for disposal of suitable dredged material from the San Francisco Bay region over 50 years. The LTMS planning estimate is that up to 400 million cubic yards will be dredged in this period; however, the proposed SF-DODS will be limited to a maximum disposal volume of 6 million cubic yards of dredged material in any one year period. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal, as part of the Long Term Management Strategy (LTMS) for dredged material from this region. Approval of specific ocean dredged material disposal permit applications is a completely separate process from site designation. MPRSA section 103 permit applications are reviewed on a case-by-

case basis to determine whether the proposed dredged materials are suitable for disposal at proposed SF-DODS.

The Final EIS discussed the need for the site designation and examined a range of alternatives to the proposed action, including 3 alternative deepwater ocean disposal sites. All disposal options, including upland, in-bay, and ocean disposal alternatives, and LTMS management policies are being evaluated in a separate LTMS Policy EIS/EIR. The upland and in-bay sites are limited in capacity relative to the ocean site for disposal of large volumes of suitable dredged material. Disposal alternatives for individual projects will be evaluated by EPA Region IX and the Corps' San Francisco District on a case-by-case basis during the permitting process. The following ocean disposal alternatives were evaluated in the Final EIS:

1. No Action–Selection of this alternative would prevent final designation of the proposed SF-DODS site. Failure to designate a permanent ocean disposal site pursuant to section 102 of the MPRSA would have significant negative consequences. First, the continued foreseeable need to have some place to dispose of sediments from various San Francisco Bay dredging projects would place pressure on the Corps and EPA to approve on a project-by-project basis the use of temporary in-Bay or ocean dumping location pursuant to either Clean Water Act section 404 or MPRSA section 103. Approval of dredged material disposal via these mechanisms would be less desirable in that dump site selection would not be made in the context of long-term comprehensive planning. The advantages of the latter, the limiting of dumping to a single location and the consideration of cumulative impacts and cumulative needs for dumping could be lost if dump site are selected piecemeal on a project-by-project basis. The LTMS mission is to provide long-term options, including ocean disposal, to accommodate the dredged material volumes and compositions anticipated for the 50-year planning period. Second, the Water Resources Act of 1992 prohibits the continued use of ocean dump sites which have not been designated by EPA as section 102 dump sites by the end of 1997. If EPA fails to designate the proposed SF-DODS by that date, then ocean disposal of dredged materials taken from San Francisco Bay projects will be effectively precluded. It appears from current information that there is a substantial probability that there will not be sufficient capacity available in alternative disposal options to accommodate sediments from currently contemplated dredging projects. Accordingly, the lack of an ocean disposal site could delay or preclude several economically important dredging projects.

2. Alternatives Not Considered for Further Analysis (Study Area 1 and Study Area 2)–Study Area 1, corresponding to the Channel Bar ODMDS is only designated for disposal of sandy material from the San Francisco Bay entrance channel. The LTMS considered changing the designation of this ODMDS to accept sand from other dredging projects in the Bay, but decided that the amount of potentially suitable material would be too small to warrant redesignating the site. Based on this decision, EPA proposes to eliminate Study Area 1 from further consideration. Study Area 2 originally was included as a candidate location on the continental shelf, and was subjected to considerable study effort. Nevertheless, based on its location within the Monterey Bay National Marine Sanctuary (MBNMS) and because dredged material disposal at a new ODMDS within the MBNMS is prohibited, EPA proposes to eliminate Study Area 2 from further consideration as an alternative.

3. Deepwater Alternative Site 3–This site is located approximately 47 nautical miles (87 kilometers) from the Golden Gate in an area where depths range approximately 4,590 to 6,230 feet (1,400 to 1,900 meters). EPA proposes to eliminate this site from further consideration, primarily because of its proximity to Pioneer Canyon and associated hardbottom areas.

4. Deepwater Alternative Site 4–This site is located approximately 50 nautical miles (93 kilometers) from the Golden Gate in an area where depths range approximately from 6,230 to 6,900 feet (1,900 to 2,100 meters). EPA proposes to eliminate this site from further consideration, primarily because of its proximity to Half Moon Bay and its high usage as commercial fishing grounds as compared to Alternative Site 5.

5. Deepwater Alternative Site 5 (Preferred Alternative)–EPA proposes to select this site (proposed SF-DODS) as the preferred alternative based on comparisons of the alternative sites to the specific selection criteria. Alternative Site 5 is located furthest from the coast (approximately 49 nautical miles west of the Golden Gate) and in the deepest depth range (approximately 8,200 to 9840 feet, or 2,500 to 3,000 meters). Bathymetric and sediment surveys indicate Alternative Site 5 is located in a depositional area which, because of existing topographic containment features, is likely to retain dredged material which reaches the sea floor. No significant impacts to other resources or amenity areas, such as marine sanctuaries, are expected to result from designation of Alternative Site 5. Existing and potential fisheries resources within Alternative Site 5 are minimal and the site is removed from more important fishing grounds located closer to the other alternative sites. Abundances and biomass of demersal fishes and megafaunal invertebrates, as well as abundances and diversity of infaunal invertebrates, at Alternative Site 5 are lower than those at the other alternative sites. Potential impacts to surface and mid-water dwelling organisms, such as seabirds, mammals, and midwater fishes, are expected to be insignificant. Finally, disposal of low-level radioactive wastes and chemical and conventional munitions occurred historically in the vicinity of Alternative Site 5. Disposal within the site has also occurred as part of a Navy MPRSA section 103 permit approved for up to 1.2 million cubic yards of suitable dredged material.

The Final EIS presents the information needed to evaluate the suitability of ocean disposal areas for final designation of proposed SF-DODS and is based on a disposal site environmental study. The proposed rule is being promulgated in accordance with MPRSA, the EPA Ocean Dumping Regulations, and other applicable Federal environmental legislation. A separate Record of Decision (ROD) will be prepared prior to or as part of the issuance of the Final Rule for this site designation.

E. Site Designation

Today EPA Region IX proposes to designate SF-DODS as a deepwater ocean dredged material disposal site. The center of the proposed SF-DODS is located approximately 49 nautical miles (91 kilometers) west of the Golden Gate and occupies an area of approximately 6.5 square nautical miles (22 square kilometers). Water depths within the area range between 8,200 to 9,840 feet (2,500 to 3,000 meters). The center coordinates of the oval-shaped site are: 37° 39.0' North latitude by 123° 29.0' West longitude (North American Datum from 1983), with length (north-south axis) and width (west-east axis) dimensions of approximately 4 nautical miles (7.5 kilometers) and 2.5 nautical miles (4.5 kilometers), respectively.

Designation of the proposed SF-DODS is for use over a 50-year period and not to exceed 6 million cubic yards of dredged material in any one year period,

subject to a Site Management and Monitoring Plan, which will be issued through a separate Public Notice. Annual reports will be prepared on the results of site monitoring. If disposal operations at the site are shown to cause unacceptable adverse environmental impacts, further use of the site will be restricted or terminated. A suitable alternative disposal site may be designated by EPA in this event. Disposal operations will be prohibited if funds and equipment for implementing the site management and monitoring program are not available.

F. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use (40 CFR 228.5). Sites are selected to minimize interference with other marine activities, to keep any temporary perturbations from causing impacts outside the disposal site, and to permit effective monitoring which is designed to evaluate specific areas of concern, such as water quality impacts, significant movement of sediment outside the site and unacceptable impacts to the marine environment or human health. Where feasible, locations off the continental shelf and historical sites are chosen. The 11 specific site selection criteria are listed in 40 CFR 228.6(a) of the EPA Ocean Dumping Regulations. These specific factors are used to evaluate all candidate disposal sites.

The proposed SF-DODS site, as discussed below under the 11 specific factors, is acceptable under the 5 general criteria (40 CFR 228.5). The 5 general criteria and the 11 specific criteria overlap such that if a site meets the latter it necessarily meets the former. Historical disposal in the vicinity of the preferred site has not resulted in significantly adverse effects on fisheries, living resources of the ocean, or other uses of the marine environment.

1. Geographical Position, Depth of Water, Bottom Topography and Distance from Coast (40 CFR 228.6(a)(1))

The center of the proposed SF-DODS is located approximately 49 nautical miles (91 kilometers) west of the Golden Gate and occupies an area of 6.5 square nautical miles (22 square kilometers). Water depths within the area range between 8,200 to 9,840 feet (2,500 to 3,000 meters). The center coordinates of the oval-shaped site are: 37° 39.0' North latitude by 123° 29.0' West longitude (North American Datum from 1983), with length (north-south axis) and width (west-east axis) dimensions of approximately 4 nautical miles (7.5 kilometers) and 2.5 nautical miles (4.5 kilometers), respectively.

2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2))

The proposed SF-DODS site provides feeding and breeding areas for common resident benthic species. Floating larvae and eggs of various species are expected to be found at and near the water surface at the site as well as the other sites. Designation of the site will not affect any geographically limited habitats, breeding sites or critical areas that are essential to commercially important species or rare or endangered species.

3. Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6(a)(3)

The proposed SF-DODS site is approximately 49 nautical miles (91 kilometers) west of the Golden Gate, 30 nautical miles (56 kilometers) from Pioneer Canyon, 10 nautical miles (19 kilometers) from the Gulf of the Farallones National Marine Sanctuary boundary, and 30 (56 kilometers) nautical miles from the Farallon Islands. EPA Region IX and the Corps' San Francisco District have determined that aesthetic impacts of plumes, transport of dredged material to any shoreline and alteration of any habitat of special biological significance or marine sanctuary will not occur if this site is designated.

Ocean currents flow primarily to the northwest in the upper 2,600 to 3,000 feet (800 to 900 meters) of the water column, although periodic reversals in flow occur. Currents below 3,000 feet (900 meters) are generally weaker than near-surface currents. Therefore, any residual suspended solids from the proposed SF-DODS site will move primarily in the north-northwest direction. Initial water column modeling results using a conservative approach and assuming disposal of 6 million cubic yards of dredged sediments per year indicate that suspended solid levels would decrease to background levels by the time the plume reaches the nearest amenity area (GFNMS boundary). Initial footprint modeling using a conservative approach and assuming disposal of 6 million cubic yards of dredged sediments per year indicates that the majority of the disposed material would be deposited within the disposal site.

4. Types and Quantities of Wastes Proposed to be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste if Any (40 CFR 228.6(a)(4))

Site use over a 50-year period is not to exceed 6 million cubic yards of suitable dredged material per year. The projected volumes are based on historical annual maintenance dredging volumes and projected new work projects in the San Francisco Bay region which could be considered for disposal at the ocean site if the material is determined to suitable for ocean disposal. The anticipated military base closures may reduce the LTMS planning estimates for the total volume of material expected to be dredged over a 50-year period. However, the overall impact of base closures may be offset by other new projects, such as expansion of commercial port facilities in areas vacated by the military. Composition of dredged material is expected to range between two types: predominantly "clay-silt" (e.g., 74% clay, 5% silt, 21% sand) versus "mostly sand" (e.g., 3% silt, 21% clay, 76% sand). These material types are based on data from historical projects from the San Francisco Bay region. The expected disposal method would involve split-hull barges, with capacities ranging between 1,000 to 6,000 cubic yards, which would be towed by ocean-going tugboats. The actual amount of disposal may vary from the annual average for any given year. EPA Region IX and the Corps' San Francisco District will evaluate and manage the amount of dredged material proposed for disposal at proposed SF-DODS through the MPRSA section 103 permit process.

All dredged material proposed for disposal at the site must be suitable for ocean disposal. This determination will be made by EPA Region IX and the Corps' San Francisco District based upon the results of physical, chemical and biological tests before a MPRSA section 103 permit can be issued. Certain dredged material may be exempted from chemical and biological testing based upon the physical characteristics of the sediments and their location in relation to sources of contamination (40 CFR 227.13(b)(1)). Dumping of prohibited materials or other industrial or municipal wastes will not be permitted at the site (40 CFR 227.5 and 227.6(a)).

5. Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5))

Surveillance and monitoring of the dredged material disposal site involves several agencies. The U.S. Coast Guard

(U.S.C.G) is the Federal agency with authority to conduct onsite surveillance and monitoring of vessels involved in disposal activities at sea. For dredged material disposal, this monitoring would be to determine that the vessels dump the material at the designated disposal site. EPA Region IX and the Corps' San Francisco District share the responsibilities of managing and monitoring the disposal site, and, with the onsite assistance of the U.S.C.G, to enforce permit conditions within the limits of their jurisdiction. Recent Navy mid-project monitoring activities have clearly confirmed the feasibility of surveillance and monitoring at the proposed SF-DODS. A Site Management and Monitoring Plan (SMMP) is under development by EPA Region IX and the Corps' South Pacific Division and San Francisco District. The goals and objectives of the SMMP are summarized in Section G. below. The SMMP will be issued through a separate Public Notice.

6. Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction and Velocity, if Any (40 CFR 228.6(a)(6))

Ocean currents flow primarily to the northwest in the upper 2,600 to 3,000 feet (800 to 900 meters) of the water column, although periodic reversals in flow occur. Currents below 3,000 feet (900 meters) are generally weaker than near-surface currents. Therefore, any residual suspended solids from the proposed SF-DODS will move primarily in the north-northwest direction. Near-bottom flows may be enhanced by tidal influences and bottom topography. However, sediment resuspension from the seafloor within the preferred site is expected to be minimal. Initial water column modeling results, as indicated in the Final EIS, using a conservative approach (e.g., modeling parameters adjusted for worst case conditions) and assuming disposal of 6 million cubic yards of dredged sediments per year, indicate that suspended solid levels would decrease to background levels when the plume reached the nearest amenity area (GFNMS boundary). Initial footprint modeling using a conservative approach and assuming disposal of 6 million cubic yards of dredged sediments per year indicate that the majority of the disposed material would be deposited within the disposal site.

7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects) (40 CFR 228.6(a)(7)

Under an MPRSA section 103 permit, the Navy is discharging up to 1.2 million cubic yards of dredged material at their Navy disposal site which is contained within the EPA-preferred Alternative Site 5. No other documented disposal of dredged material has occurred within the site. However, disposal of radioactive waste containers was conducted in the vicinity of Alternative Site 5 from 1951–1954. Likewise, chemical and conventional munitions were disposed from approximately 1958 to the late 1960's at the Chemical Munitions Disposal Area. There was no evidence during the site designation field studies of residual contamination. Therefore, potentials for cumulative impacts are considered unlikely.

The associated municipal discharge effects from the San Francisco Southwest Ocean Outfall (5.4 nautical miles or 10.2 kilometers from shore), City of Pacifica Outfall (0.4 nautical miles or 0.8 kilometers from shore), and Northern San Mateo County Outfall (0.4 nautical miles or 0.8 kilometers from shore) are limited to local areas near the outfalls and do not extend to the vicinity of the dredged material disposal site. Discharges of dredged material at the Channel Bar ODMDS (3.0 nautical miles or 5.6 kilometers from shore) are also limited to local areas and not expected to result in farfield impacts. Ocean disposal of acid waste, cannery waste, and refinery waste was discontinued approximately 20 years ago (in 1971–1972), and presence of residual waste which could interact with discharged dredged material to produce cumulative, adverse, environmental effects has not been detected.

8. Interference with Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance and Other Legitimate Uses of the Ocean (40 CFR 288.6(a)(8))

Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other uses of the ocean as a result of disposal operations is expected to be minimal because of the already high volume of ship traffic through the region. From 1980–1991, the total vessel transits in the San Francisco Bay region ranged from approximately 61,000 to 91,000. As an example of a worst case scenario, assuming around-the-clock disposal operations (assuming 3 trips in a 24-hour period), disposal operations would augment the vessel traffic by less than 2 percent. Compared to Alternative Sites 3 and 4, Site 5 is less utilized as a fisheries resource area. In addition, the potential interferences with recreational and scientific boat traffic and marine resources (e.g., birds and mammals) near the Farallon Islands will be minimized by requirements that barges remain at least 3 nautical miles from the Islands. Under normal conditions, no interference with areas of special importance is expected. However, accidents resulting in releases of material near the Farallones may be a concern. This will also be mitigated by requiring barges to remain 3 nautical miles from the Islands and by requiring appropriate load limits based on sea conditions.

9. The Existing Water Quality and Ecology of the Site as Determined by Available Data or by Trend Assessment or Baseline Surveys (40 CFR 228.6(a)(9))

Regional studies described in the Final EIS provide the following determinations. Water quality at the proposed SF-DODS is indistinguishable from the water quality of nearby areas. Sediments contain background levels or low concentrations of trace metal and organic contaminants. The demersal fish community within Alternative Site 5 have lower numbers of species and abundances (rattails, eelpouts, finescale codling) than the other alternative sites. Alternative Site 5 contain moderate numbers of megafaunal invertebrate species but lower overall abundances (sea cucumbers, brittlestars, sea pens) compared to the other alternative sites. Infaunal invertebrates within Alternative Site 5 show lower diversity and abundance (polychaetes, amphipods, isopods, tanaids) compared to Alternative Sites 3 and 4. There have been higher numbers of sightings of marine birds and mammals within Alternative Site 5 relative to the other alternative sites. Mid-water organisms, including juvenile rockfishes, are abundant seasonally within Alternative Site 5 relative to Alternative Sites 3 and 4.

10. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site (40 CFR 228.6(a)(10))

It is unlikely to see recruitment of nuisance species from the disposal of dredged material due to significant differences in water depth and environment at the disposal site as compared to the relatively shallow dredging sites in the San Francisco Bay region. Local opportunistic benthic species characteristic of disturbed conditions are expected to be present and abundant at any ODMDS in response to physical deposition of sediments. Opportunistic polychaetes, such as *Capitella*, may colonize the

disposal site. These worms can become food items for bottom-feeding fish and are not directly harmful to other species. No recruitment of species capable of harming human health or the marine ecosystem is expected.

11. Existence at or in Close Proximity to the Site of Any Significant Natural or Cultural Feature of Historical Importance (40 CFR 228.6(a)(11))

The California State Historic Preservation Officer has determined there are no known historic shipwrecks nor any known aboriginal artifacts at the proposed SF-DODS or in the vicinity.

G. Site Management and Monitoring Plan

A Site Management and Monitoring Plan for the proposed SF-DODS is under development by EPA Region IX and the Corps' South Pacific Division and San Francisco District with input from the OSWG. The practicability of implementing a SMMP at the proposed SF-DODS has been confirmed by the recent mid-project MPRSA section 103 permit monitoring activities performed by the Navy at the Navy disposal site which is contained within the proposed SF-DODS. The completed document will be made available for public review through a separate Public Notice process and will available upon request from EPA Region IX. For this Proposed Rule, the major components of the SMMP (including goals, objectives, and criteria) are summarized below.

a. Data for site management will be provided by a tiered site monitoring program which consists of three interdependent modules: a Physical Monitoring Module, a Biological Monitoring Module, and a Chemical Monitoring Module. The Physical Monitoring Module will provide information about the plume behavior in the water column and dredged material footprint on the sea floor. The Biological Monitoring Module provides information about any detectable effects of the water column plume on sea birds, marine mammals, and mid-water fishes. In the event that significant amounts of dredged material (i.e., greater than 5 centimeters) extends outside of the designated site, any detectable impacts on the benthos shall be investigated. The Chemical Monitoring Module provides data on sediment quality and will evaluate any potential bioaccumulation of contaminants in benthic organisms if monitoring indicates that substantially elevated concentrations of contaminants exist in the sediments. Tier 1 monitoring studies shall be performed annually if dredged material disposal occurs at the proposed SF-DODS and will include portions of each module. Initiation of subsequent studies under Tiers 2 and 3 shall be based on exceedances of parameters in Tier 1, as specified in the SMMP.

(1) Annual Tier 1 monitoring activities shall involve physical, chemical, and biological assessments. These activities shall be initiated after a period of one year of disposal activities or disposal of 6 million cubic yards of dredged materials, whichever comes first. A minimum volume of dredged material disposed in any one year period may be established as a trigger for conducting the annual surveys of the footprint, based on ability to identify the dredged material layer within the disposal site. A physical survey of the disposal site shall be conducted to determine whether disposed dredged material is remaining at the proposed SF-DODS site. Sediment mapping techniques (utilizing appropriate technology, such as sediment profile photography) shall be used to determine the areal extent and thickness of the dredged material deposit footprint relative to the disposal site boundaries. Following the physical mapping of the sediment footprint, boxcore samples for sediment chemistry and benthos shall be taken within the footprint and in unaffected areas surrounding the footprint. If a ecologically significant thickness of dredged material (5 centimeters) is not identified outside the boundary of the disposal site, then no management actions (relating to physical monitoring) will be necessary. On the other hand, if significant thicknesses of dredged material are detected outside the site boundary, then management actions (e.g., reevaluation of the site boundary, or restricting or stopping disposal) and/or additional field studies (Tier 2) shall be implemented to evaluate potential impacts of the dredged material deposits outside of the disposal site. The sediment chemistry samples shall be analyzed as a conservative measure to assess any long-term accumulation of contaminants as a result of dredged material disposal. If contaminant trigger levels are not exceeded, then no management actions (relating to chemical monitoring) will be necessary. If contaminant trigger levels are exceeded, then management actions (e.g., restricting or stopping disposal) and additional field studies (Tier 2) shall be implemented to evaluate the potential impacts. Biological monitoring will be based primarily on continued collection and assessment of trends of time-series data for marine birds and mammals and midwater fishes in the Gulf of the Farallones region. Periodic shipboard observations (which could be required in the permit, as appropriate) taken from the vessels involved in disposal operations will provide additional data on any potential impacts to these organisms. If no significant negative trends are detected and shipboard observations do not indicate that adverse impacts are occurring as a result of disposal activities, then no management actions (relating to biological monitoring) will be necessary. If statistically significant negative trends are detected or shipboard observations indicate that adverse impacts are occurring as a result of disposal activities, then management actions (e.g., restricting or stopping disposal) and additional field studies (Tier 2) shall be implemented to assess potential impacts.

(2) Tier 2 monitoring shall occur based on management decisions in Tier 1 as described above with consideration of study options, including collection of additional data to further evaluate the potential physical, chemical, and biological impacts of dredged material dispersed in the water column and deposited outside of the proposed SF-DODS on sensitive water column and benthic biological resources of concern. If warranted, additional physical oceanographic studies shall be conducted to improve the models used to predict the dispersion and deposition of dredged material at the disposal site. These additional studies may include: the collection of additional current meter data, deployment of sediment traps, and deployment of Lagrangian drifters. If the additional data indicate that no detectable (above background) concentrations of material are entering the sanctuaries, then no management actions would be necessary. If the data do indicate significant elevated concentrations of sediments are entering the sanctuaries, then management actions (e.g., restricting or stopping disposal) shall be implemented. The benthic resources of concern include infauna, epifauna and demersal fishes identified in the Final EIS and in the 1985 to 1987 fish block data from the California Department of Fish and Game. The benthic community within the sediment footprint will be compared to benthic communities in adjacent areas outside of the footprint. Additional monitoring activities in a higher tier (Tier 3) may not be necessary if a management decision can be made with the data obtained from the benthic community comparisons. If more data are needed to make a management decision, Tier 3 monitoring shall be

initiated with consideration of options, including testing for bioaccumulation of contaminants in tissues of appropriate benthic and/or epifaunal organisms. EPA and the Corps, in consultation with the OSWG, will determine the appropriate sampling methodologies for marine birds and mammals based on results of the Physical Monitoring Module in Tiers 1 and 2.

(3) Tier 3 monitoring shall be conducted if chemical and/or biological triggers are exceeded in Tier 2. This tier involves the assessment of benthic body burdens of contaminants and correlation with comparison of the benthic communities inside and outside of the sediment footprint. EPA Region IX will determine whether the proposed SF-DODS is a source of significant bioaccumulation in the tissues of benthic species collected at the proposed SF-DODS compared to adjacent unimpacted areas. These data will be used to determine: the continuing use of the proposed SF-DODS; the management options to further limit disposal times, quantities or characteristics of the dredged material; or the possible closure of the site after another site is designated.

b. Guidelines for site use included in the Site Management and Monitoring Plan are:

(1) Use of the site shall be restricted to disposal of dredged sediments only, regulated under section 103 of MPRSA.

(2) All sediments proposed for dredging must be determined to be suitable for ocean disposal by EPA Region IX and the Corps' San Francisco District in accordance with the 1991 EPA/Corps Green Book and Region Implementation Manual. Suitability for ocean disposal will be determined after review of the results of physical, chemical and biological testing of the sediments, except those sediments specifically exempted under the regulations (40 CFR 227.13(b)(1,2,3)) from such testing. When the material does not qualify for an exemption, testing and reporting procedures shall be conducted as described in procedures approved by EPA Region IX and the Corps' San Francisco District.

(3) No dredged material will be disposed at the proposed SF-DODS without a MPRSA section 103 permit issued by the Corps' San Francisco District, or as authorized in a Corps' Civil Works project. All such permits or Corps' Civil Works projects are subject to the approval of EPA Region IX. All disposal operations shall be carried out according to special conditions and other procedures set out in the MPRSA section 103 permits or specifications of the Corps' Civil Works project.

(4) If the dredged material is shown to form significant surface plumes, the timing of disposal operations may be restricted in any 24-hour period.

(5) The maximum allowable volume of disposal is 6 million cubic yards per year. However, it is expected that lower volumes of sediment would be disposed as a result of either unsuitability (as determined by sediment tests) or selection of other disposal options such as beneficial use.

(6) All sediments shall be discharged within a 3,200-foot radius circle centered at the center coordinates of the disposal site, unless otherwise directed.

(7) There are no restrictions on the type of disposal equipment that can be used; however, it is anticipated that most of the dredged material will be excavated with clamshell dredges and disposed from towed split-hull scows or barges; or excavated by hopper dredges and disposed from the hopper dredge or a towed barge.

(8) The U.S.C.G is responsible for surveillance of vessels disposing of dredged material at the site. As staff and equipment availability permit, EPA Region IX, the Corps' San Francisco District or the U.S.C.G may provide an on-board observer, an escort, or impose other requirements to confirm that disposal occurs within the central dumping zone.

(9) The following reporting requirements shall be incorporated into all MPRSA section 103 permits for use of the proposed SF-DODS:

(a) The permittee shall notify EPA Region IX, the Corps' San Francisco District and the U.S.C.G Marine Safety Office in Alameda at least two weeks before the start of the disposal activity.

(b) Each permittee shall provide EPA Region IX, and the Regulatory Branch of the Corps' San Francisco District, with the following information within 30 days following the end of the disposal operation:

Project Information: Project name; permittee; permit number; project beginning and ending dates; project description, including map of area dredged, depth of dredging, side slopes and tolerance dredging (overdredging depth); and type of dredging, either construction or maintenance.

Disposal Information (For each trip to the disposal site): Date; hopper dredge or towing vessel and scow or barge name, number and owner; master of the hopper dredge or towing vessel; capacity of disposal vessel, hopper dredge, scow or barge (in cubic yards and cubic meters); volume discharged (actual volume, not pay volume); a certified plot of all hopper dredge, barge or scow disposal tracks once inside the boundaries of the proposed SF-DODS, including the time and coordinates for the beginning and ending of disposal; and any unusual conditions affecting disposal on any trip (i.e., heavy seas, equipment malfunction, etc.).

Post-Dredging Information: A post-dredging hydrographic survey compared to a pre-dredging hydrographic survey taken at the dredging site shortly before dredging began; number of disposal trips; total amount of dredged material dumped at the proposed SF-DODS in cubic yards and cubic meters, and dredged quantity calculations necessary to determine the extent of dredging at the project site; and if the dredged material is not exempt from testing, the mass loading of materials disposed at the proposed SF-DODS should be calculated based on chemical analyses used to characterize the dredged material before the permit was issued.

c. Monitoring shall occur as specified in the SMMP. If funds to implement the necessary monitoring are not available, disposal operations will not be allowed to continue for that time period. If monitoring identifies that significant adverse impacts are occurring at or beyond the site boundary, site use or designation can be modified or terminated by EPA Region IX to reduce adverse environmental impacts. These modifications will be governed by the following criteria:

(1) Exceedance of Federal water quality criteria after disposal within the site or beyond the proposed SF-DODS boundary as specified in the Ocean Dumping Regulations (40 CFR 227.29(a)).

(2) Movement of disposed material toward significant biological resource areas or marine sanctuaries.

(3) Significant adverse changes in the structure of the benthic community outside the disposal site boundary.

(4) Significant adverse bioaccumulation in organisms collected from the disposal site or areas adjacent to the proposed SF-DODS boundary compared to the reference site.

(5) Significant adverse impacts upon commercial or recreational fisheries resources near the site.

H. Action

EPA Region IX has concluded that the proposed SF-DODS may appropriately be designated for use over a period of 50 years and not to exceed 6 million cubic yards of suitable dredged material per year. Designation of the proposed SF-DODS complies with the general and specific criteria used for site evaluation. The proposed designation of the proposed SF-DODS as an EPA-approved

Ocean Dumping Site is being published as proposed rulemaking. Management of this site will be the responsibility of the Regional Administrator of EPA Region IX in cooperation with the Corps' South Pacific Division Engineer and the San Francisco District Engineer, based on objectives defined in the Site Management and Monitoring Plan for the proposed SF-DODS. This Site Management and Monitoring Plan will be issued through a separate Public Notice.

It should be emphasized, if an ocean dumping site is designated, such a site designation does not constitute or imply EPA Region IX's or the Corps' San Francisco District's approval of actual ocean disposal of dredged materials. Before ocean dumping of dredged material at the site may begin, EPA Region IX and the Corps' San Francisco District must evaluate permit applications according to EPA's Ocean Dumping Criteria. EPA Region IX or the Corps' San Francisco District have the right to deny permits if either agency determines that the Ocean Dumping Criteria of MPRSA have not been met.

I. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this rule does not necessitate preparation of a Regulatory Flexibility Analysis.

This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a major rule. Consequently, this action does not necessitate preparation of a Regulatory Impact Analysis.

This action does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: February 7, 1994.

Felicia A. Marcus,

Regional Administrator, EPA Region IX.

In consideration of the foregoing, part 228 of chapter I of title 40 is amended as set forth below.

PART 228–[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12 is amended by adding paragraph (b)(70) to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(70) Proposed San Francisco Deepwater Ocean Site (proposed SF-DODS) Ocean Dredged Material Disposal Site—Region IX.

Location: Center coordinates of the oval-shaped site are: 37° 39.0' North latitude by123° 29.0' West longitude (North American Datum from 1983), with length (north-south axis) and width (west-east axis) dimensions of approximately 4 nautical miles (7.5 kilometers) and 2.5 nautical miles (4.5 kilometers), respectively.

Size: 6.5 square nautical miles (22 square kilometers).

Depth: 8,200 to 9,840 feet (2,500 to 3,000 meters).

Primary Use: Ocean dredged material disposal.

Period of Use: Continuing use over 50 years from date of site designation and not to exceed 6 million cubic yards of suitable dredged material per year, subject to a detailed Site Management and Monitoring Plan (SMMP) issued through a separate Public Notice.

Restrictions: Use of the site shall be subject to management decisions based on results of monitoring as prescribed in the SMMP, which will be issued through a separate Public Notice. Resources for implementing the SMMP must be available in order for disposal operations to occur. Disposal shall be limited to dredged sediments that comply with EPA's Ocean Dumping Regulations. Disposal operations shall be conducted in accordance with permit conditions specific to each approved project.

* * * * *

[FR Doc. 94–3536 Filed 2–16–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 21

[CC Docket No. 92–297]

Domestic Public Fixed Radio Services; Local Multipoint Distribution Service

AGENCY: Federal Communications Commission.

ACTION: Request for comments.

SUMMARY: The Commission requests comments on whether it should establish a Federal Advisory Committee to negotiate proposed technical rules governing the provision of terrestrial and satellite services in the 27.5–29.5 GHz frequency band.

DATES: Comments may be filed on or before March 21, 1994.

ADDRESSES: Comments should be sent to the Office of the Secretary, CC Docket 92–297, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Susan Magnotti, Domestic Radio Branch, Common Carrier Bureau, (202) 634–1773.

SUPPLEMENTARY INFORMATION: The Commission hereby seeks comment on establishing an Advisory Committee to negotiate regulations defining the technical rules appropriate to sharing the 27.5—29.5 GHz band by the proposed Local Multipoint Distribution Service and by satellite services. The negotiations are to assist the Commission in developing regulations that will facilitate the shared use of this spectrum by both satellite uplink and terrestrial point-to-multipoint service providers. Any negotiating committee would be created under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and the Negotiated Rulemaking Act of 1990 (NRA), Public Law 101–648, November 28, 1990, and would consist of representatives of the interests that will be significantly affected by the outcome of these rules.

The Commission has proposed to redesignate the use of the 27.5–29.5 GHz band from point-to-point terrestrial service to point-to-multipoint service. Rulemaking to Amend Part 1 and Part 21 of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band and to Establish Rules and Policies for Local Multipoint Distribution Service, Notice of Proposed Rulemaking, 8 FCC Rcd 557 (1993) (CC Docket 92–297). The band is also allocated on a coprimary basis to fixed satellite services. One licensee, CellularVision of New York (CVNY, formerly Hye Crest Management, Inc.),

holds a regular license to provide terrestrial point-to-multipoint service in this band to the New York City Primary Metropolitan Statistical Area. Other entities hold experimental licenses to test similar services in other areas. As discussed in the Second Notice of Proposed Rulemaking, CC Docket No. 92–297, FCC 94–12, released concurrently with this notice, some of the spectrum in the 28 GHz band may be needed for satellite earth stations that will interconnect with mobile satellite systems. Moreover, the experimental Advanced Communications Technology Satellite (ACTS) launched by NASA in 1993 is using a portion of the band (29.0–29.5 GHz) for research purposes. The satellite has a four-year life expectancy. Hughes Space and Communications Company has filed an application to provide service in this band.

I. Regulatory Negotiation

Regulatory negotiation is a technique through which the Commission hopes to develop better regulations that may be implemented in a less adversarial setting. Negotiations are conducted through an Advisory Committee chartered under FACA. The goal of the Committee is to reach consensus on the language or substance of appropriate rules. If a consensus is reached, it is used as the basis of the Commission's proposal. All procedural requirements of the Administrative Procedure Act (APA) and other applicable statutes continue to apply.

When making a determination regarding the suitability of a proceeding for the negotiated rulemaking process, the Commission must consider whether:

(a) There is a need for the rules to be developed;

(b) There are a limited number of identifiable interests that will be significantly affected by the rules;

(c) There is a reasonable likelihood that a committee can be convened with a balanced representation of persons who: (1) Can adequately represent the identifiable interests and (2) are willing to negotiate in good faith to reach a consensus on the proposed rules;

(d) There is a reasonable likelihood that a committee will reach a consensus on the proposed rules within a fixed period of time;

(e) The negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of final rules;

(f) The agency has adequate resources and is willing to commit such resources, including technical assistance, to the committee, and

(g) The agency will, to the maximum extent possible consistent with the legal obligations of the agency, use the consensus of the committee with respect to the proposed rules as the basis for the rules proposed by the agency for notice and comment. Negotiated Rulemaking Act Sec. 3, 5 U.S.C. 583(a).

II. Subject and Scope of Rule for Negotiated Rulemaking

The Commission is proposing that the technical regulations to govern the provision of Local Multipoint Distribution Service and fixed satellite use of the 28 GHz band be developed through negotiation. We believe that the selection criteria listed above are met. Technical rules are necessary to establish under what circumstances, if any, sharing between satellite and terrestrial uses is feasible. The parties whose interests are affected are identifiable from comments filed in this proceeding. These interests can be adequately represented on a committee, and we believe that representatives will act in good faith to reach a consensus on technical rules within a set time frame. We believe that the negotiated rulemaking process will better use public and private resources than would our requiring more iterations of written comments will an adequate record is developed. We have adequate resources to commit to this endeavor and would use the consensus report of the committee to develop proposed technical rules.

The Commission has identified the following primary issue that should be addressed in the negotiations and resolved in the proposed rules developed by the Committee:

What technical rules should be adopted for the Local Multipoint Distribution Service and/or the fixed satellite service so as to maximize the sharing of the spectrum among these services?

If the Negotiated Rulemaking Committee is able to accommodate all proposed uses of the band, we ask that it proposes specific rules to effectuate a sharing plan. We ask that it provide an analysis of how benefits of its proposed solution outweigh other options for accommodating these services. Specifically, we ask that it explain:

—The proper definition of the product market and geographic market for the services proposed;

—The degree of competition anticipated within the relevant market (including the extent to which the proposed services are expected to compete with existing services);

—The degree to which new services and technological innovations will be stimulated by the proposed allocation;

—The amount and nature of investment in the national telecommunications infrastructure expected as a result of the use of the band for the particular service(s);

—The kind and number of jobs that would be created as a result of the licensing of particular services;

—Any other available data concerning the economic growth expected to result from the allocation for the particular service(s).

Other issues may be included by the parties. All recommendations or proposed rules must comply with International Telecommunication Union treaty obligations.

III. Potential Interests and Participants

The Commission has identified the following interests as those most likely to be significantly affected by the proposed rules:

(a) Developers, manufacturers, and licensees of Local Multipoint Distribution Service;

(b) Pending mobile-satellite applicants in the 1610–1625.5/2483.5–2500 MHz band filing by the June 2, 1991 cutoff date for these applications;

(c) Fixed-satellite service applicants and service providers.

The following have tentatively been identified as potentially affected interests should the Commission proceed with a negotiated rulemaking: Suite 12 Group, Bell Atlantic Companies, Video/Phone Systems, Inc., Endgate Company, Gigahertz Equipment Company, David Sarnoff Research Center, The University of Texas System, NASA, Ellipsat Corporation, Motorola Satellite Communications, Inc., Constellation Communications, Inc., Loral/Qualcomm Satellite Service, Inc., TRW, Inc., American Mobile Satellite Corporation, Hughes Space and Communications Company, a representative of public television and educational parties commenting in CC Docket 92–297, Comsearch, Inc., and the Domestic Facilities Division, Common Carrier Bureau, Federal Communications Commission.

IV. Formation of the Negotiating Committee

A. Procedure for Establishing an Advisory Committee

Under FACA, an Advisory Committee may be established only after consultation with the General Services Administration (GSA) and the filing of a charter with Congress. The Commission will prepare a charter and

initiate the requisite consultation process prior to formation of the Committee and the commencement of negotiations.

B. Participants

The number of participants in the group is estimated to be about 20 and should not exceed 25. A number larger than this could make it difficult to conduct efficient negotiations. Each interest will have the opportunity to be adequately represented, although this does not necessarily mean that each potentially affected entity will have its own representative. Further, we must be satisfied that the group, as a whole, reflects a proper balance and mix of interests. In this respect, we are especially interested in receiving nominations to participate from public interest advocacy groups, users groups, and educators and academics.

Entities that will be significantly affected by the proposed rules and which believe that their interests will not be adequately represented by any entity specified in paragraph 8 above, may apply for, or nominate another entity for, membership on the Committee. Each application for nomination must include:

(a) The name of the applicant or nominee and a description of the interests the entity will represent,

(b) Evidence that the applicant or nominee is authorized to represent parties related to the interests the entity proposes to represent,

(c) A written commitment that the applicant or nominee shall actively participate in good faith in the development of the rules under consideration,

(d) The reasons that the entities specified in paragraph 8 do not adequately represent the interests of the entity submitting the application or nomination.

If, in response to this Notice, any additional entities request membership or representation in the negotiating group, the Commission will determine whether that entity should be added to the group. The Commission will make that decision based on whether the entity would be substantially affected by the rule and whether that entity is already adequately represented in the negotiating group.

C. Agenda

If the Commission decides to establish a negotiating committee and its charter is approved, it is anticipated that the Committee's first meeting will take place in March or April, 1994, at the Commission's offices, Washington, DC, at a building, room, date, and time that will be announced. At this initial meeting, the committee will complete action on all procedural matters and establish a target date for submission of its recommendations. We expect that the target date would be no later than July, 1994. We anticipate a publication of a Further Notice of Proposed Rulemaking not later than October, 1994.

V. Negotiation Procedures

The following procedures and guidelines will apply to the Committee, if formed. These procedures may be modified, however, after reviewing the comments received in response to this *Notice* or during the negotiation process.

A. Facilitator

The Commission will nominate a person to serve as a neutral facilitator for the negotiations of the Committee, subject to the approval of the Committee by consensus. The facilitator will not be involved in the substantive development of the regulations. The facilitator's roles are to: (1) Chair negotiating sessions, (2) help the negotiation process run smoothly, (3) help participants define and reach a consensus, and (4) manage record-keeping and minute-keeping.

B. Good Faith Negotiations

Since participants must be willing to negotiate in good faith, each organization—including the Commission—must designate a qualified individual to represent its interests. Thomas S. Tycz, Deputy Chief, Domestic Facilities Division, Common Carrier Bureau, will be the Commission's representative.

C. Meetings and Compensation

Meetings will be held in the Washington, DC area at the convenience of the Committee. The Commission, if requested, will provide the facilities needed to conduct the meetings, and will provide the facilities needed to conduct the meetings, and will provide any necessary technical support. Private sector members of the Committee will serve without government compensation or reimbursement of expenses. Private sector members will not be special government employees for any purposes whatsoever.

D. Committee Procedures

Under the general guidance and direction of the facilitator, and subject to any applicable legal requirements, the members will establish the procedures for committee meetings that they consider most appropriate.

E. Consensus

The goal of the Committee is consensus. The Negotiated Rulemaking Act defines consensus as unanimous concurrence among the represented interests, although the Act permits the Committee to agree to another specified definition. In the event the Committee is unable to reach a consensus, the Committee may include in a report any other information, recommendations, or materials that the Committee considers appropriate, and any Committee member may include as an addendum to the report additional information, recommendations, or materials. Parties to the negotiation may withdraw at any time. If this happens, the remaining Committee members and the Commission will evaluate whether the Committee should continue.

F. Record of Meetings

Pursuant to FACA, the Committee will keep a record of all committee meetings. This record will be placed in the public docket for this rulemaking (CC Docket 92–297). The Commission will announce committee meetings in the **Federal Register**. These meetings will be open to the public.

VI. Conclusion

The Commission requests public comment on whether: (1) It should establish a Federal Advisory Committee, (2) it has properly identified the interests that are significantly affected by the key issues listed above, (3) the suggested committee membership reflects a balanced representation of these interests, and (4) regulatory negotiation is appropriate for this rulemaking.

Pursuant to the applicable procedures set forth in section 4(c) of the Negotiated Rulemaking Act of 1990, 5 U.S.C. 584(c), interested parties may file comments and applications for Committee membership on or before March 18, 1994. Comments and/or applications should be sent to the Office of the Secretary, CC Docket No. 92–297, Federal Communications Commission, Washington, DC 20554. Comments and applications will be available for public inspection during regular business hours in the Dockets Public Reference Room of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

For further information pertaining to the establishment of the negotiation committee and associated matters, contact Susan Magnotti, Domestic Radio Branch, 2025 M Street, NW., Washington, DC 20554, (202) 634–1773.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 94–3772 Filed 2–16–94; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 21

[CC Docket No. 92–297, FCC 94–12]

Establishing Rules and Policies for "Local Multipoint Distribution Service"

AGENCY: Federal Communications Commission.

ACTION: Second notice of proposed rulemaking; response to comments.

SUMMARY: This document addresses comments filed in response to the Commission's proposal to redesignate the 28 GHz frequency band (27.5–29.5 GHz) from terrestrial point-to-point services, to terrestrial point-to-multipoint services. In this action, the Commission modifies its prior proposal. In order to develop regulations for the use of the 28 GHz band that optimize the public interest benefits to the Nation, the Commission is issuing concurrently with this document a public notice requesting comments regarding the establishment of a Negotiated Rulemaking Committee (NRMC). The NRMC, if established, will develop technical regulations reflecting a consensus determination whether proposed terrestrial and satellite uses can share, on a co-frequency and co-coverage basis, the 28 GHz band. In the event that sharing is not possible for some of the proposed uses of the 28 GHz band, parties will be requested to provide detailed analyses of the costs and benefits of the various choices available to the Commission for the use of this frequency band. All other issues pertaining to establishment of LMDS will await development of frequency coordination and sharing criteria for space and terrestrial services and technical parameters for the service.

FOR FURTHER INFORMATION CONTACT: Susan Magnotti, Common Carrier Bureau, Domestic Facilities Division, (202) 634–1773.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Second Notice of Proposed Rulemaking in CC Docket 92–297, adopted January 19, 1994, and released February 14, 1994.

The complete text of the Second Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center (Room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, at (202) 857–3800, 1919 M Street, NW., room 246, Washington, DC 20554.

Synopsis of Second Notice of Proposed Rulemaking

In the NPRM, 58 FR 6400 (January 28, 1993), the Commission considered three petitions for rulemaking proposing a redesignation of the 28 GHZ band. That band currently is designated for fixed point-to-point and fixed satellite service use. It found that redesignation of the point-to-point and fixed satellite service use. It found that redesignation of the point-to-point use of the band to point-to-multipoint use could stimulate greater use of a band that largely has lain fallow. However, the Commission asked for comment from satellite entities regarding the effect of redesignation on any proposed fixed satellite use of the band.

As requested by the petitions for rulemaking from Suite 12 and Video/Phone, the Commission proposed that the 28 GHz band initially be licensed to two 1000 MHz blocks to two different carriers. Since it appeared that video service initially would be the primary service offered in LMDS, it proposed to divide each of the 1000 MHz bands into 50 channels of 20 MHz each. It also proposed allowing licensees to provide a wide variety of other services.

The Commission sought comment on whether other assignment schemes might better meet its objectives. It gave one example of a different assignment scheme, *i.e.*, four blocks, two of which would have the capacity to carry 34 video channels, and two of which could be used for smaller video systems or telecommunications systems.

Finally, the Commission requested comment on whether a separate assignment would be specifically required to accommodate the proposed satellite service applications in the Ka-band, or whether adequate coordination and sharing criteria could be developed to permit both terrestrial and fixed satellite services to operate compatibly in the band. It noted that the multicell multipoint configurations in the Suite 12 proposal envisioned a wide area distribution of services that might make frequency sharing with other services impossible.

Comments to the Commission's Notice of Proposed Rulemaking indicated that the majority of interested parties support the Commission's finding of widespread interest in LMDS. However, satellite entities argued in opposition to LMDS, saying that such operations would cause unacceptable interference into fixed satellite services, including feeder links supporting mobile satellite service systems.

The Commission stated that its preference is to accommodate all potential users of the 28 GHz band, both terrestrial and satellite. This outcome would be in keeping with the Commission's responsibilities under Sections 1 and 7 of the Communications Act and would provide consumers with the maximum number of service choices to meet their needs.

Section 1 mandates that the Commission "make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communications service with adequate facilities at reasonable charges * * *". 47 U.S.C. 151. Congress also requires the Commission, through Section 7, 47 U.S.C. 157(a), to "encourage the provision of new technologies and services to the public." So important is this policy, Congress has enjoined that "[a]ny person or party (other than the Commission) who opposes a new technology or service * * * shall have the burden to demonstrate that such proposal is inconsistent with the public interest." It has been the Commission's experience, in the nearly sixty years since the Communications Act was enacted, that accommodating new technology and service proposals serves these objectives. The Commission stated that in its view, making the 28 GHz band available to all potential service providers would allow consumers to determine the best use of this spectrum. Accommodating all proposals would result in the availability of maximum communications services possible at the lowest consumer prices possible.

The Commission further stated that coordination issues involved in allowing all interested parties to use the 28 GHz band are highly technical, and their solutions depend upon the specific system design of various proposals to use the 28 GHz band. Moreover, these system designs and the supporting technologies are still in the developmental stage and the course of their development could be influenced by our decisions in this proceeding. The Commission believes that the best way to resolve the issues discussed here would be to establish an advisory committee to negotiate proposed regulations to govern this band. Issued concurrently with this Second Notice of Proposed Rulemaking is a Public Notice requesting comments on the use of a Negotiated Rulemaking Process in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the Negotiated Rulemaking Act of 1990,

Public Law 101–648, November 28, 1990.

In spite of parties' best efforts, sharing may not be possible for all proposed uses. The technology required to permit sharing may not yet be developed, sharing efforts may result in unacceptable degradation of service to consumers, or sharing techniques may be prohibitively expensive, thus making an otherwise competitive service unaffordable to customers.

The prospect that only some of the proposed services can be accommodated within the 28 GHz band leaves the Commission with the duty to choose which non-shareable services should be licensed. In order to make these choices, the Commission requires a record based on issues pertaining to the overall public interest in enabling only certain of the non-shareable services. Options for choosing among services include, but are not limited to, enforcing a particular modulation scheme for some or all users; segmenting the band to include as many services as possible with less spectrum than parties requested; assigning all spectrum to satellite uses; or assigning all spectrum to terrestrial uses.

In the event the Negotiated Rulemaking is unsuccessful in reaching a consensus regarding proposed technical rules that would accommodate the proposals before the Commission, the Commission stated that it would require a record to enable it to select the best choices among services proposed. Assuming the Commission ultimately must select among service proposals for the 28 GHz band, the factors it will employ to do this will include:

(a) Economic growth potential: Which solution holds the greatest potential for stimulating lower prices and higher demand for services, and in what product markets and geographic markets? Which solution offers competition in existing markets, and which markets? Which solution best promotes increased efficiencies in spectrum usage, and permits the greatest number of service providers to operate commercially viable systems? Which solution best promotes the offering of new, high-quality and innovative services? Which solution promises to create the greatest number of high-paying jobs, and how? Which solution offers the greatest potential for maximizing interconnection of U.S. telecommunications services and facilities?

(b) Other public interest concerns that may not be readily calculable in economic terms: Which proposed plan appears most likely to make the most services, of the most valuable services, available to the broadest segment of the national community? What are the services, and to whom would they be available? Do any of the proposals promise needed services for unserved or underserved areas, and if so, what services, and to which communities would they be made available? Are particular services more likely to be valuable for educational, job training and employment applications, health care, environmental or public safety uses? Do any of the proposals serve our goal of facilitating the development of a National Information Infrastructure, and if so, how?

(c) Timing: When are the services likely to become available and when are the benefits they promise likely to materialize? If different benefits are likely to be realized at different times, what are the relative advantages of the short-term and long-term benefits of the various services proposed? For example, should the Commission license a service that is likely to become available in one or two years, but outlive its usefulness in five to eight years, if doing so would preclude licensing a service that is likely to produce tangible benefits only after five years, but which benefits may be expected to have long-lasting impact on economic growth and other public interest concerns? What are the likely opportunity costs of not licensing the particular service for operation in this band? Are there any contingencies that would affect the likely offering of the proposed services in a timely manner, such as market entry barriers? The relative efficiency of spectrum use and reuse capability among service providers may also be a factor entering into any final decision.

The proposed standards require quantification on the record in order for the Commission to make decisions based on these factors. To that end, it requests that commenters provide specific, detailed information that would permit the Commission to base a decision on the public interest impact of various options. In particular, the Commission requires precise data on the exact nature of services proposed to be offered by each applicant, what entities would provide the services, the business plans of the service providers, and the expected primary and secondary benefits of the proposed services.

Comment Dates

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 at a time to be established by public notice if the Commission does not establish a Committee or if a Committee is established but does not reach any consensus. To file formally in this proceeding, you must file an original and five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room of the Federal Communications Commission, 1919 M Street, NW., Washington DC 20554.

Initial Regulatory Flexibility Analysis

1. *Reason for action.* The purpose of this Second NPRM is to obtain comment on the proposed changes in fixed terrestrial and satellite service usage for the 28 GHz frequency band.

2. *Objectives.* The objective of this proposal is to consider methods for appropriating spectrum in the 28 GHz band among existing and potential service proponents.

3. *Legal basis.* The authority for this action is the Administrative Procedure Act, 5 U.S.C. 553; and Sections 4(i), 4(j), 301, 303(r) of the Communications Act of 1934 as amended, 47 U.S.C. 145, 301, and 303(r).

4. *Reporting, recordkeeping and other compliance requirements.* None.

5. *Federal rules which overlap, duplicate or conflict with these rules.* None.

6. *Description, potential impact and number of small entities involved.* Since the first NPRM was issued, the Commission has been made aware of numerous small entities interested in manufacturing and/or providing customer services using a variety of new technologies being developed in the 28 GHz band. The proposals contemplated herein, to the extent they limit the previously proposed rule changes, could impact these small businesses. The impact on small entities described in the NPRM released January 8, 1993, applies to this action as well.

7. *Significant alternatives.* Since the first NPRM was issued, the Commission has been made aware of other firms researching the potential for new technology for video and other telecommunications services in the 28 GHz band. In addition, satellite entities may offer alternatives to some services that would be offered in this band. In part due to these alternatives, the Commission is taking the instant action.

Ordering Clauses

Accordingly, *It is ordered* That the Second Notice of Proposed Rulemaking is hereby adopted;

It is further ordered That a Public Notice pursuant to the Negotiated Rulemaking Act, 5 U.S.C. Sec. 581, SHALL BE ISSUED in accordance with the findings herein;

It is further ordered That the Secretary shall mail a copy of this document to the Chief Counsel for Advocacy, Small Business Administration.

List of Subjects in 47 CFR Part 21

Communications common carriers, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–3771 Filed 2–16–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 94–6, RM–8410]

Radio Broadcasting Services; The Dalles, Oregon

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Larson-Wynn, Inc., seeking the allotment of Channel 224C3 to The Dalles, Oregon, as the community's third local FM broadcast service. Channel 224C3 can be allotted to The Dalles in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 45–35–42 and West Longitude 121–10–24.

DATES: Comments must be filed on or before April 4, 1994, and reply comments on or before April 19, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Elwyn T. Wynn, President, Larson-Wynn, Inc., Radio Station KODL–AM, P.O. Box 741, The Dalles, Oregon 97058 (Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–6, adopted January 25, 1994, and released February 9, 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, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 94–3586 Filed 2–16–94; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 94–7, RM–8425]

Television Broadcasting Services; Eagle River, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Lyle Robert Evans d/b/a Eagle River Television Company, proposing the allotment of UHF Television Channel 34 to Eagle River, Wisconsin, as that community's first local television broadcast service. Canadian concurrence will be requested for this allotment at coordinates 45–55–00 and 89–14–42. Channel 34 can be allotted to Eagle River without a site restriction.

DATES: Comments must be filed on or before April 4, 1994, and reply comments on or before April 19, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Lyle R. Evans, Eagle River Television Company, 1296 Marian Lane, Green Bay, Wisconsin 54304.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–7, adopted January 26, 1994, and released February 9, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 94–3585 Filed 2–16–94; 8:45 am]

BILLING CODE 6712–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1846 and 1852

RIN 2700–AB41

Increasing Contractor Liability on Research and Development Contracts

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: In accordance with Public Law 102–588, NASA has carried out an assessment of the allocation of risk, as currently prescribed by the Federal Acquisition Regulation, between NASA

and its contractors for research and development contracts. This assessment included publishing a concept paper in the **Federal Register** (58 FR 16715, March 30, 1993) in order to solicit public and Federal comment on options for allocating risk for correction of defects in materials and workmanship or other failures to conform to contract requirements. As a result of public comment and consistent with the requirement of Public Law 102–588 to initiate rule making, NASA is proposing certain changes to the clause, Inspection of Research and Development—Cost Reimbursement, and the associated prescription.

Essentially these changes, modified as a result of public comment on the concept paper, are made to the current FAR coverage:

(1) Allocate additional financial risks to the contractor;

(2) Assign the Government the burden of proof when disallowing the costs of correction or replacement;

(3) Define "routine" operations clearly; and

(4) Prescribe the use of an advance agreement to identify routine operations, to the maximum extent practical.

DATES: Comments are due on or before April 18, 1994.

ADDRESSES: Submit comments to: Headquarters, NASA, Washington, DC 20546, ATTN: CODE HP/MR. T. Deback.

FOR FURTHER INFORMATION CONTACT: Mr. T. Deback, Procurement Policy Division, (202) 358–0431.

SUPPLEMENTARY INFORMATION:

Background

The proposed clause, which would be used as a substitute for the clause at FAR 52.246–8, Inspection of Research and Development—Cost Reimbursement, for certain procurements, adds two situations under which the Contractor will bear additional financial responsibility to remedy failures to comply with the requirements of this contract: (1) The contractor did not apply best efforts toward the accomplishment of the research and development objectives of the contract, and (2) the contractor did not follow generally accepted industrial or engineering practices in performing routine operations. The contractor's liability will be limited to 50 percent of the cost to remedy the failure or 10 percent of the contract value at the time the failure occurred, whichever is less. The proposed clause differs from the standard FAR clause in paragraphs (a) and (h). Current cost principles preclude the allowability of costs for insurance to cover these potential costs.

If after evaluating public comments, NASA decides to adopt the revised clause proposed herein, NASA will also propose and appropriate FAR revision to cover the matter, as required by FAR 1.404.

Impact

NASA certifies that this regulation 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.*). The regulation imposes no new burdens on the public within the ambit of the Paperwork Reduction Act, as implemented at 5 CFR part 1320.

List of Subjects in 48 CFR Parts 1846 and 1852

Government procurement.

Deidre A. Lee,

Associate Administrator for Procurement.

1. The authority citation for 48 CFR parts 1846 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1846—QUALITY ASSURANCE

2. Subpart 1846.3 is added to read as follows:

Subpart 1846.3—Contract Clauses

1846.308–70 Cost reimbursement research and development contracts.

(a) With the prior approval of the Procurement Officer, the contracting officer shall insert the clause at 1852.246–XX, Inspection of High Risk Research and Development—Cost Reimbursement, in lieu of the clause at (FAR) 48 CFR 52.246–8, in solicitations and contracts for research and development when (1) the primary objective of the contract is the delivery of end items other than designs, drawings, or reports, (2) a cost-reimbursement contract is contemplated, and (3) the estimated value of the contract is $50 million or more.

(b) In connection with this clause, an advance agreement should be included in the contract which, to the maximum extent practicable, identifies those particular tasks and activities which are categorized as routine operations, as that term is defined in the clause at 1852.246–XX, and those tasks and activities which embody the contract's research and development objectives. Routine operations include activities such as moving or packaging pieces of equipment, manufacturing standard parts, or conducting standardized tests. Research and development activities encompass tasks, methods, or technical approaches for which success in meeting the contract objectives cannot be reasonably assured.

PART 1852—SOLICITATION PROVISIONS AND CLAUSES

3. Section 1852.246–XX is added to read as follows:

1852.246–XX Inspection of High Risk Research and Development—Cost Reimbursement.

As prescribed in 1846.308–70, insert the following clause:

Inspection of High Risk Research and Development—Cost Reimbursement (xxx 1994)

(a) *Definitions. Contractor's managerial personnel*, as used in this clause, means the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operation at any one plant or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with performing this contract.

Routine operation means a task or activity which is performed in accordance with customary or regular procedures and for which successful performance is reasonably assured. Routine operations may involve the performance of a service function or the fabrication of an item.

Work, as used in this clause, includes data when the contract does not include the Warranty of Data clause.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test all work called for by the contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also inspect the plant or plants of the Contractor or its subcontractors engaged in the contract performance. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If the Government performs any inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) Unless otherwise provided in the contract, the Government shall accept work as promptly as practicable after delivery, and

work shall be deemed accepted 90 days after delivery, unless accepted earlier.

(f) At any time during contract performance, but no later than 6 months (or such other time as may be specified in the contract) after acceptance of all of the end items (other than designs, drawings, or reports) to be delivered under the contract, the Government may require the Contractor to replace or correct work not meeting contract requirements. Time devoted to the replacement or correction of such work shall not be included in the computation of the above time period. Except as otherwise provided in paragraph (h) of this clause, the cost of replacement or correction shall be determined as specified in the Allowable Cost and Payment clause, but not additional fee shall be paid. The Contractor shall not tender for acceptance work required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.

(g)(1) If the Contractor fail to proceed with reasonable promptness to perform replacement or correction, the Government may—

(i) By contract or otherwise, perform the replacement or correction, charge to the Contractor any increased cost, or make an equitable reduction in any fixed fee paid or payable under the contract;

(ii) Require delivery of any undelivered articles and shall have the right to make an equitable reduction in any fixed fee paid or payable under the contract; or

(iii) Terminate the contract for default.

(2) Failure to agree on the amount of increased cost to be charged the Contractor or to the reduction in fixed fee shall be a dispute.

(h)(1) Notwithstanding paragraphs (f) and (g) of this clause, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure to comply with the requirements of this contract, if the failure is due to:

(i) Fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel;

(ii) The conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified;

(iii) The Contractor not applying best efforts toward the accomplishment of the research and development objectives of the contract (those for which success cannot be reasonably predicted at the time of contract award); or

(iv) The Contractor not following generally accepted industrial or engineering practices in performing routine operations as part of contract performance.

(2) The contractor's liability for failures due to causes listed in subparagraphs (h)(1)(iii) and (iv) is limited to the lesser of: (i) 50 percent of the cost to remedy the failure, or (ii) 10 percent of the contract value at the time the failure occurred.

(i) This clause shall apply in the same manner to a corrected or replacement end item or components as to work originally delivered.

(j) The Contractor has no obligation or liability under the contract to correct or replace articles not meeting contract requirements at time of delivery, except as provided in this clause or as may otherwise be specified in the contract.

(k) Unless otherwise provided in the contract, the Contractor's obligations to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

[FR Doc. 94–3514 Filed 2–16–94; 8:45 am]
BILLING CODE 7510–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC22

Endangered and Threatened Wildlife and Plants; Proposal To List the Barton Springs Salamander as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to determine endangered status for the Barton Springs salamander (*Eurycea sosorum*), known only from Barton Springs in Zilker Park, Austin, Travis County, Texas. The primary threat to this species is contamination of the waters that feed Barton Springs due to the potential for catastrophic events (such as petroleum or chemical spills) and chronic degradation resulting from urban activities. Also of concern are disturbances to the salamander's surface habitat (the waters in Barton Springs, Eliza Pool, and Sunken Garden Springs) and reduced groundwater supplies resulting from increased groundwater withdrawal. This proposal, if made final, would implement Federal protection provided by the Act for the Barton Springs salamander.

DATES: Comments from all interested parties must be received by April 18, 1994. Public hearing requests must be received by April 4, 1994.

ADDRESSES: Comments and materials concerning this proposal should be sent to the State Administrator, U.S. Fish and Wildlife Service, 611 East 6th Street, room 407, Austin, Texas 78701. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Lisa O'Donnell, U.S. Fish and Wildlife Biologist (see **ADDRESSES** section) (512/482–5436).

SUPPLEMENTARY INFORMATION:

Background

The Service proposes to list as endangered the Barton Springs salamander (*Eurycea sosorum*), under the authority of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et. seq.*). The Barton Springs salamander is entirely aquatic and neotenic, meaning it does not metamorphose into a terrestrial form and retains its bright red external gills throughout life. Adults attain an average length of 6.35 centimeters (2.5 inches). This species is slender, with slightly elongate limbs and reduced eyes. Dorsal coloration varies from pale purplish-brown or gray to yellowish-cream. Irregular spacing of dorsal pigments and pigment gaps results in a mottled, "salt and pepper" pattern (Sweet 1978, Chippindale *et al.* 1993).

The Barton Springs salamander was first collected from Barton Springs Pool in 1946 by Bryce Brown and Alvin Flury (Chippindale *et al.* 1993, Texas Parks and Wildlife Department (TPWD) 1993). Although he did not publish a formal description, Dr. Samuel Sweet (University of California at Santa Barbara) was the first to recognize the Barton Springs salamander as distinct from other central Texas *Eurycea* salamanders based on its restricted distribution and unique morphological and skeletal characteristics (such as its reduced eyes, elongate limbs, dorsal coloration, and reduced number of presacral vertebrae) (Sweet 1978, 1984). Formal description of the Barton Springs salamander, based on Sweet's work and genetic studies conducted by the University of Texas and TPWD (TPWD 1989, 1990, 1992), was published in June, 1993 (Chippindale *et al.* 1993). An adult male, collected from Barton Springs Pool in November, 1992, was selected to be the holotype.

The Barton Springs salamander is found near three of four hydrologically connected spring outlets collectively known as Barton Springs (Brune 1981). These three spring outlets are known as Parthenia, Eliza, and Sunken Garden springs and occur in Zilker Park, which is owned and operated by the City of Austin. No salamanders have been found at the fourth spring outlet, which is in Barton Creek immediately above Barton Springs Pool (Paul Chippindale and Dr. David Hillis, University of Texas at Austin; Dr. Andrew Price, TPWD; Sweet; pers. comms., 1993). The area around the main spring outlet (Parthenia Springs) was impounded in

the late 1920's to create Barton Springs Pool. Flows from Eliza and Sunken Garden springs are also retained by concrete structures, forming small pools located on either side of Barton Springs Pool. The salamander has been observed under gravel and small rocks, submerged leaves, and algae; among aquatic vegetation; and buried in organic debris, at depths of about 0.1 to 5 meters (0.3 to 16 feet) of water (Chippindale *et al.* 1993, TPWD 1993). It generally does not occur on bare limestone surfaces or in silted areas (Dr. Charles Sexton, City of Austin, Environmental Conservation Services Department, unpublished data).

Hundreds of individuals were estimated to occur in Eliza Pool during the 1970's (James Reddell, University of Texas at Austin, pers. comm. in Chippindale *et al.* 1993). The numbers apparently declined over the next decade. Fewer than a dozen and occasionally no individuals were observed during surveys conducted in Eliza Pool between 1987 and 1992 (Chippindale *et al.* 1993; TPWD 1993; Price, unpubl. data).

The Barton Springs salamander was reportedly abundant among the aquatic vegetation in the deep end of Barton Springs Pool in 1946 (Chippindale *et al.* 1993, TPWD 1993). Between 1989 and 1991, Sexton (*in litt.*, 1992) reported finding salamanders on "about one out of four [snorkeling] dives" under rock rubble immediately adjacent to the main spring outflows. On July 28, 1992, at least 50 salamanders (Hillis, pers. comm., 1993) were found over an area of roughly 400 square meters (4,300 square feet) near the spring outflows in Barton Springs Pool (TPWD 1993). Following reports of a fish kill at Barton Springs Pool on September 28, 1992 (Austin American Statesman, October 2, 1992; Daily Texan, October 13, 1992), only 10 to 11 salamanders were observed and could only be found in an area of about 5 square meters (54 square feet) in the immediate vicinity of the Parthenia Spring outflows (Chippindale *et al.* 1993, TPWD 1993). Since that event, the salamander appears to be recolonizing Barton Springs Pool, which has been attributed to recent changes in pool cleaning operations (see further discussion under Factor A). At least 80 individuals were observed during a November 16, 1992, survey and about 150 individuals were seen on November 24, 1992 (Chippindale *et al.* 1993, TPWD 1993).

The salamander was first observed at Sunken Garden Springs on January 12, 1993 (TPWD 1993). Five or fewer individuals have been sighted on any given visit to this outlet (Chippindale, pers. comm., 1993). Biologists had speculated that the salamander occurred at Sunken Garden Springs; however, no salamanders were observed during previous surveys conducted at this location between 1987 and 1992. Low water levels and the presence of large rocks and sediment in the pool reportedly make searching for salamanders difficult at this location (TPWD 1993).

The extent to which the salamander occurs in the aquifer is unknown. However, there is currently no evidence indicating that the species' range extends beyond the immediate vicinity of Barton Springs. Surveys of other spring outlets (including the spring outlet immediately above Barton Springs Pool) in the Barton Springs segment and other portions of the Edwards Aquifer have failed to locate additional populations (Chippindale *et al.* 1993; William Russell, speleologist; Hillis; Price; Sweet; pers. comms., 1993). No other species of *Eurycea* is known to occur in this portion of the aquifer.

The Barton Springs salamander's diet is believed to consist almost entirely of amphipods (Chippindale *et al.* 1993). Primary predators are believed to be fish and crayfish (Chippindale, Hillis, Price, pers. comm., 1993). Observations of larvae and females with eggs (Chippindale *et al.* 1993) indicate successful breeding is occurring. The species may breed year-round (Chippindale, pers. comm., 1993).

The water that discharges at Barton Springs originates from the Barton Springs segment of the Edwards Aquifer (hereafter referred to as the "Barton Springs segment"). The Barton Springs segment covers roughly 400 square kilometers (155 square miles) from southern Travis County to northern Hays County, Texas. The approximate boundaries are the "bad water" line to the east (where dissolved solids are less than 1,000 milligrams/l (mg/l) (1,000 parts per million) in the aquifer, but greater than this to the east); the Colorado River to the north; the geologic divide between contiguous Edwards limestones overlying the aquifer and the Glen Rose limestones to the west; and a groundwater divide occurring roughly between the Onion Creek and Blanco River watersheds to the south. The area south of the southern boundary is known as the San Antonio segment of the Edwards Aquifer and drains toward San Marcos Springs. Groundwater movement from the San Antonio segment northward to the Barton Springs segment is believed to occur only during extreme drought conditions. North of the southern boundary, the water in the aquifer moves toward Barton Springs (Slade *et al.* 1986).

Barton Springs drains about 391 square kilometers (151 square miles) of the Barton Springs segment. The remaining 10 square kilometers (4 square miles) discharge at Cold and Deep Eddy Springs and are believed to be hydrologically distinct from the area discharging to Barton Springs. Cold and Deep Eddy Springs are recharged by Dry Creek and a portion of Barton Creek. About 96 percent of all springflow from the aquifer discharges through Barton Springs. The remaining 4 percent exits through intermittent springs, most of which are located in Barton Creek between Loop 360 and Barton Springs. These springs flow only about 30 percent of the time and discharge up to 170 liters per second (l/s) (6 cubic feet per second (cfs)). The long-term mean discharge from Barton Springs is about 1,400 l/s (50 cfs), ranging from 283 l/s (10 cfs) to 4,700 l/s (166 cfs) (Slade *et al.* 1986). The mean water temperature is 20° C (68° F) (Martyn-Baker *et al.* 1992).

The Barton Springs segment is divided into two major zones, the recharge zone and artesian zone. The recharge zone is that portion of the aquifer where Edwards limestones are exposed at the surface, and covers the western 79 percent (about 233 square kilometers (90 square miles)) of the aquifer. The artesian zone is confined by an impermeable layer of Del Rio clay and covers the eastern 21 percent of the aquifer. About 85 percent of all recharge is through sinkholes, fractures, and other openings in the beds of six major creeks that cross the recharge zone, including (from north to south) Barton, Williamson, Slaughter, Bear, Little Bear, and Onion creeks. The remaining 15 percent of recharge is through tributaries and direct infiltration between the creeks (Slade *et al.* 1986).

The watersheds of the six creeks upstream (west) of the recharge zone span about 684 square kilometers (264 square miles). This area is referred to as the contributing zone and includes portions of Travis, Hays, and Blanco counties. The recharge and contributing zones make up the total area that provides water to the aquifer, which equals about 917 square kilometers (354 square miles) (Slade *et al.* 1986).

Based on streamflow studies, Onion Creek and Barton Creek contribute the greatest percentages of total recharge to the aquifer (34 percent and 28 percent, respectively). Williamson, Slaughter, Bear, and Little Bear creeks each contribute 12 percent or less to total recharge. Owing to the amount of recharge contributed by Barton Creek

and its proximity to Barton Springs, this creek has a greater impact on the water quality at the springs than any other recharge source in the Barton Springs segment (Slade *et al.* 1986).

The potential of the Edwards Aquifer to rapidly transmit large volumes of water with little filtration makes it highly susceptible to pollution (Slade *et al.* 1986). The Edwards Aquifer is a "karst" aquifer, characterized by subsurface features such as caves, sinkholes, and other conduits. The aquifer is made up of limestones that have high localized permeability and porosity. Dissolution of calcium carbonate along faults and fractures in the bedrock forms solution channels similar to an underground network of pipes. Because these subsurface "pipes" are not uniformly distributed, groundwater movement in the aquifer is highly variable, being rapid in areas where the "pipes" are large and extensive and slow where permeability and porosity are low. Transmissivity (the rate at which groundwater is transmitted through the aquifer) values for the Barton Springs segment have been estimated at 0.3 to 4,000 square meters (3 to 47,000 square feet) per day and tend to increase as one moves northward toward the springs (Slade *et al.* 1985).

Karst aquifers are also more prone to pollution than other aquifers because few materials (such as sand, gravel, and organic matter) are present to filter out pollutants (U.S. Environmental Protection Agency (EPA) 1990). Furthermore, waters entering from the surface receive little filtration from the typically thin soils overlying the aquifer (Slade *et al.* 1986). As a result, increasing urban development over the area supplying recharge waters to the Barton Springs segment can threaten water quality within the aquifer. The Texas Water Commission (TWC) has identified the Edwards Aquifer as being one of the most sensitive aquifers in Texas to groundwater pollution (TWC 1989; Margaret Hart, TWC, *in litt.*, 1991).

The Barton Springs salamander has been a Category 2 candidate species on the Service's candidate notices of review since December 30, 1982 (47 FR 58454; September 18, 1985–50 FR 37958; January 6, 1989–54 FR 554; and November 21, 1991–56 FR 58804), meaning that information then available indicated that a proposal to determine endangered or threatened status was possibly appropriate, but conclusive data on biological vulnerability and threats were not then available to support such a proposal. Through publication of the candidate notices, the Service requests any additional status information that may be available. On January 22, 1992, the Service received a petition from Dr. Mark Kirkpatrick and Ms. Barbara Mahler to list the Barton Springs salamander. The Service evaluated this petition and on November 25, 1992, determined that the petition presented information on threats indicating that the requested action may be warranted. A notice of that finding was published in the **Federal Register** on December 11, 1992 (57 FR 58779). The Service continued its status review of the species and solicited information regarding the status of the salamander. Although the **Federal Register** notice requested that comments be submitted by January 11, 1993, the Service sent out numerous notification letters indicating that it recognized additional time may be needed and requesting that pertinent information be submitted by February 10, 1993. This proposed rule constitutes the final finding on the petitioned action for the Barton Springs salamander.

Summary of Comments and Recommendations

The Service received 205 letters from individuals and agencies providing information and comments on the petition and the 90-day finding. Of the letters received, 104 were form letters stating opposition to listing, 80 were other letters opposing listing, 14 supported listing, and 7 were neutral. Some of the letters provided additional new, substantive information, which was considered in making a final determination on the petition. Major comments of a similar nature or point are grouped into a number of general issues and are presented and discussed here.

Issue 1: Several commenters requested that the Service delay or preclude listing the Barton Springs salamander because too little is known about the salamander's biology, including factors such as its range, population size and status, dietary needs, predators, longevity, reproductive success, and sensitivity to contaminants and other water quality constituents.

Response: The known range of the Barton Springs salamander is based on the most recent information available, including status surveys conducted by the University of Texas at Austin and TPWD pursuant to section 6 of the Act, and through personal communication with biologists who conducted surveys at other springs in central Texas. No new information was provided to contradict the finding that the salamander is endemic to the immediate vicinity of Barton Springs. Regarding other aspects of the species' biology, such as its population status, the Act requires a species to be determined endangered or threatened if one or more of the five factors described in section 4(a)(1) causes it to qualify under the Act's definition. Absolute population number may not be as significant in determining whether a species is endangered or threatened as knowledge that the species' entire range is threatened and cannot be preserved (see Factor A, "The present or threatened destruction, modification, or curtailment of its habitat or range," and Factor D, "The inadequacy of existing regulatory mechanisms"). Although there are still biological questions regarding the Barton Springs salamander, the Service believes that the available scientific information is sufficient for status determination and strongly supports the need to designate the salamander as an endangered species. The data that support this conclusion are presented and discussed in the "Summary of Factors Affecting the Species" section of this rule, particularly under Factor A (loss of habitat). Available information on the sensitivity of the salamander and its prey base (amphipods) to water quality deterioration is discussed under Factors A and E ("Other natural or manmade factors affecting its continued existence"). Once a species becomes listed as threatened or endangered, section 4(f) of the Act directs the Service to develop and implement a recovery plan for that species. Recovery is the process by which the decline of a listed species is arrested or reversed, and threats to its survival are eliminated or neutralized, so that its long-term survival in nature can be ensured. Further research is very often an essential component of recovery plans. The Service envisions that conducting research on the salamander's biology and other factors, such as those mentioned in this comment, will be an important part of the recovery process for this species (see Available Conservation Measures).

Issue 2: Several individuals questioned the taxonomic status of the salamander, asserting that it is still an undescribed species and may be part of the central Texas salamander (*Eurycea neotenes*) complex.

Response: Formal description of the salamander as a distinct species has withstood peer-review and was published in June, 1993 (see discussion in the Background section).

Issue 3: Several commenters stated that water quality data at Barton Springs

show no demonstrable deterioration, despite development immediately upstream from the springs, much of which occurred prior to implementation of water quality controls.

Response: The Service recognizes that, other than high levels of fecal-group bacteria and turbidity immediately following storm events, water quality at Barton Springs is considered to be very good. However, only about 3 to 4 percent of the recharge and contributing zones is currently developed. As urban development over the recharge and contributing zones increases, the threat of water quality degradation from point-source and non-point-source pollution will increase. The threat of increased urbanization over these areas and impacts on water quality in the aquifer and at Barton Springs are discussed in Factor A.

Issue 4: Most commenters opposed to the listing stated that existing State and local rules and regulations are adequate to protect the salamander and its habitat from groundwater degradation and depletion.

Response: This issue is presented and discussed in Factor D. The Service recognizes that there are several rules and regulations aimed at protecting water quality and quantity within the aquifer, and that these rules and regulations will provide some benefits to the Barton Springs salamander if adequately enforced. However, no information was presented to show that these existing rules and regulations will ensure long-term protection of water quality and quantity at Barton Springs and will be adequate to protect the salamander and its habitat. Furthermore, there are no assurances that the existing rules and regulations will remain in place and be enforced. Regarding water quantity, the Barton Springs/Edwards Aquifer Conservation District (BS/EACD) has limited enforcement authority and does not regulate 30 to 40 percent of the total volume that is pumped from the Barton Springs segment.

Issue 5: Several individuals expressed concern that listing the salamander could impose restrictions on the recreational use of Barton Springs Pool.

Response: This issue is discussed under Factor B ("Overutilization for commercial, recreational, scientific, or educational purposes"). There is currently no evidence suggesting that swimming in Barton Springs Pool will adversely impact the Barton Springs salamander. The Service maintains the position that if pool maintenance activities are conducted in such a way as to avoid impacting the salamander and its habitat (such as avoiding the application of chemicals and the use of high pressure fire hoses to clean areas inhabited by salamanders), then activities associated with swimming at Barton Springs Pool should not disturb the salamander.

Issue 6: The salamander has persisted despite past droughts, low springflows, and pollution events over the aquifer and its contributing zone and at Barton Springs (elevated fecal coliform bacteria and turbidity).

Response: The Service acknowledges that these events have occurred and that the frequency of such events is likely to increase with increasing development over the aquifer and its contributing zone. Although the salamander has survived these past events, the point at which declining water quality and quantity would cause extinction of the salamander is uncertain. Amphibians in general are highly sensitive to changes in water chemistry, and the salamander's restricted range makes it especially vulnerable to water quality deterioration. A major pollution event has the potential of eliminating the entire species and/or its prey base. Amphipods, which comprise most of the salamander's diet, are especially sensitive to water pollution (see discussion in Factor E).

Issue 7: A few commenters stated that the threat of declining aquifer levels is not substantial at Barton Springs and, in any event, no demonstrable evidence exists that lowered aquifer levels will cause a threat to the continued existence of the salamander.

Response: This issue is addressed in Factor A. Although the Service recognizes that cessation of flows is not likely at Barton Springs in the near future, increased groundwater withdrawal and resulting reduced flows are expected due to increasing urbanization over the aquifer. Reduced aquifer levels may lead to the encroachment of the "bad water" line and increased concentrations of pollutants in the aquifer.

Issue 8: Many individuals opposed listing of the salamander on the grounds that listing would undermine the success of the Balcones Canyonlands Conservation Plan (BCCP).

Response: The BCCP currently proposes to acquire land in the Barton Creek watershed, which will provide some benefits to the salamander by preserving the natural integrity of the landscape and positively contributing to water quality in Barton Creek and Barton Springs. The BCCP participants are currently working toward providing additional water quality protection for the Barton Springs salamander, including retrofitting of existing developments with non-point-source pollution control structures and protecting the aquifer and Barton Springs from catastrophic pollution events (see discussion in Factor D).

Issue 9: Some commenters expressed concern regarding economic impacts of listing the salamander and stated that economic impacts should be considered.

Response: Under section 4(b)(1)(A) of the Act, the listing process must be based solely on the best scientific information available, and economic considerations are not applicable. The legislative history of the Act clearly states the intent of Congress to "ensure" that listing decisions are "based solely upon biological criteria and to prevent non-biological considerations from affecting such decisions" (H.R. Conf. Rep. No. 97–835 for the 1982 amendments). Because the Service is specifically precluded from considering economic impacts in the listing process, the Service has not addressed such impacts in proposing to list this species.

Issue 10: The Service received one comment letter requesting that the Barton Springs salamander be emergency listed.

Response: In accordance with section 4(b)(7) of the Act, a species may be listed as threatened or endangered on an emergency basis if a significant risk to the well-being of the species is identified. Although the Service has determined that multiple threats to the salamander exist (see discussion in "Summary of Factors" section), the Service is not able to justify an emergency determination since these threats are not of such an immediate nature that the delay during the period between this proposed rule and any final rule might pose a significant risk to the well-being of the species.

Issue 11: A few commenters questioned the validity of the information and findings presented in several reports prepared by the U.S. Geological Survey (USGS) (including Slade *et al.* 1985 and 1986, Veenhuis and Slade 1990).

Response: The Service has reviewed the USGS reports used in preparation of this rule and has determined that the data were gathered and analyzed in accordance with sound scientific principles. The Service accepts these reports as valid and relevant scientific information and accepts their findings.

Issue 12: A few individuals cited a 1922 report stating that elevated levels of fecal coliform bacteria have been documented at Barton Springs since 1922 (T.U. Taylor, Austin City Water Survey, *in litt.*, 1922).

Response: According to the City of Austin's review of the 1922 report, the method used to measure bacterial counts at the time the report was prepared is different from that used today, and thus "the bacterial counts are not directly comparable to * * * current sampling" techniques (Austin Librach, City of Austin Environmental Conservation Services Department, *in litt.*, 1991). Elevated counts during the 1920's may have been due to ranching activities or poor sanitary disposal of human wastes, as well as natural sources (Librach, *in litt.*, 1991).

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Barton Springs salamander (*Eurycea sosorum*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The primary threat to the Barton Springs salamander is contamination of the waters that feed Barton Springs. A discussion of some potential effects of contaminants on the salamander and its prey base (amphipods) is provided in this section and under Factor D. Potential factors contributing to contamination of this portion of the Edwards Aquifer are catastrophic events (such as hazardous material spills) and chronic degradation resulting from urban activities. Water quality degradation can result from point-source and/or non-point-source pollution. Point-source pollution originates from identifiable areas, such as leaking pipelines. Non-point-source pollution enters the water supply through diffuse sources, such as runoff from urban areas. The EPA (1990) and TWC (1989) have identified several major potential sources of groundwater contamination, including leaking underground storage tanks, pipelines, septic tanks, and pesticide and fertilizer use. Other threats to the salamander are disturbances to its surface habitat and reduced groundwater supplies owing to increased groundwater withdrawal.

Due to the Barton Springs salamander's restricted range, one or more catastrophic spills has the potential to impact the entire species and its habitat. Catastrophic spills may result from leaking underground storage tanks, pipeline ruptures, transportation accidents, and/or other sources. Spilled materials reported to the TWC for Travis and Hays counties between 1986 and 1992 included oils, sewage, pesticides, ammonia, sodium hydroxide, hydrochloric acid, ferrous sulfate, trichloroethane, and perchloroethene. About a third of the spills involved gasoline or diesel fuel, most of which resulted from underground storage tank leaks and transportation accidents. Leaking underground storage tanks "are considered to be one of the most significant sources of groundwater contamination" in Texas (TWC 1989). The Texas Department of Agriculture (TDA) (1987) has estimated that thousands of underground storage tanks in Texas may be leaking. According to the EPA (1990), "a growing problem of substantial potential consequences is leakage from underground storage tanks and from pipelines leading to them * * * gasoline leakage has caused severe hazardous difficulties throughout the nation." The EPA (in TWC 1989) has estimated that at least 25 percent of the underground storage tanks in Texas "will ultimately be confirmed as leakers."

According to the TWC (1989), "substances spilled on the land surface can be a serious threat if the surface and subsurface materials are sufficiently permeable to permit downward movement" and if spilled materials are not promptly or adequately remediated. Transportation accidents involving hazardous materials at bridge crossings are of particular concern, since creek beds can transport spilled materials directly into the aquifer. For example, if a contaminant spill occurred at the Loop 360 bridge crossing over Barton Creek, less than 5 kilometers (3 miles) south of Barton Springs, the contaminant could reach Barton Springs within hours. The Barton Springs Task Force report to the TWC (City of Austin 1991) states that "the major fault that creates the discharge for Barton Springs crosses Barton Creek in the vicinity of Loop 360 and appears to be a significant point of recharge which may provide direct transmission, similar to pipe flow, to the Springs." Loop 360 provides a major route for transportation of petroleum and gasoline products to service stations in the Austin area.

Oil pipeline ruptures also represent a potential source of groundwater contamination. Three oil pipelines run roughly parallel to each other across the Barton Springs segment and its contributing zone and cross Barton Creek near the Hays/Travis county line. Two of these lines ruptured within the recharge zone during the 1980's, about 13 kilometers (8 miles) south of Barton Springs. These two spills constitute the largest spills reported from Hays and Travis counties between 1986 and 1992 (TWC, unpubl. data). The first major spill occurred in 1986, about 270 meters (300 yards) from Slaughter Creek, when an oil pipeline was severed during a construction operation and released about 366,000 liters (96,600 gallons) of oil. The equipment necessary to contain the spill was on-site at the time the spill occurred (Russell 1987), and about 91 percent of the spill was recovered (Rose 1986). The second pipeline break occurred in 1987 near the first spill site and released over 185,000 liters (49,000 gallons) of oil. According to the TWC database, more than 97 percent of this spill was recovered (TWC, unpubl. data). Although the effects of these two spills on the Barton Springs salamander are unknown, similar spills that are not immediately remediated could adversely impact the salamander and its habitat.

Peter Rose (1986), a geologist who has studied the effects of pipeline oil spills on the Edwards Aquifer, has estimated that oil spills of 160,000 liters (42,000 gallons) or more pose a "reasonable danger" of entering and contaminating the Edwards Aquifer. "Free oil entering an unconfined aquifer would be expected to spread and travel in the direction of water flow, emerging eventually at springs * * *" (Rose 1986). Oil is highly toxic to aquatic life (Pyastolova and Danilova 1987). A study of the effects of oil on the sharp-snouted frog (*Rana arvalis*) showed that "the presence of crude oil in an aquatic environment, even in small amounts (0.05 ml/l) exerts an unfavorable influence on both embryonic and larval development" of the frog, including increased mortality and appearance of deformities (Pyastolova and Danilova 1987). Because of physiological similarities among amphibian larvae, the Barton Springs salamander may exhibit similar or possibly more severe reactions.

The conveyance and treatment of sewage in the watershed, particularly in the recharge zone, may also result in the impairment of local water quality and negative effects to the Barton Springs salamander. In 1982, high levels of fecal coliform bacteria at Barton Springs were attributed to a sewerline leak upstream from Barton Springs Pool. While fecal coliform bacteria are believed to be harmless, they may indicate the presence of other organisms that are pathogenic to aquatic life (Slade *et al.* 1986), some of which may pose a threat to salamanders and/or their prey base.

The USGS has stated that because "there are many sewerlines near the springs, fecal coliform contamination of the springs may be a recurring problem" (Slade *et al.* 1986). There are over 145 kilometers (90 miles) of wastewater lines in the recharge zone of the Barton Springs segment (Maureen McReynolds, City of Austin Water and Wastewater Utility, pers. comm., 1993).

Once an aquifer is contaminated, it can be very difficult to remediate. TDA (1987) maintains that "contaminated groundwater can be extremely difficult and expensive, and in some cases even impossible, to clean up. The only way to maintain groundwater quality is to prevent contamination in the first place." Regarding the effects of oil pipeline spills on the Edwards Aquifer, "* * * for all practical purposes, once spilled oil has been introduced into a cavernous carbonate aquifer, only time and nature can take care of the cleanup job" (Rose 1986).

Major contaminant spills that are not quickly remediated could enter the aquifer and contaminate the waters feeding Barton Springs. Response times to hazardous materials spills vary, depending on several factors, including detection capability, location and size of the spill, weather conditions, whether or not the spill is reported, and the party performing the cleanup. Generally, cleanup is initiated within several hours following detection of a spill, but many weeks may be necessary to complete the effort. In some cases in Travis County, cleanup of leaking storage tanks was not initiated until two months following leak detection (Philip Winsborough, TWC, pers. comm., 1993). In other cases, such as the oil pipeline ruptures that occurred within the recharge zone, cleanup was initiated the same day the spill was detected and completed the following day.

Chronic water quality degradation of the aquifer resulting from increasing urban activities (including roadway, residential, commercial, and industrial development) may also lead to contamination of the waters feeding Barton Springs (see also discussion under Factor D). Because of the characteristics of karst aquifers discussed in the Background section, Barton Springs is believed to be "heavily influenced by the quality and quantity of runoff," particularly in the recharge zone (City of Austin 1991). A report by USGS (Veenhuis and Slade 1990) on the relationship between urbanization and surface water quality in several streams throughout the Austin area (10 of 18 sample sites were along streams in the Barton Springs segment and its contributing zone) demonstrates that increases in impervious cover can lead to large increases in pollutant runoff. This is indicated in several streams with increased levels of suspended solids, biochemical oxygen demand, total organic carbon, total nitrogen, total phosphorus, fecal-group bacteria, inorganic trace elements, and synthetic compounds. A preliminary review of water quality data for 15 wells in the Barton Springs segment also suggests that increasing impervious cover has resulted in increased concentrations of certain water quality constituents in the groundwater, including total nitrogen and total phosphorus (USGS 1992). These changes in groundwater quality may indicate future water quality changes at Barton Springs as development increases across the recharge and contributing zones.

Of the six creeks providing recharge to Barton Springs, Barton Creek has received the most intense development. The TWC has identified nutrients, fecal coliform bacteria, sediment, oil, and grease in Barton Creek, originating from rangeland, golf course runoff, highway construction, and highway runoff (Barbara Britton, TWC, *in litt.*, 1992). Increases in fecal coliform bacteria, nutrients (nitrogen and phosphorus), turbidity, and algal growth have been documented along Barton Creek between Highway 71 and Loop 360 and are primarily due to sewage effluent irrigation and construction activities in this area (City of Austin 1991; Librach, *in litt.*, 1990). Changes in the aquatic invertebrate community along this portion of Barton Creek have also been attributed to golf course runoff (Librach, *in litt.*, 1990) and insecticide use (Dr. Chris Durden, Texas Memorial Museum, *in litt.*, 1991). These reported changes are significant because water quality at Barton Springs responds rapidly to changes in the quality of water contributed by Barton Creek. Groundwater originating from Barton Creek remains in the aquifer for short periods before discharging at the springs. Thus, there is little time for dilution or chemical breakdown of pollutants before discharging at Barton Springs (Slade *et al.* 1986).

Existing land use in the recharge and contributing zones has resulted in recurring fecal-group bacteria contamination and high turbidity (a measure of suspended solids or sediment) at Barton Springs (Slade *et al.* 1986). Data suggest that bacteria and turbidity at Barton Springs increase significantly during storm events. Stormwater runoff has been identified as the major source of fecal coliform pollution at Barton Springs (City of Austin 1991). The level of nitrates at Barton Springs has also increased slightly from about 1.0 mg/l (measured as nitrate nitrogen) prior to 1955 to the current level of about 1.5 mg/l (Slade *et al.* 1986). Increased nutrients may promote the growth of bacteria, algae, and nuisance aquatic plants (Slade *et al.* 1986), which could reduce the dissolved oxygen available to the salamander. In Barton Springs Pool, the routine cleaning procedure necessary to remove algal growth may itself adversely impact the salamander and its habitat (see further discussion later in this section).

High turbidity at Barton Springs has been attributed to construction activity in the Barton Springs segment (Slade *et al.* 1986, City of Austin 1991). Sources of turbidity are believed to be "primarily limited to 126 square miles [326 square kilometers] of the Barton Creek and immediately adjacent watersheds in the recharge zone" (City of Austin 1991). Sediments have been observed emanating directly from the spring outlets in Barton Springs Pool (Doyle Mosier, LCRA; Debbie Dorsey, City of Austin Parks and Recreation Department; pers. comms., 1993). Potential problems resulting from increased sediment loads include (1) reduction of the salamander's habitat by covering substrates on which salamanders, their prey, and/or certain aquatic plants occur; (2) clogging of the salamander's gills, causing asphyxiation (Garton 1977), and smothering of eggs; (3) filling and blocking of underground conduits, restricting groundwater availability and movement; and (4) exposure of aquatic life to certain heavy metals and other toxins that readily bind to sediments. Contaminants that adsorb to the surface of sediments may be transported through the aquifer and later be released back into the water column.

Aside from high levels of fecal-group bacteria and turbidity immediately following storm events, the water quality at Barton Springs is considered to be very good (Slade *et al.* 1986, City of Austin 1991). However, only about 3 to 4 percent of the recharge and contributing zones is currently developed (USGS 1992), and both of these areas are under increasing pressure from urbanization (City of Austin 1988, Veenhuis and Slade 1990). The City of Austin has projected that the Austin metropolitan area will support a population of about 1.9 million by the year 2020, up from 577,000 in 1982 (City of Austin Planning Department, in Veenhuis and Slade 1990). Further development or urbanization in the recharge and contributing zones of the Barton Springs segment is likely to

increase the chance of a major pollution event as well as chronic water quality decline in this area and thus increase the levels of pollutants reaching Barton Creek, other creeks serving as recharge paths, and Barton Springs (see also discussion under Factor D). The USGS (1992) has stated that "much development is projected for the source area of Barton Springs * * *. [Thus] changes in water quality of Barton Springs * * * [are] possible in the near future."

Water quality is highly variable throughout the Barton Springs segment and waters flowing from Barton Springs represent a mixture of these waters, originating primarily from the six streams crossing the recharge zone. Although much development has occurred along Barton Creek near Barton Springs, these waters are diluted by recharge waters from less developed watersheds, such as Onion Creek. Little development has occurred along Onion Creek, which, although farthest from the springs, contributes about 34 percent of the recharge waters (Slade *et al.* 1986). According to the Capital Area Planning Council (CAPCO), Hays County experienced "tremendous growth" in the 1980's and has the second highest growth rate in the 10-county CAPCO region. Dripping Springs, which is located in the contributing zone between Onion Creek and Barton Creek, "will likely continue to experience a high rate of growth as development continues along U.S. 290 from the Oak Hill area westward" (CAPCO 1990). As development across these watersheds increases, the ability of the aquifer to dilute pollutants will continue to decrease. This decreased ability will likely be further compounded by increased pumping and/or drought conditions.

Another threat to the salamander is the degradation of its surface habitat, particularly at Barton Springs Pool and Eliza Pool. Following reports of a fish kill in Barton Springs Pool on September 28, 1992 (Austin American Statesman, October 2, 1992; Daily Texan, October 13, 1992), the salamander's surface range contracted from about a 400 square meter (4,300 square foot) area to about a 5 square meter (50 square foot) area immediately around the outflow of the spring (see discussion in Background). The fish kill has been attributed to the improper application of chlorine used to clean Barton Springs Pool (Chippindale et al. 1993, TPWD 1993). Previous fish kills, although rare events, have also occurred at Barton Springs Pool (Robert Sapronyi, City of Austin Parks and Recreation Department, pers. comm., 1992). Other cleaning procedures and park operations that may have had adverse impacts on the salamander and its surface habitat include lowering the water levels in Barton Springs Pool and Eliza Pool for cleaning, use of high pressure fire hoses in areas where salamanders are found, and removal of aquatic vegetation from Eliza Pool. Runoff from the area above Eliza Pool, which includes a maintenance area and concession stand for the Zilker Eagle train, may also have contributed to the decline in numbers of salamanders found at this location.

Following the September 28 fish kill, the City of Austin discontinued the use of chlorine to clean Barton Springs Pool and Eliza Pool. The City of Austin is continuing to revise its pool maintenance practices in order to protect the salamander and its habitat, as well as maintain a safe environment for swimmers (Camille Barnett, City of Austin, *in litt.*, 1993). Cleaning practices at Eliza Pool and other park operations near this pool are also being reevaluated.

Another change that has been observed at Barton Springs is the loss of aquatic vascular plants in Barton Springs Pool, where salamanders were reportedly abundant in 1946. The plants disappeared during the late 1980's (Chippindale et al. 1993). The cause of the disappearance is unknown and may be due to changes in water quality originating upstream (such as increased turbidity), certain pool maintenance operations, and/or other factors. Aquatic plants are important because they provide cover where salamanders can hide from predators. Amphipods and other invertebrates that form the diet of salamanders also depend on aquatic vegetation (Hillis and Chippindale 1992).

Reduced water levels in the Barton Springs segment could also adversely impact the Barton Springs salamander. The volume of springflow is self-regulated by the level of water in the aquifer. Discharge decreases as water storage in the aquifer drops, which historically has been due primarily to the lack of recharging rains rather than groundwater withdrawal for public consumption (Slade et al. 1986). Reduced aquifer levels may lead to the movement of water with high levels of total dissolved solids from the "bad water" zone to the freshwater zone of the Barton Springs segment, including Barton Springs (Slade et al. 1986). The increased concentration of dissolved solids resulting from this encroachment of "bad water" could have negative impacts on the plants and animals associated with Barton Springs. Reduced groundwater levels would also increase the concentration of pollutants in the aquifer.

The potential for "bad water" encroachment is increased with (a) pumpage of the aquifer and (b) extended low recharge or low flow conditions (Slade et al. 1986). Barton Springs lies near the "bad water" line. Under low flow conditions, Barton Springs and a well near the "bad water" line (YD–58–50–216) show increased dissolved solid concentrations, particularly sodium and chloride, indicating that some encroachment of "bad water" has occurred at Barton Springs in the past (Slade et al. 1986).

According to the Barton Springs/Edwards Aquifer Conservation District (BS/EACD) (1990), pumpage from the aquifer has increased in recent years, resulting in decreased discharges from Barton Springs. The USGS has stated that groundwater withdrawal in the area is expected to increase because of further urbanization in outlying areas of Austin. Currently, discharge from the Barton Springs segment (withdrawal plus springflow) is roughly equal to recharge. Thus, an increase in groundwater withdrawal is likely to cause a decrease in the quantity of water in the aquifer and discharge from Barton Springs (Slade et al. 1986). Based on the current population projection, water demands could almost double by the year 2000 (from about 470 hectare-meters/year (3,800 acre-feet/year) in 1982 to about 760 hectare-meters/year (6,200 acre-feet/year)) (Slade et al. 1986).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* No threat from overutilization of this species is known to exist at this time. Several citizens have expressed concern over impacts to the salamander from recreational use of Barton Springs Pool for swimming. However, no evidence exists to indicate that swimming in Barton Springs Pool poses a threat to the salamander population. Provided that pool maintenance activities do not adversely impact the salamander and its habitat (see discussion under Factor A), swimming at Barton Springs Pool is not likely to disturb the salamander.

C. *Disease or predation.* Certain naturally occurring populations as well as captive individuals of *Eurycea neotenes* have shown symptoms of redleg, a bacterial (*Aeromonas* sp.) infection (Sweet 1978). The Barton Springs salamander may also be susceptible to this disease, although no diseases or parasites of the Barton Springs salamander have been reported. Primary predators of the Barton Springs

salamander are believed to be fish and crayfish; however, no information exists to indicate that predation poses a major threat to this species.

D. *The inadequacy of existing regulatory mechanisms.* No existing rules or regulations specifically require protection of the Barton Springs salamander or its habitat. The salamander is not included on the TPWD's list of threatened and endangered species, and thus the species is not afforded protection by that agency. Several individuals who provided comments on the 90-day finding stated that existing state and local regulations are sufficient to mitigate potential water quality threats resulting from development activities in the Barton Springs segment and contributing zone. However, while there are many existing rules and regulations in place that will likely contribute positively to water quality and quantity, there are no assurances that they are adequate to protect the salamander and its habitat. Furthermore, whether the existing rules and regulations can provide long-term protection of the quality and quantity of the waters feeding Barton Springs is unknown.

There are few measures in place to prevent the risk of hazardous material spills across the recharge and contributing zones. No regulations prohibit the transportation of hazardous materials across the Barton Springs segment (Tom Word, Texas Department of Transportation (TxDOT), pers. comm., 1993), and few existing roads have water quality control structures (such as hazardous materials traps, sediment basins, and filters) to protect against non-point-source pollution and chemical spills (Shyra Darr, Travis County Public Improvements and Transportation Department (PITD), *in litt.*, 1993; Barnett, *in litt.*, 1993; Roland Gamble, TxDOT, *in litt.*, 1993). Travis County and TxDOT have agreed to install water quality devices on new State and county roadway construction projects in the recharge zone (Barnett, *in litt.*, 1993; David Pimentel, PITD, *in litt.*, 1993; Gamble, *in litt.*, 1993). However, no program is currently in place to retrofit these water quality control structures on existing roadways in the Barton Springs segment (Barnett, *in litt.*, 1993). In addition, the effectiveness of these water quality control structures has not yet been determined (Gamble, *in litt.*, 1993).

The major regulations affecting water quality in the Barton Springs segment include the Edwards Rules (31 Texas Administrative Code, Chapter 313), which are promulgated and enforced by the TWC, and the City of Austin's water quality protective ordinances (Williamson Creek Ordinance (1980), Barton Creek Watershed Ordinance (1981), Lower Watersheds Ordinance (1981), Comprehensive Watersheds Ordinance (1986), "Composite Ordinance" (1991), and the "Save Our Springs" ("SOS") Ordinance (1992)). These ordinances are only implemented within Austin's city limits and five-mile extra-territorial jurisdiction, which is about a third of the entire area affecting Barton Springs. Each ordinance includes impervious cover limitations, development setbacks from water quality zones, erosion control measures, restricted or prohibited development on steep slopes, and other water quality protective measures. However, none of the ordinances include retrofit provisions for existing developments or land use regulations (Barnett, *in litt.*, 1993). Furthermore, the ordinances can be rendered ineffective by variance provisions and exemptions. The SOS Ordinance requires greater impervious cover limitations, further development restrictions in the water quality zones of Barton Creek, and limitations of exemptions from the ordinance provisions, and will attempt to reduce the risk of accidental contamination (Barnett, *in litt.*, 1993).

The Edwards Rules regulate construction-related activities on the recharge zone that may "alter or disturb the topographic, geologic, or existing recharge characteristics of a site" as well as any other activity "which may pose a potential for contaminating the Edwards Aquifer," including sewage collection systems and hazardous materials storage tanks. The Edwards Rules regulate construction activities through review of Water Pollution Abatement Plans (WPAPs). The WPAPs do not require site-specific water quality performance standards for developments over the recharge zone nor do they address land use, impervious cover limitations, or retrofitting for developments existing prior to the implementation of the Rules. (Travis County was not incorporated into the Rules until March, 1990; Hays County was incorporated in 1984.) The WPAPs also do not regulate development activities in the aquifer's contributing zone. As yet, the Edwards Rules do not include a comprehensive plan to address the effects of cumulative impacts on water quality in the aquifer.

The long-term success of the watershed ordinances and the Edwards Rules in protecting water quality is unknown. Based on the water quality data and changes observed in Barton Creek (see discussion under Factor A), some level of water quality degradation in this area has already occurred (City of Austin 1991; Librach, *in litt.*, 1990). Even if the Edwards Rules and the watershed ordinances are determined to be effective at protecting water quality, about 50 percent of the area (most of which occurs in Hays County) affecting the waters of the aquifer and Barton Springs is not covered by these City and State rules and regulations. Hays County recently filed a lawsuit against the City of Austin to remove Hays County from the city's extra-territorial jurisdiction, which would further reduce the area covered by the watershed ordinances.

Furthermore, there is no guarantee that the SOS Ordinance or any of the preceding ordinances will remain in effect. A lawsuit has been filed to invalidate the SOS Ordinance. Several bills have also been proposed in the Texas Legislature aimed at restricting local environmental regulatory powers, and could prevent the City of Austin and other local governments from implementing water quality protection ordinances such as the SOS ordinance.

The Balcones Canyonlands Conservation Plan (BCCP) is being developed for Travis County to obtain a section 10(a)(1)(B) permit allowing incidental taking of certain endangered species. Parties involved in the preparation of the BCCP are TPWD, City of Austin, Travis County, and Lower Colorado River Authority. The current draft regional plan does not explicitly provide for conservation of the Barton Springs salamander (City of Austin *et al.* 1993). Proposals to acquire land within the Barton Creek watershed will provide benefits to the salamander by preserving the natural integrity of the landscape and positively contributing to water quality in Barton Creek and Barton Springs. The BCCP participants are currently working toward providing additional surface and groundwater quality protection, including retrofitting existing developments with non-point pollution controls and protecting the aquifer and Barton Springs from catastrophic pollution events. The BCCP has not yet been completed or approved and applies only to Travis County. The BCCP does not remove threats from development activities in Hays County.

While the City of Austin has voluntarily committed to revising pool cleaning and other maintenance operations in Zilker Park to assist in protecting the salamander and its surface habitat, no legal agreement or other incentive is in place to ensure that these efforts will continue for the long term.

To protect water quantity in the Barton Springs segment, the BS/EACD has developed a Drought Contingency

Plan. Barton Springs has always flowed during recorded history and one of the BS/EACD's goals is to assure Barton Springs springflow "does not fall appreciably below historic low levels" (BS/EACD 1990). The BS/EACD regulates municipal and industrial wells that pump more than 10,000 gallons per day (about 60–70 percent of the total volume that is pumped from the Barton Springs segment) and has the ability to limit development of new wells, impose water conservation measures, and curtail pumpage from these wells during drought conditions. According to the BS/EACD (Bill Couch, BS/EACD, pers. comm., 1992), water well production in the higher elevations of the Barton Springs segment has been limited during periods of lower aquifer levels in recent years. However, the ability of the BS/EACD to ensure the plan's success is limited, since it has limited enforcement authority and does not regulate 30 to 40 percent of the total volume that is pumped from the Barton Springs segment. Furthermore, the BS/EACD is not authorized to curtail groundwater withdrawal specifically for the protection of the Barton Springs salamander and its habitat.

E. *Other natural or manmade factors affecting its continued existence.* The very restricted range of the Barton Springs salamander makes this species especially vulnerable to acute and/or chronic groundwater contamination. Since the salamander is an aquatic species, there is no possibility for escape from contamination or other threats to its habitat. A single incident (such as a contaminant spill) has the potential to eliminate the entire species and/or its prey base. Crustaceans, particularly amphipods, on which the salamander feeds, are especially sensitive to water pollution (Mayer and Ellersieck 1986). Based on acute static toxicity data for 63 species tested against 174 chemicals, the Service (Mayer and Ellersieck 1986) has identified amphipods as being the third most sensitive taxonomic group tested.

The effects of environmental contaminants on amphibians has not been well documented, and the toxic effects of most chemicals is unknown. However, current research indicates that amphibians, particularly their eggs and larvae, are sensitive to many of the pollutants that have been tested, such as heavy metals; certain insecticides, particularly cyclodienes (endosulfan, endrin, toxaphene, and dieldrin) and certain organophosphates (parathion, malathion); nitrite; salts; and oil (Harfenist *et al.* 1989). Regarding pesticides, Christine Bishop (Canadian Wildlife Service) states that "the health of amphibians can suffer from exposure to pesticides (Harfenist *et al.* 1989). Because of their semipermeable skin, the development of their eggs and larvae in water, and their position in the food web, amphibians can be exposed to waterborne and airborne pollutants in their breeding and foraging habitats * * * [Furthermore] pesticides probably change the quality and quantity of amphibian food and habitat" (Bishop and Pettit 1992). Toxic effects to amphibians from pollutants may include morphological and developmental aberrations, lowered reproduction and survival, and changes in behavior and certain biochemical processes.

Available information on the effects of contaminants on central Texas *Eurycea* salamanders indicates that these species are very sensitive to changes in water quality. Captive *Eurycea* species, including the Barton Springs salamander, appear to be especially sensitive to changes in water quality and are "quite delicate and difficult to keep alive" (Sweet, *in litt.*, 1993). Sweet reported that captive individuals exhibit toxic reactions to plastic containers, aged tapwater, and detergent residues. The water in which these salamanders are kept also requires frequent changing. The lack of success in attempts at captive propagation of the Barton Springs salamander (Price, pers. comm., 1992) and the San Marcos salamander (*Eurycea nana*) (Janet Nelson, Southwest Texas State University, pers. comm., 1992) may be due to these species' sensitivity to environmental stress. As discussed under Factor A, the Barton Springs salamander also appears to be sensitive to chlorine (Chippindale *et al.* 1993, TPWD 1993).

Recent contamination at Stillhouse Hollow Preserve also demonstrates the sensitivity of *Eurycea* salamanders to changes in water quality. This event appears to have resulted in the decline of a spring population of another species of *Eurycea* found north of the Colorado River (locally known as the "Jollyville Plateau salamander"). The preserve contains two spring outlets, the larger of which has supported an abundant salamander population; a few individuals are typically found at the smaller spring (Hillis and Price, pers. comms., 1993). During a routine inspection of this property on November 19, 1992, a City of Austin employee reported "large amounts of foam" emanating from the larger spring outlet (Mike Kalender, City of Austin Parks and Recreation Department, pers. comm., 1993). The type and source of the contaminant is unknown (Chuck Lesniak, City of Austin Environmental and Conservation Services Department, pers. comm., 1993). Despite repeated search efforts following the incident, no salamanders were observed at or below this spring outlet until over three months later (February 24, 1993), when two individuals were observed (Hillis, Kalender, and Price, pers. comms., 1993).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. The best scientific data indicate that the Barton Springs salamander faces multiple threats from declining water quality and quantity and therefore warrants listing. Based on this evaluation, the preferred action is to list the Barton Springs salamander as endangered. A decision to take no action would constitute failure to properly classify this species pursuant to the Endangered Species Act and would exclude the salamander from protection provided by the Act. A decision to propose threatened status would not adequately reflect its restricted distribution, vulnerability of habitat, and multiplicity of threats that confront it. For the reason given below, critical habitat designation for the Barton Springs salamander is not being proposed.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service's listing regulations at 50 CFR 424.12(a)(1) specify that designation of critical habitat is not prudent when such designation would not be beneficial to the species. The Service finds that designation of the springs occupied by the Barton Springs salamander as critical habitat would not be prudent because it would not provide a conservation benefit to the species, and would actually be detrimental to the species by suggesting a misleadingly restricted view of its true conservation needs.

Designation of Barton Springs as critical habitat would not provide a conservation benefit to the Barton Springs salamander beyond benefits provided by listing and the subsequent evaluation of activities under section 7 of the Act for possible jeopardy to the species. In the Service's section 7 regulations at 50 CFR 402, the definition of "jeopardize the continuing existence" includes "to reduce appreciably the likelihood of both the survival and

recovery of the listed species," and "adverse modification" is defined as "a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species." Because the species is endemic to such a highly localized area, actions that appreciably diminish water quality and quantity at Barton Springs would be fully evaluated for their effects on the salamander through analysis of whether the actions would be likely to jeopardize the continuing existence of the species. Any action that would appreciably diminish the value, in quality or quantity, of flows from Barton Springs would also reduce appreciably the likelihood of survival and recovery of the Barton Springs salamander. The analysis for possible jeopardy applied to the Barton Springs salamander would therefore be identical to the section 7 analysis for determining adverse modification or destruction of critical habitat; no distinction between jeopardy and adverse modification for activities impacting the waters of Barton Springs can be made at this time. Application of section 7 relative to critical habitat would therefore not add measurable protection to the species beyond what is achievable through review for jeopardy.

Designation of the springs and their immediate environment as critical habitat would actually be detrimental to conservation efforts for the Barton Springs salamander, because it would promote the misconception that the Barton Springs are the only areas important to the conservation of the species. Conservation efforts for the species must address a wide variety of federally funded or authorized activities (summarized in the "Available Conservation Measures" section of this proposed rule) that affect the quality and quantity of water available to the species through their effects on the recharge sources and aquifer that supply water to the habitat of the salamander. Nearly all of these activities will occur beyond the immediate vicinity of Barton Springs, and some will occur several miles away. Designation of Barton Springs as critical habitat would be misleading in implying to federal agencies whose activities may affect the Barton Springs salamander that the Service's concern for the species is limited only to activities taking place at the springs occupied by the species. Designation of Barton Springs as critical habitat would therefore not be prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Conservation and management of the Barton Springs salamander is likely to involve removing threats to the survival of the salamander, including (1) protecting the quality of springflow from Barton Springs by implementing comprehensive programs to control and reduce point sources and non-point sources of pollution throughout the Barton Springs segment of the Edwards Aquifer, (2) minimizing the likelihood of pollution events that would affect groundwater quality, (3) continuing to protect groundwater and springflow quantity by implementing water conservation and drought contingency plans throughout the Barton Springs segment, and (4) continuing to examine and implement pool cleaning practices and other park operations that protect and perpetuate the salamander's surface habitat and population. It is also anticipated that listing will encourage research on the Barton Springs salamander's distribution within the aquifer and critical aspects of its biology (e.g., longevity, natality, sources of mortality, feeding ecology, and sensitivity to contaminants and other water quality constituents).

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Potential activities that may affect the salamander and its habitat include (1) urban development over the recharge and contributing zones that may lead to contamination of the species' water supply through one or more accidental contaminant spills or chronic water quality degradation, (2) increased groundwater withdrawal leading to reduced groundwater levels and springflow (compounded if drought occurs), and (3) certain pool maintenance practices or other activities that may impact the salamander and its surface habitat (such as use of chemicals and high pressure hoses in areas occupied by salamanders and removal of substrates used for cover). Federal agency actions that may require conference and/or consultation as described in the preceding paragraph include Army Corps of Engineers involvement in projects such as the construction of roads, bridges, and dredging projects subject to section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*) and section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 *et seq.*), pipeline projects, U.S. Environmental Protection Agency authorized discharges under the National Pollutant Discharge Elimination System (NPDES), and Soil Conservation Service and U.S. Housing and Urban Development projects.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in the course of otherwise lawful activities. This species

is not in trade, and such permit requests are not expected.

Requests for copies of the regulations regarding listed wildlife and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, room 420C, 4401 N. Fairfax Drive, Arlington, Virginia 22203 (703/358–2104; FAX 703/358–2281).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the Barton Springs salamander;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the Barton Springs segment of the Edwards Aquifer, its contributing zone, and the area around Barton Springs and possible impacts on this species resulting from these activities.

Final promulgation of the regulations on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to State Administrator, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Austin Ecological Services Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Lisa O'Donnell, U.S. Fish and Wildlife Service (see **ADDRESSES** section) (512/482–5436).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. § 17.11(h) is amended by adding the following, in alphabetical order under Amphibians, to the List of Endangered and Threatened Wildlife, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Amphibians							
•	•	•	•	•		•	•
Salamander, Barton Springs.	*Eurycea sosorum*	U.S.A. (TX)	Entire	E		NA	NA
•	•	•	•	•		•	•

Dated: February 9, 1994.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–3635 Filed 2–16–94; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 59, No. 33
Thursday, February 17, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Westslope Timber Sale, Plumas National Forest; Environmental Impact Statement Cancellation

The Plumas National Forest is no longer involved in the preparation of an Environmental Impact Statement for the Westslope Timber Sale.

The notice of Intent, published in the **Federal Register** on March 5, 1991, is hereby rescinded (56 FR 9194).

FOR FURTHER INFORMATION CONTACT: R.C. Bennett, Environmental Coordinator, Plumas National Forest, Box 11500, Quincy, CA 95971, telephone (916) 283–2050.

Dated: January 22, 1994.

H. Wayne Thornton,

Forest Supervisor.

[FR Doc. 94–3671 Filed 2–16–94; 8:45 am]

BILLING CODE 3410–11–M

SerCan Timber Sale, Plumas National Forest; Environmental Impact Statement Cancellation

The Plumas National Forest is no longer involved in the paration of an Environmental Impact Statement for the SerCan Timber Sale.

The notice of Intent, published in the **Federal Register** on March 23, 1989, is hereby rescinded (54 FR 11981).

FOR FURTHER INFORMATION CONTACT: R.C. Bennett, Environmental Coordinator, Plumas National Forest, Box 11500, Quincy, CA 95971, telephone (916) 283–2050.

Dated: January 22, 1994.

H. Wayne Thornton,

Forest Supervisor.

[FR Doc. 94–3672 Filed 2–16–94; 8:45 am]

BILLING CODE 3410–11–M

Saddle Timber Sale, Plumas National Forest; Environmental Impact Statement Cancellation

The Plumas National Forest is no longer involved in the preparation of an Environmental Impact Statement for the Saddle Timber Sale.

The notice of Intent, published in the **Federal Register** on February 3, 1989, is hereby rescinded (54 FR 9194).

FOR FURTHER INFORMATION CONTACT: R.C. Bennett, Environmental Coordinator, Plumas National Forest, Box 11500, Quincy, CA 95971, telephone (916) 283–2050.

Dated: January 22, 1994.

H. Wayne Thornton,

Forest Supervisor.

[FR Doc. 94–3673 Filed 2–16–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requested to conduct administrative review of various antidumping and countervailing duty orders, findings and suspension agreements with January anniversary dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: February 17, 1994.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–2104.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) has received timely requests, in accordance with §§ 353.22(a) and 355.22(a) of the Department's regulations, for administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements with January anniversary dates.

Initiation of Reviews

In accordance with §§ 353.22(c) and 355.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders, findings, and suspension agreements. We intend to issue the final results of these reviews not later than January 31, 1995.

Antidumping duty proceedings	Period to be reviewed
Canada:	
Brass Sheet and Strip A–122–601:	
Wolverine Tube (Canada) Inc.	1/1/93–12/31/93
Color Picture Tubes A–122–605:	
Mitsubishi Electric Corporation	1/1/93–12/31/93
The Republic of Korea:	
Stainless Steel Cooking Ware A–580–601:	
Daelim Trading Company, Ltd	1/1/93– 12/31/93
The People's Republic of China:	

Antidumping duty proceedings	Period to be reviewed
Potassium Permanganate A–570–001:	
China National Chemicals Import and Export Corporation	1/1/93– 12/31/93
Beijing Dayu Chemical Plant.	
Changsha Organic Chemical Plant.	
Chongqing Jialing Chemical Plant.	
Jinan Huaiyin Chemical General Factory.	
Jinan Tailu Chemical Industry Projects Co., Ltd.	
Shenzhan Metals Materials Co.	
Tianjin Haiyang Chemical Plant.	
Tongji Chemical Plant.	
Zunyi Chemical Plant.	
Calberson Intl.	
Chemical Spa.	
China National Chemicals.	
China National Foreign Trade.	
China Conic.	
Daher Oriental Lines.	
Guangzhou Chemicals.	
Guangdong Foreign Trading Development.	
Guangdong Foreign Economics Development Company Ltd.	
Guangzhou Chemicals.	
Guangdong Foreign Economic Relations & Trade Consultancy Corporation.	
Guangzi Import & Export Trading Corporation.	
Guilin Native Produce & Animal.	
China Native Produce and Animal By-Products I/E Corporation, Fuilin Branch.	
Guilin Prefecture Foreign Economic.	
Guangxi Zhuang Autonomous Region.	
Hei Long Jiang Machinery Imports Exports.	
Helm Products.	
Hunan Golden Glove International.	
Hunan Chemicals & Medicines.	
Mitrans.	
Sinchart.	
Strong Guide.	
Yue Xiu Chemicals.	
AEL Asia Express (HK) Ltd.	
Anduk Industry Supply Co. Ltd.	
Asia Express Company.	
Asia Express Packages.	
Ava International.	
BBT.	
Chemetal.	
Ceylon Shpg.	
Chemproha Chemical Distributors Ltd.	
Continental Freight Forwarders.	
Devoted Cargo Services (HK) Ltd.	
Dynamic Freight Services Ltd.	
Far Ocean Trading Co..	
Globe Ind..	
Go Up Company.	
Gui Da Company Ltd.	
Helmag AG.	
Hip Fung Trading Company.	
He-Ro Chemicals Ltd.	
ICD Group (HK) Ltd.	
International Merona Ltd.	
J.A. Moeller (HK) Ltd.	
K L & Company.	
Kenwa Shipping Co. Ltd.	
Landyet Company, Ltd.	
LP & Assoc Intl Freight Service.	
M & R Forwarding (HK) Ltd.	
Mayer Shipping Ltd.	
Meikien Trading Co. Ltd.	
Newesdean Trading Co. Ltd.	
Pan Air & Sea Forwarders (HK) Ltd.	
Power Shipping Co..	
Progressive Resources Ltd.	
Pacific Champion Express.	
Reimer Martens.	
Sam Wing International, Ltd.	
Santex Import & Export Co..	

Antidumping duty proceedings	Period to be reviewed
Seagull Container Line.	
Shinyei Shipping.	
Shipair Express.	
Sidneyson Ltd.	
Sunstar Int'l Trading.	
Sunway Lines.	
Thompson Express.	
Tin Sing Chemical Engineers, Ltd.	
Trans Ocean Pacific Fwdg.	
Vincent Shipping Co..	
Wincomfort.	
Yue Pak Co., Ltd.	
All other exporters of potassium permanganate from the People's Republic of China are conditionally covered by this review.	
Countervailing Duty Proceedings:	
Thailand:	
Butt-Weld Pipe Fittings C–549–804	1/1/93–12/31/93
Suspension Agreements	
Colombia:	
Miniature Carnations C–301–601	1/1/93–12/31/93
Roses and Other Fresh Cut Flowers C–301–003	1/1/93–12/31/93
Hungary:	
Truck Trailer Axle-and-Brake Assemblies A–437–001	1/1/93–12/31/93

Interested parties must submit applications for disclosure under administrative protective orders in accordance with §§ 353.34(b) and 355.34(b) of the Department's regulations.

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) (1993).

Dated: February 9, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–3573 Filed 2–16–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–583–810]

Chrome-Plated Lug Nuts From Taiwan

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and partial termination.

SUMMARY: In response to a request by a petitioner, the Department of Commerce has conducted an administrative review of the antidumping duty order on chrome-plated lug nuts from Taiwan. The review covers four firms and the period April 18, 1991, through August 31, 1992. The review indicates the existence of margins for the firms.

As a result of this review, we preliminarily determine to assess antidumping duties equal to the difference between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: February 1, 1994.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner, 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) 482–4195 or 482–3814, respectively.

Background

On September 20, 1991, the Department of Commerce (the Department) published the antidumping duty order on chrome-plated lug nuts from Taiwan (56 FR 47737). The Department published a notice of "Opportunity to Request Administrative Review" on September 11, 1992 (57 FR 41725). On September 21, 1992, the petitioner, Consolidated International Automotive, Inc. (Consolidated), requested that we conduct an administrative review for the period April 18, 1991, through August 31, 1992. We published a notice of "Initiation of Antidumping and Countervailing Duty Administrative Review" on October 22, 1992 (57 FR 48202), announcing an administrative review of King Kong Corporation, San Shin Hardware Works Co., Ltd. (San Shin), Gourmet Equipment (Taiwan) Corporation (Gourmet), Chu Fong Metallic Industrial Corporation (Chu Fong), and San Chien Electric Industrial Works, Ltd. (San Chien).

On January 8, 1993, the petitioner withdrew its request for review of San Shin. Therefore, we are terminating the review. We were unable to identify an address for King Kong Corporation. We sent questionnaires to Gourmet, Chu Fong, and San Chien. We received a response from Gourmet and conducted a verification at Gourmet's office September 22, 1993, through September 26, 1993.

On May 26, 1993, the petitioner alleged middleman dumping of the subject merchandise. Based on information compiled during the review process, the Department determined to apply best information available (BIA) to Gourmet and the two non-respondents. Therefore, the Department did not initiate a middleman dumping investigation (see Use of BIA, Middleman dumping allegation, and Transhipment allegation memos to Holly Kuga, Director, Office of Antidumping Compliance).

On June 11, 1993, the petitioner alleged that the respondent was shipping the subject merchandise through Canada to the United States. We examined data provided by the U.S. Customs Service which showed no evidence that the Canadian buyer resold the subject merchandise to the United States during the period of review (POR) (see Use of BIA, Middleman dumping allegation, and Transhipment allegation memo to Holly Kuga, Director, Office of Antidumping Compliance).

The Department has now conducted the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

The merchandise covered by this review is one-piece and two-piece chrome-plated lug nuts, finished or unfinished, which are more than 11/16 inches (17.45 millimeters) in height and which have a hexagonal (hex) size of at least 3/4 inches (19.05 millimeters). The term "unfinished" refers to unplated and/or unassembled chrome-plated lug nuts. The subject merchandise is used for securing wheels to cars, vans, trucks, utility vehicles, and trailers. Zinc-plated lug nuts, finished or unfinished, and stainless-steel capped lug nuts are not in the scope of this review. Chrome-plated lock nuts are also not in the scope of this review.

During the POR, chrome-plated lug nuts were provided for under subheading 7318.16.00.00 of the Harmonized Tariff Schedule (HTS). Although the HTS subheading is provided for convenience and Customs purposes, our written description of the scope of this review is dispositive.

Best Information Available

Based on information gathered while on verification, the Department determined that the data submitted by Gourmet for this review are unverifiable because the response Gourmet submitted was based on an "in-house" accounting system that could not be reconciled to an audited financial statement.

Reliance on the accounting system used for the preparation of the audited financial statements is a key and vital part of the Department's determination that a company's constructed value data are credible. An "in-house" system which has not been audited and is not used for the preparation of the financial statements or for any purpose other than internal deliberations of the company does not assure the Department that such costs have been stated in accordance with generally accepted accounting principles, or that all costs have been appropriately captured by the "in-house" system (see Final Determination at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products and Certain Cut-To-Length Carbon Steel Plate from Korea, 58 FR 37186 (July 9, 1993)). Since Gourmet's "in-house" system cannot be relied upon due to numerous deficiencies (see Use of BIA, and Middleman dumping allegation memo to Holly Kuga, Director, Office of Antidumping Compliance), the Department has determined to apply BIA to Gourmet's sales in the POR, pursuant to Section 776(c) of the Tariff Act.

Chu Fong and San Chien both failed to respond to the Department's questionnaire. Accordingly, we are applying BIA to their entries.

In deciding what to use as BIA, the Department's regulations provide that the Department may take into account whether a party refuses to provide requested information (19 CFR 353.37(b)). Thus, the Department may determine, on a case-by-case basis, what constitutes BIA. For the purposes of these preliminary results, we applied the following two tiers of BIA where we were unable to use a company's response for purposes of determining a dumping margin (see Final Results of Antidumping Duty Administrative Review of Antifriction Bearings and Parts Thereof from France, et al., 58 FR 39739, July 26, 1993):

1. When a company refuses to cooperate with the Department or otherwise significantly impedes these proceedings, we used as BIA the higher of (1) the highest of the rates found for any firm for the same class or kind of merchandise in the same country of origin in the less than fair value investigation (LTFV) or prior administrative reviews: or (2) the highest rate found in this review for any firm for the same class or kind of merchandise in the same country of origin.

2. When a company substantially cooperates with our requests for information and, substantially cooperates in verification, but fails to provide the information requested in a timely manner or in the form required or was unable to substantiate it, we used as BIA the higher of (1) the highest rate ever applicable to the firm for the same class or kind of merchandise from either the LTFV investigation or a prior administrative review or if the firm has never before been investigated or reviewed, the all others rate from the LTFV investigation; or (2) the highest calculated rate in this review for the class or kind of merchandise for any firm from the same country of origin.

Therefore, for parties refusing to respond, Chu Fong and San Chien, the first-tier BIA rate we applied in these preliminary results is 10.67 percent, which is the highest rate the Department found in the original LTFV investigation, Gourmet provided us with responses to our questionnaires, however the information on the record was unverifiable. Accordingly, we applied the second-tier BIA rate of 6.47 percent. This rate represents the highest rate ever applicable to Gourmet.

King Kong Corporation received the "all other" rate because the Department attempted, but could not locate, an address for it.

Preliminary Results of Review

We have preliminarily determined that the following margins exist for the period April 18, 1991, through August 31, 1992:

Manufacturer/exporter	Margin (percent)
Gourmet Equipment (Taiwan) Corporation	6.47
Chu Fong Metallic Industrial Works Co, Ltd	10.67
San Chien Industrial Works, Ltd	10.67
King Kong Corporation	6.93

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions concerning all respondents directly to the U.S. Customs Service.

Furthrmore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered, or withdrawn from warehouse for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Tariff Act (1) The cash deposit rate for the reviewed firms will be those firms' established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period, (3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the "all others" rate will remain at 6.93 percent as established in the LTFV investigation.

On May 25, 1993, the Court of International Trade, in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation and the Torrington Company* v. *United States*, Slip Op. 93–83, decided that once an "all other" rate is established for a company,it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to apply the original "all others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders for the purposes of establishing cash deposit in all current and future administrative reviews. The "all others" rate in the LTFV investigation was 6.93 percent.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Interested parties may request disclosure within five days of the date of publication of this notice, and a hearing within 10 days of the date of publication. Any hearing requested will be held as early as convenient for parties but not later than 44 days after date of publication, or the first workday thereafter. Case briefs, or other written comments, from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttal comments, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish the final results of review, including its results of its analysis of issues raised in any such written comments.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: February 3, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–3574 Filed 2–16–94; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Endangered Species; Permits

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

ACTION: Issuance of modification #2 to scientific research permit No. 747 (P45H).

On August 8, 1991 (56 FR 40312), the U.S. Fish and Wildlife Service (USFWS) issued Permit No. 747 under the authority of the Endangered Species Act of 1973 (ESA) (U.S.C. 1531–1543) and the NMFS regulations governing endangered fish and wildlife (50 CFR parts 217–227). On March 3, 1993 (58 FR 14202) NMFS issued an emergency modification to Permit No. 747, to be valid through December 31, 1993. On November 26, 1993 (58 FR 62328) notification was published that FWS has applied for a modification which would authorize them to continue the activities authorized in the March 3, 1993 emergency modification for the duration of the permit. Notice is hereby given that on January 26, 1994, NMFS issued Modification #2 to Permit 747, authorizing the above request.

Permit 747 authorizes scientific research on and captive propagation of Sacramento River winter-run chinook (*Oncorhynchus tshawytscha*), including the capture of up to 20 adults per year for broodstock purposes, the incubations of up to 35,000 of their eggs, and the rearing of the resulting juveniles for release into the upper Sacramento River. These activities are permitted through December 31, 1995.

The emergency modification, and this modification, authorize the permittee to collect and sacrifice up to 450 coded-wire tagged and adipose fin clipped juvenile winter-run chinook salmon released from the FWS's Coleman National Fish Hatchery. The emergency modification was only valid through December 31, 1993. This modification will authorize this take annually for the duration of the permit, through December 31, 1995.

Issuance of this modification was based on a finding that such modification: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the listed species which is the subject of this modification; (3) is consistent with the purposes and policies set forth in section 2 of the ESA. This modification was also issued in accordance with and is subject to parts 217–227 of title 50 CFR, NMFS regulations governing endangered species permits and modifications.

The application, permit, modifications and supporting documentation are available for review by interested persons in the following offices (by appointment):

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Highway, Silver Spring, MD 20910 (301–713–2232); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd., suite 4200, Long Beach, CA 90802–4213 (310–980–4016).

Dated: January 26, 1994.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources.

[FR Doc. 94–3649 Filed 2–16–94; 8:45 am]

BILLING CODE 3510–22–M

[I.D. 020794A]

Marine Mammals

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

ACTION: Issuance of modification to permit No. 754 (P77#56).

SUMMARY: Notice is hereby given that on February 9, 1994, Permit No. 754, issued to the Alaska Fisheries Science Center, National Marine Mammal Laboratory, NMFS, 7600 Sand Point Way, NE., Seattle, WA 98115 was modified.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, suite 13130, Silver Spring, MD 20910 (301/712–3389); and

Northwest Region, NMFS, NOAA, 7600 Sand Point Way, NE., BIN C15700— Building 1, Seattle, WA 98115–0070 (206/526–6150).

SUPPLEMENTARY INFORMATION: The subject modification has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

This permit currently authorizes the Holder to capture, tag, handle and release Antarctic seals for the purposes of tracking their movements and obtaining measurements and biological samples. The Permit also authorizes aerial surveys to be flown at altitudes of 500 feet or greater. This permit has now been modified to adjust research methods without causing additional jeopardy to the animals that are the subject of this research.

Dated: February 9, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–3578 Filed 2–16–94; 8:45 am]

BILLING CODE 3510–22–P

Marine Mammals

[I.D. 020794B]

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

ACTION: Receipt of modification to application for a scientific research permit (P557).

SUMMARY: Notice is hereby given that Scripps Institution of Oceanography, Institute for Geophysics and Planetary Physics, Acoustic Thermometry of

Ocean Climate Program, 9500 Gilman Drive, La Jolla, CA 92093–0225, has submitted a modification to an application for a permit to take marine mammals and sea turtles for purposes of scientific research.

DATES: Written comments must be received on or before March 21, 1994.

ADDRESSES: The modified application and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, NOAA, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213 (310/980–4016);

Coordinator, Pacific Area Office, NMFS, NOAA, 2570 Dole Street, room 106, Honolulu, HI 96822–2396 (808/955–8831).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, NOAA, U.S. Department of Commerce, 1315 East-West Highway, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this modification to the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

This application modification is to request incidental harassment of sea turtles, and additional species of marine mammals which have only occasionally been observed in Hawaiian waters. As described in the original permit application, permission is requested to incidentally harass marine mammals and sea turtles by a low frequency (70 Hz) sound source which will be located north of Haena, off the northern coast of Kauai, Hawaii, at a depth of 850–950m. This sound source is part of the Acoustic Thermometry of Ocean Climate (ATOC) program, and will be operated from February 1994 through December 1995, with a maximum duty cycle of 8%, to conduct research on the effects of this source on marine mammals and sea turtles. The transmission bandwidth is 20 Hz with a level of 195 dB (re: 1 uPa at 1m), and the spectrum level for the peak frequency (70 Hz) is 182 dB. The effects of these transmissions on marine mammals and sea turtles will be monitored through passive acoustic tracking of Mysticetes, shore-based visual observations of marine mammals, and aerial observations and surveys of marine mammals and sea turtles.

Dated: February 9, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–3579 Filed: 2–16–94; 8:45 am]

BILLING CODE 3510–22–P

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' next meeting is scheduled for 17 February 1994 at 10 a.m. in the Commission's offices in the Pension Building, suite 312, Judiciary Square, 411 F Street, NW., Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, February 2, 1994.

Charles H. Atherton,

Secretary.

[FR Doc. 94–3653 Filed 2–16–94; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 1 and 2 March 1994.

Time of Meeting: 0830–1600/1 March (classified); 1300–1630/2 March (classified).

Place: Fort Leavenworth, KS/1 March; Fort McPherson, GA/2 March.

Agenda: The Army Science Board's Ad Hoc Study on "Innovations in Artillery Force Structure" will hold a meeting of the Panel Members. This meeting will be hosted by the Deputy Commanding General U.S. Army Combined Arms Command for Combat Developments (Fort Leavenworth) and the Forces Command Chief of Staff (Fort McPherson). The intent of the meeting is to present general and specific information to the panel pertaining to artillery force structure development within the U.S. Army and Forces Command. It will consist of primarily classified briefings dealing with force structure initiatives, war plans, artillery related studies and analysis, and field artillery weapons systems.

This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., appendix 2, subsection 10(d). The unclassified and classified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–3692 Filed 2–14–94; 4:14 pm]

BILLING CODE 3710–08–M

Army Science Board; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 1, 2, 3 March 1994.

Time of Meeting: 0900–1700.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board's (ASB) Summer Study on "Technical Information Architecture for Army Command, Control, Communications and Intelligence" will receive briefings related to the study from 1 to 3 March 1994. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–3693 Filed 2–14–94; 4:14 pm]

BILLING CODE 3710–08–M

Department of the Navy

Intent To Prepare an Environmental Impact Statement for Disposal and Reuse of the Naval Radio Transmitting Facility, Suffolk, VA

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, as implemented by the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the environmental effects of disposal and reuse of the Naval Radio Transmitting Facility (NRTF) Driver, Suffolk, Virginia. This disposal is being conducted in accordance with the Defense Base Closure and Realignment Act of 1990.

Closure of NRTF Driver was recommended by the 1993 Defense Base Closure and Realignment Commission to eliminate redundancy in geographic coverage in naval telecommunications. The recommendations became effective in September 1993. The proposed action to be evaluated in the EIS involves the disposal of land, buildings, and infrastructure of NRTF Driver for subsequent reuse.

The Navy intends to analyze the environmental effects of the disposal of NRTF Driver based on the reasonably foreseeable reuse of the property, taking into account uses to be identified by the City of Suffolk Reuse Planning Group. The property will likely be developed for mixed uses, including recreation, housing, and light industry. In coordination with the City of Suffolk's reuse plan, other federal agencies may offer uses for the property. The EIS will evaluate alternative reuse concepts of the property, including the "no-action" alternative, which would be retention of the property by the Navy in caretaker status. However, because of the process mandated by the Base Closure and Realignment Act, selection of the "no-action" alternative would be considered impracticable for the Navy to implement.

The EIS will evaluate impacts of reuse of NRTF Driver on the natural environment including wetlands and wildlife habitat, as well as the socioeconomic environment, which includes potential impacts to population, housing, and schools. The Navy will conduct a cultural resource survey to determine whether any sensitive archaeological resources exist within the property. Additionally, the Navy is conducting an Environmental Baseline Survey to determine if any areas of environmental contamination exist.

The Navy will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying the significant environmental issues related to disposal and reuse of the property. The Navy will hold a public scoping meeting on March 3, 1994, beginning at 7 p.m., at the John Yeates Middle School, located on 4901 Bennett Pasture Road, Suffolk, Virginia. This meeting also will be advertised in local newspapers.

A brief presentation will precede request for public comments. The Navy and the City of Suffolk will provide a brief introduction and description of the proposed action. Navy representatives will be available to receive comments from the public regarding issues of concern to the public. It is important that federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. In the interest of time, each speaker will be asked to limit his or her oral comments to 5 minutes.

Agencies and the public are also invited and encouraged to provide written comments in addition to, or in lieu of, oral comments at the scoping meeting. To be most helpful, scoping comments should clearly describe specific issues or topics that the commentor believes the EIS should address. The Navy will provide comment cards at the scoping meeting. Prepared statements also will be accepted at the scoping meeting. Written statements and/or questions regarding the scoping process should be mailed no later than March 18, 1994, to Commander, Atlantic Division, Naval Facilities Engineering Command, 1510 Gilbert Street, Norfolk, Virginia 23511–2699.

(Attn: Mr. Robert Waldo, (Code 2032RW)), telephone (804) 445–2305.

Dated: February 14, 1994.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–3618 Filed 2–16–94; 8:45 am]

BILLING CODE 3810–AE–M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Naval Research Advisory Committee Panel on Littoral Warfare/ Amphibious Warfare will meet on February 22, 23, 24, and 25, 1994. The meeting will be held at the Applied Physics Laboratory, University of Washington, Seattle, Washington. The meeting will commence at 8:30 a.m. and terminate at 5:00 p.m. on each day. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to conduct Executive Sessions to write a briefing and report which provide the Department of the Navy with (1) an assessment of the capabilities and readiness of the U.S. Navy and Marine Corps to effectively conduct littoral and amphibious warfare operations, and (2) recommendations for technological investments that can improve performance while reducing risk to Marine and Naval forces. The agenda will consist of Executive Sessions devoted to discussions of information received and drafting of the study briefing and report.

These discussions and resulting briefing and report will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. 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: Commander R. C. Lewis, USN, Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000, Telephone Number: (703) 696-4870.

Dated: January 31, 1994

Michael P. Rummel

LCDR, JAGC, USN Federal Register Liaison Officer.

[FR Doc. 94–3648 Filed 2–16–94; 8:45 am]

BILLING CODE 3810–AE–F

Intent To Grant Partially Exclusive Patent License; Federal Products Co.

AGENCY: Department of the Navy, DOD.

ACTION: Intent to grant partially exclusive patent license; Federal Products Company.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Federal Products Company a revocable, nonassignable, partially exclusive license in the United States to

practice the Government-owned invention described in U.S. Patent Application Serial No. 130,480 entitled "Magnetostrictive Linear Displacement Sensor, Angular Displacement Sensor, and Variable Resistor," filed October 1, 1993 in which the Government owns an undivided interest.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research (ONR 00CC3), Ballston Tower One, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research (ONR 00CC3), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: February 8, 1994.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–3651 Filed 2–16–94; 8:45 am]

BILLING CODE 3810–AE–M

Intent To Grant Partially Exclusive Patent License; Hydroscience, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Intent to grant partially exclusive patent license; Hydroscience, Inc.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Hydroscience, Inc. a revocable, nonassignable, partially exclusive license in the United States to practice the Government-owned inventions described in U.S. Patents No. 4,648,083, "All-Optical Towed and Conformal Arrays" issued March 3, 1987 and 4,653,915, "Method For Reduction of Polarization Fading In Interferometers" issued March 31, 1987 in the field of marine geophysical exploration using acoustic towed array systems.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of Naval Research (ONR 00CC3), Ballston Tower One, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research (ONR 00CC3), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: February 8, 1994.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–3650 Filed 2–16–94; 8:45 am]

BILLING CODE 3810–AE–M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, February 23, 1994. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 1 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

An informal conference among the Commissioners and staff will be open for public observation at 9:30 a.m. at the same location and will include discussions concerning Basinwide hydrologic conditions; the Christina River drought management plan; Pennsylvania municipal compliance with DRBC water conservation plumbing fixture requirements and contracts to receive and expend funds in connection with the scenic rivers water quality monitoring program and a nonpoint source management study of the Musconetcong watershed.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. *Merrill Creek Owners Group (MCOG) D–77–110 CP (Amendment 4).* A Resolution to include an additional designated unit (Metropolitan Edison Company's Portland Unit 5, an oil/gas fueled combustion turbine electric generating unit) to the list of designated units which is incorporated in the MCOG docket. Table A (Revision 4), attached to the Resolution, replaces Table A (Revision 3).

2. *Carolyn R. Wilson D–83–4 RENEWAL.* An application for the renewal of a ground water withdrawal project, formerly approved under the name of Edith Raughley, to supply up to 18.9 million gallons (mg)/30 days of water to the applicant's supplemental agricultural irrigation system from Well Nos. 1(Home Farm) and 2(Wilson Farm). Commission approval on June 27, 1984 was limited to nine years. The applicant requests that the total withdrawal from all wells remain limited to 18.9 mg/30 days. The project is located in Kent County, Delaware.

3. *Willingboro Municipal Utilities Authority D–87–42 CP RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 60.48 mg/30 days of water to the applicant's distribution system from Well No. 11. Commission approval on October 26, 1988 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 300 mg/30 days. The project is located in Willingboro Township, Burlington County, New Jersey.

4. *City of Dover D–88–71 CP RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 300 mg/30 days of water to the applicant's distribution system from Well Nos. 1 through 14. Commission approval on December 14, 1988 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 300 mg/30 days. The project is located in the City of Dover, Kent County, Delaware.

5. *Citgo Asphalt Refining Company D–91–34.* A surface water withdrawal project for provision of up to 0.156 million gallons per day (mgd) of water for steam generation and other uses at the applicant's asphalt refining facility. The applicant proposes to withdraw water from Mantua Creek adjacent to the refinery located near the confluence of Mantua Creek with the Delaware River, in West Deptford Township, Gloucester County, New Jersey.

6. *Borough of Richland D–92–1 CP.* An application for approval of a ground water withdrawal project to supply up to 1.3 mg/30 days of water to the applicant's distribution system from existing Well No. 5, and to retain the existing withdrawal limit from all wells of 5.2 mg/30 days. The project is located in Millcreek Township, Lebanon County, Pennsylvania.

7. *Audubon Water Company D–92–47 CP.* An application to consolidate all wells presently owned and operated by the Audubon Water Company (AWC) into one comprehensive docket. Well Nos. VFCC 1 - 4 were previously approved under the ownership of the Valley Forge Industrial Park Water Company and the remaining wells were approved under AWC ownership. The proposed total withdrawal limit of 42 mg/30 days is not an increase in existing total allocation of ground water. The project is located in Lower Providence Township, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

8. *Township of Pemberton D–92–56 CP.* An application for approval of a ground water withdrawal project to supply up to 17.3 mg/30 days of water to the applicant's distribution system from new Well No. 11, and to retain the existing withdrawal limit from all wells of 38.75 mg/30 days. The project is located in Pemberton Township, Burlington County, New Jersey.

9. *Metro Machine of Pennsylvania, Inc. D–92–65.* A project to revitalize and rehabilitate the shipbuilding and repair operation formerly owned by the Pennsylvania Shipbuilding Company located on the Delaware River in the City of Chester, Delaware County, Pennsylvania and situated approximately two miles northeast of the Commodore Barry Bridge. Water withdrawal from the Delaware River is proposed at a rate of 4.32 mgd used mostly for cooling shipboard facilities, with a portion used to surcharge the fire fighting system, and provide shipboard sanitary service. Approximately 95 percent of the water will be returned to the Delaware River unaltered while shipboard sanitary wastewater will be discharged to the Delaware County Regional Water Quality Control Authority's (DELCORA) sewage treatment plant. Potable water will be provided by the City of Chester.

10. *Narrowsburg Water District D–92–81 CP.* An application for approval of a ground water withdrawal project to supply up to 4.11 mg/30 days of water to the Narrowsburg Water District distribution system from new Well No. 3, and to limit the withdrawal from all wells to 4.11 mg/30 days. The project is located in the Town of Tusten, Sullivan County, New York.

11. *Perkiomen Township Municipal Authority D–93–11 CP.* An application for approval of a ground water withdrawal project to supply up to 3.36 mg/30 days of water to the applicant's southern distribution system from existing Well Nos. PW–1 and PW–2, and to limit the withdrawal from the northern system wells (Well Nos. 2, 3 and 4) to 7.15 mg/30 days. The project is located in Perkiomen Township, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

12. *Purex Industries D–93–34(G) & D–93–34(D).* An application for approval of a ground water withdrawal and treatment project of up to 11.23 mg/30 days of water from the applicant's ground water remediation system from new Well Nos. RW–1 through RW–13, and to limit the withdrawal from all wells to 11.23 mg/30 days as described in Docket No. D–93–34(G). The water withdrawn will be treated by filtration, ultra-violet peroxidation and air-stripping prior to return to the ground water via recharge wells, as described in Docket D–93–34(D). The project is located in the City of Millville, Cumberland County, New Jersey.

13. *Peddler's View Utility Co. Inc. D–93–41.* A proposed new sewage treatment plant (STP) project to provide a 60,000 gallons per day (gpd) capacity secondary level plant to serve the proposed 214-unit residential development of Peddler's View. The STP will be located in Solebury Township, Bucks County, Pennsylvania, south of Route 202 and east of Route 263. The discharge will be to an 18-acre spray irrigation area on the Peddler's View site to the north side of Route 202.

14. *Ashland Chemical Inc. D–93–48.* An application to replace the withdrawal of water from Well No. 3 in the applicant's water supply system which has become an unreliable source of supply. The applicant requests that the withdrawal from replacement Well No. 4 be limited to 8.7 mg/30 days, and that the total withdrawal from all wells remain limited to 8.7 mg/30 days. The project is located in Glendon Borough, Northampton County, Pennsylvania.

15. *Sechler Foods, Inc. D–93–49.* An application for an increased withdrawal of ground water from existing Well Nos. 2 and 3, previously approved under the ownership of United Poultry Processing Plant, Inc. The applicant requests that the withdrawal from existing Well Nos. 2 and 3 be limited to 9 mg/30 days and that the total withdrawal from all wells be increased from 4.5 to 9 mg/30 days. The project is located in Franklin Township, Gloucester County, New Jersey.

16. *MAFCO Worldwide Corporation D–93–58.* An application to upgrade and modify the applicant's existing 0.36 mgd industrial wastewater treatment plant (IWTP) by providing a filtration unit for reducing suspended solids in the treated effluent. The IWTP serves only the applicant's licorice extract manufacturing operations at the plant site located on Jefferson Avenue between 3rd Street and the Delaware River in the City of Camden, Camden County, New Jersey. The treated effluent will continue to discharge to the Delaware River via the existing outfall in Water Quality Zone 3.

17. *Lake Adventure Community Association D–93–62.* A project to upgrade and expand the applicant's existing 0.065 mgd secondary sewage treatment plant (STP) and provide a 0.16 mgd capacity STP with tertiary filtration. An existing malfunctioning seepage bed discharge system will be discontinued. The existing spray irrigation system will continue in use but with the addition of a seasonal alternate surface water discharge (primarily for winter discharge) to an unnamed tributary in the Birchy Creek Watershed in Dingman Township, Pike County, Pennsylvania. The proposed STP will continue to serve the applicant's residential development in Dingman Township situated approximately one-half mile south of Interstate Route 84 and near the western boundary of Dingman Township.

18. *Sun Pipe Line Company D–93–64.* A project to construct a petroleum products pipeline which will cross the Delaware River between Paulsboro Borough, Gloucester County, New Jersey and Tinicum Township, Delaware County, Pennsylvania. There will also be a crossing of the Schuylkill River in Philadelphia, Pennsylvania, just north of Interstate Route 95 and a crossing of Raccoon Creek in Logan Township, Gloucester County, New Jersey. All crossings will be done via directional drilling with no excavation in the river beds. The proposed crossings will provide interconnections for a 21-mile length of petroleum product pipeline serving Sun Oil Company's Marcus Hook and Philadelphia refineries.

19. *Upper Dublin Township D–93–76 CP.* A project to modify the applicant's existing 0.85 mgd capacity secondary treatment plant (formerly operated by Delaware Valley Industrial Sewage Company) which will continue to serve a portion of Upper Dublin Township and discharge to Pine Run, a tributary of the Wissahickon Creek, in Montgomery County, Pennsylvania. The modification will provide additional 0.25 mgd capacity secondary treatment facilities to improve effluent quality and to allow for a future rerating.

20. *Mobile Estates of Southampton D–93–79.* A project to upgrade and modify the applicant's existing 0.06 mgd sewage treatment plant (STP) and relocate the surface water discharge from a small unnamed tributary of the North Branch Rancocas Creek to a new point discharging directly to the North Branch Rancocas Creek. The STP will provide tertiary treatment facilities and continue to serve only the Mobile Estates of Southampton mobile home development located in Southampton Township, Burlington County, New Jersey.

APPLICATIONS FOR APPROVAL FOR EXTENSION OF THE EXPIRATION DATES OF THE FOLLOWING GROUND WATER DOCKETS AND PROTECTED AREA PERMITS

Docket No.	Docket name	Municipality	County	State	Current expiration	Proposed expiration
D–79–54 CP Renewal 2	Middletown Twp Water Sewer Dept.	Middletown Twp	Bucks	PA	02/28/95	02/28/2000
D–80–51 CP Renewal 2	Warminster Municipal Authority.	Warminster Twp	Bucks	PA	02/20/96	02/20/2201
D–84–03 CP Renewal	Summit Hill Water Authority.	Summit Hill Boro	Carbon	PA	12/14/93	12/14/1998
D–84–60 CP Renewal	Citizens Utilities Water Co of PA.	Spring Twp	Berks	PA	06/27/95	06/27/2000
D–85–08 CP Renewal	Borough of Roosevelt	Roosevelt Boro/	Monmouth	NJ	08/02/96	08/02/1999
D–85–26 CP Renewal	Borough of Ambler	Lower Gwynedd Twp; Upper Dublin Twp.	Montgomery	PA	02/28/95	02/28/2000
D–86–07 CP	Telford Borough Authority.	Hilltown Twp	Bucks	PA	09/28/93	09/28/1998
D–86–59 CP Renewal	Citizens Utilities Home Water Company.	East Pikeland Twp	Chester	PA	12/11/96	12/11/2001
D–87–61 CP Renewal	Bedminster Municipal Authority.	Bedminster Twp	Bucks	PA	06/24/97	06/24/2002
D–87–96 CP	C.S. Water Sewer Company.	Lackawaxen Twp	Pike	PA	04/26/94	04/26/1999
D–89–03 CP	Borough of Collingswood.	Collingswood Boro	Camden	NJ	06/28/94	06/28/1999
D–89–10 CP	Northeast Land Company.	Kidder Twp	Carbon	PA	04/26/94	04/26/1999
D–90–05 CP	Evansburg Water Company.	Lower Providence Twp/ Perkiomen Twp.	Montgomery	PA	12/12/95	12/12/2000
D–90–12 CP	Collegeville-Trappe Joint Water System.	Collegeville Boro/Trappe Boro.	Montgomery	PA	09/26/95	09/26/2000
D–90–57 CP	Township of Medford	Medford Twp	Burlington	NJ	12/12/95	12/12/2000
D–90–68 CP	Kiamesha Artesian Spring Water Co.	Town of Thompson	Sullivan	NY	12/12/95	12/12/2000
D–90–87 CP	Walnutport Authority	Walnutport Boro/Lehigh Twp.	Northampton	PA	01/16/96	01/16/2001
D–90–111 CP	Town of Newton	Town of Newton	Sussex	NJ	05/20/97	05/20/2002
D–92–63 CP	Grand View Hospital	West Rockhill Twp	Bucks	PA	01/20/98	01/20/2003

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: February 8, 1994.

Susan M. Weisman,

Secretary.

[FR Doc. 94–3656 Filed 2–16–94; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The 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 February 16, 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, 726 Jackson Place NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Cary Green, Department of Education, 400 Maryland Avenue SW., room 4682, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Cary Green, (202) 401–3200.

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 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: February 10, 1994.

Wallace R. McPherson, Jr.,

Deputy Director, Information Resources Management Service.

Office of Educational Research and Improvement

Type of Review: Expedited.
Title: Application for Educational Research and Development Center Program.
Abstract: Research and Development Centers: The Office of Research invites research and development centers established by institutions of higher education or by interstate agencies to conduct educational research and development to submit applications for an award.
Additional Information: An expedited clearance is requested for the data collection on the Application for Educational Research and Development to meet the grant schedule for FY94. In order to provide respondents with sufficient time, a clearance date of February 16 is necessary.
Frequency: Quarterly.
Affected Public: Non-profit institutions.
Reporting Burden
Responses: 9.
Burden Hours: 1,260.
Recordkeeping Burden
Recordkeepers: 0.
Burden Hours: 0.

[FR Doc. 94–3603 Filed 2–16–94; 8:45 am]

BILLING CODE 4000–01–M

The International Research and Studies Program

AGENCY: Department of Education.

ACTION: Publication of 1993 annual report.

SUMMARY: Section 606 of the Higher Education Act of 1965 (HEA), as amended, authorizes the Secretary of Education to provide assistance to conduct research, studies, and surveys and develop specialized instructional materials that further the purposes of Part A of Title VI of the HEA.

The activities conducted under section 606 of the HEA correspond in large part to the foreign language and area studies research activities previously supported under section 602 of Title VI of the National Defense Education Act.

Purpose

Under the International Research and Studies Program, the Secretary of Education awards grants and contracts for—

(a) Studies and surveys to determine the needs for increased or improved instruction in foreign language, area studies, or other international fields, including the demand for foreign language, area, and other international specialists in government, education, and the private sector;

(b) Studies and surveys to assess the use of graduates of programs supported under this title by governmental, educational, and private sector organizations and other studies assessing the outcomes and effectiveness of programs so supported;

(c) Comparative studies of the effectiveness of strategies to provide international capabilities at institutions of higher education;

(d) Research on more effective methods of providing instruction and achieving competency in foreign languages;

(e) The development and publication of specialized materials for use in foreign language, area studies, and other international fields, or for training foreign language, area, and other international specialists; and

(f) The application of performance tests and standards across all areas of foreign language instruction and classroom use.

1993 Program Activities

In fiscal year 1993, 9 new grants ($933,231) and 14 continuation grants ($1,263,767) were awarded under the International Research and Studies Program. All of these grants are active currently and will be monitored through progress reports submitted by grantees. Grantees have 90 days after the expiration of the grant to submit the products resulting from their research to the Department of Education for review and acceptance.

Completed Research

The first grants under the authority of section 606 were awarded in fiscal year 1981. Most of the research projects funded in FY 1981 through FY 1990 have been completed and reported in previous annual reports. However, a number of completed research projects resulting from grants made during prior fiscal years have been received during the past year. A listing of this completed research follows. Grants from fiscal years 1990, 1991, and 1992 are still ongoing, or have recently expired.

Title	Author/location
A Comprehensive Lexicon of English/Chinese Business Terms	A.C. Chang, American Graduate School of International Management, Thunderbird Campus, Glendale, AZ 85306.
Advanced Gulf Arabic	H.A. Qafisheh, Near Eastern Studies, University of Arizona, Tucson, AZ 85721.
Reading Authentic Czech and Polish/Volume II	G. Privorotsky and W. Walczynski, Center for Applied Linguistics, 1118 22nd Street, NW., Washington, DC 20037.
Pashto Reader and Glossary	B. Robson, Center for Applied Linguistics, 1118 22nd Street, NW., Washington, DC 20037.
The Development of the Polish Proficiency Test	C.W. Stansfield, Center for Applied Linguistics, 1118 22nd Street, NW., Washington, DC 20037.
Improving Listening Comprehension in Russian	J. Rubin, I. Thompson, Department of Slavic Languages, George Washington University, Washington, DC 20052.
Translation Tutorials	D. Bowen, Department of Languages and Linguistics, Georgetown University, 37th and O Streets, NW., Washington, DC 20057.
Learning Strategies in Japanese Foreign Language Instruction	A.U. Chamot, Department of Languages and Linguistics, Georgetown University, 37th and O Streets, NW., Washington, DC 20057.
American and Chinese Perceptions and Belief Systems, A PRC-Taiwanese Comparison.	L.B. Szalay, Institute of Comparative Social and Cultural Studies, Inc., 6935 Wisconsin Avenue, Chevy Chase, MD 20815.
Specialized Materials for Teaching Japanese in the Elementary School.	M. Met, Montgomery County Public Schools, 850 Hungerford Drive, Rockville, MD 20850–1747.
Los Arboles Hablan: A Spanish Language Curriculum Unit Based on the Study of Latin American Forests/Phase I.	J.P. Zuman, Intercultural Center for Research in Education, 366 Massachusetts Avenue, Arlington, MA 02174.
Non-Conventional Chinese Reading Materials/Phase I	Tao-chung Yao, Asian Studies, Mount Holyoke College, South Hadley, MA 01075.

All of the listed materials and reports have been reviewed by Department of Education staff and meet the terms and conditions under which the grants were awarded.

To obtain a copy of a complete study, contact the author at the institution listed.

FURTHER INFORMATION: For a copy of this report and further information regarding the International Research and Studies Program, write to Joseph F. Belmonte, Acting Director, Center for International Education, United States Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202–5247. Telephone number: (202) 732–6065.

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.

Dated: February 10, 1994.

David A. Longanecker,

Deputy Assistant Secretary for Postsecondary Education.

[FR Doc. 94–3602 Filed 2–16–94; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Implementation Plan for the Environmental Restoration and Waste Management Programmatic Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy announces the availability of the Implementation Plan for the Environmental Restoration and Waste Management Programmatic Environmental Impact Statement. The purpose of the Implementation Plan is to record the results of the public scoping and public participation processes and to serve as a plan for the preparation of the Programmatic Environmental Impact Statement. The Implementation Plan also states the alternatives and issues to be evaluated in the Programmatic Environmental Impact Statement.

FOR FURTHER INFORMATION CONTACT: For further information on the Programmatic Environmental Impact Statement, contact: Glen L. Sjoblom, Special Assistant to the Assistant Secretary, Environmental Restoration and Waste Management (EM–1), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, 202–586–0396.

To request copies of the Implementation Plan, call 1–800–379–5441.

For information on the Department's National Environmental Policy Act process, contact: Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, 202–586–4600 or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Background

On October 22, 1990, the Department of Energy issued a Notice of Intent in the **Federal Register** (55 FR 42693) to prepare the Environmental Restoration and Waste Management Programmatic Environmental Impact Statement. In the Notice of Intent, the Department identified the proposed action of implementing an integrated environmental restoration and waste management program, and requested comments on the scope of the Programmatic Environmental Impact Statement. A public comment period was held from October 22, 1990, to February 19, 1991. Beginning on December 3, 1990, the Department held 23 scoping meetings at various locations across the country to provide an opportunity for public participation by interested individuals and organizations, and other governmental agencies. During the public comment period, over 1,200 parties provided approximately 7,000 comments, either by participating in the meetings or by submitting materials and letters to the Department.

On February 4, 1992, the Department announced in the **Federal Register** (57 FR 4193) the availability of a Draft Implementation Plan and an additional opportunity for public review and comment. The public comment period on the Draft Implementation Plan was held from February 4, 1992, to April 10, 1992. Beginning on March 17, 1992, the Department conducted six regional workshops on the Draft Implementation Plan. More than 1,000 comments were received on the Draft Implementation Plan.

After the close of the Draft Implementation Plan comment period, the Department revised the Plan and provided it to the Environmental Restoration and Waste Management Advisory Committee for review and comment. The Committee is composed of individuals from universities, trade associations, state and local governments, Indian Nations, labor unions, environmental groups, and other interested parties. On December 21, 1992, the Committee submitted its formal recommendations on the Draft Implementation Plan. After responding to the Committee's recommendations and discussing further revisions with the Committee, the Department further revised the Implementation Plan. The Implementation Plan now considers all the issues from the public scoping process, the public review and comment period on the Draft Implementation Plan, and the Environmental Restoration and Waste Management Advisory Committee's review and recommendations.

Programmatic Environmental Impact Statement Alternatives

The programmatic alternatives for environmental restoration to be evaluated in the Programmatic Environmental Impact Statement are structured in terms of the factors that affect the selection of remediation goals. In addition to a No Action baseline alternative, four other alternatives will be evaluated: (1) An alternative reflecting the current application of "applicable or relevant and appropriate requirements" under the Comprehensive Environmental Response, Compensation, and Liability Act; (2) an alternative emphasizing foreseeable land use to better define likely exposure scenarios and appropriate waste management strategies; (3) an alternative equally balancing remedial worker and transportation risks with the risk to a site's surrounding population; and (4) an alternative emphasizing foreseeable land use to establish initial remediation objectives while also emphasizing worker and transport risks. Evaluation of these five alternatives is intended to provide input into the development of Department of Energy policies relevant to undertaking future environmental restoration that would incorporate consideration of land use and all major elements of human health risks.

The programmatic alternatives for waste management to be evaluated in the Programmatic Environmental Impact Statement are structured in terms of configurations for each of six waste types: High-level radioactive waste; transuranic radioactive waste; low-level radioactive waste; low-level mixed waste (waste consisting of hazardous and radioactive components); commercial Greater-than-Class-C radioactive waste, and hazardous waste. In addition to a No Action baseline, which includes only existing or approved waste management facilities, alternative configurations for each waste type will be evaluated that reflect decentralized, regionalized, and

centralized approaches for utilizing existing and new waste management facilities at Department of Energy sites. The waste management facilities for which alternative configurations will be evaluated are storage facilities for treated high-level waste and commercial Greater-than-Class-C waste pending repository disposal; storage facilities for transuranic waste and treatment facilities in the event that treatment of transuranic waste is required prior to disposal; and treatment, storage, and disposal facilities for low-level, low-level mixed, and hazardous wastes. The evaluation of alternative configurations for waste management facilities is intended to provide environmental input for decisions on the potential consolidation of existing waste management facilities and locating new or expanded waste management facilities at Department of Energy installations. The evaluation of alternative configurations for the treatment of low-level mixed wastes also will provide environmental input for site-specific plans required by the Federal Facility Compliance Act.

Technology Development and Other Issues

The Programmatic Environmental Impact Statement will discuss emerging technologies and their effect on the analysis of alternatives. Several other issues that are important to achieving cleanup and waste management goals and to the implementation of the Department's Environmental Restoration and Waste Management program also will be discussed. Issues to be addressed include budgeting and prioritization, job retraining programs, stakeholder roles, waste minimization, and public involvement. Discussion of these issues is included to assist public understanding of the decisions to be reached, and to provide the opportunity for public input on improving the conduct of the Department's Environmental Restoration and Waste Management Program. The Programmatic Environmental Impact Statement will not evaluate site-specific actions at Department sites that would be covered by appropriate project-level National Environmental Policy Act documentation.

Spent Nuclear Fuel

The Department had proposed to consider the storage of Department-owned spent nuclear fuel in the scope of the Programmatic Environmental Impact Statement. On September 3, 1993, however, the Department announced that it would incorporate the planned programmatic analysis of spent nuclear fuel into the Idaho National Engineering Laboratory Environmental Restoration and Waste Management Environmental Impact Statement to comply with a recent order issued by the U.S. District Court for the District of Idaho. The Programmatic Environmental Impact Statement will contain a summary of the spent fuel analysis and will incorporate the results of that analysis into the Programmatic Environmental Impact Statement's evaluation of cumulative environmental consequences.

Availability of Implementation Plan

Copies of the Implementation Plan have been sent to individuals and interested agencies and organizations who indicated an interest in receiving a copy, and a copy of the Implementation Plan's Executive Summary has been provided to individuals, agencies, and organizations that participated in the public scoping and workshop processes. The full Implementation Plan will be provided to any additional interested parties upon request. Copies of the Implementation Plan also have been placed in the Department of Energy reading rooms and public libraries identified below. Please contact the individual reading rooms and libraries for information on the availability of the Implementation Plan and the hours of operation.

Federal Documents Collection, Alaska State Library, P.O. Box 110571, 8th Floor State Office Building, Juneau, Alaska 99811
Berkeley Public Library, 2090 Kittredge Street, Berkeley, California 94704
Davis Branch, Yolo County Library, 315 East 14th Street, Davis, California 95616
Oakland Operations Office, U.S. Department of Energy, 1333 Broadway, Oakland, California 94612
Livermore Public Library, 1000 South Livermore Avenue, Livermore, California 94550
Serial Division, Los Angeles Public Library, 361 South Anderson Street, Los Angeles, California 90033
Palo Alto Public Library, 1213 Newell Road, Palo Alto, California 94303
Government Publications Section, California State Library, 914 Capitol Mall, P.O. Box 942837 Sacramento, California 94237
San Diego County Library, 5555 Overland Avenue, Building 15, San Diego, California 92123
Semi Valley Public Library, 2969 Tapo Canyon Road, Semi Valley, California 93063
Government Publications Department, Denver Public Library, BS/GPD, 1357 Broadway, Denver, Colorado 80203
Rocky Flats Environmental Monitoring Council, 1536 Cole Boulevard, suite 150, Golden, Colorado 80401
Mesa County Public Library, P.O. Box 20,000–5019, 530 College Place, Grand Junction, Colorado 81502
Lakewood Branch, Jefferson County Public Library, 10200 West 20th Street, Lakewood, Colorado 80215
U.S. Department of Energy Rocky Flats Public Reading Room, Front Range Community College Library, 3645 West 112th Avenue, Westminster, Colorado 80030
Connecticut State Library, 231 Capitol Avenue, Hartford, Connecticut 06106
Government Publications, Seely G. Mudd Library, Yale University, 38 Mansfield Street, New Haven, Connecticut 06520
Widener University School of Law Library, P.O. Box 7475, 4601 Concord Pike, Wilmington, Delaware 19803
District of Columbia Library, 6th Level, 500 Indiana Avenue, NW., Washington, D.C. 20001
Freedom of Information Reading Room, U.S. Department of Energy, 1000 Independence Avenue, SW., room 1E–190, Washington, D.C. 20585
Public Reading Room, Largo Public Library, 351 East Bay Drive, Largo, Florida 34640
Document Section, State Library of Florida, R.A. Gray Building, 500 South Poronough, Tallahassee, Florida 82399
Reese Library, Augusta College, 2500 Walton Way, Augusta, Georgia 30910
Federal Documents Section, Hawaii State Library, 478 South King Street, Honolulu, Hawaii 96813
Boise Public Library, 715 South Capitol Boulevard, Boise, Idaho 83702
Idaho State Library, 325 West State Street, Boise, Idaho 83702
Public Reading Room, Idaho Operations Office, U.S. Department of Energy, 1776 Science Center Drive, Idaho Falls, Idaho 83402
Idaho Falls Public Library, 457 Broadway, Idaho Falls, Idaho 83402
Moscow-Latah County Library, 110 South Jefferson, Moscow, Idaho 83843
Idaho National Engineering Laboratory Pocatello Office, 215 North 9th, Pocatello, Idaho 83201
Pocatello Library, 612 East Clark, Pocatello, Idaho 83201
Idaho National Engineering Laboratory Twin Falls Office, 1062 Blue Lakes Boulevard North, suite 106, Twin Falls, Idaho 83001
Twin Falls Public Library, 434 2nd Street East, Twin Falls, Idaho 83001
Chicago Operations Office, U.S. Department of Energy, 9800 South Cass Avenue, Argonne, Illinois 60439
Government Publications Department, Chicago Public Library, 400 North Franklin, Chicago, Illinois 60610
Reference Department, Illinois State Library, 300 South Second, Springfield, Illinois 62701
Documents Section, State Library of Iowa, Historical Building, East 12th & Grand, Des Moines, Iowa 50310
Ashland Community College Library, University of Kentucky, 1400 College Drive, Ashland, Kentucky 41101
Federal Documents Section, Kentucky Department for Libraries and Archives, P.O. Box 537, 300 Coffee Tree Road, Frankfort, Kentucky 40602
Paducah Public Library, 555 Washington Avenue, Paducah, Kentucky 42001

Documents Division, Enoch Pratt Free Library, 400 Cathedral Street, Baltimore, Maryland 21201
Harford Community College Library, 401 Thomas Run Road, Bel Air, Maryland 21014
Document Department, State Library of Massachusetts, 442 State House, Boston, Massachusetts 02133
Government Documents Unit, Library of Michigan, P.O. Box 30007, 717 West Allegan Street, Lansing, Michigan 48909
Joseph A. Cook Memorial Library, University of Southern Mississippi, 2609 West 4th Street, Hattiesburg, Mississippi 39406
Documents Section, Mississippi Library Commission, 1221 Ellis Avenue, Jackson, Mississippi 39209
Missouri State Library, P.O. Box 387, 600 West Main Street, Jefferson City, Missouri 65102
U.S. Department of Energy Public Reading Room, Red Bridge Branch, Mid-Continent Public Library, 11140 Locust Street, Kansas City, Missouri 64137
Documents Division, Kansas City Missouri Public Library, 311 East 12th Street, Kansas City, Missouri 64106
Kisker Road Branch, St. Charles City-County Library District, 1000 Kisker Road, St. Charles, Missouri 63303
St. Louis County Library, 1640 South Lindberg Boulevard, St. Louis, Missouri 63131
Documents Division, Montana College of Mineral Science and Technology Library, Park Street, Butte, Montana 59701
Montana State Library, 1515 East 6th Avenue, Helena, Montana 59620
Federal Documents Department, Nebraska Library Commission, 1420 P Street, Lincoln, Nebraska 68508
Beatty Community Library, P.O. Box 129, 4th and Ward Street, Beatty, Nevada 89003
Nevada State Library and Archives, Capitol Complex, 451 North Carson Street, Carson City, Nevada 89710
Nevada Operations Office, U.S. Department of Energy, 2753 South Highland Drive, Las Vegas, Nevada 89193
Government Documents Department, James R. Dickinson Library, University of Nevada, 4805 South Maryland Parkway, Las Vegas, Nevada 89154
Las Vegas Clark County Library, 833 Las Vegas Boulevard North, Las Vegas, Nevada 89101
Lawrenceville Branch, Mercer County Library, 2751 Brunswick Pike, Lawrenceville, New Jersey 08648
Government Publications Department, Alexander Library, Rutgers University, 169 College Avenue, New Brunswick, New Jersey 08903
U.S. Documents, New Jersey State Library, CN–52D, 185 West State Street, Trenton, New Jersey 08625
Albuquerque Operations Office, U.S. Department of Energy, Pennsylvania and H Streets, Kirtland Air Force Base, New Mexico 87115
Government Publications Department, General Library, University of New Mexico, Albuquerque, New Mexico 87131
Carlsbad Public Library, 101 South Halagueno Street, Carlsbad, New Mexico 88220
Mesa Public Library, 1742 Central Avenue, Los Alamos, New Mexico 87545
New Mexico State Library, 325 Don Gasper Avenue, Santa Fe, New Mexico 87503
Cultural Education Department, New York State Library, Madison Avenue, Empire State Plaza, Albany, New York 12230
U.S. Department of Energy, 26 Federal Plaza, Room 3437, New York City, New York 10278
Concord Public Library, 23 N. Buffalo Street, Springville, New York 14141
Lane Library, 800 Vine Street, Cincinnati, Ohio 45202
Documents Department, State Library of Ohio, 65 South Front Street, Columbus, Ohio 43266
Documents Department, Dayton and Montgomery Community Public Library, 215 East Third Street, Dayton, Ohio 45402
Miamisburg Library, 35 South Fifth Street, Miamisburg, Ohio 45342
Portsmouth Public Library, 1220 Galia Street, Portsmouth, Ohio 45667
Shawnee State University Library, 940 Second Street, Portsmouth, Ohio 45662
Social Science Department, Toledo-Lucas County Public Library, 325 Michigan Street, Toledo, Ohio 43624
Portland State University Library, 934 S.W. Harrison, Portland, Oregon 97207
Oregon State Library, State Library Building, West Summer & Court Streets, Salem, Oregon 97310
Government Publications Section, State Library of Pennsylvania, P.O. Box 1601, Walnut Street & Commonwealth Avenue, Harrisburg, Pennsylvania 17105
U.S. Department of Energy Reading Room, Writing Center, University of South Carolina, Aiken Campus, 171 University Parkway, Aiken, South Carolina 29801
Documents Department, South Carolina State Library, P.O. Box 11469, 1500 Senate Street, Columbia, South Carolina 29204
Lawson McGhee Library, Knox County Public Library System, 500 West Church Avenue, Knoxville, Tennessee 37902
Tennessee State Library and Archives, 403 7th Avenue North, Nashville, Tennessee 37219
Freedom of Information Officer, Oak Ridge Operations Office, U.S. Department of Energy, 200 Administration Road, Oak Ridge, Tennessee 37831
U.S. Department of Energy Reading Room, Lynn Library—Learning Center, Amarillo College, 2201 South Washington Street, Amarillo, Texas 79109
U.S. Documents, Texas State Library, P.O. Box 12927, 1201 Brazos, Austin, Texas 78711
Documents Section, Virginia State Library & Archives, 11th Street at Capitol Square, Richmond, Virginia 23219
Richland Operations Office, U.S. Department of Energy, 825 Jadwin Avenue, Richland, Washington 99352
FM–25 Government Publications, Suzzalo Library, University of Washington, Seattle, Washington 98195
Crosby Library, Gonzaga University, E. 502 Boone, Spokane, Washington 99258

Draft Programmatic Environmental Impact Statement

The Department is tentatively planning to hold public workshops in May 1994, in advance of issuing the Draft Programmatic Environmental Impact Statement. Additional announcements will be made at that time. The Department expects to distribute the Draft Programmatic Environmental Impact Statement between June and September 1994; public hearings on the Draft Statement will be scheduled at that time.

Issued in Washington, DC, this 10th day of February 1994.

Tara O'Toole,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 94–3642 Filed 2–16–94; 8:45 am]

BILLING CODE 6450–01–P

DOE Response to Recommendation 93–6 of the Defense Nuclear Facilities Safety Board; Maintaining Access to Nuclear Weapons Expertise

AGENCY: Department of Energy.

ACTION: Notice and request for public comment.

SUMMARY: Pursuant to section 315(b) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(b), the Department of Energy (DOE) hereby publishes notice of a response of the Secretary of Energy (Secretary) to Recommendation 93–6 of the Defense Nuclear Facilities Safety Board, published in the **Federal Register** on December 23, 1993, (58 FR 68123) concerning access to nuclear weapons expertise.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before March 21, 1994.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Victor H. Reis, Assistant Secretary for Defense Programs, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Issued in Washington, DC, on February 2, 1994.

Mark B. Whitaker,

Acting Departmental Representative to the Defense Nuclear Facilities Safety Board.

The Honorable John T. Conway,
Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004

Dear Mr. Conway: The Department of Energy fully accepts Defense Nuclear Facilities Safety Board Recommendation 93–6, Maintaining Access to Nuclear Weapons Expertise.

The Department shares your concern of ensuring capability to safely conduct nuclear weapons testing operations at the Nevada Test Site and to safely dismantle nuclear weapons at the Pantex Site. To meet this challenge, the Department must identify and maintain access to the critical skills of nuclear weapons scientists, engineers, and technicians. Where access to skills in the future is uncertain, the Department must find ways to capture knowledge, so safe dismantlement procedures can be developed and utilized and safe testing operations can be conducted.

The forthcoming Implementation Plan for Recommendation 93–6 will capitalize on activities that have already been initiated and provide a structured approach for ensuring the continued safe conduct of operations at Pantex and the Nevada Test Site.

Sincerely,

Hazel R. O'Leary.

[FR Doc. 94–3643 Filed 2–16–94; 8:45 am]

BILLING CODE 6450–01–P

Office of the Deputy Secretary

Contract Reform Team: Notice of Availability of the Report of the Contract Reform Team

AGENCY: Department of Energy (DOE).

ACTION: Notice of availability.

SUMMARY: The Contract Reform Team, which was established last year by the Secretary of Energy to conduct a comprehensive review of the Department's contracting practices, has completed its work and provided its recommendations to the Secretary. This notice announces the availability of the Report of the Contract Reform Team (Report) and requests the views of the public on the recommendations contained in the Report. The Department will proceed with implementation of the recommendations following an opportunity to consider the views of DOE employees and the public on the Report's recommendations.

DATES AND ADDRESSES: Copies of the Report may be purchased from the Superintendent of Documents, U.S. Government Printing Office. The publication's number is 061–000–00801–2, and its cost is $11.00. Telephone orders should be directed to: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238, FAX (202) 512–2233, Monday through Friday between the hours of 8 a.m. and 4 p.m., eastern time. Mail orders should be directed to: U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954.

The Report also is available for inspection in DOE Public Reading Rooms at Headquarters and in the eight Operations Offices. The locations and telephone numbers of these Reading Rooms are:

Washington, DC

U.S. Department of Energy, Public Reading Room, room 1G–051, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–6020, Attn: Denise Diggin

Albuquerque

National Atomic Museum, 20358 Wyoming Boulevard SE, Kirkland Air Force Base, NM 87117, (505) 845–4378, Attn: Diane Zepeda

Chicago

Chicago Operations Office, Public Reading Room, 9800 South Cass Avenue, Argonne, IL 60439, (708) 252–2010, Attn: Joan L. Redding

Idaho

Idaho Operations Office, Public Reading Room, 1776 Science Center Drive, Idaho Falls, ID 83415, (208) 526–1144, Attn: Gail Wilmore

Nevada

Nevada Operations Office, Public Reading Room, 2753 South Highland Drive, Las Vegas, NV 89109, (702) 295–1459, Attn: Charlotte Santilli

Oak Ridge

Oak Ridge Operations Office, Public Reading Room, Federal Building, 200 Administration Road, Oak Ridge, TN 37830, (615) 576–1216, Attn: Jane Greenwalt

Richland

Richland Operations Office, Public Reading Room, room 130 West, 100 Sprout Road, Richland, WA 99352, (509) 376–8583, Attn: Terri Traub

Oakland

Oakland Operations Office, 1301 Clay Street, Oakland, CA 94612, (510) 637–1794, Attn: Lauren McNair

Savannah River

U.S. Department of Energy, Public Reading Room, University of South Carolina-Aiken, 171 University Parkway, Second Floor Library, Aiken, SC 29801, (803) 725–2889, Attn: James M. Gaver.

Written comments on the Report should be sent to: The Office of the Deputy Secretary, Attention: Contract Reform Team, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW, room 7B–252, Washington, DC 20585. Comments must be received no later than March 21, 1994 and should not exceed ten double-spaced, single-sided typed pages. To facilitate review, an original and two copies of the comments should be provided.

FOR FURTHER INFORMATION CONTACT: For further information contact Carol Drury, U.S. Department of Energy, Office of Public and Consumer Affairs, Washington, DC 20585, at (202) 586–4940.

SUPPLEMENTARY INFORMATION: On May 26, 1993, Secretary of Energy Hazel R. O'Leary announced her intention to establish a Contract Reform Team, chaired by the Deputy Secretary, to review the Department's contracting mechanisms and practices. The Contract Reform Team was charged with a review of a broad range of contracting issues, including the management and operation of DOE weapons production facilities and national laboratories, support service contracting, and environmental restoration activities, consistent with the Department's changing mission.

The Contract Reform Team conducted a thorough analysis of the Department's contracting practices and provided a list of specific recommendations to the Secretary regarding administrative, financial, and regulatory improvements that are intended to increase contractor accountability, enhance competition, provide appropriate incentives for contractors to meet and exceed performance criteria and achieve cost savings, and improve contract administration and financial accountability.

The Department is strongly committed to the President's and Vice President's efforts to reinvent Government and recognizes that reforming DOE's contracting practices is critical to our success. This Report represents a major step forward in the Secretary's efforts to reform the Department's contracting practices. The recommendations are intended to create a system that focuses on efficient processes and quality results, rewards initiative and commitment, and provides meaningful sanctions and penalties where necessary.

The Department is interested in the views of stakeholders within and outside the Department on the Report's recommendations. Following consideration of stakeholder views, the Department intends to proceed with the implementation phase of its contract reform initiative.

Issued in Washington, DC, on February 11, 1994.

William H. White,

Deputy Secretary, Department of Energy.

[FR Doc. 94–3641 Filed 2–16–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ER94–949–000, et al.]

Public Service Company of Oklahoma, et al.; Electric Rate and Corporate Regulation Filings

February 8, 1994.

Take notice that the following filings have been made with the Commission:

1. Public Service Company of Oklahoma

[Docket No. ER94–949–000]

Take notice that on February 2, 1994, Public Service Company of Oklahoma and Southwestern Electric Power Company submitted for filing a revised SPP Interpool Transmission Service Tariff. The filing companies state that the purpose of the filing is to update the rates for service under the tariff. The filing companies request an effective date of February 2, 1994.

The filing companies state that copies of the filing have been served on the Public Utility Commission of Texas, the Oklahoma Corporation Commission, the Arkansas Public Service Commission, the Louisiana Public Service Commission and the New Mexico Public Utility Commission. Copies of the filing are also available for inspection in the general offices of each of the filing companies.

Comment date: February 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Westchester Resco Company, L.P.

[Docket Nos. ES94–14–000 and ES94–14–001]

Take notice that on February 2, 1994, Westchester Resco Company (WRC) filed an application and on February 3, 1994, filed an amendment to its application under section 204 of the Federal Power Act seeking authority to guarantee refunding bonds to be issued by the County of Westchester Industrial Development Agency for refinancing bonds issued in 1982 and seeking authorization for blanket approval of all future issuance of securities and assumptions of liabilities. Also, WRC requests exemption from the Commission's competitive bidding and negotiated placement regulations.

Comment date: February 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Stone Container Corporation, A Delaware Corporation

[Docket No. EL94–25–000]

Take notice that on January 28, 1994, Stone Container Corporation (Operator) tendered for filing a Petition for Declaratory Order that the transfer of the lessee's interest in a qualifying cogeneration facility from the Operator to Carolina Power & Light Company (CP&L), a North Carolina corporation, will not (1) subject the Operator to Commission regulation as a "public utility" under section 201(e) of the Federal Power Act if the Operator continues to operate the Facility pursuant to an Operating, Maintenance and Repair Agreement between CP&L and the Operator and (2) subject GELCO Corporation (GELCO) and Westinghouse Electric Corporation, as lessors, each holding an undivided interest in the Facility to regulation as "public utilities" under section 201(e) of the Federal Power Act.

Comment date: February 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Maine Yankee Atomic Power Company

[Docket No. EL93–22–001]

Take notice on February 2, 1994, Maine Yankee Atomic Power Company (Maine Yankee) tendered for filing its compliance report in the above-referenced docket.

Comment date: February 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Columbus Southern Power Company, Ohio Power Company

[Docket No. ER93–637–000]

Take notice that on January 28, 1994, American Electric Power Service Corporation, on behalf of Columbus Southern Power Company (CSP) and Ohio Power Company (OPCO) tendered for filing revised copies of Supplement B to CSP's FERC Rate Schedule No. 37 and OPCO's FERC Rate Schedule No. 74. Supplement B caps the transmission rate in Rate Schedule Nos. 37 and 74 respectively, for transactions exceeding one year in length at the level ultimately approved by FERC in Docket No. ER93–540–000.

A copy of the filing was served upon the American Municipal Power-Ohio Inc., the City of Columbus, Ohio, and the Public Utility Commission of Ohio.

Comment date: February 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. El Paso Electric Company, Central and South West Services, Inc.

[Docket No. EC94–7–000]

Take notice that on February 3, 1994, El Paso Electric Company (EPEC) and Central and South West Services, Inc. (CSWS), submitted for filing workpapers that support the testimony and exhibits of three witnesses: Samuel C. Hadaway David A. Harrell and James A. Brugeman, that were included in the Joint Application filed on January 10, 1994, and supplemented on January 13, 1994.

Copies of this second supplemental filing have been served on all parties listed on the service list in Docket No. EC94–7–000 and on all affected state utility commissions.

Comment date: February 24, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Northern States Power Company (Minnesota)

[Docket No. ER94–882–000]

Take notice that on January 11, 1994, Northern States Power Company (Minnesota) tendered for filing page 4 of the Operating Agreement in the above-referenced docket, which was inadvertently omitted from the filing made in this docket on December 30, 1993.

Comment date: February 22, 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, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFF 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. 94–3638 Filed 2–16–94; 8:45 am]

BILLING CODE 6717–01–P.

[Docket No. EG94–21–000, et al.]

SEI Bahamas Argentina I, Inc., et al.; Electric Rate and Corporate Regulation Filings

February 7, 1994.

Take notice that the following filings have been made with the Commission:

1. SEI Bahamas Argentina I, Inc.

[Docket No. EG94–21–000]

On January 28, 1994, SEI Bahamas Argentina I, Inc. (the "Applicant"), 900 Ashwood Parkway, Suite 300, Atlanta, Georgia 30338, 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 Applicant is a wholly-owned subsidiary of SEI Holdings VI, Inc., which, in turn, is a wholly-owned subsidiary of The Southern Company. The Applicant is participating in a bid for the purpose of owning and/or operating "eligible facilities" as defined in section 32(a)(2) of PUHCA. The facilities consist of four dams and three hydroelectric generating stations with a total installed capacity of 265 MW produced by twelve generating units and associated interconnection facilities. The facilities are located on the Atuel River system in the Department of San Rafael in the Province of Mendoza, Argentina.

Comment date: February 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Inversores de Electricidad S.A.

[Docket No. EG94–22–000]

On January 28, 1994, Inversores de Electricidad S.A. (the "Applicant") filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator ("EWG") status pursuant to Part 365 of the Commission's regulations.

The Applicant is jointly owned by SEI Holdings VI, Inc. and SEI Bahamas Argentina I, Inc. SEI Bahamas Argentina I, Inc. is a wholly-owned subsidiary of SEI Holdings VI, Inc., which, in turn, is a wholly-owned subsidiary of The Southern Company. The Applicant is participating in a bid for the purpose of owning and/or operating "eligible facilities" as defined in section 32(a)(2) of PUHCA. The facilities consist of four dams and three hydroelectric generating stations with a total installed capacity of 265 MW produced by twelve generating units and associated interconnection facilities. The facilities are located on the Atuel River system in the Department of San Rafael in the Province of Mendoza, Argentina.

Comment date: February 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. SEI Inversora S.A.

[Docket No. EG94–23–000]

On January 28, 1994, SEI Inversora S.A. (the "Applicant") filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator ("EWG") status pursuant to Part 365 of the Commission's regulations.

The Applicant is jointly owned by SEI Bahamas Argentina I, Inc. and Inversores de Electricidad. SEI Bahamas Argentina I, Inc. is a wholly-owned subsidiary of SEI Holdings VI, Inc., which, in turn, is a wholly-owned subsidiary of The Southern Company. Inversores de Electricidad is jointly owned by SEI Holdings VI, Inc. and SEI Bahamas Argentina I, Inc. The Applicant is participating in a bid for the purpose of owning and/or operating "eligible facilities" as defined in section 32(a)(2) of PUHCA. The facilities consist of four dams and three hydroelectric generating stations with a total installed capacity of 265 MW produced by twelve generating units and associated interconnection facilities. The facilities are located on the Atuel River system in the Department of San Rafael in the Province of Mendoza, Argentina.

Comment date: February 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Gordonsville Energy, L.P.

[Docket Nos. EL94–20–000, QF92–166–003 and QF92–167–003]

Take notice that on January 13, 1994, Gordonsville Energy, L.P. (Gordonsville) tendered for filing a Petition for Waiver of the Commission's Regulations under the Public Utility Regulatory Policies Act of 1978 (PURPA). Gordonsville petitions the Commission to waive the ownership requirements for qualifying cogeneration facilities as set forth in § 292.206(b), 18 CFR 292.206(b) of the Commission's Regulations implementing Section 201 of PURPA, as amended, with respect to Gordonsville's one hundred percent (100%) ownership interest in two natural gas and oil-fired qualifying cogeneration facilities located in Gordonsville, Virginia.

The notice originally issued in this proceeding on January 28, 1994, is amended to reference Docket Nos. QF92–166–003 and QF92–167–003.

Comment date: February 28, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Southern California Edison Company

[Docket No. ER93–576–000]

Take notice that on February 2, 1994, Southern California Edison Company submitted supplemental information regarding its filing in the above-captioned docket.

Comment date: February 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Pennsylvania Power & Light Company

[Docket No. ER94–945–000]

Take notice that on February 1, 1994, Pennsylvania Power & Light Company (PP&L), tendered for filing a proposed change in rate levels of certain electric resale schedules presently on file with the Commission. The proposed change will decrease base rate revenues from jurisdictional sales and service to the specified utility and municipal resale customers (municipal utilities). PP&L requests an effective date of February 1, 1994, the date negotiated by PP&L and the municipal utilities. PP&L states that all the municipal utilities concerned have agreed to the filed rate schedule changes.

PP&L states that copies of the filing were served on the municipal utilities concerned as well as the Pennsylvania Public Utility Commission.

Comment date: February 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Niagara Mohawk Power Corporation

[Docket No. ER94–946–000]

Take notice that on February 1, 1994, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing with the Commission a signed Service Agreement between Niagara Mohawk and the New York Power Authority (NYPA) for sales of system capacity and/or energy or resource capacity and/or energy under Niagara Mohawk's proposed Power Sales Tariff in Docket No. ER93–313–000. Niagara Mohawk filed its Power Sales Tariff on January 11, 1993 and requested an effective date of March 13, 1993 for the Tariff. Niagara Mohawk requests an effective date for this Service Agreement of February 1, 1994, the date of filing with FERC.

A copy of this filing has been served upon NYPA and the New York State Public Service Commission.

Comment date: February 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. IES Utilities Inc.

[Docket No. ER94–947–000]

Take notice that on February 1, 1994, IES Utilities Inc. (IESU), tendered for filing a Notice of Succession, wherein IESU stated it had adopted all existing rate schedules of Iowa Southern Utilities Company (ISU) and Iowa Electric Light and Power Company (IE)

on file with the Commission. Effective December 31, 1993, ISU merged into IE and the name of the surviving corporation was changed to IES Utilities Inc.

A copy of the filing was served upon all jurisdictional customers of IESU.

Comment date: February 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Arizona Public Service Company

[Docket No. ER94–948–000]

Take notice that on February 2, 1994, Arizona Public Service Company (APS) tendered for filing revised estimated load and contract demand Exhibits applicable under the following rate schedules:

APS–FPC/ FERC No.	Customer	Exhibit name
58	Welton-Mohawk Irrigation & Drainage District	Exhibit B
126	Electrical District No. 6	Exhibit "II."
140	Electrical District No. 8	Exhibit "II."
142	McMullen Valley Water Cons. & Drainage District	Exhibit "II."
143	Tonopah Irrigation District	Exhibit "II."
153	Harquahala Valley Power District	Exhibit "II."
155	Buckeye Water Cons. & Drainage District	Exhibit "II."
158	Rossevelt Irrigation District	Exhibit "II."
168	Maricopa Water District	Exhibit "II."

Current rate levels are unaffected, revenue levels are unchanged from those currently on file with the Commission, and no other significant change in service to these or any other customer results from the revisions proposed herein. No new or modifications to existing facilities are required as a result of these revisions.

A copy of this filing has been served on the above customers and the Arizona Corporation Commission.

Comment date: February 22, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Pioneer Energy Partners, Limited Partnership

[Docket No. QF93–127–001]

On February 1, 1994, Pioneer Energy Partners, Limited Partnership tendered for filing a supplement to its filing in this docket. The supplement pertains to technical aspects of the qualifying facility. No determination has been made that the submittal constitutes a complete filing.

Comment date: February 22, 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, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before 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. 94–3639 Filed 2–16–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–204–000, et al.]

Arkla Energy Resources Co., et al.; Natural Gas Certificate Filings

February 8, 1994.

Take notice that the following filings have been made with the Commission:

1. Arkla Energy Resources Company, ONEOK Services, Inc.

[Docket No. CP94–204–000]

Take notice that on January 28,1994, Arkla Energy Resources Company (AER), 1600 Smith Street, Houston, Texas 77002 and ONEOK Services, Inc. (ONEOK), 100 West Fifth Street, P.O. Box 871, Tulsa, Oklahoma 74102, filed in Docket No. CP94–204–000 a joint application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange agreement and for AER to abandon by sale to Arkansas Louisiana Gas Company (ALG) certain facilities in Marshall County, Oklahoma, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

AER states that its predecessor, Arkansas Louisiana Gas Company, and ONEOK's predecessor, Lone Star Gas Company, were authorized to exchange gas in McClain and Marshall Counties, Oklahoma. AER further states that it delivers gas to ONEOK in McClain County, Oklahoma and ONEOK redelivers the gas to AER in Marshall County, Oklahoma for delivery to ALG for distribution in the Town of Kingston, Oklahoma. ALG and ONEOK have negotiated intrastate service arrangements that make the exchange between AER and ONEOK no longer necessary, it is stated. ALG would operate the lines and taps as part of its rural distribution system in Oklahoma and continue to serve the Town of Kingston, Oklahoma, it is stated.

AER proposes to abandon by sale to ALG the exchange receipt facilities, consisting of a 2-inch tap and meter station, and two 2-inch delivery taps and meter stations and approximately 9.4 miles of 3-inch pipeline, all located in Marshall County, Oklahoma. AER and ONEOK also propose to abandon the exchange service under AER's Rate Schedule No. XE–45. ONEOK asserts that it was not assigned a tariff or rate schedule when it accepted the assignment of service from Lone Star. ONEOK is not proposing to abandon any facilities.

Comment date: March 1, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. Southern Natural Gas Company

[Docket No. CP94–210–000]

Take notice that on February 2, 1994, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP94–210–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a delivery tap, pipeline, metering and appurtenant facilities for additional service to Union

Camp Corporation (Union Camp) under Southern's blanket certificate issued in Docket No. CP82–406–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Southern states that it was authorized by the Commission to provide service to Union Camp at its Savannah, Georgia Plant by order dated February 18, 1953, in Docket No. G–1907. Southern further states that it proposes to construct and operate certain measurement and regulating facilities in order to provide interruptible transportation service to Union Camp at a second delivery point for use at a new boiler to be constructed at the Savannah Plant in Chatham County, Georgia. Southern says that it proposes to locate the facilities on the plant site in Chatham County, and the estimated cost of construction and installation is approximately $628,967.

Southern states that it would transport gas on behalf of Union Camp pursuant to its Rate Schedule IT. Southern states that the installation of the proposed facilities would have no adverse effect on its peak day or annual requirements.

Comment date: March 25, 1994, in accordance with Standard Paragraph G at the end of this notice.

3. Natural Gas Pipeline Company of America

[Docket No. CP94–215–000]

Take notice that on February 3, 1994, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed, in Docket No. CP94–215–000, a request pursuant to §§ 157.205(b) and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205(b) and 157.212) for authorization to construct and operate facilities in Moultrie County, Illinois. The facilities would be used as a new delivery point to deliver natural gas transported for Illinois Power Company (Illinois Power), a local distribution company, pursuant to a part 284, subpart G transportation contract between Natural and Illinois Power. Illinois Power would use the gas received as part of its system supply. Natural would construct and operate these facilities under its blanket certificate granted September 1, 1982, at Docket No. CP82–402–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural proposes to install dual 8" meter and dual 10" tap facilities for an interconnect with Illinois Power's 20" Hillsboro Lateral. The facilities would be constructed to deliver approximately 90,000 MMBtu per day of natural gas to Illinois Power in Section 4, Township 14 South, Range 5 East, Moultrie County, Illinois, at an estimated total cost of $393,000. Natural states that it has sufficient capacity to provide these services at the proposed delivery point without detriment or disadvantage to Natural's peak day and annual delivery capacity.

Comment date: March 25, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–3640 Filed 2–16–94; 8:45 am]

BILLING CODE 6717–01–P

Office of Hearings and Appeals

Issuance of Decisions and Orders During the Week of November 8 Through November 12, 1993

During the week of November 8 through November 12, 1993, the decisions and orders summarized below were issued with respect to applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

The Gazette Newspapers, 11/9/93, LFA–0156

The Gazette Newspapers filed an Appeal from a determination issued by the DOE Office of Naval Reactors (Naval Reactors) in response to a request for information filed by the Gazette under the Freedom of Information Act (FOIA). The Gazette had requested certain radiological documents that were withheld by Naval Reactors as classified. In considering the Appeal, the DOE found that Naval Reactors properly withheld the requested documents as classified under Executive Order 12356. Accordingly, the Appeal was denied.

Refund Applications

Shell Oil Company/Brown Construction Company, 11/9/93, RR315–5

The DOE issued a Decision and Order denying a Motion for Reconsideration filed in the Shell Oil Company special refund proceeding by Resource Refunds, Inc. (RRI), on behalf of Brown Construction Company (Brown). The RRI Motion sought reversal of a decision to deny the Brown Application for Refund in the Shell proceeding because

the Application was filed after the April 1, 1992 final filing deadline in this proceeding. RRI demonstrated that the late filing was the result of it's own error and was not at all the fault of Brown. The DOE concluded that while RRI's error may have left it responsible for the loss of Brown's potential refund, the agent's mishandling of the Brown's Application did not justify reopening the Shell proceeding. Accordingly, the Motion for Reconsideration filed by RRI on behalf of Brown was denied.

Texaco Inc./Airport Texaco, 11/12/93, RF321–19277

The DOE issued a Decision and Order concerning an Application for Refund filed by Mr. Ben Story in the Texaco Inc. special refund proceeding on behalf of Airport Texaco, a service station located at 7770 Airport Boulevard in Mobile, Alabama. In the Application, Mr. Story indicated that he owned and operated Airport Texaco from March 1978 through March 1984. However, the DOE had previously granted an Application for Refund filed by John Locklier based upon purchases by the service station during the period at the 7770 Airport Boulevard address. In support of his Application, Mr. Locklier had provided Texaco invoices, accounting documents, cancelled checks, and copies of tax forms which established that he operated Airport Texaco from February 1976 through December 1980. Mr. Story also provided a statement from the State of Alabama Department of Revenue attesting to Mr. Story's payment of withholding tax, as reflected on W–2 forms, for the period from March 1978 through 1982. However, according to this statement, Mr. Story paid withholding tax at Airport Texaco only in 1980 and 1981. Because W–2 forms are filed by employees and are based on their earnings, the DOE determined that this evidence could not be taken as proof that Mr. Story was the owner and operator of Airport Texaco. Mr. Story could produce no further documentation to substantiate his claim, and in the absence of a convincing demonstration that he was the owner and operator of Airport Texaco during the refund period, his Application for Refund was denied.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Kenmore ARCO et al	RF304–14449	11/08/93
City of Augusta et al	RF272–83084	11/09/93
City of Hawaiian Gardens	RF272–83545	11/09/93
City of Stamps et al	RF272–84404	11/09/93
Fairchild Industries, Inc	RD272–58630	11/10/93
Fairchild Industries, Inc	RF272–58630	
Farmers Union Oil Company	RF272–88286	11/09/93
Farmers Co-operative Oil Co	RF272–88656	
Gulf Oil Corporation/City of Bowie et al	RF300–21007	11/10/93
Gulf Oil Corporation/Davis Gulf et al	RF300–18272	11/12/93
Gulf Oil Corporation/Hickory Drive-In Gulf et al	RF300–20502	11/12/93
Gulf Oil Corporation/Pilot Freight Carrier et al	RF300–19542	11/12/93
Gulf Oil Corporation/Richard Construction Co., Inc	RF300–19699	11/12/93
Richard Construction Co., Inc	RF300–21762	
Texaco Inc./David Rodgers Texaco et al	RF321–93	11/08/93
Texaco Inc./Mauldin Service Center et al	RF321–19029	11/08/93
Texaco Inc./Ridge Texaco	RF321–8460	11/12/93
Town of Lancaster et al	RF272–85598	11/10/93

Dismissals

The following submissions were dismissed:

Name	Case No.
4-WAY SERVICE	RF321–16744
ARNONE TEXACO	RF321–17906
B. LLOYD'S PECAN PRODUCTS, INC.	RF321–2595
BOYD'S TEXACO	RF321–18413
CAMPBELL 66 EXPRESS	RF321–19880
FAIRLESS HILLS	RF321–16960
HALLMAN'S TEXACO	RF321–17913
LAKEWOOD TEXACO	RF321–14303
MAPLES TEXACO	RF321–8605
MAXWELL'S TEXACO	RF321–18589
MCPHERSON FUELS AND ASPHALTS, INC.	RF321–17017
MOUNTAIN VIEW ELEMENTARY.	RF272–82130
NABE'S TEXACO	RF321–8607
PEPE'S TEXACO	RF321–8606
PORTWAY TEXACO	RF321–17942
RAYLE TEXACO	RF321–18380
RAYLE TEXACO	RF321–18461
ROBERT KETCHUM	RF321–17998
SCHUYLER GRADE SCHOOLS.	RF272–82141
TOM'S TEXACO	RF321–18466
USA GAS TRENTON	RF321–16959
VICKERS, INC.	RF321–16426
WESTERN EXCHANGE CORP.	RF321–16745

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: February 10, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94–3644 Filed 2–16–94; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL RESERVE SYSTEM

Alabama National Bancorporation, 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 March 11, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Alabama National Bancorporation, Shoal Creek, Alabama; to merge with Citizens Holding Company, Inc., Talladega, Alabama, and thereby indirectly acquire Citizens Bank of Talladega, Talladega, Alabama.

2. United Community Banks, Inc., Blairsville, Georgia; to acquire a debenture of White County Bancshares, Inc., Cleveland, Georgia, that is exchangeable for 51 percent of the common shares of its subsidiary, White County Bank, Cleveland, Georgia.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Leeds Holding Company, Leeds, North Dakota; to acquire 100 percent of the voting shares of Bankers Financial Corporation, Drake, North Dakota, and thereby indirectly acquire First National Bank in Drake, Drake, North Dakota.

Board of Governors of the Federal Reserve System, February 10, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–3612 Filed 2–16–94; 8:45 am]

BILLING CODE 6210–01–F

Alabama National Bancorporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 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.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 11, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Alabama National Bancorporation, Shoal Creek, Alabama; to acquire Saint Clair Holding Company, Inc., Pell City, Alabama, and its thrift subsidiary, Saint Clair Federal Savings Bank, Pell City, Alabama, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y. The activity will be conducted in the State of Alabama.

Board of Governors of the Federal Reserve System, February 10, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–3613 Filed 2–16–94; 8:45 am]

BILLING CODE 6210–01–F

Hoosier Hills Financial Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has 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.

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 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.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 8, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Hoosier Hills Financial Corporation, Osgood, Indiana; to engage *de novo* in a one time lending activity via the lending of funds to the Hoosier Hills Financial Corporation Employee Stock Ownership Plan, Osgood, Indiana, for the sole purpose of purchasing additional holding company stock pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 10, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–3611 Filed 2–16–94; 8:45 am]

BILLING CODE 6210–01–F

Marsha Merrill Wedell; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has 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 notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice 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 the notice or to the offices of the Board of Governors. Comments must be received not later than March 8, 1994.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Marsha Merrill Wedell and Henri Ludwig Wedell, Memphis, Tennessee; to retain 10.4 percent of the voting shares of Community Bancshares, Inc., Germantown, Tennessee, and thereby indirectly acquire Community First Bank, Germantown, Tennessee.

Board of Governors of the Federal Reserve System, February 10, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–3614 Filed 2–16–94; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

[2168]

Program Announcement and Proposed Funding Priorities for Cooperative Agreements for Area Health Education Centers Program for Fiscal Year 1994

The Health Resources and Services Administration (HRSA) announces that applications are now being accepted for fiscal year 1994, Cooperative Agreements for the Area Health Education Centers (AHEC) Program under the authority of section 746(a)(1), (previously section 781(a)(1), title VII of the Public Health Service (PHS) Act, as amended by the Health Professions Education Extension Amendments of 1992, dated October 13, 1992. Comments are invited on the proposed funding priorities stated below.

Approximately $18.7 million will be available for this program in FY 1994. Total continuation support recommended is $8.4 million. It is anticipated that $10.3 million will be available to support nine competing awards averaging $1.14 million.

The Health Professions Education Extension Amendments of 1992, makes the following amendments to this program.

(1) Period of Support

The maximum period during which the AHEC programs may receive payments shall be 12 years, subject to annual approval by the Secretary and the availability of appropriated funds. The maximum period during which an AHEC center developed by a program may receive payments shall be 6 years. The provision for a 12-year maximum shall not be construed as establishing a limitation on the number of awards under this authority that may be made to the school involved.

(2) General Requirements

As provided in section 746(b), a medical or osteopathic medical school may not receive an award for operational expenses under the existing basic AHEC award authority unless the program:

(a) Maintains preceptorship educational experiences for health science students;

(b) Maintains community-based primary care residency programs or is affiliated with such programs;

(c) Maintains continuing education programs for health professions or coordinates with such programs;

(d) Maintains learning resource and dissemination systems for information identification and retrieval;

(e) Has agreements with community-based organizations for the delivery of education and training in the health professions;

(f) Is involved in the training of health professionals (including nurses and allied health professionals), except to the extent inconsistent with the law of the State in which the training is conducted; and

(g) Carries out recruitment programs for the health science professions, or programs for health-career awareness, among minority and other elementary or secondary students from the areas the program has determined to be medically underserved;

(3) Requirements for Participation of Other Health Professions Schools or Programs

The former requirement that participating medical schools provide for the active participation of at least 2 schools or programs of other health professions (including a school of dentistry if there is one affiliated with the medical school's university) is modified to require also participation of a graduate program of mental health practice if there is one affiliated with the university.

(4) Requirement for Expenditure of at Least 75 Percent of Award in Centers

The former requirement that at least 75 percent of the total funds provided to a school under any AHEC program authority (basic AHEC programs, AHEC Special Initiatives or Model AHEC programs) be expended by the AHEC program in AHEC centers has been amended, as provided in section 746(e)(1)(A) to require also that the school enter into an agreement with each of such centers for purposes of specifying the allocation of the 75 percent of funds.

(5) Alternative Matching Requirements for New AHEC Programs Developed Under Basic AHEC Authority

As provided in section 746(e)(2), for an AHEC center developed as part of an AHEC program first funded under the basic AHEC authority on or after October 13, 1992, the existing requirement that not more than 75 percent of total operating funds be provided by the Federal Government (section 746(e)(1)(B)), is amended to establish a ceiling of 55 percent of any fifth or sixth year of the development or operation of the center.

Previous Funding Experience

Previous funding experience information is provided to assist potential applicants to make better informed decisions regarding submission of an application for this program.

In FY 1993, HRSA reviewed 17 applications for Cooperative Agreements for the Area Health Education Centers Program. Of those applications, 58.9 percent were approved and 41.1 percent were disapproved. Eight projects, or 47 percent of the applications received, were funded.

In FY 1992, HRSA reviewed 11 applications. Of those applications, 73

percent were approved and 27 percent were disapproved. Three projects or 27 percent of the applications received, were funded.

Purpose

Section 746(a)(1) of the PHS Act authorizes Federal assistance to schools of medicine and osteopathic medicine which have cooperative arrangements with one or more public or nonprofit private area health education centers for the planning, development and operation of area health education center programs.

Eligibility

To be eligible to receive support for an area health education center cooperative agreement, the applicant must be a public or nonprofit private accredited school of medicine or osteopathic medicine or consortium of such schools, or the parent institution on behalf of such school(s).

Applicants may request up to 3 years of support with the expectation that AHECs planned and developed in years 1 and 2 would be fully operational no later than the 3rd year. The period of Federal support should not exceed 12 years for an area health education center program and 6 years for an area health education center.

The Health Professions Reauthorization Act of 1988, title VI of Public Law 100–607, amended the authority for the area health education center program by:

1. Providing for a waiver, under specified circumstances, of the provision now contained in section 746(a)(2)(C) prohibiting an AHEC from being a school of medicine or osteopathic medicine, the parent institution of such a school, or a branch campus or other subunit of a school of medicine or osteopathic medicine or its parent institution, or a consortium of such entities. The waiver of this provision applies to an AHEC having, at the time of initial application, an operating program supported by appropriations of a State legislature as well as local resources;

2. Reducing the minimum number of individuals enrolled in first-year positions in a rotating osteopathic internship or a medical residency training program in family medicine, general internal medicine, or general pediatrics from six individuals to four; and

3. Revising the requirement that each AHEC shall "conduct interdisciplinary training and practice involving physicians and other health personnel including, where practicable, physician assistants and nurse practitioners" to add "and nurse midwives."

To receive support, programs must meet the requirements of the regulations as set forth in 42 CFR part 57, subpart MM.

Degree of Federal Involvement in the Planning, Development and Operation of Area Health Education Centers Program

The Bureau of Health Professions, within the Health Resources and Services Administration, has substantial programmatic involvement in the planning, development, and administration of the AHEC projects by:

1. Reviewing and approving plans upon which continuation of the cooperative agreement is contingent in order to permit appropriate direction and redirection of activities;

2. Reviewing and approving all contracts and agreements among recipient medical or osteopathic schools, other health professions schools and community-based centers;

3. Participating with project staff in the development of funding projections;

4. Developing, with project staff, individual project data collection systems and procedures; and

5. Participating with project staff in the design of project evaluation protocols and methodologies.

Matching Funds Requirement

Section 746(e)(1)(B) of the Act requires that not more than 75 percent of total operating funds of a program in any year shall be provided by the Federal Goverment. However, as provided in section 746(e)(2), for an AHEC center developed as part of an AHEC program first funded under the basic AHEC authority on or after October 13, 1992, a ceiling of 55 percent of any fifth or sixth year of the development or operation of a center is established.

National Health Objectives for the Year 2000

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS led national activity for setting priority areas. This program is related to the priority area of Educational and Community-Based Programs. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The degree to which the proposed project adequately provides for the program requirements set forth in 42 CFR 57.3804;

2. The capability of the applicant to carry out the proposed project; and

3. The extent of the need of the area to be served by the area health education centers.

Other Considerations

In addition, the following funding factors may be applied in determining funding of approved applications.

1. Funding preference is defined as the funding of a specific category or group of applications ahead of other categories or groups of approved applications, such as competing continuation projects ahead of new projects.

2. Funding priority is defined as the favorable adjustment of aggregate review scores of individual approved applications when applications meet specified criteria.

It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for funding factors will be reviewed and given full consideration for funding.

Established Funding Preferences for Fiscal Year 1994

The following funding preference No. 1 was established in FY 1989 after public comment (at 54 FR 189) dated January 4, 1989. Funding Preference No. 2, was established in FY 1993, after public comment at 58 FR 12245, dated March 3, 1993. These funding preferences are being extended in FY 1994.

In making awards for fiscal year 1994, a funding preference will be given to:

(1) Approved competing continuation applications under section 746(a)(1); and

(2) Approved competing new applications under section 746 (a)(1) which propose to plan, develop and implement an AHEC program in a State where there is no existing AHEC

program. These applications will be funded after approved competing continuation applications.

Established Funding Priority for Fiscal Year 1994

The following funding priority was established in FY 1989, after public comment at 54 FR 189, dated January 4, 1989, and is being extended in FY 1994:

A funding priority will be given to applications which demonstrate substantial clinical training (a student or resident clerkship or preceptorship of 4 to 8 weeks) in sites that serve the medically underserved.

Proposed Funding Priorities for FY 1994

It is proposed that a funding priority be given to:

1. Applicants which demonstrate an increase in the percentage of graduates who have entered a Primary Care (Family Medicine, General Internal Medicine, General Pediatrics) Residency, for the most recent 3-year period.

An overall goal of the AHEC Program is to utilize educational interventions to improve the geographic and specialty distribution of primary care health personnel, and thereby increase access to health care to underserved populations. The achievement of AHEC Program goals is enhanced by medical schools (allopathic and osteopathic) which can demonstrate a commitment to increasing the number of students who select graduate training in a primary care specialty (family medicine, general internal medicine, general pediatrics). Such a commitment can be demonstrated in the performance and track record of the applicant medical schools, during a most recent 3-year period. In times of limited dollars, it is reasonable to allocate funds to: (1) Training institutions that have primary care training goals that are consonant with those of the Bureau of Health Professions and the AHEC Program; and (2) institutions that can demonstrate performance in training an increasing number of medical students who upon graduation select a primary care career specialty.

2. Applicants which demonstrate an increase in the percentage of underrepresented minority graduates for the most recent 3-year period.

This funding priority is proposed to encourage the training of underrepresented minorities in an effort to increase the number of underrepresented minorities who are accepted to medical school (allopathic or osteopathic) and complete training. It is assumed that these individuals, following training, are most likely to provide much needed care in medically underserved communities to predominantly minority populations. It is reasonable to provide limited funds to institutions which demonstrate a commitment to increasing the number of underrepresented minorities who graduate from medical school. Such commitment can be demonstrated in the performance and track record of the medical school, during a most recent 3-year period. Current data indicate that the percentage of underrepresented minorities attending and graduating from medical schools is not equal to the percentage of underrepresented minorities in the United States. This priority will assist in addressing the needs of underserved minority populations. The term "underrepresented minorities" means, with respect to a health profession, racial and ethnic populations that are underrepresented in the health profession relative to the number of individuals who are members of the population involved. For this program, it means American Indians or Alaskan Natives, Blacks, Hispanics, and, potentially, various subpopulations of Asian individuals. Applicants must evidence that any particular subgroup of Asian individuals is underrepresented in a specific discipline.

Additional Information

Interested persons are invited to comment on the proposed funding priorities. All comments received on or before March 21, 1994 will be considered before the final funding priorities are established.

Written comments should be addressed to: Marc L. Rivo, M.D., M.P.H., Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 4C–25, Parklawn Building, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Application Requests

Requests for application materials and questions regarding grants policy and business management issues should be directed to:

Ms. Diane Murray, Grants Management Specialist (U76), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Parklawn Building, room 8C–26, Rockville, Maryland 20857, Telephone: (301) 443–6857, Fax: (301) 443–6343.

Completed applications should be forwarded to the Grants Management Branch at the above address.

If additional programmatic information is needed, please contact: Ms. Cherry Tsutsumida, Chief, AHEC and Special Programs Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Parklawn Building, room 4C–05, Rockville, Maryland 20857, Telephone: (301) 443–6817, Fax: (301) 443–8890.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB Clearance Number is 0915–0060.

The deadline date for receipt of applications is March 15, 1994. Applications shall be considered to be "on time" if they are either:

(1) Received on or before the established deadline date, or

(2) Sent on or before the established deadline and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service commercial carrier or U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant.

This program is listed at 93.824 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

This program is not subject to the Public Health System Reporting Requirements.

Dated: December 20, 1993.

John H. Kelso,

Acting Administrator.

[FR Doc. 94–3598 Filed 2–16–94; 8:45 am]

BILLING CODE 4160–15–P

[PN 2164]

Emergency Medical Services for Children Demonstration Grants

AGENCY: Health Resources and Services Administration (HRSA), PHS, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The HRSA in collaboration with the National Highway Traffic

Safety Administration (NHTSA) announces the availability of fiscal year (FY) 1994 funds for grants authorized under section 1910 of the PHS Act. These discretionary grants will be made to States or accredited schools of medicine to support projects for the expansion and improvement of emergency medical services for children (EMSC). Funds appropriated by Public Law 103–112 will be used for this purpose. Under the EMSC program authority, awards are made for project periods of up to 2 years.

The NHTSA participated with the HRSA in developing program priorities for the EMSC program for FY 1994. The NHTSA will share the Federal monitoring responsibilities for EMSC awards made during FY 1994 and will continue to provide ongoing technical assistance and consultation in regard to the required collaboration/linkages between applicants and their Highway Safety Offices and Emergency Medical Services Agencies for the State(s). Grantees funded under this program are expected to work collaboratively with the State trauma systems planning and development projects funded by the Bureau of Health Resources Development, HRSA.

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS led national activity for setting priority areas. The EMSC grant program will directly address the Healthy People 2000 objectives related to emergency medical services and trauma systems linking prehospital, hospital, and rehabilitation services in order to prevent trauma deaths and long-term disability. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone 202 783–3238).

ADDRESSES: Grant applications for Emergency Medical Services for Children Demonstration Grants (Revised PHS form #5161–1, approved under OMB #0937–0189) must be obtained from and submitted to: Grants Management Branch, Maternal and Child Health Bureau, HRSA, room 18–12, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Attn: EMSC, telephone 301 443–1440.

DATES: The application deadline date is May 6, 1994, for all categories except planning grants, which are due March 25, 1994. These are different from the dates announced in the **Federal Register** on February 2, 1994 (59 FR 4925). Competing applications will be considered to be on time if they are either:

(1) Received on or before the deadline date, or

(2) Postmarked on or before the deadline date and received in time for orderly processing. Applicants should request a legibly dated receipt from a commercial carrier or the U.S. Postal Service, or obtain a legibly dated U.S. Postal Service postmark. Private metered postmarks will not be accepted as proof of timely mailing.

Late competing applications or those sent to an address other than specified in the **ADDRESS** section will be returned to the applicant.

FOR FURTHER INFORMATION: Requests for technical or programmatic information should be directed to Jean Athey, Ph.D., Division of Maternal, Infant, Child and Adolescent Health, Maternal and Child Health Bureau, Health Resources and Services Administration, room 18A–39, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone 301 443–4026. Requests for technical or programmatic information from NHTSA should be directed to Garry Criddle, R.N., CDR, USCG/USPHS, Department of Transportation, NHTSA EMS Division, NTS–42, 400 7th Street SW., Washington, DC 20590, telephone 202 366–5440. Requests for information concerning business management issues should be directed to: Maria Carter, Grants Management Specialist, Grants Management Branch, Maternal and Child Health Bureau, at the address listed in the **ADDRESSES** section above.

In addition, this program funds two national EMSC resource centers that are available to provide technical assistance and support to applicants, particularly in the areas of: (1) Understanding EMSC terminology; (2) developing a manageable approach to EMSC implementation; (3) obtaining local support for the grant application process; (4) facilitating development of community linkages for a collaborative effort; (5) identifying products of previously-funded EMSC projects of interest to potential applicants; and (6) offering advice on grant writing. Applicants may contact: James Seidel, M.D., Ph.D., or Deborah Henderson, R.N., M.A., National EMSC Resource Alliance, Research and Education Institute, Harbor/UCLA Medical Center, 1001 West Carson Street, suite S, Torrance, CA 90502, telephone 310 328–0720; or Jane Ball, R.N., Dr. P.H., EMSC National Resource Center, Children's National Medical Center, Emergency Trauma Services, 111 Michigan Ave., NW., Washington, DC 20010, telephone 202 745–5188.

SUPPLEMENTARY INFORMATION:

Program Background and Objectives

The Emergency Medical Services for Children statute (Section 1910 of the PHS Act, as amended) establishes a program of two-year grants to States, through a State-designated agency, or to an accredited medical school within the State, for projects for the expansion and improvement of emergency medical services for children who need treatment for trauma or critical illness. For purposes of this grant program, the term "State" includes the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Northern Mariana Islands, Guam, American Samoa, the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia. The term "school of medicine" is defined as having the same meaning as set forth in Section 799(1)(A) of the PHS Act (42 U.S.C. 295p(1)(A)). "Accredited" in this context has the same meaning as set forth in section 799(1)(E) of the PHS Act (42 U.S.C. 295p(1)(E)). It is the intent of this grant program to stimulate further development or expansion of ongoing efforts in the States to reduce the problems of life-threatening pediatric trauma and critical illness. The Department does not intend to award grants which would duplicate grants previously funded under the Emergency Medical Services Systems Act of 1972 or which would be used simply to increase the availability of emergency medical services funds allotted to the State under the Preventive Health Services Block Grant.

Funding Categories

There will be four categories of competition for funding this year: State planning grants, State systems grants, targeted issue grants, and resource capacity grants. States may apply for only one of the first two categories, but are not restricted in applying for the last two categories.

Category (1): State Planning Grants

Planning grants are intended for States that have never received an EMSC grant and that are not at a stage of readiness to initiate a full-scale implementation project. States (or medical schools within those States) that have not received prior EMSC implementation grants are the only applicants eligible for this category. Planning grants are designed to enable a State to assess needs and develop a

strategy to begin to address those needs. Funds may be used to hire staff to assist in the assessment of EMSC needs of the State; obtain technical assistance from national, State, regional or local resources; help formulate a State plan for the integration of EMSC services into the existing State EMS plan; and plan a more comprehensive grant proposal based upon a needs assessment performed during the planning grant project period. A comprehensive approach, addressing physical, psychological, and social aspects of EMSC along the continuum of care, should be reflected. An ongoing working relationship with Federal EMSC program staff and resource center staff, beginning with the initiation of a planning grant application, is strongly encouraged. Budget requests in this category should not exceed $50,000. The project period is for one year only, with no renewal. Applications in this category are due earlier than other categories. The application deadline is March 25, 1994.

Category (2): State Systems Grants

This category of grants has two subcategories: implementation grants and system enhancement grants. Proposals for State systems grants may be framed within the context of the changing conditions of health care delivery anticipated under health care reform.

Subcategory (A): implementation grants. Implementation grants will improve the capacity of a State's Emergency Medical Services program to address the particular needs of children. Implementation grants are used to assist States in integrating research-based knowledge and state-of-the-art systems development approaches into the existing State EMS/trauma systems using the experience and products of previous EMSC grantees. Grants of up to $250,000 per award for each twelve month budget period are anticipated. Project periods are up to two years. Up to five grants will be awarded. For this competition, we intend to fund applications from States (and medical schools within those States) that have not as yet received support, or that have received only partial support under this program as part of a regional alliance. This means that approved applications from States (and medical schools within those States) with no or very limited prior EMSC program support will be funded before approved applications from outside this group. Applications will not be accepted for both planning grants and implementation grants simultaneously from the same State.

Subcategory (B): system enhancement grants. System enhancement grants will fund activities that represent the next logical step or steps to take in institutionalizing EMSC activities within the State EMS system and achieving program goals outlined in this announcement and further elaborated in the 1993 Institute of Medicine Report to Congress entitled Emergency Medical Services for Children. (A copy of the Executive Summary of this report will be enclosed with the application kit. The full report is available for $49.95 from National Academy Press, 2101 Constitution Avenue, NW., Box 285, Washington, DC 20055.) For example, funding might be used to improve linkages between local and regional or State agencies, to develop pediatric standards for a region, or to assure effective field triage of the child in physical or emotional crisis to appropriate facilities and/or other resources. Activities implemented under prior EMSC program funding but not completed or made self-sustaining during the original implementation project period will not be considered suitable. States that have previously received EMSC funds may apply for a system enhancement grant, as long as they will not also be receiving implementation grant funds during the project period of the systems enhancement grant. Grants of up to $150,000 are anticipated for the first year, with grants of up to $100,000 for the second year.

Category (3): Targeted Issues Grants

The third funding category is that of targeted issues grants on topics of importance to EMSC. These grants are intended to address specific, focused issues related to the development of EMSC capacity, with the potential to serve as national or regional models. Proposals in this category must have a well conceived methodology to evaluate the impact of the activity. The Director of the Maternal and Child Health Bureau (MCHB) will judge the acceptability of projects proposed in this category. Prospective applicants are urged to contact EMSC program staff well in advance of submitting their formal applications, so that the work of proposal development can be avoided if the proposed project is judged to be inappropriate for submission in this category.

Priorities for this category have been chosen from topics recommended by the 1993 Institute of Medicine Report on EMSC. Priorities and examples include:

—Education and Training. For this priority, proposals are sought which develop or evaluate education or training geared to improving EMS providers' ability to address underdeveloped elements in EMSC. They may relate to particular areas of attention, such as the psychosocial aspects of EMSC, or to particular populations that are underserved or isolatad. Proposals focusing on underserved or isolated populations of children might target the needs of Native Americans, Native Alaskans, or Native Hawaiians, adolescents, developmentally disabled, mentally ill, homeless, or children living in rural areas or inner cities. Educational programs might also be developed for particular groups, such as parents, volunteers, caretakers, teachers, firefighters, medical control or medical dispatch personnel. Assessment of the effectiveness of the training, using appropriate outcome measures, is a key objective for proposals in this category. Proposals are expected to incorporate existing materials whenever possible; however, innovations in media or instructional techniques are encouraged. Projects could include the conversion of previously developed teaching materials to interactive video format, the development of curricula or training exercises to promote improved EMS management of psychosocial crises, or the utilization of multidisciplinary seminars or study groups to enhance collaboration on pediatric emergency care between primary and specialty providers.

—Data and Information System Management. For this priority, proposals are sought which reflect an understanding of the uses to which data are to be applied (e.g., patient care, quality assessment, resource allocation, research, etc.) and of the questions they are to answer. Projects should reflect familiarity with efforts of NHTSA, HRSA, the Centers for Disease Control and Prevention (CDC), and the EMSC program to develop national uniform data sets, if appropriate to the proposed project. States are encouraged to develop EMS data systems which include all the elements of a national uniform data set and are capable of describing the nature of EMS provided to children. Demonstrations of linkage of data sources to provide an optimal picture of EMS furnished to children is one example of a proposed project under this priority; such proposals would be expected to show considerable familiarity with previous linkage efforts by the above organizations and others. Another example is the improvement of the quality of data that relate mechanisms of injury to assigned E-codes.

—Communications. For this priority, proposals are sought which take advantage of new telecommunications technologies to improve EMS for children. Proposals could promote access to "911" or "enhanced 911" emergency telephone systems. For example, projects might use the "Make the Right Call" campaign on a statewide basis, with modifications that include educating the public—including children—about when to access EMS services for children; such projects would be expected to incorporate a well conceived evaluation of

the impact of such a campaign. Alternetively, proposals could promote the use of advanced technologies to improve care for children. For example, projects might use new technology to improve communications among health care facilities, linking hospitels, health care egencies and/or providers; or to educate various categories of providers by providing on-line pediatric medical control via new technology. Proposals are also sought which evaluate, describe, analyze, or improve the pettern of EMS communicetions, dispetcher protocols, or on-line medical control as they effect the care of children or in relationship to pediatric utilization of emergency medical services. This priority has been developed in cooperation with HRSA's Trauma Care Systems Planning and Development Program.

—Violence and Injury Prevention. For this priority, activities could include edvocacy, educetion, training, or curriculum development, especially in the development of programs which expand the role of EMS personnel in prevention of injury, interpersonel violence, or youth-on-youth violence. Innovative strategies to link EMS personnel with lew enforcement personnel, primary care providers, and community resources are sought. Examples are programs to reduce children's eccess to firearms or to educate children ebout the use of seatbelts or bicycle helmets. Further examples include the use of EMS personnel es trainer/educators, advocates, and organizers for community based violence prevention initietives in schools and other settings serving youth, such as recreetion centers, detention centers, or youth employment centers; or the use of EMS records to study the characteristics of violence or for education about the consequences of violence. Violence and injury prevention initietives might also focus on enhancing preparation of EMS personnel for providing initial attention and arranging appropriate follow-up when there are violent, destructive, damaging, or hurtful beheviors, or when there are injury-risking behaviors, such as combined drinking and driving, substance abuse, or ettempted suicide by intentional overdosing on drugs.

—Psychosociel/Behavioral. Proposals are sought for this priority focusing on strategies to reduce the emotional toll of childhood emergencies on the child, family, and/or providers. Examples include development and evaluation of techniques to increase the sensitivity of EMS personnel to psychosocial issues affecting children, adolescents, and their families and enhance EMS provider skills, knowledge, and crisis intervention capebility in dealing with these issues; development and evaluetion of approaches and techniques for assisting EMS personnel in dealing with child and family crises arising from ebuse, neglect, sexual assault, or noncompliant and other high risk behaviors; or activities that foster greater synergy between primary care and mentel heelth specielty personnel in deeling with psychosociel aspects of EMSC.

Up to five grants will be awarded in Category (3), at least one in eech priority aree, if epproved. States that have received EMSC funding es well as those that have never received EMSC funding may compete in this category. Grants for this ectivity of up to $150,000 per eward for eech twelve month budget period are anticipated. Project periods are up to two years.

Category (4): Resource Capacity Cooperative Agreements

Up to two resource centers will be supported through cooperative agreements under this funding category. One of these will include maintenance and distribution of EMSC products among its activities and will receive more funds than the other. Resource centers are intended to provide assistance to the public, professional groups, and grantees on issues of importance in developing an EMSC system. In addition to monitoring and technical assistance, Federal involvement will include the following:

—Making availeble the services of experienced MCHB personnel as participants in the planning and development of all pheses of the project.

—Participation, es eppropriate, in any conferences and meetings conducted during the period of the cooperative agreement.

—Review, approval, and implementation of procedures to be esteblished for accomplishing the scope of work.

—Assistance and referral in the esteblishment of Federal interagency contacts thet may be needed to carry out the project and assisting MCHB dissemination and program communication goals.

—Participation in the disseminetion of project products.

If time permits, comments from the public will be accepted on the categories, priorities, and preferences described above. Any comments which members of the public wish to make should be submitted to: Chief, Grants Management Branch, at the address listed in the ADDRESSES section.

Availability of Funds

Approximately $7,500,000 is available for grants under the EMSC program, of which approximately $3,600,000 will be used for new grants. Of this total, the distribution of funds for new grants is anticipated to be as follows:

Category	Maximum number of awards*	Estimated amounts available*	Project period (years)
(1) State Planning	4	$200,000	1
(2) State Systems:			
(A) Implementation	5	1,250,000	2
(B) System Enhancement	4	600,000	2
(3) Targeted Issues	5	750,000	2
(4) Resource Capacity	2	800,000	2

*All grant amounts in this notice include indirect costs.

Special Concerns

The MCHB places special emphasis on improving service delivery to children from culturally identifiable populations who have been disproportionately affected by barriers to accessible care. This means that EMSC projects are expected to serve and appropriately involve in project activities members of ethnoculturally distinct groups, unless there are compelling programmatic or other justifications for not doing so. The MCHB's intent is to ensure that project outcomes are of benefit to culturally distinct populations and to ensure that the broadest possible representation of culturally distinct and historically underrepresented groups is supported through programs and projects sponsored by the MCHB. This same special emphasis applies to improving service delivery to children with special health care needs.

Project Review and Funding

The Department will review applications in the preceding funding categories as competing applications and will fund those which, in the Department's view, are consistent with the statutory purpose of the program, with particular attention to children from culturally distinct populations and children with special health care needs; and that best meet the purposes of the EMSC program and address

achievement of applicable Healthy People 2000 objectives related to emergency medical services and trauma systems.

Review Criteria

The review of applications will take into consideration the following criteria:

- For Category (1) State Planning Grants

—Evidence of the State's commitment to improve pediatric emergency care services and to continue with EMSC program implementation.
—The adequacy of the applicant's proposed method to identify problems and conduct a needs assessment.
—Evidence of the applicant's understanding of obstacles to EMSC activity in the past, and the completeness of proposed strategies to overcome these obstacles.
—The adequacy of the applicant's proposed planning process for improving EMSC.
—The soundness of the methods the applicant will use to: (1) Recruit, select and assemble appropriate participants, including minorities, with demonstrated expertise and experience in EMS; trauma systems; child health issues; and emergency care for children; and (2) obtain input from potential consumers of a State EMSC plan.
—Reasonableness of the proposed budget, soundness of the arrangements for fiscal management, effectiveness of use of personnel, and likelihood of project completion within the proposed grant period.

- For Categories (2) and (3) State Systems and Targeted Issues Grants

—The adequacy of the applicant's understanding of the problem of pediatric trauma and critical illness in the grant locale, including the special problems of (a) children with special health care needs (CSHCN) and their families; and (b) minority children and families (including Native Americans, Native Hawaiians, and Alaska Natives).
—The appropriateness of project objectives and outcomes in relation to the specific nature of the problems identified by the applicant.
—In relation to the state of the art, the soundness, appropriateness, comprehensiveness, cost effectiveness, and responsiveness of the proposed methodology for achieving project goals and outcome objectives.
—The soundness of the plan for evaluating progress in achieving project objectives and outcomes.
—Reasonableness of the proposed budget, soundness of the arrangements for fiscal management, effectiveness of use of personnel, and likelihood of project completion within the proposed grant period.
—The extent to which the applicant will employ products and expertise of EMSC programs from other States, especially of current and former grantees of the Federal EMSC program.
—The extent to which the project gives special emphasis to the issues identified in the Special Concerns section of this notice.

- For Category (2) State Systems Grants only, the following additional criteria

—The extent to which the applicant can ensure institutionalization of the proposed project.
—The extent to which the applicant demonstrates collaboration and coordination with any trauma care systems implementation plan funded by HRSA.
—Evidence that the applicant will: (1) Collaborate and coordinate with other participants in the EMSC continuum, e.g., the State Emergency Medical Services agency; the State MCH/CSHCN agency; the State Highway Safety Office; other relevant State agencies, such as mental health; tribal nations; state and local professional organizations; private sector voluntary organizations; business organizations; parent advocacy groups; consumer or community representatives; hospital organizations; and any other ongoing federally funded projects in EMS, injury prevention, and rural health;
—Evidence that the applicant will integrate EMSC systems into the primary care delivery system.

- For Category (4) Resource Capacity Cooperative Agreements

—The adequacy of the applicant's understanding of the problem of pediatric trauma and critical illness, including the special problems of (a) CSHCN and their families; and (b) minority children and families (including Native Americans, Native Hawaiians, and Alaska Natives). This understanding includes knowledge of and experience with strategies to overcome identified problems as well as knowledge of and experience with the Title V MCH Block Grant.
—The appropriateness of project objectives and outcomes in relation to the specific nature of the problems identified by the applicant.
—The soundness, appropriateness, comprehensiveness, cost effectiveness and responsiveness of the proposed methodology for achieving project goals and outcome objectives.
—The extent to which the proposed resources are necessary and sufficient for project activities.
—The soundness of the plan for evaluating progress in achieving project objectives and outcomes.
—Reasonableness of the proposed budget, soundness of the arrangements for fiscal management, effectiveness of use of personnel, and likelihood of project completion within the proposed grant period.
—The extent to which the applicant is capable of successfully carrying out the project, particularly, the qualifications of proposed staff.
—The extent to which the applicant will employ products and expertise of EMSC programs, especially those of current and former EMSC program grantees.
—The extent to which the project gives special emphasis to the issues identified in the Special Concerns section of this notice.
—The likelihood of success of the applicant's proposed strategies for promoting coordination and collaboration between separate centers providing different resource capacities.

Eligible Applicants

Applications for funding will be accepted from States and accredited schools of medicine. Applications which involve more than a single State will also be accepted. In developing the proposed project, applicants must seek the participation and support of local or regional trauma centers and other interested entities within the State, such as local government and health and medical organizations in the private sector. If the applicant is a school of medicine, the application must be endorsed by the State. The State's endorsement must acknowledge that the applicant has consulted with the State and that the State has been assured that the applicant will work with the State on the proposed project.

Any State (or medical school within that State) may apply for any category or subcategory of grant, subject to the following considerations based on equitable geographic distribution of EMSC funds, differences in purpose among EMSC grant categories, and variation among States in EMSC program progress:

- For Category (1) Planning Grants, States (or medical schools within those States) that have received prior EMSC implementation grants may not apply for planning grants.

- For Category (2)(A) Implementation Grants, applications from States (and medical schools within those States) that have not previously received EMSC program funds, or that have received only partial support under this program as part of a regional alliance, will receive preference for funding in this subcategory. This means that approved applications from States (and medical schools within those States) with no or very limited prior EMSC program support will be funded ahead of approved applications from outside this group.

- For Category (2)(B) System Enhancement Grants, States (and medical schools within States) that have previously received EMSC funds may apply for a system enhancement grant, as long as they will not also be receiving implementation funds during the project period of the systems enhancement grant. States that have not previously received EMSC funds are advised to apply first for implementation category funds.

- For Category (3) Targeted Issues Grants, eligibility is not affected by receipt of other EMSC funding.

• For Category (4) Resource Capacity Cooperative Agreements, eligibility is not affected by receipt of other EMSC funding.

Applications will not be considered for both Category (1) State Planning Grants and Category (2)(A) Implementation Grants simultaneously from the same State. Funding of an application for a planning grant or for either subcategory of State Systems Grant bars a State from future competitions for that category or subcategory. Although funding of a Category (3) Targeted Issue Grant does not preclude a State (or medical school) from applying for other categories of EMSC funding, applicants should taken care to avoid overlap in proposed project activities and associated Federal support for the separate categories.

Allowable Costs

The MCHB may support reasonable and necessary costs of EMSC Demonstration Grant projects within the scope of approved projects. Allowable costs may include salaries, equipment and supplies, travel, contracts, consultants, and others, as well as indirect costs as negotiated and certified. The MCHB adheres to administrative standards reflected in the Code of Federal Regulations, 45 CFR part 92 and 45 CFR part 74.

Public Health System Reporting Requirements

This program is subject to the Public Health System Reporting Requirements (approved under OMB No. 0937–0195). Under these requirements, community-based nongovernmental applicants must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions. Community-based non-governmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date:

(a) A copy of the face page of the application (SF 424).

(b) A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

Executive Order 12372

This program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs by appropriate health planning agencies, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice will contain a listing of States which have chosen to set up such a review system and will provide a single point of contact (SPOC) in the States for review. Applicants (other than federally-recognized Indian tribal governments) should contact their State SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline for new and competing awards. The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date. (See part 148, Intergovernmental Review of PHS Programs under Executive Order 12372 and 45 CFR part 100 for a description of the review process and requirements).

The OMB Catalog of Federal Domestic Assistance number is 93.127.

Dated: December 14, 1993.

John H. Kelso,

Acting Administrator.

[FR Doc. 94–3601 Filed 2–16–94; 8:45 am]

BILLING CODE 4160–15–P

[2161]

Program Announcement and Proposed Minimum Percentage Rates for "High Rate" and "Significant Increase in the Rate" for Implementation of the General Statutory Funding Preference, Proposed Funding Preference and Priority for Grants for Programs for Physician Assistants for Fiscal Year 1994

The Health Resources and Services Administration (HRSA) announces that applications for fiscal year (FY) 1994 Grants for Programs for Physician Assistants are being accepted under the authority of section 750 title VII, formerly section 788(d) of the Public Health Service (PHS) Act, as amended by the Health Professions Education Extension Amendments of 1992, Public Law 102–408, dated October 13, 1992. Comments are invited on the proposed minimum percentage rates for high rate and significant increase in the rate" for implementation of the general statutory funding preference, proposed funding preference and priority stated below.

Approximately $6.5 million will be available for Grants for Programs for Physician Assistants. Total continuation support recommended is $4.1 million. It is anticipated that $2.4 million will be available to support approximately 17 competing awards averaging $140,000.

Previous Funding Experience

Previous funding experience information is provided to assist potential applicants to make better informed decisions regarding submission of an application for this program.

In FY 1993, there was no competitive cycle for this program.

In FY 1992, HRSA reviewed 40 applications. Of those applications, 88 percent were approved and 12 percent were disapproved. Twenty-seven projects, or 68 percent of applications received, were funded.

In FY 1991, HRSA reviewed 17 applications. Of those applications, 53 percent were approved and 47 percent were disapproved. Nine projects or 53 percent of the applications received, were funded.

Purpose

Section 750 of the PHS Act authorizes the award of grants to accredited schools of medicine or osteopathic medicine and other public or nonprofit private entities to assist in meeting the cost of planning, developing and operating or maintaining programs for the training of physician assistants as defined under section 799(3) of the Public Health Service Act.

To receive support, programs must meet the requirements of section 750 of the Act and program regulations implementing these sections published at 42 CFR part 57, subparts H and I and section 791(b) of the PHS Act.

Eligibility

Eligible applicants are accredited schools of medicine or osteopathic medicine and other public or nonprofit private entities.

The initial period of Federal support will not exceed 5 years.

In accordance with section 750(c) of the Act, eligible applicant institutions must provide assurances that the

institutions have appropriate mechanisms for placing graduates of the training program in positions for which they have been trained.

"Program for the Training of Physician Assistants" is defined in section 799 of the PHS Act as an educational program that: (a) Has as its objective the education of individuals who will, upon completion of their studies in the program, be qualified to provide primary health care under the supervision of a physician; and (b) meets regulations prescribed by the Secretary in accordance with section 750(b).

National Health Objectives for the Year 2000

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Grants for Programs for Physician Assistants Program is related to the priority area of Educational and Community-Based Programs.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The degree to which the project plan adequately provides for meeting the requirements set forth in the regulations;
2. The potential effectiveness of the project in carrying out the purposes of section 750 of the PHS Act and 42 CFR part 57, subparts H-I;
3. The capability of the applicant to carry out the proposed project;
4. The local, regional and national needs the project proposes to serve;
5. The adequacy of the project's plan for placing graduates in health professional shortage areas;
6. The soundness of the fiscal plan for assuring effective use of grant funds;
7. The potential of the project to continue on a self-sustaining basis after the period of grant support; and
8. The adequacy of the project's plan to develop and use methods designed to attract and maintain minority and disadvantaged students to train as physician assistants.

Other Considerations

In addition, the following funding factors may be applied in determining the funding of approved applications:

1. Funding preference is defined as the funding of a specific category or group of applications ahead of other categories or groups of approved applications, such as competing continuation projects ahead of new projects.
2. Funding priority is defined as the favorable adjustment of aggregate review scores when applications meet specified objective criteria.

It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for a funding factor will be reviewed and given full consideration for funding.

General Statutory Funding Preference

As provided in section 791(a) of the PHS Act, preference will be given to any qualified applicant that—

(A) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or

(B) During the 2-year period preceding the fiscal year for which an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This preference will only be applied to applications that rank above the 20th percentile that have been recommended for approval by the peer review group.

Proposed Minimum Percentages for "High Rate" and "Significant Increase in the Rate"

"High rate" means that 20 percent of the physician assistant program graduates in academic year 1991–92 or academic year 1992–93, whichever is greater, are spending at least 50 percent of their work time in these settings.

"Significant increase in the rate" means that, between academic years 1991–92 and 1992–93, the rate of physician assistant program graduates in these settings has increased by at least 50 percent and that not less than 15 percent of the academic year 1992–93 graduates are working in these settings.

Additional information concerning the implementation of this preference has been published in the **Federal Register** at 58 FR 40659, dated July 29, 1993.

To allow new programs to compete more equitably in FY 1994, criteria for the statutory and the administrative funding preferences have been developed to apply only to them. This criteria is provided in the application materials.

Proposed Funding Preference for Fiscal Year 1994

The following funding preference is proposed for FY 1994:

A funding preference will be given to established physician assistant training programs which can demonstrate that (a) More than 50 percent of their graduates in 1993 entered a generalist specialty (family medicine, general internal medicine, general pediatrics); or (b) an average of 40 percent of graduates over the last 3 years (1991, 1992, and 1993) entered a generalist specialty.

Proposed Funding Priority for FY 1994

The following priority is proposed for FY 1994:

A funding priority will be given to approved applications that can demonstrate either substantial progress over the last 3 years or a significant experience of 10 or more years in enrolling and graduating trainees from those minority or low-income populations identified as at risk of poor health outcomes.

Information Requirements Provision

Under section 791(b) of the Act, the Secretary may make an award under the Grants for Programs for Physician Assistants only if the applicant for the award submits to the Secretary the following information:

1. A description of rotations or preceptorships for students, or clinical training programs for residents, that have the principal focus of providing health care to medically underserved communities.
2. The number of faculty on admissions committees who have a clinical practice in community-based ambulatory settings in medically underserved communities.
3. With respect to individuals who are from disadvantaged backgrounds or from medically underserved communities, the number of such individuals who are recruited for academic programs of the applicant, the number of such individuals who are admitted to such programs, and the number of such individuals who graduate from such programs.

4. If applicable, the number of recent graduates who have chosen careers in primary health care.

5. The number of recent graduates whose practices are serving medically underserved communities.

6. A description of whether and to what extent the applicant is able to operate without Federal assistance under this title.

Additional details concerning the implementation of this information requirement have been published in the **Federal Register** at 58 FR 43642, dated August 17, 1993, and will be provided in the application materials.

Paperwork Reduction Act

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. This approval includes the burden for collection of information for the statutory general preference and for the information requirement provision. (OMB #0915–0060, expiration date 7/31/95)

Additional Information

Interested persons are invited to comment on the proposed minimum percentages for "high rate" and "significant increase in the rate" for implementation of the general statutory funding preference, proposed funding preference and priority. The comment period is 30-days. All comments received on or before March 21, 1994 will be considered before the final minimum percentages for "high rate" and "significant increase in the rate" for implementation of the general statutory funding preference, proposed funding preference and priority are established.

Written comments should be addressed to: Marc L. Rivo, M.D., M.P.H., Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 4C–25, Parklawn Building, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Application Requests

Requests for application materials, questions regarding grants policy and business management issues should be directed to: Mrs. Judy Bowen, Grants Management Specialist (D–21), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8C–26, Parklawn Building, Rockville, Maryland 20857, Telephone: (301) 443–6960, Fax: (301) 443–6343.

Completed applications should be forwarded to the Grants Management Office at the above address.

Questions regarding programmatic information should be directed to: Mrs. Joyce Emelio, Program Specialist, Multidisciplinary Centers and Programs Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 4C–03, Parklawn Building, Rockville, Maryland 20857, Telephone: (301) 443–6950, Fax: (301) 443–8890.

The application deadline date for receipt of applications is March 15, 1994. Applications shall be considered to be "on time" if they are either:

1. Received on or before the established deadline date, or

2. Postmarked on or before the established deadline and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant.

This program is listed at 93.886 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

This program is not subject to the Public Health System Reporting Requirements.

Dated: December 13, 1993.

John H. Kelso,

Acting Administrator.

[FR Doc. 94–3599 Filed 2–16–94; 8:45 am]

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[2171]

Program Announcement and Proposed Funding Priorities for Special Project Grants to Schools of Public Health for Fiscal Year 1994

The Health Resources and Services Administration (HRSA) announces that applications will be accepted for fiscal year (FY) 1994 Special Projects Grants to Schools of Public Health under the authority of section 762, title VII of the Public Health Service Act, as amended by the Health Professions Education Extension Amendments of 1992, Public Law 102–408, dated October 13, 1992. Comments are invited on the proposed funding priorities.

Approximately $2.4 million will be available in FY 1994 for this program to support 18 to 20 competing awards averaging $120,000 to $133,000.

Previous Funding Experience

Previous funding experience information is provided to assist potential applicants to make better informed decisions regarding submission of an application for this program. There were no competitive grant cycles in fiscal years 1992 and 1993. In FY 1991, HRSA reviewed 32 applications for this grant program. Of those applications, 53 percent were approved and 47 percent disapproved. Seventeen grant projects, or 100 percent of the approved grant applications, were funded.

Purpose

Section 762 of the Public Health Service Act (the Act), as amended, authorizes the Secretary to award grants to accredited schools of public health for the costs of planning, developing, demonstrating, operating, and evaluating projects that are in furtherance of the goals established by the Secretary for the year 2000 in the area of: (1) Preventive medicine; (2) health promotion and disease prevention; (3) improving access to and quality of health services in medically underserved communities; or (4) reducing the incidence of domestic violence.

The period of initial Federal support will not exceed 3 years.

Eligibility

Eligible applicants for this program are accredited schools of public health. "A school of public health" means a school as defined in section 799(1)(A) of the PHS Act which has been accredited by the Council on Education for Public Health pursuant to section 799(1)(E) of the Act and which is located in a State as defined in section 799(9) of the Act.

Applicant schools must assure that the students of the school will, through participation in the project for which the award is made, receive training in the activities carried out by the project.

Section 762(e) of the PHS Act provides that the Secretary establish goals for projects under this authority and shall require as a condition of the receipt of a Special Project Grant to Schools of Public Health that schools carry out activities in furtherance of

meeting the goals. Also the law provides that the Secretary establish and implement a methodology for measuring the extent of progress that has been made toward the goals by schools receiving such a grant. A Report to Congress describing the progress made by projects is due not later than February 1, 1994. The goals required by section 762(e) are currently in development and are expected to be available to be mailed with program application materials.

National Health Objectives for the Year 2000

The Public Health Service urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Review Criteria

The following review criteria were established in FY 1990 after public comment (55 FR 4482, dated 2/8/90) and the Administration is again extending these criteria in FY 1994.

The review of applications will take into consideration the following criteria:

- The degree to which the proposed project adequately meets legislative intent;
- The background and rationale for the proposed project;
- Whether the project contains clearly stated realistic and achievable national or regional objectives which are described in Healthy People 2000.
- The extent to which the project contains a methodology which is integrated and compatible with project objectives, including collaborative arrangements and feasible workplans;
- Evaluation plans and procedures for program and trainees, if applicable;
- The administrative and management capability of the applicant to carry out the proposed project, including institutional infrastructure and resources;
- The extent to which the budget justification is complete, cost-effective and includes cost-sharing, when applicable; and
- Whether there is an institutional plan and commitment for self-sufficiency when Federal support ends.

Other Considerations

In addition, the following funding factors may be applied in determining funding of approved applications.

A funding preference is defined as the funding of a specific category or group of approved applications ahead of other categories or groups of approved applications.

A funding priority is defined as the favorable adjustment of aggregate review scores of individual approved applications when applications meet specified criteria.

It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for funding factors will be reviewed and given full consideration for funding.

Statutory Preference

In making awards of grants, preference will be given to qualified schools agreeing that the project for which the award is made: (1) Will establish or strengthen field placements for students in public or nonprofit private health agencies or organizations; and (2) will involve faculty members and students in collaborative projects to enhance public health services to medically underserved communities.

Proposed Funding Priorities

It is proposed that a funding priority will be given to programs which demonstrate either substantial progress over the last three years or a significant experience of ten or more years in enrolling and graduating trainees from those minority or low-income populations identified as at risk of poor health outcomes. This priority is consistent with a HRSA strategy to increase the number of minority health professionals, to assure equal access to health professions education for all population groups, and ultimately, to provide a greater volume of health care in underserved areas.

It is also proposed that a funding priority be given for projects that address the program purpose of reducing the incidence of domestic violence. The incidence of reported violence, especially domestic or family violence, has increased significantly in recent decades. This proposed priority is intended to provide incentive to schools of public health to take responsibility for helping to reduce domestic violence through the special projects grant program.

Additional Information

Interested persons are invited to comment on the proposed funding priorities. The comment period is 30 days. All comments received on or before March 21, 1994 will be considered before the final funding priorities are established. Written comments should be addressed to: Neil Sampson, M.P.H., Director, Division of Associated, Dental, and Public Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8–101, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Associated, Dental, and Public Health Professions, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Application Requests

Requests for application materials and questions regarding grants policy and business management issues should be directed to:

Ms. Sandra Bryant (D38), Grants Management Specialist, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone: (301) 443–6915.

Completed applications should be returned to the Grants Management Branch at the above address.

If additional programmatic information is needed, please contact: Ms. Elizabeth Coleman-Santucci, Public Health Branch, Division of Associated, Dental, and Public Health Professions, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8C–09, Rockville, Maryland 20857, Telephone: (301) 443–6896.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

The deadline date for receipt of applications is March 21, 1994. Applications will be considered to be "on time" if they are either:

(1) Received on or before the established deadline date, or

(2) Sent on or before the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant.

This program, Special Project Grants to Schools of Public Health, is listed at 93.188 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: December 29, 1993.

William A. Robinson,

Acting Administrator.

[FR Doc. 94–3600 Filed 2–16–94; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

Office of the Director; Meetings of the Women's Health Initiative Program Advisory Committee and its Subcommittees

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Women's Health Initiative Program Advisory Committee (WHIPAC), Office of the Director, and its subcommittees, on February 28 and March 1, 1994. All meetings will be held at the ANA Hotel, 2401 M Street, NW., Washington, DC 20037 and will be open to the public, with attendance limited to space available. Notice of the meeting rooms will be posted in the hotel lobby.

The meeting of the full committee will be on March 1, 1994, from 8 a.m. to 4 p.m. The purpose of the meeting is to review the status and progress in the planning and conduct of the Women's Health Initiative (WHI), and to advise the NIH Director on the comprehensive plan of prevention studies in the WHI. There will also be a panel discussion on hormone replacement therapy.

The WHIPAC subcommittee meetings (Recruitment and Retention, Public Education, and Study Management) will be held on February 28, 1994 from 7 p.m. to 8:30 p.m. for the discussion of issues pertaining to the recruitment of study subjects to the clinical trial, the informed consent process, center activities, and the dissemination of information to the public.

Dr. Carrie P. Hunter, Special Assistant to the Director, Office of Research on Women's Health, National Institutes of Health, Bethesda, Maryland 20892 (301–402–2900) will provide a summary of the meeting, a roster of committee members, and substantive program information, upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Dina Battle of Conwal Incorporated, at 703–536–3200 in advance of the meeting.

This notice is being published less than 15 days before the meeting due to the difficulty of coordinating conflicting schedules.

Dated: February 14, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–3732 Filed 2–16–94; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–94–3716]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 4, 1994.

John T. Murphy,

Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Notice of Funding Availability (NOFA) for Intermediaries to Administer Preservation Technical Assistance Grants (FR–3473).

Office: Housing.

Description of the Need for the Information and Its Proposed Use: This information collection is required to implement Section 312 of Title III of the Housing and Community Development Act of 1992. The NOFA will establish grants to nonprofit organizations to become intermediaries administering technical assistance to resident groups and community based nonprofit developers.

Form Number: None.

Respondents: Individuals or households and non-profit institutions.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	100		2.8		4.43		1,240

Total Estimated Burden Hours: 1,240.
Status: New.
Contact: Besty Keeler, HUD; (202) 708–1142; Joseph F. Lackey, Jr., OMB, (202) 395–7316.
Dated: February 3, 1994.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Request for Approval of Escrow Funds.
Office: Housing.
Description of the Need for the Information and Its Proposed Use: The form is used by the mortgagor to request release of funds from the Escrow Agreement for offsite facilities, construction changes, or construction costs not paid at final endorsement. HUD needs the information to analyze the requested amounts and to authorize approval.
Form Number: HUD–92464.
Respondents: Businesses or other for-profit and non-profit institutions.
Frequency of Submission: On occasion.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	12,000		1		1.5		18,000

Total Estimated Burden Hours: 18,000.
Status: Extension.
Contact: Kerry K. Mulholland, HUD, (202) 708–0283. Joseph F. Lackey, Jr., OMB, (202) 395–7316.
Dated: February 4, 1994.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Application for Fiscal Year 1993 Family Investment Centers (FR–3398).
Office: Public and Indian Housing.
Description of the Need for the Information and Its Proposed Use: The information collection is required in connection with the issuance of a Notice of Funding Availability which announces funding for Family Investment Centers. Under the program, grants will be provided to public housing agencies and Indian housing authorities to assist families living in public housing with better access to education and job opportunities to achieve self-sufficiency and independence.
Form Number: None.
Respondents: State or Local Governments.
Frequency of Submission: Recordkeeping and one-time.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application	500		1		40		20,000
Annual Report	50		1		2		100
Recordkeeping	500		1		1		500

Total Estimated Burden Hours: 20,600.
Status: New.
Contact: Marcia Y. Martin, HUD, (202) 708–3611. Joseph F. Lackey, Jr., OMB, (202) 395–7316.
Dated: February 4, 1994.

[FR Doc. 94–3622 Filed 2–16–94; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. N–94–3717]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.
ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including numbers of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 4, 1994.

Kay Weaver,
Acting Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Real Estate Mortgage Investment Conduit (REMIC) Notice of GNMA.
Office: Government National Mortgage Association (GNMA).
Description of the Need for the Information and its Proposed Use: The purpose of this information collection is to allow GNMA's REMIC Program to raise revenue for the U.S. Government through receipt of

guarantee fees and to benefit borrowers using Federally insured or guaranteed mortgages by lowering financing costs for these mortgages.

Form Number: None.

Respondents: Individuals or Households.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	166		1		10		1,660
Recordkeeping	166		1		1		166

Total Estimated Burden Hours: 1,826.

Status: New.

Contact: Paul St. Laurnet, III, HUD (202) 708–2884; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: February 4, 1994.

[FR Doc. 94–3625 Filed 2–16–94; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of the Technical/Agency Draft Recovery Plan for the Pygmy Madtom for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the pygmy madtom. This small catfish presently has a very fragmented distribution, but the species was probably formerly much more widespread within the Tennessee River system. The pygmy madtom is currently known to inhabit only two short river reaches within the Duck River, Humpbreys County, Tennessee, and the Clinch River, Hancock County, Tennessee. The species has been and continues to be impacted by water quality deterioration. This deterioration occurred as a result of siltation (contributed by coal mining and poor land use practices), other water pollution, and impoundments. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the technical/agency draft recovery plan must be received on or before April 18, 1994 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Biggins at the address and telephone number shown above (Ext. 228).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for recognizing the recovery levels for downlisting or delisting them, and estimate time and cost to implement the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The primary species considered in this draft recovery plan is the pygmy madtom (*Noturus stanauli*). The area of emphasis for recovery actions is the Duck River, Humphreys County, Tennessee, and the Clinch River, Hancock County, Tennessee. The protection of existing populations, habitat restoration, preservation of genetic material, and public education are among the management actions outlined in the plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: February 8, 1994.

Richard G. Biggins,

Acting Field Supervisor.

[FR Doc. 94–3667 Filed 2–16–94; 8:45 am]

BILLING CODE 4310–55–M

Klamath Fishery Management Council; Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The meeting is open to the public.

DATES: The Klamath Fishery Management Council will meet from 6 p.m. to 8 p.m. on Monday, March 7, 1994; and from 6 p.m. to 8 p.m. on Tuesday, March 8, 1994. The Klamath Fishery Management Council may have other meetings during this timeframe between the hours of 8 a.m. and 9 p.m. on Monday, March 7, and Tuesday, March 8, 1994. Details will be announced at the March 2, 1994 meeting..

PLACE: The meeting will be held at the Red Lion Inn—Columbia River, 1401 North Hayden Island Drive, Portland, Oregon 97217.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1215 South main, suite 212),

Yreka, California 96097–1006, telephone (916) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Management Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639). The principal agenda item will be to continue discussion on harvest management options for California's Klamath River-origin fall chinook salmon. Meetings will be concurrent with the announced meeting of the Pacific Fishery Management Council.

Dated: February 10, 1994.

Don Weathers,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–3662 Filed 2–16–94; 8:45 am]

BILLING CODE 4310–55–M

Klamath Fishery Management Council; Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The meeting is open to the public.

DATES: The Klamath Fishery Management Council will meet from 8 a.m. to 4:30 p.m. on Tuesday, March 1, 1994; and from 8 a.m. to 4:30 p.m. on Wednesday, March 2, 1994.

PLACE: The meeting will be held at the Red Lion Inn, 1929 4th Street, Eureka, California, 95501.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1215 South Main, Suite 212), Yreka, California 96097–1006, telephone (916) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Management Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639). The principal agenda item will be making recommendations on a range of options for harvest of Klamath River origin fall chinook salmon to the Pacific Fishery Management Council for the 1994 Ocean Salmon Management season, and to the tribes and the State of California for in-river salmon management options for 1994 in the Klamath River. The Council will also prepare a letter to the Secretary of the Interior, requesting clarification of Tribal fishing rights in the Klamath River Basin, and will identify priority information needs for harvest management, for which funding will be sought.

Dated: February 10, 1994.

Don Weathers,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–3663 Filed 2–16–94; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[WO–610–4140–01–24]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approved under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau's Clearance Office and to the Office of Management and Budget Paperwork Reduction Project (1004–0074), Washington, DC 20503, telephone 202–395–7340.

Title: Oil and Gas Geothermal Resources Leasing

OMB Approval Number: 1004–0074

Abstract: Respondents supply information which will be used to determine the highest qualified bonus bid submitted for a competitive oil and gas or geotermal lease (Form 3000–2) and enable the Bureau of the Land Management to complete environmental reviews in compliance with the National Environmental Policy Act of 1969 (Form 3200–9). The information supplied allows the Bureau of Land Management to determine whether a bidder is qualified to hold a lease and to conduct geothermal resource operations under the terms of the Mineral Leasing Act of 1920 and the Geothermal Steam Act of 1970.

Bureau Form Numbers: 3000–2, 3200–9

Frequency: On occasion

Description of Respondent: Individuals, small businesses, and oil companies

Estimated Completion Time: 2 hrs

Annual Responses: 443

Annual Burden Hours: 886

Bureau Clearance Officer: (Alternate) Marsha Harley 202–452–5019.

Dated: December 8, 1993.

Hillary A. Oden,

Assistant Director, Energy and Mineral Resources.

[FR Doc. 94–3646 Filed 2–16–94; 8:45 am]

BILLING CODE 4310–84–M

[NV–960–4370–01–241B]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau of Land Management's (BLM) Clearance Office at the phone number listed below. Comments and suggestions on the requirement should be made directly to the BLM's Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004–0042), Washington, DC 20503, telephone 202–395–7340.

Title: Protection, Management, and Control of Wild Free-Roaming Horses and Burros, 43 CFR 4700.

OMB Approval Number: 1004–0042.

Abstract: Respondents furnish documentation about the following:

1. Removal of wild horses and burros from private land (non-form item).
2. Qualifications of applicants related to adoption of 1 to 4 wild horses or burros (Form 4710–10).
3. Qualifications of applicants related to adoption of 5 or more wild horses or burros (non-form item).

The request for removal of animals from private land is necessary to determine the need for removing wild horses and burros from these lands. The documentation about adoption allows the BLM to determine if an applicant will be given the opportunity to adopt wild horses or burros. Adoption applicants provide information about their qualifications and capability to provide humane care and treatment for wild horses and burros under conditions specified by Federal regulations. Applicants for adoption of more than 4 wild horses or burros are requested to provide additional information related to their capability to

provide proper care for the number of wild horses or burros requested.

Bureau Form Numbers: Application for Adoption of Wild Horse(s) and Burro(s), Form 4710–10.

Frequency: On occasion.

Description of Respondents: Landowners requesting the BLM to remove wild horses or burros from their property and applicants desiring to adopt wild horses or burros.

Estimated Completion Time: .165 hours per response.

Annual Response: 32,380.

Annual Burden Hours: 5,376.

Bureau Clearance Officer: Marsha A. Harley 202–452–5014.

Dated: January 19, 1994.

J. David Almand,

Acting Deputy Asstistant Director, Land and Renewable Resources.

[FR Doc. 94–3647 Filed 2–16–94; 8:45 am]

BILLING CODE 4310–84–M

[WY–040–04–4110–03]

Notice of Availability of Enron's Burly Field Enhance Oil Recovery Project Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Draft Environmental Impact Statement for Enron Burly Field Enhanced Oil Recovery Project. The proposed project area is located in Sections 18, 19, 20 and 29 of Township 28 North, Range 133 West, 6th Principal Meridian, Sublette County, Wyoming.

DATES: Comments on the Draft Environmental Statement must be postmarked by April 18, 1994.

ADDRESSES: Comments on the Draft Environmental Statement should be sent to District Manager, Rock Springs District, Highway 191 North, P.O. Box 1869, Rock Springs, 82902, telephone 307–382–5350.

FOR FURTHER INFORMATION CONTACT: Arlan Hiner, Area Manager, Pinedale Resource Area, 432 E. Mill Street, P.O. Box 768, Pinedale, Wyoming 82941, telephone 307–367–4358.

PUBLIC HEARINGS: No hearings are presently planned. However, should public demand warrant, a hearing would be held by the BLM.

SUPPLEMENTARY INFORMATION: The Draft Environmental Impact Statement analyses two development scenarios including a 10 acre and 20 acre spacing infill drilling program within Enron's existing Burly Field. There is potential to convert approximately 14 of the 37 proposed wells into water injection wells for enhanced oil recovery. Associated facilities include access roads, water injection and oil gathering and sales pipelines, central tank battery and an electric distribution powerline.

Dated: February 9, 1994.

David J. Walter,

Acting State Director.

[FR Doc. 94–3580 Filed 2–16–94; 8:45 am]

BILLING CODE 4310–22–M

[MT–921–03–4120–03; NDM 81582]

Coal Lease Offering

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of coal lease offering by sealed bid NDM 81582—The Coteau Properties Company.

SUMMARY: Notice is hereby given that the coal resources in the lands described below in Mercer County, North Dakota, will be offered for competitive lease by sealed bid. This offering is being made as a result of an application filed by The Coteau Properties Company, in accordance with the provisions of the Mineral Leasing Act of 1920 (41 Stat. 437; 30 U.S.C. 181–287), as amended.

An Environmental Assessment of the proposed coal development and related requirements for consultation, public involvement and hearing have been completed in accordance with 43 CFR part 3420, subpart 3425. The results of these activities were a finding of no significant environmental impact.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets the fair market value of the coal resource. The minimum bid for the tract is $100 per acre, or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The minimum bid is not intended to represent fair market value. The fair market value will be determined by the authorized officer after the sale.

COAL OFFERED: The coal resource to be offered consists of all recoverable reserves in the following described lands located approximately 10 miles north of the town of Beulah:

T. 145 N., R. 86 W., 5th p.m.,
Sec. 6: Lots 3, 4, 5, SE¼NW¼;
Sec. 8: E½NE¼, NW¼NW¼, SE¼NW¼, SE¼SW¼, NE¼SE¼, S½SE¼;
Sec. 18: E½.

Containing 792.900 acres, Mercer County, North Dakota.

The Beulah bed, averaging 12.0 feet in thickness, is the only economically minable coal seam within the tract. The tract contains an estimated 9.1 million short tons of recoverable lignite. Coal quality, as received, averages 6831 BTU/lb, 37.78 percent moisture, 5.9 percent ash, 0.8 percent sulfur, 29.3 percent fixed carbon, and 27.0 percent volatile matter. This coal bed is being mined in adjoining tracts by The Coteau Properties Company.

RENTAL AND ROYALTY: A lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre, or fraction thereof, and a royalty payable to the United States of 2.0 percent of the value of coal mined. The value of the coal shall be determined in accordance with 43 CFR 3485.2.

DATE: Lease Sale—The lease sale will be held at 10 a.m., Tuesday, March 22, 1994, in the Conference Room on the Sixth Floor of the Granite Tower Building, Bureau of Land Management, 222 North 32nd Street, Billings, Montana 59107.

Bids—Sealed bids must be submitted on or before 9:00 a.m., Tuesday, March 22, 1994, to the cashier, Bureau of Land Management, Montana State Office, Second Floor, Granite Tower Building, 222 North 32nd Street, Post Office Box 36800, Billings, Montana 59107–6800. The bids should be sent by certified mail, return receipt requested, or be hand-delivered. The cashier will issue a receipt for each hand-delivered bid. Bids received after that time will not be considered.

SUPPLEMENTARY INFORMATION: Bidding instructions for the offered tract are included in the Detailed Statement of Lease Sale. Copies of the statement and the proposed coal lease are available at the Montana State Office. Casefile documents are also available for public inspection at the Montana State Office.

Dated: February 7, 1994.

Francis R. Cherry, Jr.,

Acting State Director.

[FR Doc. 94–3652 Filed 2–16–94; 8:45 am]

BILLING CODE 4310–DN–M

[NV–020–4191–03]

Intent To Prepare Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) for a mining Plan of Operations (POO) for the Lone Tree Mine project, Humboldt County, Nevada; and notice of scoping period and public meetings.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, and 43 CFR part 3809, the Bureau of Land Management (BLM) will

be directing the preparation of an EIS for the proposed expansion of a gold mine in Humboldt County, Nevada. This EIS will be prepared by contract and funded by the proponent, Santa Fe Pacific Gold Corporation. Public meetings will be held to identify issues to be addressed in the EIS, and to encourage public participation in the review process. Representatives of the BLM and Santa Fe Pacific Gold Corporation will be summarizing the POO and accepting comments from the audience. The BLM invites comments and suggestions on the scope of the analysis.

DATES: Scoping meetings will be held March 8, 1994, at the Humboldt County Library in Winnemucca, Nevada; and on March 9, 1994, at the Airport Plaza Hotel on 1981 Terminal Way, Reno, Nevada. Both meetings will be held from 7–9 p.m. each night. Written comments on the Plan of Operations and the scope of the EIS will be accepted until April 30, 1994. The Draft EIS is expected to be completed by September of 1994, at which time the document will be made available for public review and comment.

ADDRESSES: Scoping comments may be sent to: District Manager, 705 E. 4th Street, Winnemucca, NV 89445, ATTN: Gerald Mortiz, Project Coordinator.

FOR FURTHER INFORMATION CONTACT: Gerald Moritz, 705 E. 4th Street, Winnemucca, NV 89445, (702) 623–1500.

SUPPLEMENTARY INFORMATION: Santa Fe Pacific Gold Corporation of Albuquerque, New Mexico has submitted to the Winnemucca District Office of the BLM, a POO for expansion of their existing gold mine, the Lone Tree Mine (LTM). The POO describes proposed expansion of LTM mining operations in Humboldt County, approximately 34 miles east of Winnemucca, Nevada. A total of approximately 55 million tons of ore and 370 million tons of barren (nongold-bearing) rock may be excavated during the 15 year mine life. Total surface disturbance for all mine facilities would be about 2251 acres. Existing key production facilities would include the mine pits, barren rock piles, ore crushing, conveying, grinding, and oxidation circuits, heap leach pads and solution ponds, gold extraction and refining equipment, and tailings disposal facilities. Nonprocessing ancillary facilities to support the mining activities include administration, laboratory, warehouse, maintenance shop buildings, fuel, oil, reagent and water storage facilities and other small structures required for operations.

This EIS will address the issues of geology, minerals, soils, water resources, vegetation, wildlife, grazing management, air quality, aesthetic resources, cultural resources, paleontological resources, land use, access, recreation, social and economic values related to expansion.

Federal, state, and local agencies and other individuals or organizations who may be interested in or affected by the BLM's decision on the POO are invited to participate in the scoping process. The Authorized Officer will respond to public input and comment as part of the final EIS. The decision regarding the proposal will be recorded as a Record of Decision, which is subject to appeal under 43 CFR part 4.

Dated: February 7, 1994.

Ron Wenker,

District Manager, Winnemucca.

[FR Doc. 94–3655 Filed 2–16–94; 8:45 am]

BILLING CODE 4310–HC–M

[AZ–020–04–4210–05; AZA–27967]

Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands in Mohave County, Arizona have been examined and found suitable for classification for lease or conveyance to the Chloride School District #11 under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Chloride School District proposes to use the lands for an elementary (kindergarten through 8th grades) school.

Gila and Salt River Base and Meridian

Township 25 North, Range 19 West,
Sec. 10, W½SW¼SW¼.
Comprising 20.00 acres.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current Bureau of Land Management land use planning and would be in the public interest.

The lease/patent, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Those rights for road purposes granted to the Mohave County Board of Supervisors by Right-of-Way No. AZA–27254 for June Road and 7th Street.

For detailed information concerning this action, contact Bill Wadsworth at the office of the Bureau of Land Management, Kingman Resource Area, 2475 Beverly Avenue, Kingman, Arizona, 86401, (602) 757–3161.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, Bureau of Land Management, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027, (602) 780–8090.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a school. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a school.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: February 10, 1994.

G.L. Cheniae,

District Manager.

[FR Doc. 94–3661 Filed 2–16–94; 8:45 am]

BILLING CODE 4310–32–M

[NM–940–04–4730–12]

Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, on March 21, 1994.

New Mexico Principal Meridian, New Mexico

T. 30 N., R. 8 W.,
Accepted January 20, 1994, for Group 912 NM.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, a notice that they wish to protest prior to the proposed official filing date given above.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within (30) days after the protest is filed.

The above-listed plats represent dependent resurveys, survey and subdivision.

These plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–0115. Copies may be obtained from this office upon payment of $2.50 per sheet.

Dated: February 10, 1994.

John P. Bennett,

Chief, Branch of Cadastral Survey/Geo Science.

[FR Doc. 94–3654 Filed 2–16–94; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–943–4210–06; GP4–088; OR–50500]

Proposed Withdrawal and Opportunity for Public Meeting; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw 4,921 acres of National Forest System lands to protect the recreational and visual resources of the Elk Wild and Scenic River Corridor in the Siskiyou National Forest. This notice closes the lands for up to two years from mining. The lands have been and will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by May 18, 1994.

ADDRESSES: Comments and meeting requests should be sent to the Oregon State Director, BLM, P.O. Box 2965, Portland, Oregon 97208–2965.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM, Oregon State Office, 503–280–7162.

SUPPLEMENTARY INFORMATION: On January 31, 1994, the U.S. Department of Agriculture, Forest Service, filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws (30 U.S.C. Ch. 2), but not the mineral leasing laws, subject to valid existing rights:

Willamette Meridian

Siskiyou National Forest

Tracts of land located within the following described townships and sections as more particularly identified and described below:

T. 33 S., R: 13 W.,
Secs. 13 to 24, inclusive, secs. 29 and 30.

T. 33 S., R. 14 W.,
Secs. 7, 8, 13, 15, 16, 17, and secs. 20 to 24, inclusive. Beginning at the northeast corner of the SW¼NE¼ of Sec. 7, T. 33 S., R. 14 W.; Thence westerly to the northwest corner of the SW¼NE¼ of Sec. 7; Thence southerly to the south quarter corner of Sec. 7; Thence easterly to the southeast corner of Sec. 7; Thence southerly along the west boundary of Sec. 17 to the northwest corner of the SW¼SW¼ of Sec. 17; Thence easterly to the southwest corner of the E½NW¼SW¼ of Sec. 17; Thence northerly to the northwest corner of the E½NW¼SW¼ of Sec. 17; Thence easterly to the northeast corner of the W½NE¼SW¼ of Sec. 17; Thence southerly to the southeast corner of the W½SE¼SW¼ of Sec. 17; Thence easterly along the south boundary of Sec. 17 to the south quarter corner of Sec. 17; Thence southerly along the north-south centerline of Sec. 20 to the northeasterly right-of-way of Forest Service (FS) road 5502 020 as described in Curry County Book of Records 1, pages 308 and 429; Thence easterly along said northeasterly right-of-way line to the east boundary of Sec. 20, EXCEPT that portion of land in the NE¼ and northeast of the road as described in deed to Maude S. Kohl, et al., recorded June 20, 1969, in Book 11 page 313 of Curry County; Thence northerly to the northeast corner of the SE¼NE¼ of Sec. 20; Thence southeasterly to the summit of Pearce Peak; Thence easterly along the ridge to the summit of Purple Mountain; Thence southeasterly along the ridge to the east-west centerline of Sec. 22; Thence easterly along said centerline to the northeast corner of the SW¼ of Sec. 22; Thence southerly along the north-south centerline of Sec. 22 to the divide between Bald Mountain Creek and Elk River; Thence southeasterly along said divide to the northerly most point of Father Mountain; Thence northeasterly to the east quarter corner of Sec. 23; Thence northeasterly to a point in an unnamed tributary to Elk River at 42°42'15.45" N., 124°18'32.56" W.; Thence northeasterly to a point in a borrow pit and 50 foot offset from FS Road No. 5325 180 at 42°42'31.08" N., 124°18'26.24" W.; Thence easterly and parallel to said FS road at a 50 foot northerly offset to a point at 42°42'27.22" N., 124°17'47.98" W.; Thence northeasterly to a point at the end of FS Road No. 5325 182 at 42°42'40.41" N., 124°17'22.11" W.; Thence northeasterly to a point on the divide between Panther Creek and Elk River at 42°42'49.13" N., 124°17'07.24" W.; Thence southerly to 42°42'44.66" N., 124°17'04.49" W.; Thence southerly to 42°42'36.55" N., 124°17'04.22" W.; Thence southwesterly to 42°42'21.93" N., 124°17'13.85" W.; Thence southeasterly to 42°42'15.44" N., 124°17'09.72" W.; Thence southwesterly to 42°42'08.94" N., 124°17'11.10" W.; Thence southerly to the junction of the West Fork and Main Fork of Panther Creek; Thence southeasterly along the thread of the Main Fork to the junction of the East Fork of Panther Creek; Thence northeasterly to the west sixteenth corner of Secs. 20 and 29, T. 33 S., R. 13 W.; Thence northeasterly to the north quarter of Sec. 20; Thence northeasterly to a point at the end of a logging spur on a prominent ridge at 42°43'03.31" N., 124°15'52.92" W.; Thence following said ridge and logging spur, southeasterly to a point at a 50 foot northerly offset from FS Road No. 5544; Thence parallel to said road at a 50 foot northerly offset to a point on the ridge where the road turns southerly at 42°43'19.14" N., 124°15'35.57" W.; Thence southeasterly to a point at the end of FS Road 5544 040 at 42°43'13.04" N., 124°14'36.19" W.; Thence southeasterly to the south quarter of Sec. 15; Thence southeasterly to a point in Blackberry Creek at 42°42'37.34" N., 124°13'41.38" W.; Thence southeasterly following spur ridge to divide between McCurdy Creek and Blackberry Creek; Thence easterly and northerly along ridge to a 50 foot southerly offset from FS Road No. 5325 starting at 42°42'07.12" N., 124°12'48.52" W. to 42°42'08.54" N., 124°12'38.61" W. to 42°42'16.05" N., 124°12'19.62" W. to 42°42'28.23" N., 124°12'20.18" W. to 42°42'36.75" N., 124°12'27.34" W. to 42°42'49.14" N., 124°12'26.52" W.; Thence easterly to a point in the south fork of Elk River at 42°42'49.75" N., 124°12'09.18" W.; Thence northwesterly along thread of South Fork of Elk River to junction with the Main and North Forks of Elk River; Thence northwesterly to 42°43'07.00" N., 124°12'25.16" W.; Thence northwesterly to 42°43'12.68" N., 124°12'38.10" W.; Thence northwesterly

along spur ridge which divides the North Fork and Main Fork of the Elk River to a prominent point at 42°43'16.33" N., 124°12'43.61" W.; Thence southwesterly along said ridge to a point at 42°43'04.76" N., 124°12'59.84" W.; Thence northwesterly to the intersection of a tributary to Bungalow Creek and the west boundary of Sec. 14; Thence northerly along said section line to the northwest corner of Sec. 14; Thence westerly along the south boundary of Secs. 10, 9, and 8 to a point on the Grassy Knob Wilderness Boundary; Thence along the Grassy Knob Wilderness Boundary line to a point on the east-west centerline of the NE¼ of Sec. 7, T. 33 S., R. 14 W.; Thence west along said east-west centerline to the point of beginning.

The areas described aggregate approximately 4,921 acres in Curry County.

The purpose of the proposed withdrawal is to protect the recreational and visual resources of the Elk Wild and Scenic River Corridor.

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 may present their views in writing to the State Director at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the State Director at the address indicated above within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of two years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are other National Forest management activities, including permits, licenses, and cooperative agreements, that are compatible with the intended use under the discretion of the authorized officer.

Dated: February 11, 1994.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 94–3665 Filed 2–16–94; 8:45 am]

BILLING CODE 4310–33–P

Bureau of Reclamation

Narrows Project, Utah; Draft Environmental Impact Statement

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability and notice of public hearings on draft environmental impact statement DEIS: INT–DES–94–07.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior, Reclamation, has prepared a draft environmental impact statement (DEIS) on the proposed Narrows Project. The DEIS describes and presents the environmental effects of three alternatives, including no action, for a multiple-purpose water development project that would provide water for irrigation and municipal use in north Sanpete County, Utah. A public hearing will be held, in two sessions, to receive comments from interested organizations and individuals on the environmental impacts of the proposal.

DATES: A 60-day public review period commences on February 17, 1994. The public hearings are scheduled for Wednesday, March 30, 1994, at 7 p.m., in Price, Utah, and Thursday, March 31, 1994, at 7 p.m., in Mt. Pleasant, Utah.

ADDRESSES: The hearings will be held at the following locations:

- March 30, 1994, at the Carbon County Courthouse, 185 East Main Street, Price, Utah
- March 31, 1994, at the Mt. Pleasant City Office, 115 West Main Street, Mt. Pleasant, Utah

Addresses for comments, requests to testify, and further information: Copies of the DEIS may be requested from Reclamation's Upper Colorado Regional Office at the following address:

- Regional Director, Bureau of Reclamation, Attention: UC–750, 125 South State Street, PO Box 11568, Salt Lake City UT 84147; telephone: (801) 524–5580

Copies of the DEIS are available for inspection at the address above and also at the following locations:

- Office of the Commissioner, Bureau of Reclamation, Technical Liaison Division, 1849 C Street, NW., Washington DC 20240; telephone: (202) 208–4054
- Denver Office, Bureau of Reclamation, Library, room 167, Building 67, Denver Federal Center, Denver CO 80225; telephone: (303) 236–6963

Libraries: Copies will also be available for inspection at libraries in the project vicinity.

FOR FURTHER INFORMATION CONTACT: Lee Swenson, Regional Environmental Officer, Upper Colorado Region; telephone: (801) 524–5580.

SUPPLEMENTARY INFORMATION: Sanpete Water Conservancy District is proposing to build a multiple-purpose water development project that would provide water for irrigation and municipal use. Water from the project would come from a transmountain diversion from upper Gooseberry Creek and its tributaries which are located in the Price River drainage. Irrigation water shortages would be reduced from their present level of 30 percent to 19 percent.

Three alternatives, including no action, are considered in the draft statement. The two action alternatives are: (1) Reclamation's Recommended Plan, and (2) Smaller Reservoir Plan. The Recommended Plan would provide to north Sanpete County an average annual supply of 4,920 acre-feet of supplemental irrigation water for 15,420 acres of presently irrigated farmland and 480 acre-feet of water for municipal use. The service area encompasses about 49,000 acres. The project plan would include construction of Narrows Dam and Reservoir on Gooseberry Creek, pipelines to deliver the water to existing water distribution systems, rehabilitation of the existing Narrows Tunnel, and relocation of 2.9 miles of State Road 264. The project would also provide recreation opportunities and fish and wildlife improvements. In addition to the two action plans and the No Action Plan, the DEIS also evaluates in less detail the impacts of several nonviable alternatives.

The principal environmental consequences that would result from the two action plans include: increased crop production, economic stability and growth, expanded fish and wildlife resources, and recreational opportunities.

Hearing Process Information

Organizations and individuals wishing to present statements at the hearing should contact the Bureau of Reclamation, Upper Colorado Region, at the above address, to announce their intention to participate. Requests for

scheduled presentations will be accepted through 4 p.m. on March 21, 1994.

Oral comments at the hearing will be limited to 10 minutes. The hearing officer may allow any speaker to provide additional oral comments after all persons wishing to comment have been heard. Whenever possible, speakers will be scheduled according to the time preference mentioned in their letter or telephone requests. Speakers not present when called will lose their privilege in the scheduled order and will be recalled at the end of the scheduled speakers.

Written comments from those unable to attend or those wishing to supplement their oral presentations at the hearing should be received by Reclamation's Upper Colorado Regional Office at the above address by April 11, 1994, for inclusion in the hearing record.

Dated: February 2, 1994.

James O. Malila,

Acting Deputy Commissioner.

[FR Doc. 94–3596 Filed 2–16–94; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

[Investigation 337–TA–360]

Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding administrative law judge in the above captioned investigation terminating the following respondents on the basis of a settlement agreement: MicroComputer Cable Company.

In the Matter of CERTAIN DEVICES FOR CONNECTING COMPUTERS VIA TELEPHONE LINES

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on February 10, 1994.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

Issued: February 10, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–3597 Filed 2–16–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32459]

Southern Pacific Transportation Co.—Renewal of Trackage Rights Exemption—Peninsula Corridor Joint Powers Board

Peninsula Corridor Joint Powers Board (JPB) has agreed to extend for 2 years its grant of trackage rights to Southern Pacific Transportation Company (SP), between Santa Clara Junction (milepost 44.0) and Tamien, CA (milepost 48.7), a distance of approximately 4.7 miles. The extension of the trackage rights will be effective on or after March 1, 1994.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction Pleadings must be filed with the Commission and served on: Gary A. Laakso, Southern Pacific Bldg., One Market Plaza, room 846, San Francisco CA 94105.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Decided: February 10, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–3594 Filed 2–16–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Lewis Arnold, on (202) 514–4305. If you anticipate commenting on a form/

collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or the Method of Collection

(1) VICAP Crime Analysis Report.
(2) FD–676. Federal Bureau of Investigation.
(3) On Occasion.
(4) State or local governments. This form is used for the collection of data at crime scenes (e.g., unsolved murders) for analysis by FBI VICAP Staff. Law enforcement agencies reporting similar pattern crimes will be provided with relevant information to assist in initiating coordinated multi-agency investigations.
(5) 2,000 annual respondents at 2.0 hours per response.
(6) 4,000 annual burden hours.
(7) Not applicable under Section 3504(h).

Public comment on this item is encouraged.

Dated: February 9, 1994.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

[FR Doc. 94–3572 Filed 2–16–94; 8:45 am]

BILLING CODE 4410–02–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—the ATM Forum

Notice is hereby given that, on November 18, 1993, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the ATM Forum (the "ATM Forum") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members of ATM Forum are: Bel Fuse Inc., Jersey City, NJ; Broadband Technologies Inc., Research Triangle Park, NC; Graphics Communication Laboratories, Tokyo, Japan; and Sony Corporation, Tokyo, Japan.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the ATM Forum intends to file additional written notifications disclosing all changes in membership.

On April 19, 1993, ATM filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 2, 1993 (58 FR 31415).

The last notification was filed with the Department on August 20, 1993. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 2, 1993 (58 FR 63586).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 94–3657 Filed 2–16–94; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Microelectronics and Computer Technology Corporation

Notice is hereby given that, on November 12, 1993, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Microelectronics and Computer Technology Corporation ("MCC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the changes are as follows: (1) Ceridian Corporation, Bloomington, MN, and Paramex Systems Corporation, Salt Lake City, UT, have agreed to become participants in MCC's Adaptive Beam Forming Technology Study; and (2) Raytheon Company, Lexington, MA, has agreed to become a participant in MCC's Mixed Signal Open Systems Project.

On December 21, 1984, MCC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 17, 1985 (50 FR 2633).

The last notification was filed with the Department on September 15, 1993. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 28, 1993 (58 FR 58019).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 94–3658 Filed 2–16–94; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Mortgage Loss Prevention Forum

Notice is hereby given that, on November 15, 1993, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Mortgage Loss Prevention Forum (the "Forum") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identity of the new member of the Forum is: PMI Mortgage Insurance Co., San Francisco, CA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On September 20, 1993, the Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 29, 1993 (58 FR 58180).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 94–3659 Filed 2–16–94; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open Software Foundation, Inc.

Notice is hereby given that, on November 19, 1993, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Open Software Foundation, Inc. ("OSF") has filed written notifications simultaneously with the Attorney General and the Federal Trade

Commission disclosing changes in its membership. The additional notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new, non-voting members of OSF are as follows: Grumman Data Systems, Herndon, VA; NASA/Langley Research Center, Hampton, VA; Ohio State University, Columbus, OH; Herbert H. Lehman College, Bronx, NY; Laboratoire de l'Accelerateur Lineaire, Orsay, France; Foundation of Research and Technology Hellas, ICS, Heraklio, Greece; Battelle Pacific Northwest Laboratory, Richland, WA; Harvard University, Cambridge, MA; 3M Company, St. Paul, MN; Centre for Development of Telematics, New Delhi, India; University of Waikato, Hamilton, New Zealand; Griffith University, Nathan, Australia; Flinders University of South Australia, Adelaide, Australia; Edith Cowan University, Churchlands, Australia; Australian National University, Canberra, Australia; Michigan Department of Transportation, Lansing, MI; Open Systems Associates, Inc., Reston, VA; Intellisoft Corporation, Acton, MA; Duetsche Bundespost Telekom, Bonne, Germany; Sycomore, S.A., Paris La Defense, France; University of Melbourne, Parkville, Victoria, Australia; University of Western Sydney, MacArthur, Cambelltown, NSW, Australia; University of New South Wales, Kensington, NSW, Australia; Aggregate Computing, Inc., Minneapolis, MN; Montran Corporation, New York, NY; Information Communication Institute of Singapore, Singapore Telecommunications, Singapore; Wells Fargo Bank, San Francisco, CA; Atrium Technologies, Inc., Austin, TX; Fachhochschule Wiesbaden, Wiesbaden, Germany; Template Software, Inc., Herndon, VA; and Freie Universitat Berlin, Berlin, Germany. No new voting members have been added as of this filing.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OSF intends to file additional written notifications disclosing all changes in membership.

On August 8, 1988, OSF and the Open Software Foundation Institute, Inc. (the "Institute") filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 7, 1988, (53 FR 34594).

The last notification was filed with the Department on August 2, 1993. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 2, 1993 (58 FR 46652).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 94–3660 Filed 2–16–94; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

All Items Consumer Price Index for All Urban Consumers; U.S. City Average

Pursuant to Section 604(c) of the Motor Vehicle Information and Cost Savings Act, which was added to the Motor Vehicle Theft Law Enforcement Act of 1984, and the delegation of the Secretary of Transportation's responsibilities under that Act to the Administrator of the Federal Highway Administration (49 CFR, 501.2(f)), the Secretary of Labor has certified to the Administrator and published this notice in the **Federal Register** that the United States City Average All Items Consumer Price Index for All Urban Consumers (1967=100) increased 39.1 percent from its 1984 base period annual average of 311.1 to its 1993 annual average of 432.7.

Signed at Washington, DC, on the 31st day of January 1994.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 94–3619 Filed 2–16–94; 8:45 am]

BILLING CODE 4510–24–M

Privacy Act of 1974; Amendment of the Systems of Records Notice; Flexiplace Programs

AGENCY: Office of the Secretary, Labor.

ACTION: Amendment of Privacy Act systems of records notice.

SUMMARY: The Department of Labor hereby amends its current Privacy Act systems of records notice to give notice of the creation of flexible workplace pilot projects. These projects will mean that, for short periods of time, participating employees will take copies of agency records to alternative worksites, including their homes or satellite offices, because they will be working at these locations. However, all appropriate safeguards will be taken by these employees so that the records will be safe. This amendment will occur by adding a new category to the General Prefatory Statement within the notice.

EFFECTIVE DATE: February 17, 1994.

FOR FURTHER INFORMATION CONTACT: Miriam McD. Miller, Co-Counsel for Administrative Law, Office of the Solicitor, telephone (202) 219–8188.

SUPPLEMENTARY INFORMATION: In 1993 the Secretary of Labor authorized flexible workplace pilot projects for Department of Labor employees. Flexiplace is a voluntary program which allows employees to work at home or at geographically convenient satellite offices for part of the workweek with equipment provided by the Department.

Section (e)(4)(A) of the Privacy Act (5 U.S.C. 552a(e)(4)(A)) requires, in part, that each agency publish in the **Federal Register** the location for each of its systems of records. Since employees in the Flexiplace Pilot Programs will be taking copies of Departmental records to these additional locations, the category for SYSTEM LOCATION, for every system, must be amended to reflect the additional locations made possible by the flexiplace pilot programs. The Department's current Privacy Act Systems of Records Notice was published on September 23, 1993 at 58 FR 49548. This amendment will be accomplished by adding a new paragraph to the existing General Prefatory Statement which appears in that notice. The General Prefatory Statement contains provisions that apply to and are incorporated by reference into all the Department's systems of records under the Privacy Act.

Amendment to Privacy Act Systems of Records Notice

The Department hereby amends its September 23, 1993 Privacy Act Systems of Records Notice, 58 FR 49548, by adding the following text to the current General Prefatory Statement which Statement begins at page 49554 of Volume 58 of the **Federal Register.**

System Location—Flexiplace Pilot Programs

This paragraph applies to and is incorporated by reference into all of the Department's systems of records under the Privacy Act, within the category entitled, SYSTEM LOCATION:

Pursuant to the Department of Labor's Flexiplace Pilot Programs, copies of records may be temporarily located at alternative worksites, including employees' homes or at geographically convenient satellite offices for part of the workweek. All appropriate safeguards will be taken at these sites.

Signed at Washington, DC this 10th day of February 1994.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 94–3623 Filed 2–16–94; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance; Steward, Inc., et al

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under section 250(a) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of OTAA at the U.S. Department of Labor (DOL) in Washington, DC, provided such request is filed in writing with the Director of OTAA not later than February 28, 1994.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of OTAA at the address shown below not later than February 28, 1994.

Petitions filed with the Governors are available for inspection at the Office of the Director, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC. this 7th day of February, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Steward, Inc. (Co.)	Chattanooga, TN	01/31/94	01/27/94	NAFTA–00010	Ferrite Components.
Procter Gamble Manufacturing Co. (IOCW).	Quincy, MA	01/31/94	01/24/94	NAFTA–00011	Bar Soap and Industrial Chemicals.
The Strolle Corp. (Wkrs.)	Phoenix, OR	01/28/94	01/25/94	NAFTA–00012	Wood, Western Pine Cuttings.
Hubbell, Inc. (Wkrs.)	Fogelsville, PA	02/02/94	01/25/94	NAFTA–00013	Electrical Weatherproof Products.
Alcatel Data Networks (Wkrs.)	Mt. Laurel, NJ	02/02/94	01/19/94	NAFTA–00014	Printed Circuit Board Assembly/Testing.
Parkway Fabricators (Wkrs.)	South Amboy, NJ	02/02/94	02/02/94	NAFTA–00015	Rubber Goods, Survival & Skin diving Suits.
Metacomet Manufacturing Co., Inc. (Wkrs.).	Fall River, MA	02/03/94	02/03/94	NAFTA–00016	Belts and Related Trim.

[FR Doc. 94–3624 Filed 2–16–94; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 94–20; Application Number D–5700]

Class Exemption Relating to Certain Employee Benefit Plan Foreign Exchange Transactions

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Class Exemption.

SUMMARY: This document contains a final exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1986 (the Code). The class exemption permits the purchase and sale of foreign currencies between an employee benefit plan and a bank or a broker-dealer or an affiliate thereof which is a party in interest with respect to such plan.

The exemption affects participants and beneficiaries of employee benefit plans involved in such transactions, as well as banks and broker-dealers and their affiliates which act as dealers in foreign exchange.

EFFECTIVE DATE: Section I(a) of PTE 94–20 is effective for transactions occurring from January 1, 1975 to June 18, 1991. Section I(b) of PTE 94–20 is effective for transactions occurring on or after June 18, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Lyssa Hall, Pension and Welfare Benefits Administration, Office of Exemption Determinations, U.S. Department of Labor, Washington, DC 20210, (202) 219–8971 (not a toll-free number) or Susan Rees, Plan Benefits Security Division, Office of the Solicitor, (202) 219–9141 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Exemptive relief for the transactions described herein, as well as for other transactions not covered by the proposed exemption, was requested in an application dated July 18, 1984 (Application No. D–5700) submitted by the American Bankers Association (ABA) pursuant to section 408(a) of ERISA and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).

In a letter to the ABA dated December 28, 1984, the Department of Labor (the Department) tentatively denied the application. By letter dated June 21, 1985, the ABA modified its application in response to the Department's tentative denial, explaining that it was no longer seeking exemptive relief for foreign exchange transactions between banks and plans where the banks or their affiliates have investment management discretion over the plan assets involved in the transactions. On September 15, 1986, the Department published a notice in the **Federal Register** (51 FR 32695), requesting additional information from the public on various issues being considered by

the Department in deciding whether to propose a foreign exchange class exemption in response to the ABA application. The comment period ended on February 24, 1987. Seventeen substantive responses to the solicitation of comments were received.[1]

On March 20, 1991, the Department published a notice in the **Federal Register** (56 FR 11757) of the pendency of a proposed class exemption from the restrictions of section 406(a)(1) (A) through (D) of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code by reason of certain transactions described in section 4975(c)(1) (A) through (D) of the Code. The notice of pendency invited all interested persons to submit written comments concerning the proposed class exemption by May 20, 1991. The Department received nine public comments requesting, among other things, that the Department broaden the scope of the exemption to provide relief for transactions entered into pursuant to standing instructions. In view of those comments, the Department published a notice of public hearing in the **Federal Register** (56 FR 46806 (September 16, 1991)). The hearing was held on October 3, 1991. Upon consideration of all of the comments received and testimony. offered at the public hearing, the Department has determined to grant the proposed class exemption, subject to certain modifications. These modifications and the major comments are discussed below.

Discussion of the Comments

The proposed exemption provided retroactive and prospective relief from section 406(a)(1) (A) through (D) of the Act and section 4975(c)(1) (A) through (D) of the Code for foreign exchange transactions between a party in interest bank or affiliate thereof and an employee benefit plan.

One commentator urged the Department to expand the final exemption to permit broker-dealers who are registered under the Securities Act of 1934 (1934 Act) and their affiliates to engage in foreign exchange transactions with plans. According to this commentator, the same reasons for granting the exemption to banks apply with equal force to broker-dealers and their affiliates. Broker-dealers act as custodians and provide other services to plans which cause them to be parties in interest as defined in section 3(14) of the Act. In addition, broker-dealers may also participate in foreign exchange transactions. Accordingly, absent the availability of an exemption, many major money market broker-dealers and their affiliates might not be able to deal with plans with respect to foreign exchange transactions. The commentator also asserts that in order for the "general" arm's length test contained in the exemption to work effectively, the exemption must include significant participants in the foreign exchange market. Finally, the commentator notes that broker-dealers which are registered under the 1934 Act are subject to extensive regulatory control consisting of a panoply of federal, self-regulatory organization and state regulations and supervisory structures. The Department has considered this comment and determined that it would be appropriate to include broker-dealers which are registered under the 1934 Act and their affiliates within the scope of relief provided by the final class exemption. Accordingly, the final exemption has been modified in this regard.

One commentator requested that the exemption be expanded to provide relief for individual retirement accounts (IRAs) and Keogh plans which are not employee benefit plans covered by title I of the Act.[2] The Department does not believe that a sufficient showing has been made regarding the demand for exemptive relief for non-title I IRAs and Keogh Plans. Therefore, the Department is unable to conclude that the final exemption should be expanded as requested.

The proposed exemption contained a condition requiring that the bank maintain written policies and procedures regarding the handling of foreign exchange transactions with plans which assure that the person acting for the bank knows that he or she is dealing with a plan.

One commentator expressed concern that requiring the person acting for the bank to know that he or she is dealing with an ERISA plan will require the institution of new procedures at foreign exchange desks which will increase the cost of transactions for ERISA plans. The commentator stated that it treats all client transactions in a uniform manner. Finally, the commentator stated that it does not believe that the condition will achieve beneficial results for plan transactions at its facility.

While the commentator states that all client transactions at its facility are treated in a uniform manner, the Department notes that purchases and sales of foreign currency between an employee benefit plan and a party in interest bank or broker-dealer are prohibited in the absence of exemptive relief. The purpose of the above-noted condition is to put persons who act for the bank or broker-dealer on notice that they are dealing with a plan in order that any additional steps or procedures that are necessary to comply with the conditions of the exemption may be implemented. The Department believes that the identification of the client as a plan will help assure compliance with the conditions of the exemption. Accordingly, the Department has determined not to revise the final exemption in this regard.

Section III(c)(6) of the proposed exemption required the issuance of a written confirmation statement for each covered transaction. The proposal required that the confirmation statement disclose the amount of U.S. dollars purchased or sold. A commentator noted that U.S. dollars are not involved in every foreign currency transaction. In response to this comment, the Department has modified section III(c)(6) to require disclosure of the currencies purchased and sold pursuant to the final exemption.

The proposed exemption included a recordkeeping requirement which provided that the bank, broker-dealer or affiliate must maintain within territories under the jurisdiction of the United States Government, the records necessary to determine whether the applicable conditions of the exemption have been met. Several commentators objected to the requirement that records be maintained within territories under the jurisdiction of the U.S. Government. In this regard, they represented that this requirement creates difficulties for those banks who maintain foreign exchange

[1] For a discussion of those comments, see the proposed exemption at 56 FR 11761 (March 20, 1991).

[2] 29 CFR 2510.3–2(d) explains that IRAs described in section 408(e) of the Code will not be considered pension plans subject to title I of ERISA, provided that: (1) no contributions to the plan are made by the employer or employee association; (2) participation is completely voluntary for employees or members; (3) the sole involvement of the employer or employee organization is without endorsement to permit the sponsor to publicize the program, to collect contributions on behalf of the sponsor through payroll deductions or dues checkoffs and to remit them to the sponsor; and (4) the employer or employee organization receives no consideration in the form of cash or otherwise, other than reasonable compensation for services actually rendered in connection with payroll deductions or dues checkoffs.

29 CFR 2510.3–3(b) explains that for purposes of title I of ERISA, "employee benefit plan" shall not include a Keogh Plan under which no employees are covered under the plan. In this regard, 29 CFR 2510.3–3(c) states that for purposes of the above referenced section: (1) an individual and his or her spouse shall not be deemed to be employees with respect to a trade or business, whether incorporated or unincorporated, which is wholly owned by the individual or by the individual and his or her spouse; and (2) a partner in a partnership and his or her spouse shall not be deemed to be employees with respect to the partnership.

trading desks in a country or countries other than the United States. In addition, one commenter suggested that the recordkeeping requirement may result in higher costs to plans involved in foreign exchange transactions.

The ABA suggested that the recordkeeping requirement should permit the required records to be maintained on a computer system located at a foreign facility which would be accessible in the United States. These systems could print out any information requested and produce a hard copy to anyone who is authorized to have such information. These systems would contain all the bank's foreign exchange transactions on a daily basis for employee benefit plans as well as other entities. In this way, all information needed to test for compliance would be available in the United States. Other commenters suggested that requirements similar to those provided in the regulations under section 404(b) of the Act regarding the maintenance of the indicia of ownership of plan assets should be adopted. Specifically, they requested that the exemption permit the required records to be maintained at foreign locations described under the section 404(b) regulations.

The Department notes that the purpose of the record maintenance requirement is to ensure that the persons described in paragraph III(e) of the exemption will have access to bank, broker-dealer or affiliate records involving covered foreign exchange transactions. The Department is unable to determine how the alternatives for holding securities, which are described in the regulations under section 404(b) of the Act, would operate in the context of a record maintenance requirement. If the records were maintained outside of the jurisdiction of the United States Government and became unavailable for reasons beyond the control of the bank, broker-dealer or affiliate, there would be no comparable records available for determining compliance with the terms of this exemption. Accordingly, the Department is not persuaded that the conditions described in the regulations under section 404(b) of the Act would be appropriate with respect to the record maintenance requirement.

The Department has considered the ABA's suggestion to modify the final exemption to include records which are maintained on a foreign computer system that could be accessed in the United States. We note, however, that the ABA is unable to represent that such records could always be accessed on a foreign computer system without the risk of restriction by a foreign government. Accordingly, the Department is unable to conclude that the final exemption should be modified to include this method of recordkeeping.

The ABA, as well as a number of other commentators, requested that the Department expand the proposed exemption to include retroactive and prospective relief for foreign exchange transactions entered into pursuant to a standing authorization, hereinafter "standing instruction." Similarly, many of those commenters also requested that the Department amend the definition of the term "directed transaction" by modifying the requirement that the independent plan fiduciary effect the foreign exchange transaction at a specific exchange rate.

The commentators represent that the utilization of a standing instruction is an integral component in foreign exchange transactions involving employee benefit plans. They further indicate that standing instructions are necessary to repatriate relatively minor amounts of income such as dividend and interest payments routinely generated by foreign securities which are held by plans. In this regard, they state that obtaining individual directions for each income receipt would be impractical and that plan beneficiaries would lose investment income due to the time that it would take to receive directions from investment managers and convert the payments. In addition, many investment managers who wish to effectuate a foreign exchange transaction do not contact the foreign exchange desk directly, but instead leave their trading instructions with their account managers in the bank's trust or global area. Transactions effected in this manner can be bulked or added together with other transactions from employee benefit plans as well as other trusts and custodial accounts so as to obtain a more beneficial exchange rate. Under the circumstances described above, foreign exchange transactions would not meet the definition of "directed" as set forth in the proposed exemption because of the inability to comply with the requirement that the independent plan fiduciary designate a specific exchange rate.

The Department notes that a bank or broker-dealer engages in violations of section 406(b) of the Act whenever it uses its fiduciary authority or control with respect to the plan assets involved in the transaction to increase the amount of its compensation by determining the timing or the specific exchange rate for the foreign exchange transaction. The Department did not propose relief with respect to such transactions because it was unable, at the time, to make the findings required under section 408(a) of the Act. Specifically, the Department was unable to conclude that the conditions proposed by the ABA would effectively and consistently address the potential for abuse of discretion by party in interest banks or broker-dealers in setting exchange rates for foreign exchange transactions.

The commenters have responded to the Department's concerns by suggesting additional conditions which would limit the amount of discretion that a bank or broker-dealer would have in executing the foreign exchange transactions pursuant to standing instructions. Thus, some of the commenters suggested that the class exemption could limit relief to those situations where the triggering event, such as the receipt of cash dividends, would not be within the control of the bank or broker-dealer. In addition, the exchange transaction would have to take place within a short period of time following the triggering event. As a further limitation on the bank or broker-dealer, a commenter suggested that the exchange rate could be set daily prior to execution of the covered foreign exchange transaction using objective criteria which would be disclosed to and approved by a plan fiduciary independent of the bank or broker-dealer. Finally, it was represented that conditions relating to the information which must be provided or made available to the independent plan fiduciary could require very detailed disclosures which would enable such fiduciary to determine the reasonableness of the foreign exchange rates paid by the plan.

On the basis of the comments received following publication of the proposed exemption, the Department believes that it may be appropriate, under certain circumstances, to provide relief from section 406(b)(1) of the Act. Pursuant to the requirements of section 408(a) of the Act, however, the Department is required to offer interested persons an opportunity to present their views and an opportunity for a hearing before granting an exemption from section 406(b) of the Act. Therefore, in order not to delay the publication of an exemption from section 406(a) of the Act for foreign exchange transactions, the Department has decided to grant the exemption described herein while it continues to consider additional exemptive relief for foreign exchange transactions between a plan and a party in interest bank, broker-dealer or affiliate thereof where

such transactions are engaged in pursuant to a "standing instruction."

Miscellaneous

One commenter requested that the Department clarify that the term "foreign exchange transaction" which is defined in section IV(a) of the proposed exemption as "the exchange of the currency of one nation for the currency of another nation or a contract for such exchange" includes options to buy or sell foreign currency. The commenter is concerned that a footnote to the supplementary information accompanying the proposed exemption which describes foreign exchange transactions as "generally * * * either 'spot', 'forward', or 'split'" delimits the scope of the literal language of the exemption.

The commenter represents that options contracts operate in a manner similar to that of forward contracts. For example, a forward contract to sell a specified sum of Yen for dollars would enable a party to sell Yen at the agreed upon rate even if the value of Yen declined over the time period covered by the forward contract; the same forward contract would require the counterparty to buy Yen from the party at a rate favorable to the counterparty if the Yen appreciated during the same time period. A similar economic result could be achieved if the party had bought an option to sell Yen at the forward contract rate, and sold an option to buy Yen at the same rate.

After considering this comment, the Department has decided to amend the final exemption to specifically include options to buy or sell currency.

One commenter requested that the Department expand the final exemption to include relief from section 406 (b)(1) & (b)(2) of the Act and section 4975(c)(1)(E) of the Code so that it would be clear that a fiduciary bank would not violate those provisions when it engaged in a foreign exchange transaction if it did not exercise its fiduciary authority to cause the plan to pay it an additional fee. The regulations at 29 CFR 2550.408b–2(e)(2) specifically state that a fiduciary does not engage in an act described in section 406(b)(1) of the Act if the fiduciary does not use any of the authority, control or responsibility which makes such person a fiduciary to cause a plan to pay additional fees for a service furnished by such fiduciary. Accordingly, the Department has determined that it is unnecessary to modify the final exemption as requested.

Finally, for purposes of clarity, the Department has added a definition to section IV of the class exemption. Paragraph (g) defines the term "employee benefit plan" for purposes of this class exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The exemption, will not extend to transactions prohibited under section 406(b) of the Act and section 4975(c)(1)(E) and (F) of the Code;

(3) In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, and based upon the entire record, the Department finds that the exemption is administratively feasible, in the interests of plans and of their participants and beneficiaries and protective of the rights of the participants and beneficiaries of plans.

(4) The exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(5) The exemption is applicable to a transaction only if the conditions specified in the exemption are met.

Exemption

Accordingly, the following exemption is granted under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).

Section I. Transactions

(a) For the period from January 1, 1975 to June 18, 1991, the restrictions of section 406(a)(1) (A) through (D) of the Employee Retirement Income Security Act of 1974 (the Act) and the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1986 (the Code) by reason of Code section 4975(c)(1) (A) through (D) shall not apply to any foreign exchange transaction between a bank or broker-dealer or an affiliate thereof and an employee benefit plan with respect to which the bank or broker-dealer or affiliate thereof is a trustee, custodian, fiduciary or other party in interest, provided that (i) the transaction is directed (within the meaning of section IV(e)) on behalf of the plan by a fiduciary which is independent of the bank, the broker-dealer, and any affiliate thereof, and (ii) the conditions set forth in section II are met.

(b) Effective June 18, 1991, the restrictions of section 406(a)(1) (A) through (D) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of Code section 4975(c)(1) (A) through (D) shall not apply to any foreign exchange transaction between a bank or broker-dealer or an affiliate thereof and an employee benefit plan with respect to which the bank or broker-dealer or an affiliate thereof is a trustee, custodian, fiduciary, or other party in interest, provided that (i) the transaction is directed (within the meaning of section IV(e)) on behalf of the plan by a fiduciary which is independent of the bank, the broker-dealer, and any affiliate thereof, and (ii) all of the conditions set forth in sections II and III are met.

Section II. General Conditions

Section I of this exemption applies only if the following conditions of this section II are satisfied. In the case of transactions described in section I(b), all of the conditions specified in section III below must also be satisfied.

(a) At the time the transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms generally available in comparable arm's length foreign exchange transactions between unrelated parties.

(b) Neither the bank, the broker-dealer, nor any affiliate thereof has any discretionary authority or control with respect to the investment of the plan assets involved in the transaction or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to the investments of those assets.

Section III. Specific Conditions

Section I(b) of this exemption applies only if the conditions specified in

section II above and the following conditions are satisfied:

(a) At the time the transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms afforded by the bank, the broker-dealer, or any affiliate thereof in comparable arm's length foreign exchange transactions involving unrelated parties.

(b) The bank, or broker-dealer, maintains at all times written policies and procedures regarding the handling of foreign exchange transactions with plans with respect to which the bank or broker-dealer is a trustee, custodian, fiduciary or other party in interest or disqualified person which assure that the person acting for the bank or broker-dealer knows that he or she is dealing with a plan.

(c) A written confirmation statement is issued with respect to each covered transaction to the independent plan fiduciary who directs the transaction for the plan.

The confirmation shall disclose the following information:

(1) Account name;

(2) Transaction date;

(3) Exchange rates;

(4) Settlement date;

(5) Currencies exchanged:

(i) Identity of the currency sold;

(ii) The amount sold;

(iii) Identity of the currency purchased;

(iv) The amount purchased.

The confirmation shall be issued in no event more than 5 business days after execution of the transaction.

(d) The bank or broker-dealer, or affiliate thereof, maintains within territories under the jurisdiction of the United States Government, for a period of six years from the date of the transaction, the records necessary to enable the persons described in paragraph (e) of this section to determine whether the applicable conditions of this exemption have been met. Notwithstanding these recordkeeping requirements, a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the bank's or broker-dealer's control, the records are lost or destroyed prior to the end of the six-year period, and no fiduciary of a plan who is independent of the bank or broker-dealer or any affiliate thereof, which engages in a transaction covered by the exemption, shall be subject to the civil penalty that may be assessed under 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, solely because the records are not maintained by the bank, the broker-dealer, or its affiliate, or are not made available for examination by the bank or broker-dealer or affiliate as required by paragraph (e) below.

(e)(i) Except as provided in subparagraph (ii) of this paragraph and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (d) of this Section are available at their customary location for examination, upon reasonable notice, during normal business hours by:

(A) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service.

(B) Any fiduciary of a plan who has authority to acquire or dispose of the assets of the plan involved in the foreign exchange transaction or any duly authorized employee and representative of such fiduciary.

(C) Any contributing employer to the plan involved in the foreign exchange transaction or any duly authorized employee or representative of such employer.

(ii) None of the persons described in subparagraphs (B) and (C) shall be authorized to examine a bank's or broker-dealer's trade secrets or commercial or financial information of a bank or broker-dealer or an affiliate thereof which is privileged or confidential.

Section IV. Definitions and General Rules

For purposes of this exemption.

(a) A "foreign exchange transaction" means the exchange of the currency of one nation for the currency of another nation, or a contract for such an exchange. The term foreign exchange transaction includes options contracts on foreign exchange transactions.

(b) A "bank" means a bank which is supervised by the United States or a State thereof, or any affiliate thereof.

(c) A "broker-dealer" means a broker-dealer registered under the Securities Exchange Act of 1934, or any affiliate thereof.

(d) An "affiliate" of a bank or broker-dealer means any entity directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such bank or broker-dealer.

(e) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(f) A foreign exchange transaction involving assets of an employee benefit plan shall be considered "directed" only where the independent plan fiduciary who has not been appointed by the bank or broker-dealer or affiliate thereof, directs such bank or broker-dealer or affiliate thereof to effect the purchase or sale of a specific amount of currency at a specific exchange rate.

(g) For purposes of this exemption, the term "employee benefit plan" refers to a pension plan described in 29 CFR 2510.3–2 and/or a welfare benefit plan described in 29 CFR 2510.3–1.

Signed at Washington, DC, this 10th day of February, 1994.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94–3607 Filed 2–16–94; 8:45 am]

BILLING CODE 4510–29–P

[Prohibited Transaction Exemption 94–15, et al.; Exemption Application No. D–9460, et al.]

Grant of Individual Exemptions; G. Robert Taylor Individual Retirement Account, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17,

1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

G. Robert Taylor Individual Retirement Account (the Account) Located in Chattanooga, Tennessee

[Prohibited Transaction Exemption 94–15; Exemption Application No. D–9460]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale for cash of certain shares of stock from the Account to R. Scott Taylor, a disqualified person with respect to the Account, provided that the following conditions are met:

1. The fair market value of the stock is established by an appraiser independent of G. Robert Taylor;

2. The buyer pays no less than current fair market value for the stock;

3. The transaction is entirely for cash; and

4. The Account pays no fees or commissions in regard to the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 29, 1993, at 58 FR 68957.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Money Purchase Retirement Plan of Local 567, I.B.E.W. (the Plan) Located in Falmouth, Maine

[Prohibited Transaction Exemption 94–16; Exemption Application D–9465]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the lease (the Lease) of 360 square feet of office space (the Office Space) in a commercial office building located in Falmouth, Maine, to the Plan by the Local No. 567, International Brotherhood of Electrical Workers (I.B.E.W.), Building Corporation (the Building Corporation), a corporation which is wholly-owned by the Local No. 567 of the I.B.E.W., AFL–CIO (the Union), a party in interest with respect to the Plan.

This exemption is conditioned upon the following requirements: (a) The terms of the Lease are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; (b) an independent, qualified appraiser determines annually the fair market rental value of the Office Space; (c) the Lease payments are adjusted annually by an independent, qualified fiduciary, to assure that such Lease payments are not greater than the fair market rental value of the Office Space; (d) the independent, qualified fiduciary determines that the transaction is appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries; and (e) the independent, qualified fiduciary monitors the transaction and the conditions of the exemption and takes whatever action is necessary to enforce the Plan's rights under the Lease.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 3, 1993 at 58 FR 64013.

FOR FURTHER INFORMATION CONTACT: Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Scios Nova Inc., Scios Nova Inc. 401(k) Plan (the Plan) Located in Mountain View, CA

[Prohibited Transaction Exemption 94–17; Application No. D–9551]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale by the Plan of Group Annuity Contract, No. GA–10,021 (the GAC) issued by Mutual Benefit Life Insurance Company (Mutual Benefit) to Scios Nova Inc. (the Employer), a party in interest with respect to the Plan; provided the following conditions are satisfied: (1) The sale is a one-time transaction for cash; (2) the Plan receives no less than the fair market value of the GAC at the time of the sale; (3) the Plan's trustee, acting as independent fiduciary for the Plan, has determined that the sale price is not less than the current fair market value of the GAC; and (4) the Plan's trustee has determined that the transaction is appropriate for and in the best interests of the Plan and its participants and beneficiaries.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 17, 1993 at 58 FR 66029.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.).

Local No. 60 Health and Welfare Fund (the Plan) Located in Leominster, Massachusetts

[Prohibited Transaction Exemption 94–18; Exemption Application No. L–9526]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act shall not apply to the cash sale of a parcel of real property (the Property) by the Plan to the New England Joint Board of the Retail, Wholesale and Department Store Union, AFL–CIO, for the greater of (1) $170,000 in cash or (2) the fair market value of the Property as of the date of the sale, provided the following conditions are satisfied: (a) the purchase price is not less than the fair market value of the Property on the date of the sale; and (b) the fair market value of the Property is determined by a qualified, independent appraiser as of the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 17, 1993 at 58 FR 66032.

WRITTEN COMMENTS AND HEARING REQUESTS: The Department received one comment with respect to the proposed exemption, but it did not address any issues relating to the subject transaction. The Department received no requests for a hearing with respect to the proposed exemption.

Accordingly, the Department has determined to grant the exemption as proposed.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Penn Mutual Life Insurance Company (Penn Mutual), Located in Philadelphia, Pennsylvania, The Pennsylvania Trust Company (PTC), Located in Radnor, Pennsylvania; Independence Capital Management, Inc. (ICMI), Located in Horsham, Pennsylvania

[Prohibited Transaction Exemption 94–19; Application Nos. D–9194, D–9195, D–9196]

Exemption

Section I. Covered Transactions

The restrictions of section 406(a)(1)(A) through (D) and section 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The extension of credit by Penn Mutual, the sponsor and third party guarantor of an investment product involving a guaranteed investment contract (GIC), to a plan invested in the GIC pursuant to the terms of its participation in the Independence Stable Asset Trust (Stable Asset Trust); (2) the sale of the assets of a closed-end collective investment fund (Fund) which is part of the Stable Asset Trust to Penn Mutual upon termination of the Fund, or in connection with a non-benefit withdrawal from the Fund; (3) the transfer of a Fund's assets to Penn Mutual upon termination of the Fund, or in connection with a non-benefit withdrawal from the Fund; and (4) the operation of the Stable Asset Trust in accordance with the letter agreement between Penn Mutual and PTC.

The exemption is subject to the following conditions which are set forth below in Section II.

Section II. General Conditions

The relief provided under Section I is available only if the following conditions are met:

1. The decision to invest in a Fund will be made by a plan fiduciary who is responsible for and knowledgeable regarding the investment of plan assets in GICs and similar investment products and who is independent of Penn Mutual, PTC, and ICMI and any affiliates of such entities (the Independent Fiduciary).

2. Prior to a plan's investment in a Fund, the Independent Fiduciary for such plan receives the following written disclosures:

(a) All material facts concerning the structure, operation and investment objectives of the Fund including:

i. A copy of the Supplement creating the Fund in which the plan intends to invest which identifies the proposed investment portfolio of the Fund (the Supplement), the Fund Commencement Date and the Scheduled Fund Termination Date, the date projected for the funding of all investments to be made in the Fund, the guaranteed rate of return for the Fund, and any other material terms of the Fund;

ii. The confirmation document which confirms the plan fiduciary's written approval of matters set forth in the Supplement;

iii. The Independence Stable Asset Trust Participant Investment Agreement;

iv. The Declaration of Trust of the Short Term Investment Fund of the Pennsylvania Trust Company for Employee Benefit Accounts; and

v. The letter agreement between the Pennsylvania Trust Company and the Penn Mutual Life Insurance Company (Letter Agreement).

(b) The corporate affiliation existing between Penn Mutual, PTC and ICMI and either the amount of the compensation or the method of calculation of the compensation paid to such entities.

3. Neither Penn Mutual nor any of its affiliates has discretionary authority or control with respect to the decision to invest plan assets in the proposed investment product described herein or render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

4. The interest charged by Penn Mutual with respect to an amount advanced by Penn Mutual to a plan for a benefit payment advance will be 100% offset by the returns realized with respect to the Stable Asset Trust units held by the plan and no other interest costs or charges will be associated with benefit payment advances.

5. Penn Mutual provides copies of the proposed and final exemption as published in the **Federal Register** to each plan which invests in the proposed investment product.

6. The fees paid to Penn Mutual, PTC, and ICMI will not be in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act and such fees cannot be increased during the term of a Fund as the result of any action taken by Penn Mutual, PTC or ICMI.

7. Penn Mutual maintains or causes to be maintained, for a period of six years, the records necessary to enable the persons described in paragraph (8) of this section to determine whether the conditions of this exemption have been met, except that (a) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control Penn Mutual or its agents, the records are lost or destroyed prior to the end of the six year period, and (b) no party in interest other than Penn Mutual shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (8) below.

(8)(a). Except as provided in section (b) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph 7 of this section shall be unconditionally available at their customary location during normal business hours by:

(1) Any duly authorized employee or representative of the Department or Internal Revenue Service (the Service);

(2) Any fiduciary of an investing Plan or any duly authorized representative of such fiduciary;

(3) Any contributing employer to an investing Plan or any duly authorized employee or representative of such employee; and

(4) Any participant or beneficiary, any investing Plan, or any duly authorized representative of such participant or beneficiary.

(b) None of the persons described above in subparagraph (2)–(4) of this paragraph (8) shall be authorized to examine the trade secrets of Penn Mutual or its affiliates or commercial or financial information which is privileged or confidential.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material facts which are the subject of this exemption.

For purposes of this exemption, affiliate means

(a) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) Any officer, director or partner, in such other person; and

(c) Any corporation or partnership of which such other person is an officer, director or partner.

Control means the power to exercise a controlling influence over the management or policies of a person other than an individual.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 15, 1993 at 58 FR 60219.

Written Comments: The Department received one written comment and no requests for hearing. The comment was submitted on behalf of the applicants Penn Mutual, PTC and ICMI. The issues addressed in the comment and the Department's responses are summarized as follows:

1. The applicants request that the first sentence of Section I. Covered Transactions section of the Exemption be revised to include the following phrase at the end of subsequent (2) and (3) "or in connection with a non-benefit withdrawal from the Fund,". The applicants represent that the added phrase is intended to reflect the fact that it is contemplated that there may be sales of assets of a Fund which form a part of the Stable Asset Trust to Penn Mutual in connection with a non-benefit withdrawal from the Fund by a participating plan. Such sales are authorized in section 5.6(e) of the declaration of trust for the Stable Asset Trust. In accordance with the applicants' request the Department has included the above-referenced phrase at the end of subsections (2) and (3) of Section I of the final exemption.

2. Paragraph 1 of Section II of the proposed exemption states that the decision to invest in a Fund will be made by a plan fiduciary who is responsible for and knowledgeable regarding the investment of plan investments in GICs and similar investment products. Similarly, paragraph 15(a) of the Summary of Facts and Representations section of the proposed exemption states that the applicants represent that investment of a Plan's assets in a Fund will be made and approved by a plan fiduciary who is responsible for and knowledgeable regarding the investment of plan assets in guaranteed investment contracts and similar products.

The applicants wish to clarify that this condition will be satisfied by an express representation that will be required to be made by the Plan's independent fiduciary under the Independence Stable Asset Trust Participant Investment Agreement.

3. The applicants have noted two factual errors in paragraph 1 of the Summary of Facts and Representation section of the proposed exemption. The correct name of the affiliate listed in the proposed exemption as "Penn Assurance and Annuity Company" is "Penn Insurance and Annuity Company." Secondly, as of December 31, 1992, Penn Mutual had $6.9 billion in consolidated assets and not $46.9 billion as reported in the proposed exemption.

4. Paragraph 10 of the Summary of Facts and Representations section of the proposed exemption includes a description of the non-benefit withdrawal provisions of the synthetic GIC product. The description includes statements to the effect that the withdrawing plan would be subject to a surrender charge and that there would be a credit against the amount of the surrender charge owing based on the excess of the market value of the units of the Fund held by the Plan over the Plan Account Amount as of such date.

The applicants represent that there may be cases where no surrender charges will be applied with respect to non-benefit withdrawals and also there may be circumstances where surrender charges will be applied and will not be subject to any offset. Thus, the word "would" as noted above should be changed to "may". These provisions, in each case, however, will be determined and approved by the Plan fiduciary at the Fund's inception.

5. Paragraph 11 of the Summary of Facts and Representations section of the proposed exemption includes a reference to paragraph 12, which does not appear to relate to the substance of that paragraph. The Department notes that the paragraph labeled "12" was incorrectly identified in the Federal Register and the designation for paragraph 13 omitted. As corrected, paragraphs 12 and 13 read as follows.

12. PTC, at its discretion, will be entitled at a Fund's Termination Date to sell any one or more of the Fund assets to Penn Mutual for a cash price sufficient to obtain net proceeds equal to the aggregate of the Plan Account Amounts of plans holding units in the Fund. The obligations of the parties under these arrangements will be netted against one another, resulting in a "swapping-out" of the entire remaining portfolio at an amount equal to the aggregate Plan Account Amounts.

13. Penn Mutual's fee for its minimum yield, liquidity guarantees and Plan Account Amount assurances will be an amount computed on and payable as of pre-set quarterly dates from each Fund. The fee will be equal to the product of the cost of the remaining invested assets in the Fund adjusted in accordance with generally accepted accounting principles for amortization of premium and accretion of discount, times the Penn Mutual Quarterly Compensation Percentage specified in the applicable Fund Supplement.

* * * * *

After consideration of the entire record, including the comment, the Department has determined to grant the exemption as amended in the manner described above.

FOR FURTHER INFORMATION CONTACT: Ms. Lyssa E. Hall of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 10th day of February 1994.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94–3606 Filed 2–16–94; 8:45 am:]

BILLING CODE 4510–29–P

Advisory Council on Employee Welfare and Pension Benefits Plan; Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Health Care Reform of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held from 9:30 a.m. until 12 noon, Wednesday, March 9, 1994, in suite C–5515, Seminar Room 3, U.S. Department of Labor Building, Third and Constitution Avenue NW., Washington, DC 20210.

This working group was formed by the Advisory Council to study issues relating to health care reform for employee benefit plans covered by ERISA.

The purpose of the March 9 meeting is to discuss preliminary plans and schedules for accomplishing its objectives for the remainder of the work year. The working group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals or representatives of organizations wishing to address the working group should submit a written request on or before March 4, 1994 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue NW., Washington, DC 20210. Oral presentations will be limited to ten (10) minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before March 4, 1994.

Signed at Washington, DC, this 11th day of February 1994.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 94–3631 Filed 2–16–94; 8:45 am]

BILLING CODE 4510–29–M

Advisory Council on Employee Welfare and Pension Benefits Plan; Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Reporting and Disclosure of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held from 1 p.m. until 3:30 p.m., Wednesday, March 9, 1994, in suite C–5515, Seminar Room 3, U.S. Department of Labor Building, Third and Constitution Avenue NW., Washington, DC 20210.

This working group was formed by the Advisory Council to study issues relating to reporting and disclosure for employee benefit plans covered by ERISA.

The purpose of the March 9 meeting is to discuss preliminary plans and schedules for accomplishing its objectives for the remainder of the work year. The working group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals or representatives of organizations wishing to address the working group should submit a written request on or before March 4, 1994 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue NW., Washington, DC 20210. Oral presentations will be limited to ten (10) minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before March 4, 1994.

Signed at Washington, DC, this 11th day of February 1994.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 94–3632 Filed 2–16–94; 8:45 am]

BILLING CODE 4510–29–M

Advisory Council on Employee Welfare and Pension Benefits Plan; Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Defined Contribution Plans of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held from 9:30 a.m. until 12 noon, Thursday, March 10, 1994, in suite N–3437 AB, U.S. Department of Labor Building, Third and Constitution Avenue NW., Washington, DC 20210.

This working group was formed by the Advisory Council to study issues relating to defined contribution plans covered by ERISA.

The purpose of the March 10 meeting is to discuss preliminary plans and schedules for accomplishing its objectives for the remainder of the work year. The working group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals or representatives of organizations wishing to address the working group should submit a written request on or before March 4, 1994 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue NW., Washington, DC 20210. Oral presentations will be limited to ten (10) minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before March 4, 1994.

Signed at Washington, DC, this 11th day of February 1994.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 94–3633 Filed 2–16–94; 8:45 am]

BILLING CODE 4510–29–M

Advisory Council on Employee Welfare and Pension Benefits Plan; Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Thursday, March 10, 1994, in suite N–3437 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

The purpose of the Eighty-Fourth meeting of the Secretary's ERISA Advisory Council, which will be held from 2 p.m. until 3:30 p.m., is to receive and discuss each working group's progress in defining its topic and schedule of work to be accomplished. The Council has established three working groups this year to consider health care reform, reporting and disclosure and defined contribution plans. The Council will also take

testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding any aspect of the administration of ERISA.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting twenty (20) copies on or before March 4, 1994 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Advisory Council should forward their request to the Executive Secretary at the above address. Oral presentations will be limited to ten (10) minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before March 4, 1994.

Signed at Washington, DC, this 11th day of February, 1994.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 94–3634 Filed 2–16–94; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL SCIENCE FOUNDATION

Privacy Act of 1974: Revision to Two Systems of Records

AGENCY: National Science Foundation.

ACTION: Notice of revised systems of records.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the National Science Foundation is providing notice of a revision to two systems of records—NSF–50, "Principal Investigator/Proposal File and Associated Records," and NSF–51, "Reviewer/Proposal File and Associated Records." Both systems include investigatory records maintained by NSF when proposals are submitted to the agency and subsequent evaluations of the applicants and their proposals are obtained. These systems are being revised to include altered routine uses, and are reprinted in their entirety.

In accordance with the requirements of the Privacy Act, NSF has provided a report on the proposed systems of records to the Director of OMB, the Chairman, Committee on Governmental Affairs, and the Chairman, Committee on Government Operations.

EFFECTIVE DATE: Sections 552a(e) (4) and (11) of Title 5 of the U.S. Code require that the public have thirty days to comment on the routine uses of systems of records. The new routine uses that are the subject of this notice will take effect on March 21, 1994, unless modified by a subsequent notice to incorporate comments received from the public.

ADDRESSES: Written comments should be submitted to the NSF Privacy Act Officer, National Science Foundation, Division of Contracts, Policy and Oversight, 4201 Wilson Boulevard, room 485, Arlington, Virginia 22230.

Dated: February 10, 1994.

Herman G. Fleming,

NSF Privacy Act Officer.

NSF–50

SYSTEM NAME:

Principal Investigator/Proposal File and Associated Records.

SYSTEM LOCATION:

Decentralized. There are numerous separate files maintained by individual NSF offices and programs. National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Each person that requests support from the National Science Foundation, either individually or through an academic institution.

CATEGORIES OF RECORDS IN THE SYSTEM:

The name of the principal investigator, the proposal and its identifying number, supporting data from the academic institution or other applicant, proposal evaluations from peer reviewers, a review record, financial data, and other related material.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101; 42 U.S.C. 1870.

PURPOSES:

This system enables program offices to maintain appropriate files and investigatory material in evaluating applications for grants or other support. NSF employees may access the system to make decisions regarding which proposals to fund, and to carry out other authorized internal duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of information may be made:

1. To qualified reviewers for their opinion and evaluation of applicants and their proposals as part of the application review process.

2. To Federal government agencies in order to coordinate grant programs.

3. To contractors, grantees, volunteers and other individuals who perform a service or work on a contract, grant, cooperative agreement, or job for the Federal Government.

4. To the Department of Justice or the Office of Management and Budget for the purpose of obtaining advice on the application of the Freedom of Information Act or Privacy Act to the records.

5. To another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Various portions of the system are maintained on computer or in hard copy files, depending on the individual program office.

RETRIEVABILITY:

Information can be accessed from the computer database by addressing data contained in the database, including individual names. An individual's name may be used to manually access material in alphabetized hard copy files.

SAFEGUARDS:

All records containing personal information are maintained in secured file cabinets or are accessed by unique passwords and log-on procedures. Only those persons with a need-to-know in order to perform their duties may access the information.

RETENTION AND DISPOSAL:

File are maintained in accordance with approved record retention schedules. Awarded proposals are transferred to the Federal Records Center for permanent retention. Declined proposals are destroyed five years after they are closed out.

SYSTEM MANAGER(S) AND ADDRESS:

Division Director of particular office or program maintaining such records, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

NOTIFICATION PROCEDURE:

The NSF Privacy Act Officer should be contacted in accordance with procedures set forth at 45 CFR part 613.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Information is obtained from the principal investigator, academic institution or other applicant, peer reviewers, and others.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The portions of this system consisting of investigatory material which would identify persons supplying evaluations of NSF applicants and their proposals have been exempted pursuant to 5 U.S.C. 552a(k)(5).

NSF–51

SYSTEM NAME:

Reviewer/Proposal File and Associated Records.

SYSTEM LOCATION:

Decentralized. There are numerous separate files maintained by individual NSF offices and programs. National Science Foundation, 420–1 Wilson Boulevard, Arlington, Virginia 22230.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Reviewers that evaluate Foundation applicants and their proposals, either by submitting comments through the mail or serving on review panels or site visit teams.

CATEGORIES OF RECORDS IN THE SYSTEM:

The "Reviewer/Proposal File and Associated Records" system is a subsystem of the "Principal Investigator/Proposal File and Associated Records" system, and contains the reviewer's name, proposal title and its identifying number, and other related material.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101; 42 U.S.C. 1870.

PURPOSES:

This system enables program offices to reference specific reviewers and maintain appropriate files for use in evaluating applications for grants or other support. NSF employees may access the system to help select reviewers as part of the merit review process, and to carry out other authorized internal duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of information may be made:

1. To Federal government agencies needing names of potential reviewers and specialists in particular fields.

2. To contractors, grantees, volunteers and other individuals who perform a service or work on a contract, grant, cooperative agreement, or job for the Federal Government.

3. To the Department of Justice or the Office of Management and Budget for the purpose of obtaining advice on the application of the Freedom of Information Act or Privacy Act to the records.

4. To another Federal agency, a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Various portions of the system are maintained on computer or in hard copy files, depending on the individual program office.

RETRIEVABILITY:

Information can be accessed from the computer database by addressing data contained in the database, including individual reviewer names. An individual's name may be used to manually access material in alphabetized hard copy files.

SAFEGUARDS:

All records containing personal information are maintained in secured filed cabinets or are accessed by unique passwords and log-on procedures. Only those persons with a need-to-know in order to perform their duties may access the information.

RETENTION AND DISPOSAL:

File is cumulative and is maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Division Director of particular office or program maintaining such records, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

NOTIFICATION PROCEDURE:

The NSF Privacy Act Officer should be contacted in accordance with procedures set forth at 45 CFR part 613.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES;

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Information is obtained from the individual reviewers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 94–3616 Filed 2–16–94; 8:45 am]

BILLING CODE 7555–01–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: Extension.

2. The title of the information collection: 10 CFR Part 60—Disposal of High-Level Radioactive Wastes in Geologic Repositories

3. The form number if applicable: Not applicable.

4. How often the collection is required: The information need only be submitted one time.

5. Who will be required or asked to report: States or Indian Tribes, or their representatives, requesting consultation with the NRC staff regarding review of a potential high-level waste repository site, or wishing to participate in a license review for a potential repository.

6. An estimate of the annual number of responses: 8

7. An estimate of the total number of hours needed annually to complete the requirement or request: An average of 40 hours per response for consultation requests, 80 hours per response for license review participation proposals, and 1 hour per response for statements of representative authority. The total burden for all responses is estimated to be 244 hours.

8. An indication of whether Section 3504(h), Public Law 96–511 applies: Not applicable.

9. Abstract: 10 CFR part 60 requires States and Indian Tribes to submit certain information to the NRC if they request consultation with the NRC staff

concerning review of a potential repository site or wish to participate in a license review for a potential repository. Representatives of States or Indian Tribes must submit a statement of their authority to act in such representative capacity. The information submitted by the States and Indian Tribes is used by the director of the Office of Nuclear Material Safety and Safeguards as a basis for decisions about the commitment of NRC staff resources to the consultation and participation efforts.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Troy Hillier, Office of Information and Regulatory Affairs (3150–0127), NEOB–3019, 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) 492–8132.

Dated at Bethesda, Maryland, this 8th day of February 1994.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 94–3589 Filed 2–16–94; 8:45 am]

BILLING CODE 7590–01–M

Baltimore Gas and Electric Company; Environmental Assessment and Finding of No Significant Impact

[Docket No. 50–318]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of 10 CFR part 50, appendix A, General Criterion 2, "Design Bases For Protection Against Natural Phenomena," to Baltimore Gas and Electric Company (the licensee), for the Calvert Cliffs Nuclear Power Plant, Unit No. 2, located at the licensee's site in Calvert County, Maryland.

Environmental Assessment

Identification of Proposed Action

The proposed exemption would allow relief from General Design Criterion 2 (GDC–2) during the upgrading of the Unit 1 emergency diesel generator (EDG) No. 11. The proposed exemption will permit the temporary removal of a steel missile door which provides missile protection for the No. 11 EDG, which will be out-of-service to allow for modifications which will increase its load capacity, and also provides missile protection to portions of the support systems for EDGs Nos. 12 and 21. EDGs Nos. 12 and 21 are required to be operable to support the operation of Unit 2.

The upgrading of the Unit 1 EDG will be performed during the upcoming Unit 1 refueling outage (RFO–11). RFO–11 is scheduled to commence on February 8, 1994, and be completed in early May 1994. The steel missile door will be required to be removed about four times during the outage. The licensee estimates that each of the removals will last for about 24 hours, which will result in a total removal time of about 100 hours during the scheduled 89 day RFO–11.

Need for the Proposed Action

The proposed temporary exemption is needed to permit the completion of highly desirable upgrades to the Unit 1 EDG No. 11 without requiring a dual unit shutdown.

Environmental Impacts of the Proposed Action

The proposed exemption does not involve any measurable environmental impacts during normal operation of Unit 2 since the plant configuration is changed only minimally for short periods of time when the missile door will be removed and overall plant operation is not changed. The likelihood of tornado-generated or other high wind-generated missile damage during the time the exemption would be in effect and which could affect equipment required to be operable to avoid radiological impact is low. Also, the licensee indicates that the missile door will be installed whenever severe weather conditions arise. Thus, the proposed temporary exemption would not significantly affect the probability or consequences of potential reactor accidents and would not otherwise affect radiological plant effluents. Consequently, the Commission concludes that there are no significant radiological impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves features located entirely within the owner-controlled area defined in 10 CFR part 20. The EDG upgrade project activities do not affect nonradiological plant effluents and has no other environmental impact. Therefore, the staff concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

The principal alternative to requesting the temporary exemption for implementation of the EDG upgrade would be to comply with the restrictive requirements of GDC–2. However, this alternative would not significantly enhance the protection of the environment, and would result in a significant loss of power generation since a dual unit outage would be required.

Alternate Use of Resources

This action does not involve the use of any resources not previously considered in the April 1973 Final Environmental Statement for the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2.

Agencies and Persons Consulted

The NRC staff contacted the State of Maryland, Department of Natural Resources, regarding the environmental impact of this proposed action.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment and has determined, therefore, not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the application dated December 17, 1993, as supplemented on February 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 Calvert County Library, Prince Frederick, Maryland 20678.

Dated at Rockville, Maryland, this 10th day of February 1994.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I–1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–3588 Filed 2–16–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–423]

Northeast Nuclear Energy Co.; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Enforcement, has taken action with regard to a Petition for action under 10 CFR 2.206 received from Mr. Paul M. Blanch (Petitioner)

dated August 2, 1993, regarding the Northeast Nuclear Energy Company (licensee) and the Millstone Facility.

The Petitioner requested that the NRC reconsider the May 4, 1993 enforcement action issued to the licensee for discrimination against the Petitioner in violation of 10 CFR 50.7.

The Petitioner requested reconsideration based on his view that additional enforcement action is warranted. Specifically, Petitioner requests: (1) An enforcement action against a licensee Vice President for alleged willful violation of 10 CFR 50.7 and alleged deliberate misconduct under 10 CFR 50.5 in the discriminatory actions against Petitioner; (2) a Severity Level I violation against the licensee corporate officer allegedly responsible for directing action against two of Petitioner's former subordinates; (3) Severity Level I violations against three licensee corporate officers allegedly resonsible for harassment, intimidation and discrimination against the Petitioner; (4) a Severity Level I violation and a Severity Level II violation against a licensee attorney and a licensee manager respectively for threatening individuals with letters of reprimand if they did not communicate with licensee attorneys prior to being interviewed by the NRC's Office of Investigations on the discrimination matter; and (5) a minimum of a Severity Level II violation against a licensee manager for a retaliatory audit of the Petitioner's group.

The Director of the Office of Enforcement has reviewed the bases for the Petitioner's request and has found that the Petitoner has not presented information that would warrant reconsideration of the May 4, 1993 enforcement action. Therefore, the Petitoner's request has been denied. The reasons for the denial are explained in the "Director's Decision Under 10 CFR 2.206" (DD–94–01) which is available for public inspection at the Nuclear Regulatory Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Local Public Document Room for the Millstone Nuclear Power Station, unit 3, Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

A copy of this Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by that regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 9th day of February 1994.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 94–3590 Filed 2–16–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33614; File No. SR–NASD–94–6]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Assessments and Fees on Members

February 10, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 9, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one establishing or changing a fee under section 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing a rule change to amend Schedule A, Section 2(b) to the By-Laws[1] to add the provision that any initial or transfer application for registration as a registered representative or registered principal with the NASD which requires a special registration review shall be assessed a surcharge of $85.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Any initial or transfer application to register as a representative or principal with the Association requires the submission of Form U–4, the Uniform Application for Securities Industry Registration or Transfer ("Form U–4"). Item 22 on page three of Form U–4 requires disclosure of violations of certain criminal and securities laws, rules and regulations. Any "yes" answer to item 22 requires additional detailed disclosure on the disclosure reporting page of Form U–4, which in turn requires a special registration review of such information by the Association.

Pursuant to Article VI of the By-Laws of the Association, the NASD requires its members to pay a $65 fee for each application submitted to the Association for the registration or transfer of registration of a registered representative or registered principal, as set forth in Schedule A, Section 2(b) to the By-Laws. The NASD is proposing to amend Schedule A, Section 2(b) to the By-Laws to add the provision that any initial or transfer application which requires a special registration review shall be assessed a surcharge of $85.

There are additional costs associated with performing a special registration review of information disclosed in the Form U–4 and maintaining such information in the NASD's Central Registration Depository disciplinary database ("CRD database"). These costs relate to conducting research on all criminal actions, disciplinary actions taken by the states, SROs and the SEC disclosed in the U–4 and including information on such actions on the CRD database. A special registration review will also require CRD to provide information on any criminal, disciplinary, or SEC action.

Based on data for 1991, the Association estimates the extra costs attributable to U–4s in 1994 for which a special registration review is required will be approximately $85 per U–4 filing. The NASD, therefore, in accordance with its objective to align revenues with the cost of providing particular services to members and, specifically, its objective to focus fee

[1] NASD Manual, By-Laws, Schedule A, Section 2(b), (CCH) ¶ 1753.

increases on actions that impact the disciplinary process, is proposing to amend Schedule A, Section 2(b) to the By-Laws to add the provision that any initial or transfer application which requires a special registration review shall be assessed a surcharge of $85. The surcharge will take effect on March 1, 1994 for all initial and transfer filings either that have a "yes" answer to item 22 on Form U–4 or for which information exists in the CRD database that would require a "yes" answer to item 22 regardless of how it is answered.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(5) of the Act,[2] which require that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges among members in that the proposed rule change equitably allocates the extra costs associated with U–4s for which a special registration review is required to the member firms incurring such costs.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act and section (e) of Rule 19b–4 promulgated thereunder in that it constitutes a due, fee or other charge. However, the NASD will implement the fee change on March 1, 1994.

At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[2] 15 U.S.C. 78o–3 (1988).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by March 10, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–3626 Filed 2–16–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges, Notice and Opportunity for Hearing; Chicago Stock Exchange, Inc.

February 10, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Morgan Stanley Africa Investment Fund, Common Stock, $.01 Par Value (File No. 7–11977).

Ashland Oil, $3.125 Cum. Conv. Pfd., No Par Value (File No. 7–11978).

Crisalerias de Chile S.A., American Depository Shares (each representing 3 shares of Common Stock, No Par Value (File No. 7–11979).

Freeport-McMoran Copper & Gold, Inc., Dep. Shrs. Series II (each rep. $0.05 of a shr. of Gold-Denominated Pfr. Stk, Series II, $.10 Par Value (File No. 7–11980).

Gables Residential Trust, Shrs. of Beneficial Inter., $.01 Par Value (File No. 7–11981).

Glimcher Realty Trust, Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–11982).

Quantum Restaurant Group, Inc., Common Stock, $.01 Par Value (File No. 7–11983).

Mid America Apartment Communities, Inc., Common Stock, $.01 Par Value (File No. 7–11984).

O'Sullivan Industries Holding, Inc., Common Stock, $.100 Par Value (File No. 7–11985).

Occidental Petroleum Corp., $3.00 Cum. Conv. Pfd. Stk., $1.00 Par Value (File No. 7–11986).

Playtex Products, Inc., Common Stock, $.01 Par Value (File No. 7–11987).

Shawnut National Corp., Warrants, No Par Value (File No. 7–11988).

Statesman Group, Inc., Common Stock, $.01 Par Value (File No. 7–11989).

G.T. Global Developing Markets Fund, Inc., Common Stock, $.001 Par Value (File No. 7–11990).

United Mobil Homes, Inc., Common Stock, $.10 Par Value (File No. 7–11991).

PECO Energy Company, Common Stock, No Par Value (File No. 7–11992).

Franklin Advantage Real Estate Income Fund, Series A, Common Stock, No Par Value (File No. 7–11993).

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 4, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–3628 Filed 2–16–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

February 10, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Ceridian Corp.,
Depositary Shares (rep. 1/100 sh. Cm. Cv. Exch. Pfd., $100.00 Par Value (File No. 7–12003).
Columbus Realty Trust,
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–12004).
Compania Boliviana de Energia Electrica, S.A.,
Common Stock, No Par Value (File No. 7–12005).
Corporate High Yield Fund II,
Common Stock, $.10 Par Value (File No. 7–12006).
Emerging Markets Infrastructure Fund, Inc.,
Common Stock, $.001 Par Value (File No. 7–12007).
Home Holdings, Inc.
Ser. A Common Stock, $.01 Par Value (File No. 7–12008).
Koninklije Ahold AV,
American Depositary Shares (rep. 1 Ord. sh., NGL 1.25 Par Value (File No. 7–12009).
M.I. Schottenstein Homes, Inc.,
Common Stock, $.01 Par Value (File No. 7–12010).
MAXXIM Medical, Inc.
Common Stock, $.001 Par Value (File No. 7–12011).
MuniBond Income Fund, Inc.,
Common Stock, $.10 Par Value (File No. 7–12012).
National Intergroup, Inc.,
$4.20 Cm. Exch. Ser. A Pfd. Stk. (File No. 7–12013).
New York State Gas & Electric Corp.,
Adj. Rte. Srl. Pfd., Ser. B Cum., $25.00 Par Value (File No. 7–12014).
Oil-Dri Corp. of America,
Common Stock, $.10 Par Value (File No. 7–12015).
Pakistan Investment Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–12016).
Salomon Brothers Worldwide Income Fund, Inc.,
Common Stock, $.001 Par Value (File No. 7–12017).
Schroder Asian Growth Fund, Inc.,
Common Stock, $.01 Par Value (File No. 7–12018).
Washington Homes, Inc.,
Common Vot. Stock, $.01 Par Value (File No. 7–12019).
Wiser Oil Co.,
Common Stock, $3.00 Par Value (File No. 7–12020).

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 4, 1994, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–3629 Filed 2–16–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

February 10, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Quantum Restaurant Group, Inc.,
Common Stock, $.01 Par Value (File No. 7–11957).
Southdown, Inc.,
Pfd. Stock, Conv. Series D (File No. 7–11958).
Glimcher Realty Trust,
Common Shares of Beneficial Interest (File No. 7–11959).
Pakistan Investment Fund, Inc.,
Common Stock, $.01 Par Value (File No. 7–11960).
Pacific Gulf Properties, Inc.,
Common Stock, $1.00 Par Value (File No. 7–11961).
Golden Star Resources, Ltd.,
Common Stock, $.01 Par Value (File No. 7–11962).
Occidental Petroleum Corporation,
$3.00 Cum. Cxy Indexed Conv. Pfd. Stock (File No. 7–11963).
O'Sullivan Industries Holding, Inc.,
Common Stock, $.01 Par Value (File No. 7–11964).
Playtex Products, Inc.,
Common Stock, $.01 Par Value (File No. 7–11965).
Mid American Apartment Communities, Inc.,
Common Stock, $.01 Par Value (File No. 7–11966).
Crisalerias De Chile S.A.,
American Depository Shares (File No. 7–11967).
United Asset Management,
Common Stock, $.01 Par Value (File No. 7–11968).
United Mobile Home, Inc.,
Common Stock, $.01 Par Value (File No. 7–11969).
Plantronics, Inc.,
Common Stock, $.01 Par Value (File No. 7–11970).
G.T. Global Developing Market Fund, Inc.,
Common Stock, $.01 Par Value (File No. 7–11971).
Franklin Advantage Realty Estate Income Fund,
Series A Common Stock, No Par Value (File No. 7–11972).
Bowater Incorporated,
Depository Shares Preferred B Stock (File No. 7–11973).
Bowater Incorporated,
Depository Shares Preferred C Stock (File No. 7–11974).
Security Connecticut Corporation,
Common Stock, $.01 Par Value (File No. 7–11975).
Ceridian Corporation,
Depository Shares each representing 1.100th of a Share of Cum. Cv. Exchangeable Pfd. Stock, $100 Par Value (File No. 7–11976).

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 4, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–3630 Filed 2–16–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Boston Stock Exchange, Inc.

February 10, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Grangers Exploration, Ltd.
Common Stock, $.01 Par Value (File No. 7–11994)
Playtex Products, Inc.
Common Stock, $.01 Par Value (File No. 7–11995)
Emerging Markets Infrastructure Fund
Common Stock $.001 Par Value (File No. 7–11996)
Aztar Corp.
Common Stock, $.01 Par Value (File No. 7–11997)
Alliance World Dollar Fund
Common Stock, $.01 Par Value (File No. 7–11998)
Blackrock 2001 Term Trust
Common Stock, No Par Value (File No. 7–11999)
Grupo Casa Autry S.A. de C.V.
American Depositary Shares, No Par Value (File No. 7–12000)
Grupo Mexicano de Desarrollo S.A. de C.V.
American Depositary Shares, No Par Value (File No. 7–12001)
J&L Specialty Steel, Inc.
Common Stock, $.01 Par Value (File No. 7–12002)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 4, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–3627 Filed 2–16–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Availability of Environmental Document and Public Hearing; Greater Rockford Airport, Rockford, IL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice to hold a public hearing and accept additional scoping comments.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that an Environmental Document has been prepared for proposed development at Greater Rockford Airport, Rockford, Illinois. In addition, it is the intent of this notice to also inform the public that the Airport will be conducting a Public Hearing. Major development items, proposed to be completed over the next 5 to 10 years, are depicted on the Airport Layout Plan (ALP).

FOR FURTHER INFORMATION CONTACT: Melissa Wishy, Community Planner, Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (708) 294–7524.

SUPPLEMENTARY INFORMATION: The FAA issued a **Federal Register** Notice on April 22, 1993 announcing its intent to prepare an Environmental Document (possible Environmental Impact Statement) and to hold a May 26, 1993 scoping meeting. At the scoping meeting no significant impacts were identified. Some concerns were expressed over possible noise, floodplain and wetland impacts. The airport sponsor indicated that any impacts would be mitigated below the level of significance as an integral part of the development. Recently, United Parcel Service (UPS) announced their intention to initiate a cargo hub at the airport in an area not covered by the previous scoping meeting. Below is a refined listing of the major associated and indirect development projects, incorporating items scoped originally and those newly identified as part of the UPS project.

1. Develop the midfield area for aviation-related industrial users. (scoped originally)
2. Expand the existing cargo apron and buildings west of the existing terminal building to accommodate a minimum of 26 cargo aircraft. (expansion scoped originally; to accommodate 26 aircraft—new)
3. Extend Runway 7/25 to a length of 10,000 feet by constructing a 3,500-foot southwesterly extension with parallel and connecting taxiways and associated lighting and navigation aids. This would include the installation of a CAT II Instrument Landing System (ILS) for Runway 7. (scoped originally)
4. Relocate approximately 12,000 feet of Belt Line Road and 9,300 feet of Kishwaukee Road. (scoped originally)
5. Expand the existing terminal building and auto parking lot and upgrade the existing airport entrance roadway. (scoped originally)
6. Construct a general aviation apron and T-hangars. (scoped originally)
7. Remove miscellaneous support buildings. (scoped originally)
8. Construct a new 4,000-foot general aviation visual approach runway, parallel to and 5,100 feet southeast of existing Runway 7/25, with associated taxiways and instrumentation. (scoped originally)
9. Construct and realign various taxiways parallel to Runway 1/19. The majority of the realignment work proposed is adjacent to and west of the approach end of Runway 19. (scoped originally)
10. Implement actions recommended in the 1993 Master Drainage/Stormwater Management Plan. (scoped originally)
11. Implement actions recommended in the updated Noise Compatibility Plan. (scoped originally)
12. Acquire approximately 1,100 acres of land for airfield development and noise and floodway mitigation. Included in this acquisition is the relocation of approximately 28 residential dwellings, of which only eleven are considered to be noise impacted and must be acquired and residents relocated prior to the start of any operation resulting from the Proposed Action Alternative. The remaining residential dwellings would be acquired for purposes of airfield development and floodway mitigation. (land acquisition scoped originally; new noise impacted homes)
13. Compensate for wetland impacts caused by the development of the Proposed Action Alternative through the creation of approximately 25 acres of new wetlands. (scoped originally)
14. An additional 1,500 flights annually beyond those originally forecasted but with a greater number of stage three aircraft. This is based on UPS's proposal to initiate an air cargo operation at Greater Rockford Airport. (new)

An informational workshop and Public Hearing will be held from 3 p.m. to 8 p.m. on Tuesday, March 22, 1994 in the Auditorium and Classroom of the Operations & Public Safety Center at Greater Rockford Airport, 60 Airport Drive, Rockford, Illinois. Comments on the Draft Environmental Assessment are invited from Federal, State, and local

agencies, and all other interested parties to provide additional opportunity for scoping comments and to insure that a full range of issues and alternatives related to the proposed projects and actions are addressed and all issues identified. Comments may be provided in writing and/or orally at the Public Hearing or submitted in writing either to the FAA at the address provided above or to Mr. Frederick C. Ford, Executive Director, Greater Rockford Airport, 3600 Airport Drive, P.O. Box 5063, Rockford, Illinois 61125–0063. All comments received by April 6, 1994 will be considered in preparation of the Airport Sponsor's Final Environmental Assessment. Comments received after the close of the comment period, but prior to the FAA's environmental fining will be considered by the FAA to the extent practical. The FAA will issue a Final Environmental Document that includes corrections, clarifications and responses to comments on the Draft Environmental Assessment.

Copies of the Draft Environmental Assessment are available for review at the following locations:

Airport Manager's Office, Greater Rockford Airport Authority, 3600 Airport Drive, Rockford, Illinois 61125–0063

Rockford City Clerk's Office, Rockford City Hall, 1201 Broadway, Rockford, Illinois

Winnebago County Courthouse, County Clerk's Office, 400 West State, Rockford, Illinois

Rockford Public Library, 215 North Wyman, Rockford, Illinois

Illinois Department of Transportation, Division of Aeronautics, One Langhorne Drive, Capitol Airport, Springfield, Illinois

Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018

Issued in Des Plaines, Illinois on February 9, 1994.

Louis H. Yates,

Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. 94–3621 Filed 2–16–94; 8:45 am]

BILLING CODE 4910–13–M

Availability of Final Environmental Impact Statement (EIS) for the Establishment of an Instrument Landing System (ILS) on Runway 11 at Newark International Airport, Newark, NJ

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of Final Environmental Impact Statement (EIS).

SUMMARY: The Federal Aviation Administration (FAA) is issuing this Notice to advise the public, local, State and Federal agencies, and all other interested parties of the availability of a final Environmental Impact Statement (EIS), which assesses the potential effects of constructing and operating an Instrument Landing System (ILS) facility on Runway 11 at Newark International Airport, Newark, New Jersey. The EIS has been prepared in accordance with the National Environmental Policy Act of 1969. The purpose of this proposed action is to reduce delays to the aircraft and passengers utilizing Newark International Airport and to provide more efficient use of the existing runways.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Hom of the Federal Aviation Administration at (718) 553–1508, or Mr. Errol Francis of the Federal Aviation Administration at (718) 553–1158.

SUPPLEMENTARY INFORMATION: An FAA evaluation concluded that the installation of an ILS on Runway 11 at Newark International Airport would reduce aircraft and passenger delays and provide for greater efficiency in the use of the existing runways. The FAA, in cooperation with the Port Authority of New York and New Jersey (PANYNJ), began the preparation of an Environmental Assessment (EA) for an Instrument Landing System/Microwave Landing System (ILS/MLS).

A public hearing was held on September 19, 1991 to receive comments regarding the Draft Environmental Assessment (EA) for the proposed Runway 11 ILS/MLS at Newark International Airport; and a notice of Intent to prepare an Environmental Impact Statement (EIS) was published in the **Federal Register** by the FAA on March 29, 1993 inviting comments. Both verbal and written comments were received. Comments from the public hearing and those arising from the publication of the Notice of Intent were incorporated into a Draft Environmental Impact Statement (DEIS). Due to technical reasons and considerations, an MLS was no longer a part of the proposed action.

A notice of Availability of the DEIS was published in the **Federal Register** by the FAA on September 20, 1993 and by the United States Environmental Protection Agency (EPA) on September 24, 1993. Both verbal and written comments were received, incorporated into, and addressed in the Final EIS.

Several alternatives to the proposed action were evaluated in the EIS, including: shifting the demand to other airports; restricting aircraft operations during peak operating hours; installing a precision instrument landing system on another runway; and no action.

An analysis of both the function of the ILS and the data used to develop the Environmental Assessment led to the recommendation to prepare an Environmental Impact Statement (EIS) for the proposed installation of an ILS on Runway 11 at Newark International Airport. In addition, based on this analysis the FAA determined that the Runway 11 precision approach is separate and independent of those issues and actions considered in the EIS currently being completed for the Expanded East Coast Plan (EECP).

The EIS for the Newark Runway 11 ILS project specifically addresses the environmental impacts resulting from the installation and use of a precision approach landing system for Runway 11 at Newark International Airport. The installation of an ILS on Runway 11 is not a component part of the EECP. The scope of the EECP EIS analyzes procedures involving aircraft above 3,000 feet. Utilization of the precision approach to Runway 11 will only effect procedures relevant to, and aircraft operations conducted below 3,000 feet. The Runway 11 ILS precision approach will in no way limit the choice of reasonable alternatives in the current EECP EIS. Rather, the Runway 11 ILS is a stand alone project of independent utility, needed to reduce operating delays at Newark International Airport. Therefore, the preparation of a separate EIS for this project is appropriate.

The EIS is available for public review at the following locations: (1) Cranford Public Library, 224 Walnut Avenue, Cranford, New Jersey (contact the Head Librarian); (2) Elizabeth Public Library, 11 South Broad Street, Elizabeth, New Jersey (contact the Head Librarian); (3) Newark Public Library, 5 Washington Street, Newark, New Jersey (contact the Head Librarian); (4) Air Traffic Control Tower, room 112, Tower Road, Newark International Airport (ask for Mr. Lucious Riley).

To obtain a copy of the EIS, submit a written request to: Mr. Thomas Hom (AEA–451.3), Supervisor, Navaids/Visaids/Weather Section, Airway Facilities Division, Federal Aviation Administration, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

Issued in Jamaica, New York on February 14, 1994.

Charles J. Hoch,

Manager, Airway Facilities Division, FAA Eastern Region.

[FR Doc. 94–3674 Filed 2–16–94; 8:45 am]

BILLING CODE 4910–13–M

Flight Standards District Office at Los Angeles, CA; Relocation

Notice is hereby given that on or about January 29, 1994, the Flight Standards District Office at 5885 W. Imperial Highway, Los Angeles, CA 90045 will be relocating to 2250 E. Imperial Highway, suite 140, Kilroy Airport Center, El Segundo, CA 90245. 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 January 24, 1994.

Alex Hammond,

Regional Administrator, Western-Pacific Region.

[FR Doc. 94–3246 Filed 2–16–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

February 10, 1994.

The Department of Treasury has made revisions and resubmitted 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 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0023

Form Number: IRS Form 720

Type of Review: Resubmission

Title: Quarterly Federal Excise Tax Return

Description: Form 720 is used to report excise taxes due from retailers and manufacturers on the sale or manufacture of various articles, to report taxes on facilities and services, and taxes on certain products and commodities (gasoline and vaccines, etc.). It enables IRS to monitor excise tax liability for various categories on a single form and to collect the tax quarterly in compliance with the law and regulations (Internal Revenue Code 6011).

Respondents: Individuals or households, businesses or other for-profit, small businesses or organizations

Estimated Number of Respondents/ Recordkeepers: 338,000

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing and sending the form to the IRS
720	25 hr., 21 min	2 hr., 26 min	8 hr., 52 min.
Sch. A	2 hr., 23 min		2 min.
Sch. C Part I	2 hr., 38 min		2 min.
Sch. C Part II	11 hr., 58 min		12 min.
Sch. C Part III	14 min		

Frequency of Response: Quarterly

Estimated Total Reporting/ Recordkeeping Burden: 10,003,900 hours

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 94–3668 Filed 2–16–94; 8:45 am]

BILLING CODE 4830–01–P

Sunshine Act Meetings

Federal Register

Vol. 59, No. 33

Thursday, February 17, 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).

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Published February 9, 1994, 59 FR 6082.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: February 24, 1994, 2:00 p.m.

PLACE: Public Hearing Room, Suite 700, 625 Indiana Avenue, NW., Washington, DC 20004.

STATUS: Open.

CHANGE IN THE MEETING: The meeting date has been changed to March 11, 1994, 9:00 a.m., to accommodate Department of Energy witnesses.

Note: Any matter not discussed or concluded may be carried over to a later meeting.

FOR MORE INFORMATION CONTACT: Robert M. Andersen, (202) 208–6400.

Dated: February 15, 1994.

Robert M. Andersen,

General Counsel.

[FR Doc. 94–3808 Filed 2–15–94; 8:45 am]

BILLING CODE 6820–KD–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 59 FR 6676, February 11, 1994.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, February 16, 1994.

CHANGES IN THE MEETING: Change in the status of an item:

Proposed amendments to Regulation E (Electronic Fund Transfers) to cover Electronic Benefit Transfer (EBT) programs established by federal, state, or local agencies (proposed earlier for public comment; Docket No. R–0796) has been moved from the Summary Agenda to the *Discussion Agenda.*

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: February 14, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–3727 Filed 2–15–94; 9:31 am]

BILLING CODE 6210–01–P

Corrections

Federal Register
Vol. 59, No. 33
Thursday, February 17, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 931107–3307]

RIN 0693–AA70

Proposed Federal Information Processing Standard for Portable Operating System Interface (POSIX)—Part 2: Shell and Utilities

Correction

In notice document 94-1818 beginning on page 4034 in the issue of Friday, January 28, 1994, make the following corrections:

1. On page 4036, in the second column, in the third paragraph, in the first and second lines, "[*c/l*]" should read "[*c!1*]" each place it appears.

2. On the same page, in the same column, in the sixth paragraph, in the second line, "*unmask*" should read "*umask*".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

48 CFR Part 252

Defense Federal Acquisition Regulation Supplement; North American Free Trade Agreement Implementation Act

Correction

In rule document 94-447 beginning on page 1288 in the issue of Monday, January 10, 1994, make the following corrections:

252.225-7007 [Corrected]

1. On page 1291, in the first column, in section 252.225-7007(c), in the fourth line, after "country" insert "designated country".

2. On the same page, in the same column, in section 252.225-7007(d), in the last line "customer" should read "custom".

252.225-7037 [Corrected]

3. On page 1292, in the second column, in section 252.225-7037((f)(2)(iv), in the 10th line, "plan." should read "plant."

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP91-143-026]

Great Lakes Gas Transmission Limited Partnership; Revenue Sharing Report

Correction

In notice document 94-2903 appearing on page 6012, in the issue of Wednesday, February 9, 1994, in the first column, in the first line, the docket number should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93-ASW-40]

Proposed Modification of Class E Airspace: Harrison, AR

Correction

In proposed rule document 93-31698 beginning on page 68577 in the issue of Tuesday, December 28, 1993, make the following correction:

On page 68578, in the first column, in the file line at the end of the document, "FR Doc. 93-3" should read "FR Doc. 93-31698".

BILLING CODE 1505-01-D

federal register

Thursday
February 17, 1994

Part II

Department of Education

34 CFR Parts 668 and 682
Student Assistance General Provisions; Federal Family Education Loan Programs; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 668 and 682

RIN 1840–AB80

Student Assistance General Provisions; Federal Family Education Loan Programs

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Student Assistance General Provisions and Federal Family Education Loan program regulations. These amendments are needed to implement changes in the Higher Education Act of 1965, as amended (HEA), and to improve the monitoring and accountability of institutions and third-party servicers participating in the student financial assistance programs authorized by Title IV of the HEA (Title IV, HEA programs). The changes would establish requirements governing contracts between institutions and third-party servicers to administer any aspect of an institution's participation in those programs. In addition, the changes would strengthen sanctions against institutions for violations of Title IV, HEA program requirements and establish similar sanctions for third-party servicers. The changes also would establish standards of administrative and financial responsibility for third-party servicers that administer any aspect of a guaranty agency's or lender's participation in the Federal Family Education Loan programs.

DATES: Comments must be received on or before April 4, 1994.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Mr. Greg Allen, U.S. Department of Education, 400 Maryland Avenue SW., room 4318, Regional Office Building 3, Washington, DC 20202–5343.

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. Greg Allen. Telephone (202) 708–7888. 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 6 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Student Assistance General Provisions (34 CFR part 668) currently apply to all institutions that participate in the Student Financial Assistance Programs authorized by Title IV of the HEA. For purposes of these regulations, the Title IV, HEA Student Financial Assistance Programs include the Federal Pell Grant, Federal Family Education Loan (FFEL), Federal Direct Student Loan, State Student Incentive Grant (SSIG), Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs.

The FFEL program regulations (34 CFR part 682) govern the Federal Stafford Loan Program, the Federal Supplemental Loans for Students (Federal SLS) Program, the Federal PLUS Program, and the Federal Consolidation Loan Program, collectively referred to as the Federal Family Education Loan programs (formerly the Guaranteed Student Loan (GSL) programs). With respect to 34 CFR part 682, the Federal Stafford Loan, Federal SLS, Federal PLUS, and Federal Consolidation Loan programs are hereinafter referred to as the Stafford, SLS, PLUS and Consolidation Loan programs.

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239), enacted December 19, 1989, amended the HEA to authorize the Secretary to promulgate regulations governing the limitation, suspension, or termination of the eligibility of an individual or organization to contract with an educational institution to administer any aspect of the institution's participation in any Title IV, HEA program. That act further amended the HEA to authorize the Secretary to promulgate regulations to take emergency action against or to fine such an individual or organization.

The Higher Education Amendments of 1992 (Pub. L. 102–325), enacted July 23, 1992, amended the HEA to expand the Secretary's authority to regulate the activities of those individuals and organizations, now called *third-party servicers*. Further, Public Law 102–325 authorizes the Secretary to promulgate regulations that are applicable to third-party servicers to establish minimum standards with respect to sound management and accountability of the FFEL programs and include standards for financial responsibility and the assessment of liabilities for FFEL program violations. These proposed regulations would implement those statutory provisions. In addition, these proposed regulations would strengthen and clarify the procedures for fining an institution or limiting, suspending, or terminating its participation in any Title IV, HEA program, and make other minor changes.

The Secretary believes that establishing accountability guidelines for an institution's continued participation and the participation of an institution's third-party servicer in the Title IV, HEA programs is an important element in the general effort for better and more accountable schools, as called for in the National Education Goals.

Negotiated Rulemaking

Section 492 of the HEA contains procedural requirements that the Secretary is to follow in developing proposed regulations for parts B, G, and H of Title IV of the HEA, as amended by the Higher Education Amendments of 1992. Section 492(a) requires the Secretary to convene regional meetings to gain input on the content of proposed regulations. Section 492(b) requires the Secretary, subsequent to these meetings, to draft and submit regulations implementing parts B, G, and H to a negotiated rulemaking process.

In accordance with the requirements of section 492, the Secretary convened four regional meetings to discuss issues related to implementation of parts B, G, and H. The Secretary invited representatives of groups involved in student financial assistance programs, such as students, legal assistance organizations that represent students, institutions of higher education, guaranty agencies, lenders, secondary markets, loan servicers, guaranty agency servicers, and collection agencies. As a precursor to the regional meetings, the Secretary held a meeting in Washington, DC, in August 1992, to invite comments from interested parties as to the key issues that should be addressed at the regional meetings. At the four regional meetings, the Secretary provided participants with a list of issues, based upon those identified in the meeting in August 1992 that needed to be addressed in these proposed regulations. Regional meetings were held in New York, New York; San Francisco, California; Atlanta, Georgia; and Kansas City, Missouri during September 1992. Participants in the meetings were invited to nominate individuals to serve as participants in negotiated rulemaking sessions. The Secretary selected participants for the negotiations process from individuals nominated by groups participating in the regional meetings and attempted, to the extent possible, to have participants reflect the diversity of those participating in the student aid community.

Negotiated rulemaking sessions were held in April, June, and August 1993 in and around the environs of Washington, DC. Taking into account views

expressed at the regional meetings, the Department of Education prepared draft regulations on the main issues discussed. The draft served as the basis for the negotiated rulemaking process.

Regional Meeting Comments

In connection with these regulations, one issue was identified during the August meeting for discussion at the regional meetings: The requirement under section 487(c)(1)(C)(i) of the HEA for an audit of a third-party servicer's administration of an institution's, lender's, or guaranty agency's Title IV, HEA program. During the regional meetings, participants were asked for their recommendations on formulating the compliance standards against which a third-party servicer would be measured in these proposed regulations. Recommendations from the regional meetings varied.

Participants involved in the New York meeting suggested that the compliance standards for third-party servicers contracting with institutions should parallel institutional compliance standards.

Participants in San Francisco recommended that compliance standards for third-party servicers should be developed by an independent accounting firm but that the Department of Education should specify servicer activities that would need to be included in the annual compliance audit report. Participants at this meeting further suggested separate standards for different types of third-party servicers.

Participants meeting in Atlanta suggested that compliance audits of third-party servicers be limited to the area of their specific function; for example, with respect to loan servicers, the default rate of Title IV, HEA program loans should be an indicator of compliance with Title IV, HEA program requirements. Participants also recommended that a third-party servicer, and not the institution with which the servicer contracts, should be cited for any violation of an audit standard by that servicer. One participant recommended that the standards developed by the Association of Independent Certified Public Accountants should be used in the Department of Education's audit guide.

Participants attending the Kansas City regional meeting suggested that in devising audit standards for third-party servicers, the Secretary first should review the audit check list currently in use by the Office of Inspector General of the Department of Education for auditing third-party servicers. Participants did not consider consultants or software providers used by an institution to be included in the definition of *third-party servicer*. Participants suggested that the Department of Education devise a process for grading and validating software.

Regulatory Changes

The Secretary submitted a draft of the proposed regulatory language governing third-party servicers along with the issue described above for discussion at the negotiated rulemaking sessions. Consensus was reached on all major issues except where noted below.

The following summarizes the major changes in this notice of proposed rulemaking (NPRM):

Part 668—Student Assistance General Provisions

Section 668.1 Scope. Part 668 governs the administration of the Title IV, HEA programs by an institution and provides for various enforcement measures against institutions for any violations of program requirements by the institution or its agents. A third-party servicer, as an agent of an institution, must currently apply the requirements of part 668 to administer properly the Title IV, HEA programs on behalf of an institution. The Secretary proposes to specify that the requirements of the Student Assistance General Provisions regulations would be applied to a third-party servicer (as proposed to be defined in § 668.2) to the extent that the servicer administers any aspect of an institution's participation in a Title IV, HEA program. This proposal would enable the Secretary, for the first time, to directly oversee the conduct of third-party servicers. The Secretary also proposes to make clear that although the Secretary would hold a third-party servicer responsible for compliance with applicable regulations, an institution that contracts with the servicer always remains responsible for the servicer's compliance. This clarification merely restates the Department of Education's long-standing policy and requirements with respect to institutional responsibility.

Section 668.2 General definitions. These proposed regulations would incorporate the statutory definition of third-party servicer in section 481(f) of the HEA. Under that definition (as amended by the Higher Education Technical Amendments of 1993 (Pub. L. 103–208), enacted on December 20, 1993), a third-party servicer is an "individual, or any State, or private, profit or nonprofit organization" that contracts with an eligible institution to administer any aspect of the institution's participation in a Title IV, HEA program. The statutory definition includes additional elements applicable to a third-party servicer's administration of the FFEL programs. These aspects of the definition are addressed in a subsequent discussion on 34 CFR part 682.

The Secretary also proposes to include as part of the definition of third-party servicer examples of services which a third-party servicer could provide to an institution that the Secretary considers to constitute the administration of the institution's participation in a Title IV, HEA program. The Secretary believes that examples are necessary to alert those individuals and organizations that contract with an eligible institution of the specific activities that would be subject to the requirements proposed in these regulations.

The examples that the Secretary proposes to include in the definition of third-party servicer are primarily examples that show an obvious relationship to the administration of the Title IV, HEA programs. The Secretary proposes these examples to specifically detail which activities unequivocally constitute the administration of an institution's participation in the Title IV, HEA programs. While these examples are not all-inclusive, they do provide a baseline to judge other activities that could be deemed an aspect of the administration of an institution's participation in the Title IV, HEA programs.

The Secretary also proposes to include another set of examples that the Secretary believes do not constitute the administration of an institution's participation in the Title IV, HEA programs. For example, the Secretary does not consider the activity of publishing ability-to-benefit (ATB) tests to be a third-party servicer activity because publishers of ATB tests do not contract with institutions and under the statute would not fall within the definition of a third-party servicer.

As another example, the Secretary does not consider performing activities as a Multiple Data Entry Processor (MDE) to be included in the scope of third-party servicer activities. While an MDE could be considered to administer certain aspects of an institution's participation in the Title IV, HEA programs, an MDE is bound by other Department of Education requirements. Therefore, the Secretary does not believe it necessary to separately regulate MDE activities as part of these proposed regulations.

In general, the Secretary also proposes to exclude auditing activities from the scope of these regulations. Entities

performing audits are required to be impartial and independent entities with no vested interest in the Title IV, HEA programs. Further, while auditors provide services needed to comply with Title IV, HEA requirements, their services are not directly connected to the day-to-day administration of Title IV, HEA assistance. The Secretary, therefore, believes that auditing activities should not be included in the scope of these regulations.

Other proposed examples classified as being outside the scope of these regulatory requirements simply reinforce the Secretary's belief that certain activities performed by a third-party servicer that do not substantially affect the delivery of Title IV, HEA program aid do not constitute the administration of an institution's participation in the Title IV, HEA programs, (for example, contracting to warehouse records).

As a result of deliberations during the negotiated rulemaking sessions, Federal and non-Federal negotiators concluded that it was not necessary to include or exclude computer services or software providers from the proposed definition of third-party servicer or the examples provided. The negotiators concluded that computer software and computer services are simply technological means to assist in carrying out specific administrative functions. Accordingly, the Secretary invites public comment on whether an individual, State, or organization providing computer software and services represented to satisfy Title IV, HEA program requirements should specifically be included in what the Secretary considers to constitute a third-party servicer's administration of an eligible institution's participation in a Title IV, HEA program.

These proposed regulations would also make clear that an individual, State, or organization that engages in an excluded function is still considered to be a third-party servicer with respect to any other function that constitutes the administration of a Title IV, HEA program performed under a contract with an institution.

The Secretary further proposes to remove the terms *designated department official, initiating official,* and *show-cause official* from subpart G of this part and place them in § 668.2, because this section contains the general definitions applicable to all of part 668 and to all of the Title IV, HEA programs.

Section 668.11 Scope. The Secretary proposes that a third-party servicer's violation of an applicable provision of Subpart B of the Student Assistance General Provisions regulations may subject the servicer to a proceeding under subpart G. This change implements the statutory authority under section 487(c)(1) of the HEA to provide for the accountability of a third-party servicer's administration of any aspect of an institution's participation in the Title IV, HEA programs. Subpart G governs emergency actions or fines against an institution and the limitation, suspension, or termination of the institution's participation in a Title IV, HEA program. The Secretary proposes to add references to a third-party servicer in subpart G so as to provide for emergency actions and fines against a third-party servicer or the limitation, suspension, or termination of the servicer's eligibility to contract with an institution to administer any aspect of the institution's participation in a Title IV, HEA program (see the discussion beginning with § 668.81).

The Secretary also proposes to provide that if a third-party servicer violates an applicable provision of this subpart, the Secretary may also initiate an emergency action, a fine proceeding, or a limitation, suspension, or termination action against any institution under whose contract the servicer violated that provision. Because an institution has agreed to comply with all applicable Title IV, HEA requirements in its agreement with the Secretary, and because the institution must demonstrate under § 668.12 the capability to administer the Title IV, HEA programs, the Secretary emphasizes that the institution is always responsible for the actions of any of its employees, officers, or agents.

Section 668.12 Institutional participation agreement. The Secretary proposes to require an institution to agree, in its participation agreement, to be liable for all misused Title IV, HEA program funds, including those received on the institution's behalf by a third-party servicer, and to be liable for refunds, including those that a third-party servicer was required to pay on the institution's behalf. This provision emphasizes that an institution is always liable for the actions of its employees, officers, and agents regarding its participation in a Title IV, HEA program.

The Secretary also proposes to amend this section by adding new paragraph (b)(2)(vi) to reflect a new statutory directive under the HEA governing the past performance of individuals, agencies, or organizations affiliated with an institution. Under section 487(a)(16) of the HEA, an institution may not knowingly contract with or employ any individual, agency, or organization that has been or whose officers or employees have been convicted of, or pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Title IV, HEA program funds or been judicially determined to have committed fraud involving Title IV, HEA program funds. An institution may not contract with another institution or a third-party servicer that has been terminated under section 432 of the HEA involving the acquisition, use, or expenditure of funds under the Title IV, HEA programs, or that has been judicially determined to have committed fraud involving Title IV, HEA program funds.

The Secretary's proposed rules, in accordance with the consensus reached at the negotiated rulemaking sessions, would apply the prohibitions not only to instances of judicial determinations of criminal or fraudulent activity, but also to administrative determination of fraud and judicial or administrative determinations of any other material violations of law. Administrative proceedings are more frequent and often occur well in advance of related court proceedings. The Secretary believes that administrative proceedings afford sufficient due process, including notice, hearing, and review, to be relied upon for excluding individuals, agencies, or organizations under these provisions from applicable employment or contracting, if such a determination of culpability has been made. The Secretary believes that the reference to material violations of law is necessary, as Title IV, HEA funds are also endangered by the employment of those determined to have violated laws governing the handling of those funds, even if those violations do not rise to the level of fraud. For example, an institution should not employ a person or organization that has failed to pay refunds required under law.

Finally, these proposed regulations would include determinations of misuse of all Federal (as opposed to simply Title IV, HEA programs) funds and State or local government funds. For example, a person determined to have committed fraud in the acquisition of State educational grant funds could foreshadow a potential danger to the Title IV, HEA programs if that person were employed by an institution.

These additional requirements are needed to establish appropriate safeguards to protect the Title IV, HEA programs if serious questions are raised about the honesty and lawful conduct of an individual, agency, or organization that contracts with or is employed by an institution.

Section 668.13 Factors of financial responsibility. Section 498(e) of the HEA

introduces the concept of "substantial control" over an institution essentially by adopting the current regulatory concept of "the ability to affect substantially the actions of" an institution. Accordingly, the Secretary substitutes the new phrase where applicable in these proposed regulations. Further, the Secretary proposes to establish that an institution is not considered financially responsible—a condition of participation in the Title IV, HEA programs—if a person with substantial control over the institution—

(1) Has or had substantial control, either alone or in combination with members of his or her family, over another institution or a third-party servicer that owes liabilities for violations of Title IV, HEA program requirements, if those liabilities are not being properly repaid;

(2) Has family members who, alone or in combination with one another, exercise or exercised substantial control over the other institution or servicer; or

(3) Owes liabilities, or members of his or her family owe liabilities, for violations committed by the other institution or servicer, and the liabilities are not being properly repaid.

The institution could continue to be considered financially responsible if—

(1) The person repays a proportion of the liabilities equivalent to the amount of control held over the other institution or servicer;

(2) The institution can establish that the person does not, in fact, have substantial control over the institution; or

(3) The institution can establish that neither the person nor any of his or her family members in fact has or had substantial control over the other institution or servicer.

The definition of a family member (as currently defined in § 668.13(j)) refers to a parent, sibling, spouse, or child; spouse's parent or sibling; or sibling's or child's spouse.

Finally, the Secretary would apply the concepts of "substantial control" and "ownership interest" (as currently defined in section 498(e) of the HEA and § 668.13) to third-party servicers.

These provisions would expand the factors of financial responsibility of an institution to take into consideration substantial control over both other existing institutions (as opposed to only defunct institutions) and third-party servicers. Section 498(e) of the HEA clearly contemplates this expansion. Furthermore, these requirements are needed for the same reasons that similar requirements recently were adopted for persons with substantial control over defunct institutions. A person might be responsible for incurring liabilities for Title IV, HEA program violations because of his or her substantial control over third-party servicers or other institutions. The person could, nevertheless, have the same level of control over a participating institution while avoiding responsibility for repayment of those liabilities. These requirements are intended to prevent those persons from continuing to participate either directly or indirectly in the Title IV, HEA programs without assuming responsibility for their prior actions.

The Secretary also proposes technical changes to this section to remove as factors of financial responsibility the consideration of matters that would instead be included in § 668.12 as conditions for participation in the Title IV, HEA programs, for the reasons given in the discussion of that section.

Section 668.23 Audits, records, and examination. The Secretary proposes to specify that in addition to current requirements, an institution would be required to cooperate with a guaranty agency in whose program the institution participates and the State postsecondary review entity designated under subpart 1 of part H of Title IV of the HEA, in the conduct of audits, investigations, and program reviews. These requirements would clarify existing responsibilities to be accountable to authorized persons or organizations for the institution's activities with respect to the sound management of the Title IV, HEA programs. The Secretary further proposes to apply these requirements to a third-party servicer that contracts with an institution to administer any aspect of that institution's participation in a Title IV, HEA program. This change would merely clarify existing responsibilities of a third-party servicer, as an agent of an institution, to be accountable and provide access to authorized persons for the servicer's activities on behalf of the institution's participation in a Title IV, HEA program.

The Secretary proposes to add a requirement that a third-party servicer that administers funds or determines student eligibility under contract with an institution would be required to have prepared, at least annually, a compliance audit of all aspects of the servicer's administration of the participation in the Title IV, HEA programs of each institution with which the servicer contracts. (This requirement would be satisfied by an audit report submitted in accordance with the Single Audit Act or Office of Management and Budget Circular A–133.) This requirement is necessitated by section 487(c)(1)(C) of the HEA.

The Secretary, however, believes that the contractual obligations of some third-party servicers do not necessitate audits of the servicers' activities. Accordingly, the Secretary proposes to require annual audits to be performed only by those servicers that administer funds or determine student eligibility on behalf of institutions. The consequences of the activities of those servicers to the integrity of the Title IV, HEA programs justify stricter accountability to the Secretary.

In addition, the Secretary proposes certain additional exceptions to the annual audit requirement in the discussion that follows. A third-party servicer that is required to have an audit performed would be excused from the annual audit requirement if that servicer contracts with only one participating institution and if that servicer's administration of a Title IV, HEA program would still be covered fully in that institution's compliance audit. (In proposed regulations to be published shortly after these, the Secretary intends to propose to excuse certain institutions from having an annual audit performed. If an institution were to be excused from an audit requirement, the activities of that institution's third-party servicer would not be fully covered, and thus the servicer would be required to have an audit performed to meet the requirements of this section). This provision would not harm the integrity of the Title IV, HEA programs as the servicer's activities still would be covered fully by the submission of an institution's compliance audit.

A third-party servicer that is required to have an audit performed and that contracts with more than one participating institution could have performed, to meet the requirements of this section, a single comprehensive compliance audit that covers all of the servicer's activities for all of the institutions that the servicer contracts with for Title IV, HEA program purposes, if the audit is conducted in such a way as to satisfy each individual audit requirement and if the audit covers all aspects of the servicer's administration of the participation in the Title IV, HEA programs of all institutions with which the servicer contracts. The Secretary believes that, by allowing third-party servicers to have one inclusive audit performed, instead of many individual audits, the burden associated with these regulations would be reduced (regulatory burden reduction is an objective under Executive Order (E.O.) 12866). Furthermore, the Secretary does not believe that this

provision would in any way affect the soundness of the information required by these regulations.

A third-party servicer would be required to have an audit performed at least once every two years if the servicer administers less than $1,000,000 under the Title IV, HEA programs for the period covered by the audit, or if the servicer's most recently submitted audit report did not contain any material deficiencies and was submitted in a timely fashion. Also, a third-party servicer would not be required to have an audit performed for any year in which the servicer administers less than $250,000 under the Title IV, HEA programs.

The Secretary is proposing these Title IV, HEA program fund thresholds, for purposes of exceptions to the audit requirements of this section, on the assumption that a large amount of Title IV, HEA program funds are not at risk in the case of a third-party servicer that administers less than $250,000 during the audit period. Similarly, the Secretary believes that a third-party servicer administering less than $1,000,000 in the Title IV, HEA programs during the audit period or whose most recently submitted audit report revealed no abnormal practices or material discrepancies in the servicer's administration of those funds, provided that the audit report was submitted in a timely fashion, would not be likely to endanger those funds. By proposing these exceptions to the audit requirements of this section, and thus limiting the scope of these provisions, the Secretary believes that the Department of Education will be able to concentrate on those third-party servicers that pose the greatest financial risk to the Title IV, HEA programs; these exceptions also reduce the administrative burden on those qualifying for the exemptions. The threshold amounts were extrapolated from similar exemptions to audit submission requirements for institutions under the Single Audit Act ($100,000 and $25,000) and increased by a factor of ten in order to cover third-party servicer activities because these entities generally contract with multiple clients and thus would administer greater amounts of Title IV, HEA program funds than any single institution.

These provisions are intended to parallel similar audit requirements for institutions (in proposed regulations to be published shortly after these). The intent is to minimize the burden associated with these regulations, both to the servicing industry and to the Federal Government, as called for under E.O. 12866. The Secretary believes that these exceptions would not harm the integrity of the audit oversight that Congress intended under section 487(c)(1)) of the HEA. Under that section and these regulations, the Secretary retains the authority to require any third-party servicer to have an audit performed on an annual basis if the Secretary believes it is necessary.

This section would be amended to provide that the servicer's first audit would cover the servicer's first full fiscal year after the effective date of these regulations and any period on or after the effective date of these regulations up to the beginning of the servicer's first full fiscal year. The Secretary believes that initial audits will be more useful and effective if they encompass an entire fiscal year. The Secretary also believes that allowing servicers additional time to prepare for the implementation of these regulations would enable servicers to comply more fully with these regulations as well as defray the costs associated with an audit of a partial fiscal year. Subsequent audits would, as required by statute, encompass the entire period since the servicer's previous audit.

A third-party servicer that is required to have an audit performed would be required to submit that audit to the Department of Education's Inspector General by the deadlines established in the audit guide developed by the Department's Office of Inspector General. The Secretary also proposes to apply the statutory requirements of section 487(c) of the HEA to third-party servicers such that the results of these audits would be made available to the appropriate authorities, as detailed in the discussion at the beginning of this section. (The Secretary intends to propose similar requirements for institutions required to have an audit performed in proposed regulations to be published shortly after these).

Section 668.24 Audit exceptions and repayments. The Secretary proposes to extend to a third-party servicer the provisions governing audit exceptions and determinations of audit liabilities that currently apply to institutions. These modifications would simply reflect the Secretary's current practice under this section as applied to a third-party servicer. In addition, an institution or a third-party servicer would have an opportunity to demonstrate within 45 days (35 days is mandated under the current regulations) of the Secretary's notification that the expenditure or compliance was proper. The Secretary is proposing 45 days to make the response period consistent with other reporting requirements in this part.

In addition, this section would be amended to specify additional steps that the Secretary may take to insure the payment of any liabilities that are owed. Under this section, if an institution or third-party servicer owes funds, the Secretary may determine that an administrative offset (as provided for under 34 CFR 30.28) is an appropriate alternative to collect those funds.

In the case of an institution or third-party servicer that provides surety or a guarantee for the benefit of the Secretary, such as a bond or letter of credit, the Secretary may determine it is necessary to collect from that surety or guarantee before the procedures under subpart H of this part are completed, if circumstances warrant.

The Secretary would collect a surety or guarantee before all available appeal procedures are completed—

(1) Where the need to provide relief to students or borrowers affected by the institution's or third-party servicer's actions, as applicable, that led to the assessment of liability, is more important than deferring collection activities until after the completion of appeal proceedings (for example, when unpaid refunds to the Title IV, HEA programs are identified, the Secretary may collect in advance of a final determination or exhaustion of appeal procedures, as the harm to students outweighs deferring collection); or

(2) Where the conditions under which a surety or guarantee are held do not provide adequate assurances that the surety or guarantee will be available for collection through the completion of available appeal proceedings.

These modifications would provide clarification in the regulations of the Secretary's existing practice and authority to collect from sureties or guarantees in accordance with their terms, prior to final determinations of liabilities or exhaustion of appeal procedures.

The Secretary also proposes to make clear that an institution is responsible for repayment of any funds owed by its servicer until those funds are repaid by the servicer. The Secretary considers this provision necessary because an institution is always responsible for the actions of its agents.

The Secretary proposes that if a determination is made to assess a liability against a third-party servicer, the servicer would be required to notify each institution under whose contract the servicer was assessed a liability of the Secretary's determination. The servicer would also be required to notify every institution that contracts with the servicer for the same service that the Secretary determined a liability is owed.

Final consensus on this particular language was not reached as negotiators believed that this provision essentially requires the notification of all institutions with which a servicer contracts. Negotiators objected to a notice being provided to institutions that a servicer contracts with that would not be directly affected by a determination from the Secretary to assess liability. A number of negotiators opposed this language on the ground that such a blanket notification unnecessarily damages a servicer's reputation among unaffected institutions. However, the Secretary believes that an institution that contracts with a third-party servicer should be informed of determinations by the Department of Education that the institution's servicer is improperly administering the Title IV, HEA programs, especially given the potential liability exposure to the institution. These notification requirements would arise only if the Secretary determines that a third-party servicer owes a liability based on an audit finding, after providing the institution or third-party servicer an opportunity to respond to an audit report response. By limiting the requirement for notice provided by a third-party servicer to institutions receiving the same service for which a liability was assessed, the Secretary believes that he has responded to any legitimate concerns raised by the negotiators.

Section 668.25 Contracts between an institution and a third-party servicer. The Secretary proposes to redesignate § 668.25, governing loss of institutional eligibility, as § 668.26 and to add a new § 668.25 that would establish minimum requirements for contracts between an institution and a third-party servicer. Proposed § 668.25 would allow an institution to contract with a servicer to administer aspects of the institution's participation in a Title IV, HEA program only to the extent that the servicer's eligibility to contract with that institution has not been limited, suspended, or terminated under the proceedings in Subpart G (as proposed to be amended). In addition, under these proposed regulations, a third-party servicer is considered eligible to contract with an institution to administer aspects of the institution's participation in a Title IV, HEA program to the extent that the servicer is not found to exhibit indicators of questionable past performance.

Indicators of questionable past performance would be—

(1) A limitation, suspension, or termination action by the Secretary against the servicer within the preceding five years;

(2) An audit finding during the servicer's two most recent audits amounting to at least five percent of funds received or administered by the servicer under the Title IV, HEA programs; and

(3) A citation within the preceding five years for the servicer's failure to submit a required audit report within an acceptable amount of time.

A third-party servicer that shows these indicators of questionable past performance with regard to the Title IV, HEA programs could not, under paragraph (d) of this section, contract with an institution unless the persons or entities with substantial control over the servicer agree to be responsible for any potential liability arising from the servicer's administration of the Title IV, HEA programs. In the case of a third-party servicer that has been subjected to a termination action, the servicer could not contract with an institution unless either the servicer or persons or entities with substantial control over the servicer (or both) provide financial guarantees (specified by the Secretary) to the Secretary for potential liabilities arising from the administration of the Title IV, HEA programs. These provisions are necessary to hold persons who have substantial control over a third-party servicer accountable for their past performance in the administration of the Title IV, HEA programs.

Any contract between an institution and a third-party servicer would have to require the servicer to agree to comply with all applicable Title IV, HEA program requirements, including using any Title IV, HEA program funds that the servicer administers and any earnings on those funds solely for Title IV, HEA program purposes. The servicer would have to agree to refer suspected instances of fraud and criminal activity to the Department of Education's Inspector General. These requirements would parallel those currently required of institutions in establishing an institution's administrative capability but add that the servicer would also have to refer suspected instances of fraud and criminal activity committed by the institution. The contract would have to require the servicer to agree to be liable to the Secretary, jointly and severally with the institution, for any violation by the servicer of any Title IV, HEA program requirement.

With regard to third-party servicer liability, a number of negotiators opposed the Secretary's proposed language, submitted to negotiators at negotiated rulemaking, requiring a third-party servicer to share liability with an institution for an infraction by the servicer of any Title IV, HEA program requirement. The negotiators offered three basic reasons for their opposition.

First, the negotiators stated that any imposition of liability would improperly interfere with the private contract between the servicer and the institution. The parties, in the view of the negotiators, should be free to decide how and if liability should be divided without Federal regulatory prescription.

The Secretary disagrees with this rationale. To ensure that the Title IV, HEA programs are properly administered and Federal funds are safeguarded, the Secretary has always required an institution to demonstrate that it is administratively capable and financially responsible. More and more institutions, however, are employing third-party servicers to administer their programs, thereby delegating responsibility to entities that the Secretary has not reviewed for administrative capability or financial responsibility. Because the Secretary does not directly approve or regulate the qualifications of these servicers, the Secretary believes that it is reasonable to require these servicers to stand behind their work and to be accountable to Federal taxpayers for any losses to Federal funds through the servicer's administration of the Title IV, HEA programs. Moreover, if the issue of liability is left to the discretion of the contracting parties, it is more than likely that some servicers will assume no responsibility for their actions. In proposing direct third-party servicer accountability to the Department of Education, the Secretary believes that institutions employing servicers to administer aspects of their participation in the Title IV, HEA programs would benefit from increased servicer integrity in fulfilling contractual obligations.

Second, the negotiators argued that it would be unreasonable to require a third-party servicer to be prepared to assume liability potentially far in excess of the fees earned by the servicer from the institution. Under this argument, the consequence of requiring third-party servicers to be liable for their actions would be to increase servicing fees charged to institutions and could make it economically impossible, in many cases, for institutions to contract with third parties for services related to the Title IV, HEA programs. The negotiators indicated that in some contracts, institutions specifically give up the right to hold a third-party servicer responsible for the consequences of the servicer's actions in exchange for a lower fee.

The Secretary does not believe that assumption of liability by servicers will make servicers unavailable to institutions. The Secretary believes that most servicers are, or should be, confident enough in the quality of their work to stand behind it financially. To the extent that a third-party servicer is unwilling to assume responsibility, it would seem to indicate that the servicer has no incentive to ensure compliance with the Title IV, HEA program requirements.

Third, the negotiators who objected to these proposed provisions claimed that the Department of Education does not impose similar constraints on its own contractors to assume contingent liability for the consequences of their actions.

The Secretary disagrees with this rationale. Those that contract with the Department of Education have different and more rigorous requirements imposed on them, both in their selection by the Department and in contracts into which the Department enters to ensure the proper use of Federal funds. The Secretary is able to select the Department of Education's contractors and retains the ability directly to enforce contractual provisions.

In an effort to respond to these objections during the negotiated rulemaking sessions, the Secretary suggested a compromise that would have limited joint and several liability of a third-party servicer for violations by the servicer of Title IV, HEA program requirements, in cases where the servicer was not an affiliate of the institution with which the servicer contracts. In those cases, joint and several liability would be capped at the fees and compensation received by the servicer from the institution during the period for which the liability is assessed. The Secretary suggested that, for the purposes of this section, an affiliate could be construed as a third-party servicer that—

(1) Is a parent or subsidiary corporation of the institution;

(2) Shares a person who exercises substantial control over the institution and servicer as defined in § 668.13; or

(3) Shares a common owner, partner, or officer with the institution.

The Secretary suggested this alternate language to decrease the financial risk for servicers that are not related parties to the institutions with which they contract. However, the Secretary believes that servicers that are linked to institutions should be fully accountable to prevent shielding of liability by shifting services to an affiliate. The Secretary invited reaction from the non-Federal negotiators on whether this compromise would sufficiently guard the integrity of the Title IV, HEA programs by providing the Secretary the means to ensure that a liability is repaid and the violation contributing to that liability is redressed and alleviate any legitimate objections raised by the negotiators.

The other negotiators did not accept the Secretary's offered compromise. Some negotiators would not agree to assumption of any liability by a third-party servicer. Thus, there was no consensus on this matter. Because consensus was not reached on either proposal, the Secretary is under no obligation to modify the position originally taken at the start of the negotiated rulemaking sessions. The Secretary therefore proposes regulations consistent with the position taken at the start of negotiated rulemaking because the Secretary believes that this proposal will best provide the greatest protection for Federal tax dollars in the form of Title IV, HEA program funds.

However, because the issue of joint and several liability was debated throughout the negotiated rulemaking sessions without resulting in consensus, the Secretary invites specific comment on this issue, and in particular on the Secretary's compromise rejected by the non-Federal negotiators, as explained previously.

Other contractual requirements would include, in the case of a third-party servicer disbursing or delivering funds under the Title IV, HEA programs or other funds to students, a requirement that the servicer confirm a student's eligibility before disbursing or delivering those funds to the student. A contract with that servicer also would require the servicer to agree to calculate and pay refunds and repayments in accordance with applicable Title IV, HEA program regulations.

Any contract with a third-party servicer would have to provide for the return to the institution of all applicable records and funds held by the servicer if either party terminates the contract, if the servicer stops providing services for the administration of a Title IV, HEA program, or if the servicer goes out of business or files a petition under the Bankruptcy Code. The servicer would have to return not only Title IV, HEA program funds, but also institutional or other funds held by the servicer for the purposes of the Title IV, HEA program for which the servicer no longer provides services.

Consistent with the time frames for other reporting requirements in 34 CFR part 600 that could affect an institution's eligibility or participation, this section also would require an institution to notify the Secretary, within 10 days, each time the institution enters into a new contract with a third-party servicer or significantly modifies an existing contract or if such a contract is terminated. The Secretary intends this provision to cover substantive modifications to existing contracts, such as the inclusion of additional responsibilities or any significant increase in the volume of work performed, and not to cover minor modifications such as a routine adjustment of the compensation owed to a third-party servicer due to inflation. This section also would require the institution to notify the Secretary, within 10 days, if a third-party servicer stops providing services for the administration of a Title IV, HEA program, goes out of business, or files a petition under the Bankruptcy Code. Any notification from an institution would have to include the name and address of the servicer. Upon the request of the Secretary, an institution that has a contract with a third-party servicer would have to provide information relevant to the contract and to the servicer's responsibilities for administering Title IV, HEA programs as well as a copy of the contract.

These changes are necessary for proper monitoring of and accountability for Title IV, HEA program funds. The requirement for a third-party servicer to agree in a contract to observe all applicable Title IV, HEA program requirements, special arrangements, agreements, and limitations is necessary to avoid situations where the servicer improperly argues that it cannot comply with these actions due to provisions in its contract with an institution.

The provisions governing the circumstances under which a third-party servicer must return records and funds to an institution are necessary to protect the interests of participating institutions and students in the event that a third-party servicer is no longer able to provide the services promised under a contract. In addition, the notification provisions would help keep the Secretary informed about those third-party servicers authorized to administer the Title IV, HEA programs on behalf of an institution, would assist the Secretary in providing appropriate materials and funds only to authorized third-party servicers, and would help the Secretary to obtain timely access to institutional records.

Section 668.81 Scope and special definitions. The Secretary proposes to amend this section to provide that the Secretary may initiate an emergency action against an institution or third-party servicer, fine an institution or

servicer or limit, suspend, or terminate the institution's participation in a Title IV, HEA program or the servicer's eligibility to contract with an institution to administer any aspect of an institution's participation in the Title IV, HEA programs, if the institution's servicer, acting under contract with the institution, violates any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation prescribed under the authority of Title IV of the HEA. This change also makes clear that an institution is always responsible for the actions of its servicers regarding its participation in the Title IV, HEA programs and remains subject to possible administrative action.

Section 668.82 Standard of conduct. The Secretary proposes to amend paragraph (a) of this section to add that a third-party servicer is also a fiduciary of the Department of Education. The Secretary also would amend paragraph (a) to provide that an institution or its third-party servicers would be required at all times to act with the competency and integrity sufficient to qualify the institution or servicer as a fiduciary. This change would clarify and emphasize the requirement that the fiduciary standard always applies and is not to be construed narrowly. The Secretary wishes to point out that this standard is not simply an additional requirement but, rather, it is a condition of initial and continued participation in or servicing of the Title IV, HEA programs. An institution or servicer cannot selectively avoid fiduciary responsibility.

This section would also be amended to specify that the Secretary would have the authority to initiate proceedings against a third-party servicer under this subpart if the servicer violates its fiduciary duty. The Secretary proposes to specify that the Secretary would have the authority to initiate a proceeding against an institution under this subpart if the institution's third-party servicer, acting under contract with the institution, violates the servicer's fiduciary duty. The Secretary wishes to emphasize that an institution is always responsible for the actions of its third-party servicers. The Secretary also proposes to make a technical amendment to clarify the meaning of paragraph (c) of this section. The Secretary's long-standing interpretation of these regulations is that a violation of an institution's fiduciary duty is grounds for termination, limitation, suspension, and fine proceedings—individually or in combination. As a result of the enactment of a statute authorizing the imposition of emergency actions, the Secretary also proposes to add emergency action to this list of potential consequences resulting from an institution's violation of the institution's fiduciary duty. An emergency action also would be applicable against a third-party servicer that violates its fiduciary duty.

The Secretary proposes to specify that an institution or third-party servicer violates its fiduciary duty if the servicer, an officer or employee of the servicer, or any person with substantial control over the servicer is guilty of or has been judicially determined to have committed a crime involving Federal funds. These provisions also would apply to a person, agency, or organization, or an officer or employee of an agency or organization with which the servicer contracts. A violation of fiduciary duty for these reasons would also constitute grounds for the termination of the participation of an institution under whose contract the servicer committed the violation. The Secretary proposes to expand the breadth of paragraph (d) of this section to parallel similar provisions proposed to be included in § 668.12, previously discussed, except that, in this case, these provisions would prohibit a third-party servicer (as opposed to the provisions of § 668.12 which prohibit institutions) from employing or contracting with persons or organizations that have questionable past performance with respect to government funds. Paragraph (d) would be similarly amended to include misuse of State and local government funds and administrative determinations of fraud or other material violations of law.

Finally, the Secretary proposes to amend paragraph (d) of this section. An institution or servicer, to remain qualified as a fiduciary, would have to meet the following requirement. If the institution or servicer becomes aware of a criminal conviction, or an administrative or judicial determination of fraud or other violation of law, by a person involved in the servicer's administration of an institution's participation in a Title IV, HEA program or a person with substantial control over the servicer, with respect to Federal, State, or local government funds, the institution or servicer would be required to protect the Title IV, HEA programs, including removing that person from Title IV, HEA program involvement or from exercising substantial control over the institution or servicer, as applicable.

In addition, if an institution or a third-party servicer becomes aware that a violation of, or failure to carry out, applicable statutes and regulations by the servicer's principals or affiliates (as those terms are defined in 34 CFR part 85), the institution or servicer is required to act to protect the Title IV, HEA programs, the beneficiaries of those programs, and the Federal Government from the risks occasioned by those events. These risks may include, but are not limited to, financial risks and risk to the reputation of the Title IV, HEA programs. An example of an action that an institution or servicer must take to protect the Title IV, HEA programs, their beneficiaries, and the Federal Government is the removal of all Title IV, HEA program administration duties from the assigned responsibilities of an individual. A violation of these proposed provisions would constitute grounds for the termination of the participation of an institution under whose contract the servicer committed the violation and the eligibility of the servicer to administer any aspect of an institution's administration of the Title IV, HEA programs. These amendments parallel similar changes made to the institutional participation agreement requirements under § 668.12.

The Secretary also proposes to amend this section to explain how a basis for debarment and suspension relates to the standard of fiduciary responsibility. Specifically, the Secretary proposes to redesignate current paragraph (e) of this section as paragraph (f) and to add a new paragraph (e). The new paragraph would specify that if an institution or servicer becomes aware that cause for suspension or debarment of any of the institution's or servicer's principals or affiliates (as those terms are defined in 34 CFR part 85) may exist, the institution or servicer is required to act to protect the Title IV, HEA programs in the same manner discussed in the previous paragraph, pending the outcome of a debarment or suspension action against that individual, or of proceedings that could give rise to suspension or debarment action against that individual.

A violation of these provisions by a third-party servicer would constitute grounds for the termination of the participation of an institution under whose contract the servicer committed the violation, if the institution knew or should have known of the causes for suspension or debarment. The violation, of course, would also constitute grounds for the termination of the eligibility of the servicer to administer any aspect of the institution's administration of the Title IV, HEA programs.

The Secretary invites comment on how to apply this requirement to owners and persons holding critical management positions at an institution or servicer. In the final regulations, the Secretary may modify these proposed regulations to address specifically their application to those persons.

These changes are needed to establish appropriate safeguards to protect the Title IV, HEA programs when serious questions are raised about the honesty and lawfulness of the conduct of an institution's or servicer's owners, officers, employees, associates, or contracted help whose duties involve the administration of or influence over the Title IV, HEA programs.

The Secretary holds an institution to the highest standard of care and diligence required of a fiduciary. The use of a third-party servicer confers that same standard on the servicer. However, the Secretary wishes to emphasize that the use of a third-party servicer does not in any way reduce the institution's responsibility to ensure compliance with Title IV, HEA program requirements.

The Secretary also proposes technical changes to this section to remove provisions governing lender participation in the FFEL programs that belong in 34 CFR part 682 and to incorporate provisions in 34 CFR part 682 concerning the consequences of a debarment or suspension on lender participation.

Section 668.83 Emergency action. The Secretary proposes to provide that an emergency action may be imposed on an institution or third-party servicer if the initiating official receives reliable information that a third-party servicer, acting under contract with the institution, is violating a Title IV, HEA program requirement. In an emergency action proceeding against a servicer, the official would also be required to notify each institution that contracts with the servicer of the emergency action. The Secretary believes that an institution that contracts with a third-party servicer should be kept informed of any administrative actions taken by the Department of Education against that servicer that might affect the administration of the institution's participation in the Title IV, HEA programs. To the examples of violations that may lead to an emergency action, the Secretary proposes to add a third-party servicer's lack of administrative ability to make appropriate refunds if students do not complete educational programs or periods of enrollment.

Any of these violations would be grounds for emergency action against a third-party servicer under this subpart. However, because an institution is always responsible for the actions of the institution's servicers, the Secretary believes that emergency action against the institution also may be necessary to prevent the likely loss of Title IV, HEA program funds.

The Secretary also proposes to include fraud committed by an institution or a third-party servicer as a specific example of a possible basis for emergency action. The Secretary proposes to provide an additional list of specific examples of fraud to emphasize the seriousness of these violations. Emergency actions based upon fraud are fully appropriate under existing regulations. The examples involve falsification of documents related to the Title IV, HEA programs, including—

(1) Documents pertaining to a student's eligibility;

(2) Documents submitted to the Department of Education, a guaranty agency, an independent auditor, a third-party servicer, or an institution by a third-party servicer;

(3) Documents pertaining to an institution's legal authorization to provide postsecondary education or to the accreditation or preaccreditation of the institution, the institution's educational programs, or the institution's additional campuses; and

(4) Documents pertaining to a servicer's loan collection activities (for example, due diligence activities), including activities that are not specifically required by the HEA or applicable program regulations.

Sections 668.84 Fine proceedings, 668.85 Suspension proceedings, and 668.86 Limitation or termination proceedings. The Secretary proposes to include, as a specific basis for any of these proceedings against an institution or a third-party servicer, a substantial misrepresentation of the institution's educational program, financial charges, or employability of the institution's graduates by an institution or servicer under contract with an institution, as applicable. The Secretary believes that substantial misrepresentation represents a clear indication of a deliberate intent to misuse Title IV, HEA program funds by deceptively encouraging enrollment, thus abusing the purpose of Title IV, HEA program funds, which is to provide equal access to a quality education for recipients of these funds. The Secretary is proposing to employ the full range of sanctions at the Secretary's disposal against this possible misrepresentation to preserve the integrity of the Title IV, HEA programs and to ensure the accountability of those who administer the programs.

The Secretary proposes to amend these sections to provide for the imposition of a fine against an institution or third-party servicer or the limitation, suspension, or termination of the institution's participation or the servicer's eligibility to contract with an institution to administer any aspect of that institution's participation in the Title IV, HEA programs if the institution's servicer, acting under contract with the institution, violates a Title IV, HEA program requirement. Under §§ 668.84, 668.85 and 668.86, if the Secretary begins a fine, suspension, limitation, or termination proceeding against a third-party servicer, the Secretary may also begin a fine, limitation, suspension, or termination proceeding against any institution under whose contract a third-party commits a violation. These technical changes are needed to conform to the changes proposed to the scope of this subpart.

With respect to fine proceedings against third-party servicers, the Secretary proposes to amend § 668.84 to specify under the procedures for fine proceedings that a designated department official notifies each institution that is affected by the alleged violations identified as the basis for the fine proceeding. To the extent possible, the official also notifies each institution that contracts with the servicer for the same service affected by the alleged violation. This change would parallel the notification requirements that the Secretary has proposed under § 668.24(b). As explained in the prior discussion regarding notification requirements under § 668.24(b), there was no consensus during negotiated rulemaking on this proposed provision. Some negotiators opposed this requirement on the grounds previously noted. In addition, §§ 668.85 and 668.86 would require the official to notify each institution that contracts with a third-party servicer under a suspension, limitation, or termination proceeding.

Fine, limitation, suspension, and termination proceedings would all require the official to include in the notice to a third-party servicer the consequences of the action to the institution, including that the Secretary may fine, limit, suspend, or terminate the institution, as applicable. Given the potential consequences to an institution, the Secretary deems it proper to provide notice to each institution that could be affected of the Secretary's intent to seek a sanction against the servicer, whether the Secretary also intends to seek a sanction against the institution or not. Even if the Secretary does not begin a fine, limitation, suspension, or termination proceeding against an

institution, the Secretary believes that the institution should be kept informed of the status of any proposed sanction against the institution's servicer. Imposition of the sanction could have an effect on the institution's participation in a Title IV, HEA program. Further, the Secretary believes that an institution should be informed if its servicer's administration of a Title IV, HEA program is called into question. That information would permit the institution to make informed judgments about the institution's continued use of the servicer, and take corrective action prior to the outcome of any administrative proceeding.

Sections 668.87 Prehearing Conference and 668.88 Hearing. The Secretary proposes to add references to third-party servicers to conform to the proposed changes in the scope of this subpart.

Section 668.89 Authority and responsibilities of the hearing official. The Secretary proposes to amend this section to make clear that a hearing official is bound by all applicable statutes and regulations. This change would codify in the regulations the existing responsibility of the hearing official.

Section 668.90 Initial and final decisions—Appeals. This section would be amended to add references to third-party servicers to conform to the proposed changes in the scope of this subpart. In addition, paragraph (a)(3) of this section would be amended to reflect changes proposed under §§ 668.12 and 668.82 dealing with the past performance of individuals, agencies, or organizations that are affiliated with an institution, including, as applicable, third-party servicers.

The Secretary proposes to add a new restriction on a hearing official's authority to modify a proposed sanction against an institution or third-party servicer. If a designated department official brings a termination action against an institution or servicer for engaging in fraud, and a hearing official finds that the institution or servicer has engaged in fraud, the hearing official must uphold the termination. The examples of fraud listed in this section are the same as those proposed for § 668.83 concerning emergency action.

The Secretary believes that if an institution or third-party servicer engages in fraud involving a Title IV, HEA program, the institution's participation in the program should be terminated or the servicer's eligibility to contract with an institution to administer any aspect of that institution's participation in the Title IV, HEA programs, as applicable, should be terminated. The Secretary does not believe that a lesser sanction that permits the institution or servicer to continue to participate in the program or in the case of a third-party servicer to be eligible to contract, is a sufficient safeguard against the likely abuse of Title IV, HEA program funds.

The Secretary proposes to amend paragraph (c)(1) of this section so that in a fine, limitation, or termination proceeding, the hearing official's initial decision automatically becomes the Secretary's final decision in 30 days (20 days is mandated under the current regulations) after the initial decision is issued and received by both parties unless that initial decision is questioned before the Secretary. The Secretary is proposing these new timeframes to make them consistent with other reporting requirements in this part. The Secretary does not believe that a ten-day difference in an institution's or servicer's right to appeal an initial decision would unduly affect the integrity of the Title IV, HEA programs.

The Secretary also proposes to make technical changes in paragraph (a)(3)(iv) of this section to correct typographical errors that inadvertently appeared in final regulations published in the **Federal Register** on July 31, 1991 (56 FR 36698).

Section 668.91 Filing of requests for hearings and appeals; confirmation of mailing and receipt dates. The Secretary proposes to add references to third-party servicers to conform to the proposed changes in the scope of this subpart.

Section 668.92 Fines. The Secretary proposes to add references to third-party servicers in this section to conform to proposed changes governing the imposition of fines in other sections of this subpart.

This section would also be amended to provide for the consideration of the size of the servicer's business (including the number of institutions and student accounts served by the servicer) in determining the amount of a fine against a servicer. This provision would be similar to the provision already in place in this section that requires consideration of the size of an institution in determining the amount of a fine against the institution. The Secretary also proposes to take into account, in the case of a violation by a third-party servicer, the degree to which the servicer can provide evidence that the institution contributed to that violation and the extent to which repeated mechanical systemic unintentional errors contributed to that violation. For purposes of this section, repeated mechanical systemic unintentional errors would be counted as a single violation. This provision was requested by non-Federal negotiators to cover cases where errors in computer systems result in multiple violations. The Secretary proposes to adopt these measures in the interest of fairness to a third-party servicer in cases where a minor programming error leads to hundreds or thousands of violations. While the Secretary believes that all resulting losses should be compensated for by the institution or servicer, fines need not be unduly multiplied. The Secretary specifically invites comment on whether this provision is sufficiently specific and not excessively broad and effectively balances the Federal interest in ensuring compliance with the realities of computer processing.

The Secretary also proposes to provide for the consideration of the amount of liability owed by an institution or third-party servicer on the misuse of Title IV, HEA program funds or refunds in determining the gravity of the institution's or servicer's violation, as applicable, of a Title IV requirement. The number of students affected by the violation also would be a consideration in that determination. The Secretary intends these provisions to serve as guidelines for evaluating the gravity of a violation.

Section 668.93 Limitation. The Secretary proposes to add references to third-party servicers in this section to conform to proposed changes governing the imposition of limitations in other sections of this subpart. The Secretary also proposes that a limitation on a third-party servicer's eligibility to contract with institutions to administer any aspect of an institution's participation in the Title IV, HEA programs could include a limit on the number or size of institutions with which the servicer may contract, the number of accounts (borrower or loan accounts) that the servicer may service under contract, an increase or reduction in the responsibilities allowed or required of the servicer under a contract, or a requirement for the servicer to obtain surety assuring the servicer's ability to meet financial obligations.

The Secretary believes that these limitations are necessary to address the probable causes of improprieties in which a third-party servicer might engage. By limiting the number or size of institutions or accounts that a third-party servicer may serve (including, for example, requiring the servicer to transfer existing accounts back to the institution) the Secretary may address a problem involving the servicer's overextended resources. By limiting the responsibilities performed by the

servicer under a contract, the Secretary may restrict the servicer's administration to a particular Title IV, HEA program while prohibiting the servicer from administering another Title IV, HEA program for which the servicer's past performance has been inadequate. By imposing additional responsibilities under a third-party servicer's contract, the Secretary may require the servicer to use additional safeguards before awarding or disbursing Title IV, HEA program funds or delivering Federal Stafford or Federal SLS loan proceeds.

Section 668.94 Termination. The Secretary proposes to add references to third-party servicers in this section to conform to proposed changes governing termination proceedings in other sections of this subpart. The Secretary proposes to specify that a termination of a third-party servicer's eligibility to contract with an institution to administer a Title IV, HEA program ends the authority of the servicer to administer that program under any existing contract between an institution and the servicer. In addition, if a third-party servicer's eligibility is terminated, the servicer would be required to return to each institution (or otherwise dispose of according to the Secretary's instructions) any funds received by the servicer under that program for that institution or the institution's students. The servicer also would be required to return to the institution all records pertaining to the servicer's administration of the institution's participation in that program.

The Secretary believes that the termination of a third-party servicer's eligibility to contract with an institution should be treated like the termination of an institution's participation in a Title IV, HEA program. Not only should new contracts with an institution be prohibited, but the servicer's existing activities involving the administration of that program also should cease. Further, a third-party servicer may possess unexpended funds under that program for an institution's students at the time that termination takes effect. The servicer should be required to return those funds to the institution so that those students may receive their aid. The return of records to the institution is needed because of the recordkeeping requirements that the various Title IV, HEA program requirements that the various Title IV, HEA program regulations apply to institutions.

Section 668.95 Reimbursements, refunds, and offsets. This section would be amended to add references to third-party servicers to conform to the proposed changes in the scope of this subpart.

Section 668.96 Reinstatement after termination. The Secretary proposes to add references to third-party servicers to conform to proposed changes in the scope of this subpart. The Secretary also proposes to eliminate the provision that permits an institution to apply for reinstatement of its participation after three months if the institution's participation has been terminated for engaging in substantial misrepresentation. Like institutions whose participation is terminated for other violations, the institution would be able to apply for reinstatement only after 18 months from the date of the termination, unless the institution also was debarred or suspended under E.O. 12549 or the Federal Acquisition Regulations (FAR), 48 CFR subpart 9.4. The Secretary further proposes to extend these criteria to apply to a termination of a third-party servicer's eligibility to contract with an institution to administer any aspect of the institution's participation in the Title IV, HEA programs if the basis for that termination was engaging in substantial misrepresentation.

The Title IV, HEA programs are most effective only if students, other members of the public, and governmental and other bodies can rely on the honesty of the representations of an institution or the institution's agents. The harm that substantial misrepresentation does to the integrity of the Title IV, HEA programs, to those who rely on the programs to help meet educational costs, and to the taxpayers who pay for the programs should carry equal weight with the harm done by any other violation of a Title IV, HEA program requirement. If an institution's participation or third-party servicer's eligibility is terminated because the institution or servicer engaged in substantial misrepresentation, the consequence of that termination should be no less than the consequence of a termination for other reasons.

Section 668.97 Removal of limitation. The Secretary proposes to provide that an institution may not apply for removal of a limitation before the later of (1) 12 months from the effective date of the limitation, or (2) the expiration of a debarment or suspension under E.O. 12549 or the FAR, 48 CFR subpart 9.4. Parallel to the requirement for institutions, a third-party servicer would be able to apply for removal of a limitation only after 12 months from the date of the limitation, unless the servicer was also debarred or suspended.

These changes are necessary to conform to the proposed changes in the scope of this subpart. The Secretary would include the length of a debarment or suspension action as a criterion to apply for removal of a limitation to protect the Title IV, HEA programs, the beneficiaries of those programs, and the Federal Government from potential effects of doing business with irresponsible entities.

Sections 668.111 Scope and purpose, 668.112 Definitions, 668.113 Request for review, 668.114 Notification of hearing, and 668.116 Hearing. The Secretary proposes to add references to a third-party servicer to these sections to parallel institutional appeal procedures and thus establish procedures for a third-party servicer to appeal a final audit determination or final program review determination. The proposed procedures generally would be parallel to the procedures already established that govern appeals by an institution of a final audit determination or final program review determination. Under § 668.116(e), the Secretary proposes to expand the types of evidence that an institution or servicer requesting review of the final audit or final program review determination may submit to a hearing official to include Department of Education program review reports and work papers for program reviews and institutional or servicer records and other materials (including records and other materials of institutions with which the servicer has contracts) provided to the Department in response to a program review. The Secretary also proposes to notify all institutions with which a third-party servicer contracts of final audit report or final program review determinations. The Secretary believes that an institution that contracts with a third-party servicer should be kept informed of any activities between the servicer and the Department that might affect the administration of the institution's participation in a Title IV, HEA program.

Section 668.123 Collection. The Secretary proposes to modify this section to conform to the proposed changes to § 668.24.

Part 682—Federal Family Education Loan Programs

Section 682.200 Definitions. The Secretary proposes to amend the definition of *lender* to exclude from the definition of an "eligible lender" any lender that (1) is debarred or suspended under E.O. 12549 or the FAR, (2) has principals or affiliates so debarred or suspended, (3) is an affiliate of any

person so debarred or suspended, or (4) employs to administer or assist in the administration of FFEL program funds any person so debarred or suspended. The effect of these proposed changes would be automatically to exclude a debarred or suspended lender from participation in the FFEL programs for the duration of the debarment or suspension. A guaranty agency would thus be prohibited from guaranteeing a new loan made by the lender during this period.

Like the proposed changes governing the standard of conduct of participating educational institutions and third-party servicers under 34 CFR 668.82, these changes are needed to establish appropriate safeguards to protect the integrity of the FFEL programs and the Federal financial interest if serious questions are raised about the honesty and lawfulness of the conduct of a lender's owners, officers, directors, management, employees, or affiliates whose duties involve the administration of or influence over the use of those funds.

The Secretary proposes to amend this section to expand on the statutory definition of *third-party servicer* in the proposed regulations to clarify its applicability in the FFEL programs. Under that definition, a third-party servicer is an individual or organization that contracts with a lender or guaranty agency to administer any aspect of the lender's or guaranty agency's participation in the FFEL programs, including any applicable function described in the definition of third-party servicer in 34 CFR part 668. The Secretary believes that by including the statutory definition as well as a reference to the proposed definition of third-party servicer under 34 CFR part 668, that individuals or organizations that contract with a lender or guaranty agency to administer any aspect of the lender's or guaranty agency's participation in the FFEL programs will be able to determine the applicability of these regulations to themselves.

Section 682.401 Basic Program Agreement. The Secretary proposes to revise this section of the regulations to clarify a guaranty agency's responsibilities if it enters into a contract with a third-party servicer. As discussed previously under § 682.200, the Secretary proposes to prohibit a guaranty agency from entering into a contract with a third-party servicer that the Secretary has determined is not financially responsible or has been determined by the Secretary to have not complied with the statutes and regulations that govern the FFEL programs.

Under this proposed provision, a guaranty agency would be required to provide to the Secretary the names and addresses of any third-party servicer with which the agency contracts and, if requested by the Secretary, a copy of that contract. The Secretary is proposing to require submission by the agency of the name and address of any third-party servicer with which the agency contracts, and, upon request, the contract, to assist the Secretary in carrying out his responsibilities to monitor the performance of third-party servicers.

The Secretary believes that receipt of a copy of the contract is necessary because it states the services that a third-party servicer performs for a guaranty agency. With this information, the Secretary will be better able to monitor program compliance and integrity of the guaranty agency's portfolio that the servicer is administering. These changes would parallel the requirements concerning contracts between institutions and third-party servicers.

Note that section 552 of the Administrative Procedure Act does not require disclosure to the public, under the Freedom of Information Act (FOIA), of subject matter that is deemed to be a trade secret or is of commercial or financial interest or is of a privileged or confidential nature (note also that the entity submitting the information is responsible for identifying information that is not subject to the FOIA's disclosure requirements).

Section 682.413 Remedial actions. The Secretary proposes to revise this section of the regulations to clarify a lender's and its third-party servicer's responsibility to pay liabilities if the servicer has not complied with FFEL program statutes or regulations with respect to services it has contracted with a lender to perform. Under this section, a third-party servicer and lender under whose contract the servicer committed the violation would be considered jointly and severally liable for paying to the Secretary any interest benefits and special allowance or any compensation the servicer has received on any loan from the lender from the date that the servicer fails to comply with any of the requirements in § 682.406(a)(1)–(a)(6), (a)(9), and (a)(12), for any period when the loan has lost its eligibility for reinsurance coverage as a result of the third-party servicer's actions, and for any period after it erroneously bills the Secretary for interest benefits and special allowance. The Secretary would vigorously attempt to collect any of those liabilities first from the lender and, if the lender does not repay those liabilities within 30 days or does not make arrangements satisfactory to the Secretary to repay those liabilities, pursue the third-party servicer for the payment of those liabilities.

This proposed section would also clarify a guaranty agency's and its third-party servicer's responsibilities to pay liabilities to the Secretary if the servicer has not complied with FFEL program statutes or regulations with respect to services that it has contracted with a guaranty agency to perform. Under this proposed provision, the Secretary would require a guaranty agency to repay to the Secretary any reinsurance payments the guaranty agency received on a loan if the third-party servicer contracting with the guaranty agency causes a loan to lose its eligibility for reinsurance. In addition to the repayment of reinsurance, if a third-party servicer makes an incomplete or incorrect statement in connection with any agreement entered into under this part or any other Federal requirement, the guaranty agency with which it has entered into a contract may be subjected by the Secretary to return payments made by the Secretary to the agency, have its payments withheld by the Secretary, or have its participation in the FFEL programs limited, suspended, or terminated. In addition to these penalties, the guaranty agency and its third-party servicer may be fined, may be required to repay any payments the Secretary became obligated to make to others as a result of an incomplete or incorrect statement or violation of any Federal requirement, or be responsible for repaying any interest benefits, special allowance, or reinsurance paid on a Consolidation loan for a violation of 34 CFR 682.206(f)(1). The guaranty agency and its third-party servicer would be considered jointly and severally liable for any of those liabilities. The method by which the Secretary would collect any liability would parallel the proposed provisions governing the circumstances under which a lender and third-party servicer would be jointly and severally liable to the Secretary.

In the negotiated rulemaking sessions, the issue of third-party servicer liability generated controversy and dissension among the negotiators. With regard to liabilities assessed against a third-party servicer under the FFEL programs, many negotiators raised the same objections previously discussed in connection with liability for servicers under 34 CFR part 668. Negotiators raised an additional objection, suggesting that liabilities assessed against third-party servicers under the FFEL programs are unnecessary given

the ability of the Secretary to determine a loan to be uninsured and thus able to be collected directly from a lender or guaranty agency. In response to these objections, the Secretary offered the same modification of the concept of joint and several liability discussed previously in 34 CFR part 668. As noted, no consensus was reached. However, the Secretary agreed to incorporate language into these proposed regulations to specify that the Secretary would first attempt collection from a lender or guaranty agency in the event of liability on the part of a third-party servicer. The Secretary included this provision at the request of negotiators because the Secretary believes that this provision would not adversely impact the integrity of the FFEL programs. The Secretary specifically invites further public comment on the issue of joint and several liability for servicers contracting with lenders and guaranty agencies in order to obtain additional advice from the higher education community in the development of final regulations.

The Secretary specifically invites public comment on whether, and how, the Secretary should hold a third-party servicer that administers FFEL programs jointly and severally liable for any violation of an FFEL program requirement by that servicer and whether any alternative less than assumption of full liability is sufficient to protect the public interest. The Secretary notes that substantial losses have occurred in the FFEL programs due to third-party servicer violations.

Under these proposed regulations, the Secretary would follow the fine proceedings contained in 34 CFR part 668, subpart G, in imposing a fine against a third-party servicer.

Section 682.414 Records, reports, and inspection requirements for guaranty agency programs. The Secretary proposes to amend this section to make a third-party servicer's responsibilities under this part conform to currently existing regulations with respect to a guaranty agency's obligation to maintain current records. Under this provision, a third-party servicer acting as an agent for a guaranty agency would be required to maintain current, complete, and accurate records for all loans that it services for that agency. These records would have to be updated at least once every 10 business days. The Secretary is proposing this provision to ensure that a third-party servicer with which a guaranty agency contracts is responsible for maintaining accurate records.

Section 682.416 Requirements for third-party servicers and lenders contracting with third-party servicers. The Secretary proposes to add a new section to the FFEL program regulations that would set forth administrative and financial standards that a third-party servicer would be required to meet in order to be an eligible third-party servicer with which a lender or guaranty agency may contract for purposes of its responsibilities under the FFEL programs. Under these proposed regulations, a third-party servicer would be considered to be administratively responsible if it provides the services for which it has contracted to perform in accordance with the Federal laws and regulations that govern the FFEL programs, has business systems that are capable of meeting those requirements and has adequate personnel who are knowledgeable about the FFEL programs. The Secretary is proposing these standards because he believes that these are the minimum administrative standards that an agent or entity must meet to demonstrate satisfactorily to the Secretary that it is capable of performing FFEL program services in accordance with applicable statutes and regulations.

The Secretary proposes to apply the standards governing financial responsibility under 34 CFR 668.13(c), (d), (g), and (h), governing the financial responsibility of institutions and third-party servicers contracting with those institutions, to a third-party servicer that administers any aspect of the FFEL programs under a contract with a guaranty agency or lender, for purposes of this part.

During the negotiated rulemaking sessions, the proposed standards governing financial responsibility of third-party servicers and institutions generated disagreement among the negotiators. The Secretary intends that the financial responsibility standards in this section would parallel, as applicable, similar standards of financial responsibility for participating institutions that the Secretary intends to publish in proposed regulations to be published shortly after these. When published, this future NPRM will provide commenters with the opportunity to comment on financial responsibility standards governing both third-party servicers and institutions.

The Secretary proposes these standards to ensure that a third-party servicer would not be able to maintain a contract with a lender or guaranty agency to administer any aspect of the lender's or guaranty agency's FFEL program unless that servicer periodically demonstrates to the Secretary the ability to meet its financial obligations with that lender or guaranty agency. Further, these standards would ensure that the servicer can demonstrate that it is financially stable and will be able to meet these obligations in the future. The Secretary believes that these standards are necessary because the financial failure of a third-party servicer could have an enormous impact on the FFEL programs that could create substantial losses for the Federal taxpayer.

Under these proposed rules, the Secretary would, as determined necessary, conduct a special review of a third-party servicer to determine if it meets the administrative capability and financial responsibility standards proposed in this section. If the Secretary conducts that review, the servicer would be required to provide evidence to the Secretary that it meets these standards. Based on the review of the materials required by this section the Secretary could initiate a limitation, suspension, or termination action against the servicer. If the servicer is unable to demonstrate that it meets the established standards for administrative capability and financial responsibility, the servicer could provide evidence to the Secretary demonstrating that the limitation, suspension, or termination action is unwarranted. This latter provision was added at the request of negotiators to govern situations where a third-party servicer may not be able to meet the defined standards proposed in this section, but the servicer still considers itself to be administratively capable and financially responsible. This provision would allow a third-party servicer the opportunity to demonstrate to the Secretary that it is still administratively capable and financially responsible.

This section would provide that a third-party servicer is not financially responsible under this section if the servicer, or the servicer's owner, majority shareholder, or chief executive officer is determined to have a questionable past performance. The past performance criteria in this section would parallel proposed requirements under 34 CFR 668.12 (implementing statutory requirements governing the past performance of persons or organizations associated with institutions that participate in Title IV, HEA programs) and under 34 CFR 668.82 (governing the standard of conduct of institutions and third-party servicers for purposes of the Title IV, HEA programs). Furthermore, the Secretary proposes to apply this provision to any person employed by the servicer or any person, entity, or any officer or employee of an entity that the servicer contracts with whose past performance is also questionable. In

addition, in order to remain financially responsible, if a third-party servicer learns of such a conviction or determination, the servicer would have to take immediate action to safeguard the Title IV, HEA programs, as explained previously in the discussion concerning § 668.82.

However, for purposes of this part, the Secretary proposes to specify that with regard to the conduct of an officer or employee of a third-party servicer or a person, entity, or officer or employee of an entity with which the servicer contracts, that conduct would be a factor in determining the servicer's financial responsibility only if the individual or entity is used in a capacity that involves administering any aspect of the Title IV, HEA programs. For example, the Secretary would not hold the conduct of a custodian employed by a third-party servicer as an element in determining the servicer's financial responsibility, if that custodian had no responsibility for administering a Title IV, HEA program.

The Secretary also proposes to specify that a third-party servicer would not be considered to be financially responsible if the servicer, or any principal or affiliate of the servicer (as those terms are defined in 34 CFR part 85), is debarred or suspended under E.O. 12549 or the FAR, or is engaging in activity that is cause under 34 CFR 85.305 or 85.405 for debarment or suspension under E.O. 12549 or the FAR.

Like the proposed changes governing the past performance of individuals or organizations associated with institutions that participate in the Title IV, HEA programs and standard of conduct of participating institutions and third-party servicers, these changes are needed to establish appropriate safeguards to protect the integrity of the FFEL programs and the Federal financial interest if serious questions are raised about the honest and lawful conduct of a servicer's owners, officers, directors, employees, or affiliates whose duties involve the administration of or influence over the use of those funds.

Under this section, a third-party servicer would be required to have an annual independent audit of its administration of the FFEL programs that examines the servicer's compliance with the Act and applicable regulations and its financial management of FFEL program activities. These requirements and audit exceptions would parallel the proposed audit requirements and exceptions under 34 CFR 668.23 (governing audit requirements for third-party servicers contracting with institutions to administer any aspect of the institution's participation in the Title IV, HEA programs), except that the report of the audit would have to be submitted to the Secretary within six months of the end of the audit report period. A third-party servicer's initial audit would have to cover the same period required of audits performed for third-party servicers contracting with institutions to administer any aspect of the institution's participation in the Title IV, HEA programs (discussed previously in 34 CFR 668.23). The Secretary believes that initial audits will be more useful and effective if they encompass an entire fiscal year. The Secretary also believes that allowing servicers additional time to prepare for the implementation of these regulations would enable servicers to comply more fully with these regulations as well as defray the costs associated with an audit of a partial fiscal year and minimize the burden associated with implementing these regulations, as called for under E.O. 12866. Subsequent audits would, as required by statute, encompass the entire period since the servicer's previous audit.

In addition, the Secretary proposes that the audit report would be conducted in accordance with the audit guide developed by the Inspector General of the Department of Education unless the third-party servicer is a governmental entity or nonprofit organization. A third-party servicer that is a governmental entity would be required to have an audit conducted in accordance with 31 U.S.C. 7502 and 34 CFR part 80, appendix G (pursuant to the Single Audit Act). A third-party servicer that is a nonprofit organization would be required to have an audit conducted in accordance with Office of Management and Budget Circular A–133, "Audit of Institutions of Higher Education and Other Nonprofit Institutions," as incorporated in 34 CFR 74.61(h)(3).

These proposed rules would also limit a lender's ability to enter into a contract with a third-party servicer. As explained previously in the discussion for § 682.200, under this proposal, a lender may not enter into a contract with a third-party servicer that the Secretary has determined does not meet the administrative capability or financial responsibility standards under this section. Further, a lender that contracts with a third-party servicer would have to provide the Secretary with the name and address of the third-party servicer, and, upon request, a copy of that contract.

Sections 682.700 Purpose and scope, 682.701 Definitions of terms used in this subpart, 682.702 Effect on participation, 682.703 Informal compliance procedure, 682.704 Emergency action, 682.705 Suspension proceedings, 682.706 Limitation or termination proceedings, 682.707 Appeals in a limitation or termination proceeding, 682.708 Evidence of mailing and receipt dates, 682.709 Reimbursements, refunds, and offsets, 682.710 Removal of limitation, and 682.711 Reinstatement after termination. The Secretary proposes to amend subpart G to provide that the Secretary would have the authority to limit, suspend, or terminate a third-party servicer's ability to contract with an eligible lender if the Secretary determines the third-party servicer has violated any FFEL program requirement. Section 432(a)(1) of the Act authorizes the Secretary to take action against third-party servicers for any violation of any FFEL program requirement. Under these proposed regulations, the Secretary could also take emergency action against the servicer if the Secretary receives reliable information that the servicer is in violation of applicable requirements pertaining to the lender's portfolio of loans. The procedures under which the Secretary could take those actions and the procedures a third-party servicer could use to appeal those actions are consistent with the long-standing procedures the Secretary uses to take those actions against a lender, and the procedures a lender may use to appeal those actions.

Executive Order 12866

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 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 identified and explained elsewhere in this preamble under the heading *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.

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. The small entities that would be affected by these regulations are small institutions of higher education; small organizations that contract with educational institutions to administer aspects of the institutions' participation in the Title IV, HEA programs; and small organizations that contract with lenders or guaranty agencies to administer aspects of the lenders' or agencies' participation in the FFEL programs. However, the regulations would not have a significant economic impact on these small entities because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

Sections 668.13, 668.23, 668.25, 668.90, 668.96, 668.113, 682.414, 682.416, and 682.711 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

Educational institutions that are public or nonprofit institutions or businesses or other for-profit institutions may participate in the Title IV, HEA programs. State entities, nonprofit institutions, businesses or other for-profit organizations, or individuals may contract with educational institutions to administer aspects of the institutions' participation in the programs and may contract with lenders and guaranty agencies to administer aspects of the lenders' and agencies' participation in the FFEL programs. Individuals may apply for student financial assistance under the programs. The Department of Education needs and uses the information to enable the Secretary to determine whether the States, institutions, organizations, businesses, and individuals comply with the requirements for eligibility and participation in the programs.

Annual public reporting and recordkeeping burden contained in the collection of information proposed in these regulations is estimated to be 2,786 hours, including the time for searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information, and submitting materials.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

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 4318, 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

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.032 Federal Stafford Loan Program; 84.032 Federal PLUS Program; 84.032 Federal Supplemental Loans for Students Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069 State Student Incentive Grant Program; 84.268 Federal Direct Student Loan Program; and 84.272 National Early Intervention Scholarship and Partnership Program. Catalog of Federal Domestic Assistance Number for the Presidential Access Scholarship Program has not been assigned.)

Dated: February 9, 1994.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend parts 668 and 682 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 is revised to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099c, and 1141, unless otherwise noted.

2. Section 668.1 is amended by revising paragraph (a) to read as follows:

§ 668.1 Scope.

(a) This part establishes general rules that apply to an institution that participates in any student financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA program). To the extent that an institution contracts with a third-party servicer to administer any aspect of the institution's participation in any Title IV, HEA program, the applicable rules in this part also apply to that servicer. An institution's use of a third-party servicer does not alter the institution's responsibility for compliance with the rules in this part.

* * * * *

3. Section 668.2 is amended by adding definitions of "Designated department official", "Initiating official", "Show-cause official", and "Third-party servicer" to paragraph (b) in alphabetical order to read as follows:

§ 668.2 General definitions.

* * * * *

(b) * * *

Designated department official: An official of the Department of Education to whom the Secretary has delegated responsibilities indicated in this part.

* * * * *

Initiating official: The designated department official authorized to begin an emergency action under § 668.83.

* * * * *

Show-cause official: The designated department official authorized to

conduct a show-cause proceeding for an emergency action under § 668.83.

* * * * *

Third-party servicer: An individual or a State or private, profit or nonprofit organization that enters into a contract with an eligible institution to administer, through either manual or automated processing, any aspect of the institution's participation in any Title IV, HEA program. The Secretary considers administration of participation in a Title IV, HEA program to—

(1) Include performing any function required by any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation, such as, but not restricted to—

(i) Processing student financial aid applications;

(ii) Performing need analysis;

(iii) Determining student eligibility and related activities;

(iv) Certifying loan applications;

(v) Processing SARs or output documents for payment to students;

(vi) Receiving, disbursing, or delivering Title IV, HEA program funds, excluding lock-box processing of loan payments and normal bank electronic fund transfers;

(vii) Conducting activities required by the provisions governing student consumer information services in Subpart D of this part;

(viii) Preparing and certifying requests for advance or reimbursement funding;

(ix) Loan servicing and collection;

(x) Preparing and submitting notices and applications required under 34 CFR part 600 and subpart B of this part; and

(xi) Preparing a Fiscal Operations Report and Application to Participate (FISAP);

(2) Exclude the following functions:

(i) Publishing ability-to-benefit tests.

(ii) Performing functions as a Multiple Data Entry Processor (MDE).

(iii) Financial and compliance auditing.

(iv) Mailing of documents prepared by the institution.

(v) Warehousing of records; and

(3) Notwithstanding the exclusions referred to in paragraph (2) of this definition, include any activity comprised of any function described in paragraph (1) of this definition.

(Authority: 20 U.S.C. 1088)

* * * * *

4. Section 668.11 is revised to read as follows:

§ 668.11 Scope.

(a) This subpart establishes standards that an institution must meet in order to participate in any Title IV, HEA program.

(b) Noncompliance with these standards by an institution already participating in any Title IV, HEA program or with applicable standards in this subpart by a third-party servicer that contracts with the institution may subject the institution or servicer, or both, to proceedings under subpart G of this part. These proceedings may lead to any of the following actions:

(1) An emergency action.

(2) The imposition of a fine.

(3) The limitation, suspension, or termination of the participation of the institution in a Title IV, HEA program.

(4) The limitation, suspension, or termination of the eligibility of the servicer to contract with any institution to administer any aspect of the institution's participation in a Title IV, HEA program.

(Authority: 20 U.S.C. 1094)

5. Section 668.12, as proposed to be amended in a Notice of Proposed Rulemaking published on July 10, 1992 (57 FR 30830), is further amended by removing the period at the end of proposed redesignated paragraph (b)(2)(iv)(B) and adding, in its place, a semi-colon and adding new paragraphs (b)(2)(v) and (b)(2)(vi) to read as follows:

§ 668.12 Institutional participation agreement.

* * * * *

(b) * * *

(2) * * *

(v) That it is liable for all—

(A) Improperly spent or unspent funds received under the Title IV, HEA programs, including any funds administered by a third-party servicer; and

(B) Refunds that the institution or its servicer may be required to make; and

(vi) That it will not knowingly—

(A) Employ in a capacity that involves the administration of the Title IV, HEA programs or the receipt of funds under those programs, an individual who has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds, or has been administratively or judicially determined to have committed fraud or any other material violation of law involving those funds;

(B) Contract with an institution or third-party servicer that has been terminated under section 432 of the HEA for a reason involving the acquisition, use, or expenditure of Federal, State, or local government funds, or that has been administratively or judicially determined to have committed fraud or any other material violation of law involving those funds; or

(C) Contract with or employ any individual, agency, or organization that has been, or any of whose officers or employees have been—

(*1*) Convicted of, or pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State or local government funds; or

(*2*) Administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local funds.

* * * * *

6. Section 668.13 as amended by the regulations published in the **Federal Register** on June 8, 1993 (58 FR 32201) (effective date pending) is amended by removing paragraphs (c)(4) and (g); redesignating paragraph (c)(5) as (c)(4) and paragraphs (h) through (j) as paragraphs (g) through (i), respectively; adding the word "or" after the semi-colon in paragraph (c)(3); and revising redesignated paragraph (c)(4), paragraph (d)(3), and redesignated paragraphs (g) introductory text and (h) to read as follows:

§ 668.13 Factors of financial responsibility.

* * * * *

(c) * * *

(4) A person who exercises substantial control over the institution or any member or members of the person's family, alone or together—

(i)(A) Exercises or exercised substantial control over another institution or a third-party servicer that owes a liability for a violation of a Title IV, HEA program requirement; or

(B) Owes a liability for a violation of a Title IV, HEA program requirement; and

(ii) That person, family member, institution, or servicer is not making payments in accordance with an agreement to repay that liability.

(d) * * *

(3) The Secretary may determine an institution to be financially responsible even if the institution is not otherwise financially responsible under paragraph (c)(4) of this section if—

(i) The institution notifies the Secretary, in accordance with 34 CFR 600.30, that the person referenced in paragraph (c)(4) of this section exercises substantial control over the institution; and

(ii)(A) The person repaid to the Secretary a portion of the applicable

liability, and the portion repaid equals or exceeds the greater of—

(1) The total percentage of the ownership interest held in the institution or third-party servicer that owes the liability by that person or any member or members of that person's family, either alone or in combination with one another;

(2) The total percentage of the ownership interest held in the institution or servicer that owes the liability that the person or any member or members of that person's family, either alone or in combination with one another, represents or represented under a voting trust, power of attorney, proxy, or similar agreement; or

(3) Twenty-five percent, if that person or any member of that person's family is or was a member of the board of directors, chief executive officer, or other executive officer of the institution or servicer that owes the liability, or of an entity holding at least a 25 percent ownership interest in the institution or servicer that owes the liability;

(B) The applicable liability described in paragraph (c)(4)(ii) of this section is currently being repaid in accordance with a written agreement with the Secretary; or

(C) The institution demonstrates why—

(1) The person who exercises substantial control over the institution should nevertheless be considered to lack that control; or

(2) The person who exercises substantial control over the institution and each member of that person's family nevertheless does not or did not exercise substantial control over the institution or servicer that owes the liability.

* * * * *

(g) An "ownership interest" is a share of the legal or beneficial ownership or control of, or a right to share in the proceeds of the operation of, an institution, institution's parent corporation, a third-party servicer, or a third-party servicer's parent corporation.

* * * * *

(h) The Secretary generally considers a person to exercise substantial control over an institution or third-party servicer, if the person—

(1) Directly or indirectly holds at least a 25 percent ownership interest in the institution or servicer;

(2) Holds, together with other members of his or her family, at least a 25 percent ownership interest in the institution or servicer;

(3) Represents, either alone or together with other persons, under a voting trust, power of attorney, proxy, or similar agreement one or more persons who hold, either individually or in combination with the other persons represented or the person representing them, at least a 25 percent ownership in the institution or servicer; or

(4) Is a member of the board of directors, the chief executive officer, or other executive officer of—

(i) The institution or servicer; or

(ii) An entity that holds at least a 25 percent ownership interest in the institution or servicer.

* * * * *

7. Section 668.23 is amended by redesignating paragraph (c)(3) as paragraph (c)(3)(i), revising paragraphs (b) and (c)(1), adding paragraph (c)(3)(ii) through (vi) and paragraph (c)(4)(iii), revising paragraph (c)(5), adding a new paragraph (c)(6), and revising paragraph (e) and the authority citation to read as follows:

§ 668.23 Audits, records, and examinations.

* * * * *

(b)(1) An institution that participates in any Title IV, HEA program shall cooperate with an independent auditor, the Secretary, the Department of Education's Inspector General, and the Comptroller General of the United States, or their authorized representatives, a guaranty agency in whose program the institution participates, and the State postsecondary review entity designated under subpart 1 of part H of Title IV of the HEA, in the conduct of audits, investigations, and program reviews authorized by law.

(2) A third-party servicer shall cooperate with an independent auditor, the Secretary, the Department of Education's Inspector General, and the Comptroller General of the United States, or their authorized representatives, a guaranty agency in whose program the institution contracting with the servicer participates, and the State postsecondary review entity designated under subpart 1 of part H of Title IV of the HEA, in the conduct of audits, investigations, and program reviews authorized by law.

(3) The institution's or servicer's cooperation must include—

(i) Providing timely access, for examination and copying, to the records (including computerized records) required by the applicable regulations and to any other pertinent books, documents, papers, computer programs, and records;

(ii) Providing reasonable access to personnel associated with the institution's or servicer's administration of the Title IV, HEA programs for the purpose of obtaining relevant information. In providing reasonable access, the institution or servicer may not—

(A) Refuse to supply any relevant information;

(B) Refuse to permit interviews with those personnel that do not include the presence of representatives of the institution's or servicer's management; or

(C) Refuse to permit interviews with those personnel that are not tape recorded by the institution or servicer.

(c)(1)(i) An institution that participates in the FDSL, Federal Perkins Loan, FWS, FSEOG, Federal Stafford Loan, Federal PLUS, Federal SLS, Federal Pell Grant, or PAS programs shall have performed a compliance audit of that program.

(ii) A third-party servicer that administers funds or determines student eligibility shall have a compliance audit performed of every aspect of the servicer's administration of the participation in the Title IV, HEA programs of each institution with which the servicer has a contract, unless—

(A) The servicer contracts with only one participating institution; and

(B) The audit of that institution's participation involves every aspect of the servicer's administration of that Title IV, HEA program.

(iii) To meet the requirements of paragraph (c)(1)(ii) of this section, a third-party servicer that contracts with more than one participating institution may submit a single compliance audit report that covers every aspect of the servicer's administration of the participation in the Title IV, HEA programs for each institution with which the servicer contracts.

(iv) The audit required under paragraph (c)(1) (i) or (ii) of this section must be conducted by an independent auditor in accordance with the general standards and the standards for audits in the U.S. General Accounting Office's (GAO's) Standards for Audit of Governmental Organizations, Programs, Activities, and Functions.

* * * * *

(3) * * *

(ii) The servicer shall have an audit performed at least once every year.

(iii) Notwithstanding paragraph (c)(3)(ii) of this section, the servicer shall have an audit performed at least once every two years if—

(A) The servicer administers less than $1,000,000 under the Title IV, HEA programs for the period covered by the audit; or

(B) The servicer had no material exceptions identified in the servicer's most recently submitted audit report and that report was submitted in a timely fashion.

(iv) The servicer is not required to have an audit performed for any year in which the servicer administers less than $250,000 under the Title IV, HEA programs.

(v) The servicer's first audit must cover the servicer's activities for its first full fiscal year beginning after July 1, 1994, and include any period from that date to the beginning of the first full fiscal year. Each subsequent audit that the servicer has performed must cover the servicer's activities for the entire period of time since the servicer's preceding audit.

(vi) Notwithstanding paragraph (c)(3)(iii) of this section, the Secretary may, as the Secretary deems necessary, request any third-party servicer to have an audit performed on an annual basis.

(4) * * *

(iii) The servicer shall submit its audit to the Department of Education's Inspector General in accordance with the deadlines established in audit guides developed by the Department of Education's Office of Inspector General.

(5)(i) An institution or third-party servicer that has an audit conducted in accordance with this section shall—

(A) Give the Secretary and the Inspector General access to records or other documents necessary to review the audit; and

(B) Include in any arrangement with an individual or firm conducting an audit described in this section a requirement that the individual or firm shall give the Secretary and the Inspector General access to records or other documents necessary to review the audit.

(ii) A third-party servicer shall give the Secretary and the Inspector General access to records or other documents necessary to review an institution's audit.

(iii) An institution shall give the Secretary and the Inspector General access to records or other documents necessary to review a third-party servicer's audit.

(6) The Secretary may require the institution or servicer to provide, upon request, to cognizant guaranty agencies and eligible lenders under the FFEL programs, State agencies, nationally recognized accrediting agencies, and State postsecondary review entities designated under Subpart 1 of part H of Title IV of the HEA, the results of any audit conducted under this section.

* * * * *

(e) Upon written request, an institution or third-party servicer shall give the Secretary access to all Title IV, HEA program and fiscal records, including records reflecting transactions with any financial institution with which the institution or servicer deposits or has deposited any Title IV, HEA program funds.

* * * * *

(Authority: 20 U.S.C. 1088, 1094, 1099c, 1141 and section 4 of Pub. L. 95–452, 92 Stat. 1101–1109)

8. Section 668.24 is revised to read as follows:

§ 668.24 Audit exceptions and repayments.

(a)(1) If, as a result of a Federal audit or an audit performed at the direction of an institution or third-party servicer, an expenditure made by the institution or servicer or the institution's or servicer's compliance with an applicable requirement (including the lack of proper documentation), is questioned, the Secretary notifies the institution or servicer of the questioned expenditure or compliance.

(2) If the institution or servicer believes that the questioned expenditure or compliance was proper, the institution or servicer shall notify the Secretary in writing of the institution's or servicer's position and the reasons for that position.

(3) The institution's or servicer's response must be certified as to accuracy and completeness by an independent auditor in accordance with the general standards and the standards for audits in the U.S. General Accounting Office's (GAO's) Standards for Audit of Governmental Organizations, Programs, Activities, and Functions and must be received by the Secretary within 45 days of the date of the Secretary's notification to the institution or servicer.

(b)(1) Based on the audit finding and the institution's or third-party servicer's response, the Secretary determines the amount of liability, if any, owed by the institution or servicer and instructs the institution or servicer as to the manner of repayment.

(2) If the Secretary determines that a third-party servicer owes a liability for its administration of an institution's Title IV, HEA programs, the servicer shall notify each institution under whose contract the servicer owes a liability of the determination. The servicer shall also notify every institution that contracts with the servicer for the same service that the Secretary determined that a liability was owed.

(c)(1) An institution or third-party servicer that must repay funds under the procedures in this section shall repay those funds at the direction of the Secretary within 45 days of the date of the Secretary's notification, unless—

(i) The institution or servicer files an appeal under the procedures established in subpart H of this part; or

(ii) The Secretary permits a longer repayment period.

(2) Notwithstanding paragraphs (b) and (c)(1) of this section—

(i) If an institution or third-party servicer has posted surety or has provided a third-party guarantee and the Secretary questions expenditures or compliance with applicable requirements and identifies liabilities, then the Secretary may determine that deferring recourse to the surety or guarantee is not appropriate because—

(A) The need to provide relief to students or borrowers affected by the act or omission giving rise to the liability outweighs the importance of deferring collection action until completion of available appeal proceedings; or

(B) The terms of the surety or guarantee do not provide complete assurance that recourse to that protection will be fully available through the completion of available appeal proceedings; or

(ii) The Secretary may determine that an administrative offset to collect the funds owed under the procedures of this section is appropriate under 34 CFR 30.28.

(3) If, under the proceedings in subpart H, liabilities asserted in the notification against the institution or third-party servicer are upheld, the institution or third-party servicer shall repay those funds at the direction of the Secretary within 30 days of the final determination under subpart H of this part unless—

(i) The Secretary permits a longer repayment period; or

(ii) The Secretary determines that earlier collection action is appropriate pursuant to paragraph (c)(2) of this section.

(d) An institution is held responsible for any liability owed by the institution's third-party servicer for a violation incurred in servicing any aspect of that institution's participation in the Title IV, HEA programs and remains responsible for that amount until that amount is repaid in full.

(Authority: 20 U.S.C. 1094)

9. Section 668.25 is redesignated as § 668.26 and a new § 668.25 is added to read as follows:

§ 668.25 Contracts between an institution and a third-party servicer.

(a) An institution may enter into a written contract with a third-party servicer for the administration of any aspect of the institution's participation in any Title IV, HEA program only to the extent that the servicer's eligibility to contract with the institution has not been limited, suspended, or terminated under the proceedings of subpart G of this part.

(b) Subject to the provisions of paragraph (d) of this section, a third-party servicer is eligible to enter into a written contract with an institution for the administration of any aspect of the institution's participation in any Title IV, HEA program only to the extent that the servicer's eligibility to contract with the institution has not been limited, suspended, or terminated under the proceedings of subpart G of this part.

(c) In a contract with an institution, a third-party servicer shall agree to—

(1) Comply with all statutory provisions of or applicable to Title IV of the HEA, all regulatory provisions prescribed under that statutory authority, and all applicable special arrangements, agreements, limitations, suspensions, and terminations, including the requirement to use any funds that the servicer administers under any Title IV, HEA program and any interest or other earnings thereon solely for the purposes specified in and in accordance with that program;

(2) Refer to the Office of Inspector General of the Department of Education for investigation of any information indicating there is reasonable cause to believe that the institution might have engaged in fraud or other criminal misconduct in connection with the institution's administration of any Title IV, HEA program or an applicant for Title IV, HEA program assistance might have engaged in fraud or other criminal misconduct in connection with his or her application. Examples of the type of information that must be referred are—

(i) False claims by the institution for Title IV, HEA program assistance;

(ii) False claims of independent student status;

(iii) False claims of citizenship;

(iv) Use of false identities;

(v) Forgery of signatures or certifications; and

(vi) False statements of income;

(3) Be jointly and severally liable with the institution to the Secretary for any violation by the servicer of any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, and any applicable special arrangements, agreements, and limitations;

(4) In the case of a third-party servicer that disburses funds (including funds received under the Title IV, HEA programs) or delivers Federal Stafford Loan or Federal SLS Program proceeds to a student—

(i) Confirm the eligibility of the student before making that disbursement or delivering those proceeds. This confirmation must include, but is not limited to, any applicable information contained in the records required under § 668.23(f); and

(ii) Calculate and pay refunds and repayments due a student, the Title IV, HEA program accounts, and the student's lender under the Federal Stafford Loan, Federal PLUS, and Federal SLS programs in accordance with the institution's refund policy, the provisions of §§ 668.21 and 668.22, and applicable program regulations; and

(5) If the servicer or institution terminates the contract, or if the servicer stops providing services for the administration of a Title IV, HEA program, goes out of business, or files a petition under the Bankruptcy Code, return to the institution all—

(i) Records in the servicer's possession pertaining to the institution's participation in the program or programs for which services are no longer provided; and

(ii) Funds, including Title IV, HEA program funds, received from or on behalf of the institution or the institution's students, for the purposes of the program or programs for which services are no longer provided.

(d) A third-party servicer may not enter into a written contract with an institution for the administration of any aspect of the institution's participation in any Title IV, HEA program, if—

(1)(i) The servicer has been limited, suspended, or terminated by the Secretary within the preceding five years;

(ii) The servicer has had, during the servicer's two most recent audits of the servicer's administration of the Title IV, HEA programs, an audit finding that resulted in the servicer's being required to repay an amount greater than five percent of the funds that the servicer administered under the Title IV, HEA programs for any award year; or

(iii) The servicer has been cited during the preceding five years for failure to submit audit reports required under Title IV of the HEA in a timely fashion; and

(2)(i) In the case of a servicer that has been subjected to a termination action by the Secretary, either the servicer, or one or more persons or entities that the Secretary determines (under the provisions of § 668.13) exercise substantial control over the servicer, or both, have not submitted to the Secretary financial guarantees in an amount determined by the Secretary to be sufficient to satisfy the servicer's potential liabilities arising from the servicer's administration of the Title IV, HEA programs; or

(ii) One or more persons or entities that the Secretary determines (under the provisions of § 668.13) exercise substantial control over the servicer have not agreed to be jointly or severally liable for any liabilities arising from the servicer's administration of the Title IV, HEA programs and civil and criminal monetary penalties authorized under Title IV of the HEA.

(e)(1)(i) An institution that participates in a Title IV, HEA program shall notify the Secretary within 10 days of the date that—

(A) The institution enters into a new contract or significantly modifies an existing contract with a third-party servicer to administer any aspect of that program;

(B) The institution or a third-party servicer terminates a contract for the servicer to administer any aspect of that program; or

(C) A third-party servicer that administers any aspect of the institution's participation in that program stops providing services for the administration of that program, goes out of business, or files a petition under the Bankruptcy Code.

(ii) The institution's notification must include the name and address of the servicer.

(2) An institution that contracts with a third-party servicer to administer any aspect of the institution's participation in a Title IV, HEA program shall provide to the Secretary, upon request, a copy of the contract, including any modifications, and provide information pertaining to the contract or to the servicer's administration of the institution's participation in any Title IV, HEA program.

(Authority: 20 U.S.C. 1094)

10. Section 668.81 is amended by removing paragraph (f); revising paragraphs (a)(1) introductory text, (b), (c) introductory text, and (c)(1); and adding a new paragraph (a)(1)(iv) to read as follows:

§ 668.81 Scope and special definitions.

(a)(1) This subpart establishes regulations for the following actions with respect to a participating institution or third-party servicer:

* * * * *

(iv) The limitation, suspension, or termination of the eligibility of the servicer to contract with any institution to administer any aspect of the institution's participation in a Title IV, HEA program.

* * * * *

(b) This subpart applies to an institution or a third-party servicer that violates any statutory provision of or applicable to Title IV, of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation prescribed under authority of Title IV of the HEA.

(c) This subpart does not apply to a determination that—

(1) An institution or any of its locations or educational programs fails to qualify for initial designation as an eligible institution, location, or educational program because the institution, location, or educational program fails to satisfy the statutory and regulatory provisions that define an eligible institution or educational program with respect to the Title IV, HEA program for which a designation of eligibility is sought; or

* * * * *

11. Section 668.82 is revised to read as follows:

§ 668.82 Standard of conduct.

(a) A participating institution or a third-party servicer that contracts with that institution acts in the nature of a fiduciary in the administration of the Title IV, HEA programs. To participate in any Title IV, HEA program, the institution or servicer must at all times act with the competency and integrity necessary to qualify as a fiduciary.

(b) In the capacity of a fiduciary—

(1) A participating institution is subject to the highest standard of care and diligence in administering the programs and in accounting to the Secretary for the funds received under those programs; and

(2) A third-party servicer is subject to the highest standard of care and diligence in administering any aspect of the programs on behalf of the institutions with which the servicer contracts and in accounting to the Secretary and those institutions for any funds administered by the servicer under those programs.

(c) The failure of a participating institution or any of the institution's third-party servicers to administer a Title IV, HEA program, or to account for the funds that the institution or servicer receives under that program, in accordance with the highest standard of care and diligence required of a fiduciary, constitutes grounds for—

(1) An emergency action against the institution, a fine on the institution, or the limitation, suspension, or termination of the institution's participation in that program; or

(2) An emergency action against the servicer, a fine on the servicer, or the limitation, suspension, or termination of the servicer's eligibility to contract with any institution to administer any aspect of the institution's participation in that program.

(d)(1) A participating institution or a third-party servicer with which the institution contracts violates its fiduciary duty if—

(i)(A) The servicer has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds, or has been administratively or judicially determined to have committed fraud or any other material violation of law involving those funds;

(B) A person who exercises substantial control over the servicer, as determined according to § 668.13, has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds, or has been administratively or judicially determined to have committed fraud or any other material violation of law involving those funds;

(C) The servicer employs a person in a capacity that involves the administration of Title IV, HEA programs or the receipt of Title IV, HEA program funds who has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds, or who has been administratively or judicially determined to have committed fraud or any other material violation of law involving those funds; or

(D) The servicer uses or contracts with any other person, agency, or organization that has been or whose officers or employees have been—

(*1*) Convicted of, or pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds; or

(*2*) Administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds; and

(ii) Upon learning of a conviction, plea, or administrative or judicial determination described in paragraph (d)(1)(i) (B) through (D) of this section, the institution or servicer, as applicable, does not promptly remove the person, agency, or organization from any involvement in the administration of the institution's participation in Title IV, HEA programs, or, as applicable, the removal or elimination of any substantial control, as determined according to § 668.13, over the servicer.

(2)(i) A participating institution or a third-party servicer with which the institution contracts violates its fiduciary responsibility if the servicer commits a violation of a statutory provision of or applicable to Title IV of the HEA, a regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation by, a principal or affiliate of the servicer (as those terms are defined in 34 CFR part 85); and

(ii) Upon learning of a conviction, plea, or administrative or judicial determination described in paragraph (d)(2)(i) of this section, the institution or servicer, as applicable, does not promptly remove the person, agency, or organization from any involvement in the administration of the institution's participation in Title IV, HEA programs, or, as applicable, the removal or elimination of any substantial control, as determined according to § 668.13, over the servicer.

(3) A violation for a reason contained in paragraphs (d) (1) and (2) of this section is grounds for terminating—

(i) The servicer's eligibility to contract with any institution to administer any aspect of the institution's participation in a Title IV, HEA program; and

(ii) The participation in any Title IV, HEA program of any institution under whose contract the servicer committed the violation, if that institution had been aware of the violation and had failed to take the appropriate action described in paragraphs (d)(1)(ii) and (d)(2)(ii) of this section.

(e)(1) A participating institution or third-party servicer, as applicable, violates its fiduciary duty if—

(i)(A) The institution or servicer, as applicable, is debarred or suspended under Executive Order (E.O.) 12549 (3 CFR, 1987 Comp., p. 189) or the Federal Acquisition Regulations (FAR), 48 CFR part 9, subpart 9.4; or

(B) Cause exists under 34 CFR 85.305 or 85.405 for debarring or suspending the institution, servicer, or any principal or affiliate of the institution or servicer under E.O. 12549 or the FAR, 48 CFR part 9, subpart 9.4; and

(ii) Upon learning of the debarment, suspension, or cause for debarment or suspension, the institution or servicer, as applicable, does not promptly—

(A) Discontinue the affiliation; or

(B) Remove the principal from responsibility for any aspect of the administration of an institution's or servicer's participation in the Title IV, HEA programs.

(2) A violation for a reason contained in paragraph (e)(1) of this section is grounds for terminating—

(i) The institution's participation in any Title IV, HEA program; and

(ii) The servicer's eligibility to contract with any institution to administer any aspect of the institution's participation in any Title IV, HEA program. The violation is also grounds for terminating, under this subpart, the participation in any Title IV, HEA program of any institution under whose contract the servicer committed the violation, if that institution knew or should have known of the violation.

(f)(1) The debarment of a participating institution or third-party servicer, as applicable, under E.O. 12549 or the FAR, 48 CFR part 9, subpart 9.4, by the Department of Education or another Federal agency from participation in Federal programs, under procedures that comply with 5 U.S.C. 554–557 (formal adjudication requirements under the Administrative Procedure Act), terminates, for the duration of the debarment—

(i) The institution's participation in any Title IV, HEA program; and

(ii) The servicer's eligibility to contract with any institution to administer any aspect of the institution's participation in any Title IV, HEA program.

(2)(i) The suspension of a participating institution or third-party servicer, as applicable, under E.O. 12549 or the FAR, 48 CFR part 9, subpart 9.4, by the Department of Education or another Federal agency from participation in Federal programs, under procedures that comply with 5 U.S.C. 554–557, suspends—

(A) The institution's participation in any Title IV, HEA program; and

(B) The servicer's eligibility to contract with any institution to administer any aspect of the institution's participation in any Title IV, HEA program.

(ii) A suspension under this paragraph lasts for a period of 60 days, beginning on the date of the suspending official's decision, except that the suspension may last longer if—

(A) The institution or servicer, as applicable, and the Secretary, agree to an extension of the suspension; or

(B) The Secretary begins a limitation or termination proceeding against the institution or servicer, as applicable, under this subpart before the 60th day of the suspension.

(Authority: E.O. 12549 (3 CFR, 1987 Comp., p. 189), 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1070, *et seq.*, 1082(a)(1) and (h)(1), 1094(c)(1) (D) and (H), and 3474)

12. Section 668.83 is revised to read as follows:

§ 668.83 Emergency action.

(a) Under an emergency action, the Secretary may—

(1) Withhold Title IV, HEA program funds from a participating institution or its students, or from a third-party servicer, as applicable;

(2)(i) Withdraw the authority of the institution or servicer, as applicable, to commit, disburse, deliver, or cause the commitment, disbursement, or delivery of Title IV, HEA program funds; or

(ii) Withdraw the authority of the institution or servicer, as applicable, to commit, disburse, deliver, or cause the commitment, disbursement, or delivery of Title IV, HEA program funds except in accordance with a particular procedure; and

(3)(i) Withdraw the authority of the servicer to administer any aspect of any institution's participation in any Title IV, HEA program; or

(ii) Withdraw the authority of the servicer to administer any aspect of any institution's participation in any Title IV, HEA program except in accordance with a particular procedure.

(b)(1) An initiating official begins an emergency action against an institution or third-party servicer by sending the institution or servicer a notice by registered mail, return receipt requested. In an emergency action against a third-party servicer, the official also sends the notice to each institution that contracts with the servicer. The official also may transmit the notice by other, more expeditious means if practical.

(2) The emergency action takes effect on the date the initiating official mails the notice to the institution or servicer, as applicable.

(3) The notice states the grounds on which the emergency action is based, the consequences of the emergency action, and that the institution or servicer, as applicable, may request an opportunity to show cause why the emergency action is unwarranted.

(c)(1) An initiating official takes emergency action against an institution or third-party servicer only if that official—

(i) Receives information, determined by the official to be reliable, that the institution or servicer, as applicable, is violating any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation;

(ii) Determines that immediate action is necessary to prevent misuse of Title IV, HEA program funds; and

(iii) Determines that the likelihood of loss from that misuse outweighs the importance of awaiting completion of any proceeding that may be initiated to limit, suspend, or terminate, as applicable—

(A) The participation of the institution in one or more Title IV, HEA programs; or

(B) The eligibility of the servicer to contract with any institution to administer any aspect of the institution's participation in a Title IV, HEA program.

(2) Examples of violations of a Title IV, HEA program requirement that cause misuse and the likely loss of Title IV, HEA program funds include—

(i) Causing the commitment, disbursement, or delivery by any party of Title IV, HEA program funds in an amount that exceeds—

(A) The amount for which students are eligible; or

(B) The amount of principal, interest, or special allowance payments that would have been payable to the holder of a Federal Stafford, Federal PLUS, or Federal SLS loan if a refund allocable to that loan had been made in the amount and at the time required;

(ii) Using, offering to make available, or causing the use or availability of Title IV, HEA program funds for educational services if—

(A) The institution, servicer, or agents of the institution or servicer have made a substantial misrepresentation as described in §§ 668.72, 668.73, or 668.74 related to those services;

(B) The institution lacks the administrative or financial ability to provide those services in full; or

(C) The institution, or servicer, as applicable, lacks the administrative or financial ability to compensate by appropriate refund for any portion of an educational program not completed by a student; and

(iii) Engaging in fraud involving the administration of a Title IV, HEA program. Examples of fraud include—

(A) Falsification of any document received from a student or pertaining to a student's eligibility for assistance under a Title IV, HEA program;

(B) Falsification, including false certifications, of any document submitted by the institution or servicer to the Department of Education;

(C) Falsification, including false certifications, of any document used for or pertaining to—

(1) The legal authority of an institution to provide postsecondary education in the State in which the institution is located; or

(2) The accreditation or preaccreditation of an institution or any of the institution's educational programs or locations;

(D) Falsification, including false certifications, of any document submitted to a guaranty agency under the Federal Stafford Loan, Federal PLUS, and Federal SLS programs or an independent auditor;

(E) Falsification of any document submitted to a third-party servicer by an institution or to an institution by a third-party servicer pertaining to the institution's participation in a Title IV, HEA program; and

(F) Falsification, including false certifications, of any document pertaining to the performance of any loan collection activity, including activity that is not required by the HEA or applicable program regulations.

(3) If the Secretary begins an emergency action against a third-party servicer, the Secretary may also begin an emergency action against any institution under whose contract a third-party servicer commits the violation.

(d)(1) Except as provided in paragraph (d)(2) of this section, after an emergency action becomes effective, an institution or third-party servicer, as applicable, may not—

(i) Make or increase awards or make other commitments of aid to a student under the applicable Title IV, HEA program;

(ii) Disburse either program funds, institutional funds, or other funds as assistance to a student under that Title IV, HEA program;

(iii) In the case of an emergency action pertaining to participation in the Federal Stafford Loan, Federal PLUS, or Federal SLS Program—

(A) Certify an application for a loan under that program;

(B) Deliver loan proceeds to a student under that program; or

(C) Retain the proceeds of a loan made under that program that are received after the emergency action takes effect; or

(iv) In the case of an emergency action against a third-party servicer, administer any aspect of any institution's participation in any Title IV, HEA program.

(2) If the initiating official withdraws, by an emergency action, the authority of the institution or servicer to commit, disburse, deliver, or cause the commitment, disbursement, or delivery of Title IV, HEA program funds, or the authority of the servicer to administer any aspect of any institution's participation in any Title IV, HEA program, except in accordance with a particular procedure specified in the notice of emergency action, the institution or servicer, as applicable, may not take any action described in paragraph (d)(1) of this section except in accordance with the procedure specified in the notice.

(e)(1) Upon request by the institution or servicer, as applicable, the Secretary provides the institution or servicer, as soon as practicable, with an opportunity to show cause that the emergency action is unwarranted or should be modified.

(2) An opportunity to show cause consists of an opportunity to present evidence and argument to a show-cause official. The initiating official does not act as the show-cause official for any emergency action that the initiating official has begun. The show-cause official is authorized to grant relief from the emergency action. The institution or servicer may make its presentation in writing or, upon its request, at an informal meeting with the show-cause official.

(3) The show-cause official may limit the time and manner in which argument and evidence may be presented in order to avoid unnecessary delay or the presentation of immaterial, irrelevant, or repetitious matter.

(4) The institution or servicer, as applicable, has the burden of persuading the show-cause official that the emergency action imposed by the notice is unwarranted or should be modified because—

(i) The grounds stated in the notice did not, or no longer, exist;

(ii) The grounds stated in the notice will not cause loss or misuse of Title IV, HEA program funds; or

(iii) The institution or servicer, as applicable, will use procedures that will reliably eliminate the risk of loss from the misuse described in the notice.

(5) The show-cause official continues, modifies, or revokes the emergency action promptly after consideration of any argument and evidence presented by the institution or servicer, as applicable, and the initiating official.

(6) The show-cause official notifies the institution or servicer, as applicable, of that official's determination promptly after the completion of the show-cause meeting or, if no meeting is requested, after the official receives all the material submitted by the institution in opposition to the emergency action. In the case of a notice to a third-party servicer, the official also notifies each institution that contracts with the servicer of that determination. The show-cause official may explain that determination by adopting or modifying the statement of reasons provided in the notice of emergency action.

(f)(1) An emergency action does not extend more than 30 days after initiated unless the Secretary initiates a limitation, suspension, or termination proceeding under this part or under 34 CFR part 600 against the institution or servicer, as applicable, within that 30-day period, in which case the emergency action continues until a final decision is issued in that proceeding, as provided in § 668.90 (c) or (f), as applicable.

(2) Until a final decision is issued by the Secretary in a proceeding described in paragraph (f)(1) of this section, the continuation, modification, or revocation of the emergency action is at the sole discretion of the initiating official, or, if a show-cause proceeding is conducted, the show-cause official.

(3) If an emergency action extends beyond 180 days by virtue of paragraph (f)(1) of this section, the institution or servicer, as applicable, may then submit written material to the show-cause official to demonstrate that because of facts occurring after the later of the notice by the initiating official or the show-cause meeting, continuation of the emergency action is unwarranted and the emergency action should be modified or ended. The show-cause official considers any written material submitted and issues a determination that continues, modifies, or revokes the emergency action.

(g) The expiration, modification, or revocation of an emergency action against an institution or third-party servicer does not bar subsequent emergency action against that institution on grounds other than those specifically identified in the notice imposing the prior emergency action. Separate grounds may include violation by an institution or third-party servicer of an agreement or limitation imposed or resulting from the prior emergency action.

(Authority: 20 U.S.C. 1094)

13. Section 668.84 is revised to read as follows:

§ 668.84 Fine proceedings.

(a) *Scope and consequences.* (1) The Secretary may impose a fine of up to $25,000 per violation on a participating institution or third-party servicer that—

(i) Violates any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation; or

(ii) Substantially misrepresents the nature of—

(A) In the case of an institution, its educational program, its financial charges, or the employability of its graduates; or

(B) In the case of a third-party servicer, as applicable, the educational program, financial charges, or employability of the graduates of any institution that contracts with the servicer.

(2) If the Secretary begins a fine proceeding against a third-party servicer, the Secretary also may begin a fine, limitation, suspension, or termination proceeding against any institution under whose contract a third-party servicer commits the violation.

(b) *Procedures.* (1) A designated department official begins a fine proceeding by sending the institution or servicer, as applicable, a notice by certified mail, return receipt requested. In the case of a fine proceeding against a third-party servicer, the official also sends the notice to each institution that is affected by the alleged violations identified as the basis for the fine action, and, to the extent possible, to each institution that contracts with the servicer for the same service affected by the violation. This notice—

(i) Informs the institution or servicer of the Secretary's intent to fine the institution or servicer, as applicable, and the amount of the fine and identifies the alleged violations that constitute the basis for the action;

(ii) Specifies the proposed effective date of the fine, which is at least 20 days from mailing of the notice of intent;

(iii) Informs the institution or servicer that the fine will not be effective on the date specified in the notice if the designated department official receives from the institution or servicer, as applicable, by that date a written request for a hearing or written material indicating why the fine should not be imposed; and

(iv) In the case of a fine proceeding against a third-party servicer, informs each institution that is affected by the alleged violations of the consequences of the action to the institution.

(2) If the institution or servicer does not request a hearing but submits written material, the designated department official, after considering that material, notifies the institution or, in the case of a third-party servicer, the servicer and each institution affected by the alleged violations that—

(i) The fine will not be imposed; or

(ii) The fine is imposed as of a specified date, and in a specified amount.

(3) If the institution or servicer requests a hearing by the time specified in paragraph (b)(1)(iii) of this section, the designated department official sets the date and the place. The date is at least 15 days after the designated department official receives the request.

(4) A hearing official conducts a hearing in accordance with § 668.88.

(c) *Expedited proceedings.* With the approval of the hearing official and the consent of the designated department official and the institution or servicer, any time schedule specified in this section may be shortened.

(Authority: 20 U.S.C. 1094)

14. Section 668.85 is revised to read as follows:

§ 668.85 Suspension proceedings.

(a) *Scope and consequences.* (1) The Secretary may suspend an institution's participation in a Title IV, HEA program or the eligibility of a third-party servicer to contract with any institution to administer any aspect of the institution's participation in any Title IV, HEA program, if the institution or servicer—

(i) Violates any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation; or

(ii) Substantially misrepresents the nature of—

(A) In the case of an institution, its educational program, its financial charges, or the employability of its graduates; or

(B) In the case of a third-party servicer, as applicable, the educational program, financial charges, or employability of the graduates of any institution that contracts with the servicer.

(2) If the Secretary begins a suspension proceeding against a third-party servicer, the Secretary also may begin a fine, limitation, suspension, or termination proceeding against any institution under whose contract a third-party servicer commits the violation.

(3) The suspension may not exceed 60 days unless—

(i) The institution or servicer and the Secretary agree to an extension if the institution or servicer, as applicable, has not requested a hearing; or

(ii) The designated department official begins a limitation or termination proceeding under § 668.86.

(b) *Procedures.* (1) A designated department official begins a suspension proceeding by sending a notice to an institution or third-party servicer by certified mail, return receipt requested. In the case of a suspension proceeding against a third-party servicer, the official also sends the notice to each institution that contracts with the servicer. The designated department official may also transmit the notice by other, more expeditious means if practical. The notice—

(i) Informs the institution or servicer of the intent of the Secretary to suspend the institution's participation or the servicer's eligibility, as applicable, cites the consequences of that action, and identifies the alleged violations that constitute the basis for the action;

(ii) Specifies the proposed effective date of the suspension, which is at least 20 days after the date of mailing of the notice of intent;

(iii) Informs the institution or servicer that the suspension will not be effective on the date specified in the notice, except as provided in § 668.90(b)(2), if the designated department official receives from the institution or servicer, as applicable, by that date a request for a hearing or written material indicating why the suspension should not take place; and

(iv) In the case of a suspension proceeding against a third-party servicer, informs each institution that contracts with the servicer of the consequences of the action to the institution.

(2) If the institution or servicer does not request a hearing, but submits written material, the designated department official, after considering that material, notifies the institution or, in the case of a third-party servicer, the servicer and each institution that contracts with the servicer that—

(i) The proposed suspension is dismissed; or

(ii) The suspension is effective as of a specified date.

(3) If the institution or servicer requests a hearing by the time specified in paragraph (b)(1)(iii) of this section, the designated department official sets the date and the place. The date is at least 15 days after the designated department official receives the request. The suspension does not take place until after the requested hearing is held.

(4) A hearing official conducts a hearing in accordance with § 668.88.

(c) *Expedited proceedings.* With the approval of the hearing official and the consent of the designated department official and the institution or servicer, as applicable, any time period specified in this section may be shortened.

(Authority: 20 U.S.C. 1094)

15. Section 668.86 is revised to read as follows:

§ 668.86 Limitation or termination proceedings.

(a) *Scope and consequences.* (1) The Secretary may limit or terminate an institution's participation in a Title IV, HEA program or the eligibility of a third-party servicer to contract with any institution to administer any aspect of the institution's participation in any Title IV, HEA program, if the institution or servicer—

(i) Violates any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation; or

(ii) Substantially misrepresents the nature of—

(A) In the case of an institution, its educational program, its financial charges, or the employability of its graduates; or

(B) In the case of a third-party servicer, as applicable, the educational program, financial charges, or employability of the graduates of any institution that contracts with the servicer.

(2) If the Secretary begins a limitation or termination proceeding against a third-party servicer, the Secretary also may begin a fine, limitation, suspension, or termination proceeding against any institution under whose contract a third-party servicer commits the violation.

(3) The consequences of the limitation or termination of the institution's participation or the servicer's eligibility are described in §§ 668.93 and 668.94, respectively.

(b) *Procedures.* (1) A designated department official begins a limitation or termination proceeding by sending an institution or third-party servicer a notice by certified mail, return receipt requested. In the case of a limitation or termination proceeding against a third-party servicer, the official also sends the notice to each institution that contracts with the servicer. The designated department official may also transmit the notice by other, more expeditious means if practical. This notice—

(i) Informs the institution or servicer of the intent of the Secretary to limit or terminate the institution's participation or servicer's eligibility, as applicable, cites the consequences of that action, and identifies the alleged violations that constitute the basis for the action, and, in the case of a limitation proceeding, states the limits to be imposed;

(ii) Specifies the proposed effective date of the limitation or termination, which is at least 20 days after the date of mailing of the notice of intent;

(iii) Informs the institution or servicer that the limitation or termination will not be effective on the date specified in the notice if the designated department official receives from the institution or servicer, as applicable, by that date a request for a hearing or written material indicating why the limitation or termination should not take place; and

(iv) In the case of a limitation or termination proceeding against a third-party servicer, informs each institution that contracts with the servicer of the consequences of the action to the institution.

(2) If the institution or servicer does not request a hearing but submits written material, the designated department official, after considering that material, notifies the institution or, in the case of a third-party servicer, the servicer and each institution that contracts with the servicer that—

(i) The proposed action is dismissed;

(ii) Limitations are effective as of a specified date; or

(iii) The termination is effective as of a specified date.

(3) If the institution or servicer requests a hearing by the time specified in paragraph (b)(1)(iii) of this section, the designated department official sets the date and the place. The date is at least 15 days after the designated department official receives the request. The limitation or termination does not take place until after the requested hearing is held.

(4) A hearing official conducts a hearing in accordance with § 668.88.

(c) *Expedited proceeding.* With the approval of the hearing official and the consent of the designated department official and the institution or servicer, as applicable, any time schedule specified in this section may be shortened.

(Authority: 20 U.S.C. 1094)

16. Section 668.87 is revised to read as follows:

§ 668.87 Prehearing conference.

(a) A hearing official may convene a prehearing conference if he or she thinks that the conference would be useful, or if the conference is requested by—

(1) The designated department official who brought a proceeding against an institution or third-party servicer under this subpart; or

(2) The institution or servicer, as applicable.

(b) The purpose of a prehearing conference is to allow the parties to settle or narrow the dispute.

(c) If the hearing official, the designated department official, and the institution, or servicer, as applicable, agree, a prehearing conference may consist of—

(1) A conference telephone call;

(2) An informal meeting; or

(3) The submission and exchange of written material.

(Authority: 20 U.S.C. 1094)

17. Section 668.88 is amended by revising paragraph (b) introductory text and paragraph (d) to read as follows:

§ 668.88 Hearing.

* * * * *

(b) If the hearing official, the designated department official who brought a proceeding against an institution or third-party servicer under this subpart, and the institution or servicer, as applicable, agree, the hearing process may be expedited. Procedures to expedite the hearing process may include, but are not limited to, the following—

* * * * *

(d) The designated department official makes a transcribed record of the proceeding and makes the record available to the institution or servicer, as applicable, upon request and upon the institution's or servicer's payment of a fee comparable to that prescribed under the Department of Education Freedom of Information Act regulations (34 CFR part 5).

(Authority: 20 U.S.C. 1094)

18. Section 668.89 is amended by revising paragraphs (a), (b)(2), and (c) introductory text, and adding a new paragraph (d) to read as follows:

§ 668.89 Authority and responsibilities of the hearing official.

(a) The hearing official regulates the course of a hearing and the conduct of the parties during the hearing. The hearing official takes all necessary steps to conduct a fair and impartial hearing.

(b) * * *

(2) If requested by the hearing official, the parties to a hearing shall provide available personnel who have knowledge about the matter under review for oral or written examination.

(c) The hearing official takes whatever measures are appropriate to expedite a hearing. These measures may include, but are not limited to, the following—

* * * * *

(d) The hearing official is bound by all applicable statutes and regulations. The hearing official may not—

(1) Waive applicable statutes and regulations; or

(2) Rule them invalid.

(Authority: 20 U.S.C. 1094)

19. Section 668.90 is revised to read as follows:

§ 668.90 Initial and final decisions—Appeals.

(a)(1)(i) A hearing official issues a written initial decision in a hearing by certified mail, return receipt requested to—

(A) The designated department official who began a proceeding against an institution or third-party servicer;

(B) The institution or servicer, as applicable; and

(C) In the case of a proceeding against a third-party servicer, each institution that contracts with the servicer.

(ii) The hearing official may also transmit the notice by other, more expeditious means if practical.

(iii) The hearing official issues the decision within the latest of the following dates:

(A) The 30th day after the last submission is filed with the hearing official.

(B) The 60th day after the last submission is filed with the hearing official if the Secretary, upon request of the hearing official, determines that the unusual complexity of the case requires additional time for preparation of the decision.

(C) The 50th day after the last day of the hearing, if the hearing official does not request the parties to make any posthearing submission.

(2) The hearing official's initial decision states whether the imposition of the fine, limitation, suspension, or termination sought by the designated department official is warranted, in whole or in part. If the designated department official brought a termination action against the institution or servicer, the hearing official may, if appropriate, issue an initial decision to fine the institution or servicer, as applicable, or, rather than terminating the institution's participation or servicer's eligibility, as applicable, impose one or more limitations on the institution's participation or servicer's eligibility.

(3) Notwithstanding the provisions of paragraph (a)(2) of this section—

(i) If, in a termination action against an institution, the hearing official finds that the institution has violated the provisions of § 668.12(b)(2)(vi), the hearing official also finds that termination of the institution's participation is warranted;

(ii) If, in a termination action against a third-party servicer, the hearing official finds that the servicer has violated the provisions of § 668.82(d) (1) and (2), the hearing official also finds that termination of the institution's participation or servicer's eligibility, as applicable, is warranted;

(iii) If an action brought against an institution or third-party servicer involves its failure to provide surety in the amount specified by the Secretary under § 668.13, the hearing official must find that the amount of the surety established by the Secretary was appropriate unless the institution can demonstrate that the amount was unreasonable;

(iv) In a limitation, suspension, or termination proceeding commenced on the grounds described in § 668.15(b)(1), if the hearing official finds that an institution's Federal Stafford loan and Federal SLS cohort default rate, as defined in § 668.15(f), meets the conditions specified in § 668.15(b)(1) for initiation of limitation, suspension, or termination proceedings, the hearing official finds that the sanction sought by the designated department official is warranted, except that the hearing official finds that no sanction is warranted if the institution demonstrates that it has acted diligently to implement the default reduction measures described in Appendix D to this part;

(v) In a termination action taken against an institution or third-party servicer based on the grounds that the institution or servicer failed to comply with the requirements of § 668.23(c)(4), if the hearing official finds that the institution or servicer failed to meet those requirements, the hearing official finds that the termination is warranted;

(vi) In a termination action against an institution based on the grounds that the institution is not financially responsible under § 668.13(c)(4), the hearing official finds that the termination is warranted unless the institution demonstrates that all applicable conditions described in § 668.13(d)(3) have been met; and

(vii) In a termination action against an institution or third-party servicer on the grounds that the institution or servicer, as applicable, engaged in fraud involving the administration of any Title IV, HEA program, the hearing official finds that the termination action is warranted if the hearing official finds that the institution or servicer, as applicable, engaged in that fraud. Examples of fraud include—

(A) Falsification of any document received from a student or pertaining to a student's eligibility for assistance under a Title IV, HEA program;

(B) Falsification, including false certifications, of any document submitted by the institution or servicer to the Department of Education;

(C) Falsification, including false certifications, of any document used for or pertaining to—

(1) The legal authority of an institution to provide postsecondary education in the State in which the institution is located; or

(2) The accreditation or preaccreditation of an institution or any of the institution's educational programs or locations;

(D) Falsification, including false certifications, of any document submitted to a guaranty agency under the Federal Stafford Loan, Federal PLUS, and Federal SLS programs, an independent auditor, an eligible institution, or a third-party servicer;

(E) Falsification of any document submitted to a third-party servicer by an institution or to an institution by a third-party servicer pertaining to the institution's participation in a Title IV, HEA program; and

(F) Falsification, including false certifications, of any document pertaining to the performance of any loan collection activity, including activity that is not required by the HEA or applicable program regulations.

(4) The hearing official bases findings of fact only on evidence considered at the hearing and on matters given judicial notice. If a hearing is conducted solely through written submissions, the parties must agree to findings of fact.

(b)(1) In a suspension proceeding, the Secretary reviews the hearing official's initial decision and issues a final decision within 20 days after the initial decision. The Secretary adopts the initial decision unless it is clearly unsupported by the evidence presented at the hearing.

(2) The Secretary notifies the institution or servicer and, in the case of a suspension proceeding against a third-party servicer, each institution that contracts with the servicer of the final decision. If the Secretary suspends the institution's participation or servicer's eligibility, the suspension takes effect on the later of—

(i) The day that the institution or servicer receives the notice; or

(ii) The date specified in the designated department official's original notice of intent to suspend the institution's participation or servicer's eligibility.

(3) A suspension may not exceed 60 days unless a designated department official begins a limitation or termination proceeding under this subpart before the expiration of that period. In that case, the period may be extended until a final decision is issued in that proceeding according to paragraph (c) of this section.

(c)(1) In a fine, limitation, or termination proceeding, the hearing official's initial decision automatically

becomes the Secretary's final decision 30 days after the initial decision is issued and received by both parties unless, within that 30-day period, the institution or servicer, as applicable, or the designated department official appeals the initial decision to the Secretary.

(2)(i) A party may appeal the hearing official's initial decision by submitting to the Secretary, within 30 days after the party receives the initial decision, a brief or other written statement that explains why the party believes that the Secretary should reverse or modify the decision of the hearing official.

(ii) At the time the party files its appeal submission, the party shall provide a copy of that submission to the opposing party.

(iii) The opposing party shall submit its brief or other responsive statement to the Secretary, with a copy to the appellant, within 30 days after the opposing party receives the appellant's brief or written statement.

(iv) The appealing party may submit proposed findings of fact or conclusions of law. However, the proposed findings of fact must be supported by—

(A) The evidence introduced into the record at the hearing;

(B) Stipulations of the parties if the hearing consisted of written submissions; or

(C) Matters that may be judicially noticed.

(v) Neither party may introduce new evidence on appeal.

(vi) The initial decision of the hearing official imposing a fine or limiting or terminating the institution's participation or servicer's eligibility does not take effect pending the appeal.

(vii) The Secretary renders a final decision. The Secretary may delegate to a designated department official the functions described in paragraph (c)(2)(vii) through (ix) of this section.

(viii) In rendering a final decision, the Secretary considers only evidence introduced into the record at the hearing and facts agreed to by the parties if the hearing consisted only of written submissions and matters that may be judicially noticed.

(ix) If the hearing official finds that a termination is warranted pursuant to paragraph (a)(3) of this section, the Secretary affirms that decision. In any other case, the Secretary may affirm, modify, or reverse the initial decision, or may remand the case to the hearing official for further proceedings consistent with the Secretary's decision. If the Secretary affirms the initial decision without issuing a statement of reasons, the Secretary adopts the opinion of the hearing official as the decision of the Secretary. If the Secretary modifies, remands, or reverses the initial decision, in whole or in part, the Secretary's decision states the reasons for the action taken.

(Authority: 20 U.S.C. 1082, 1094)

20. Section 668.91 is amended by revising the heading; and revising paragraphs (a)(1), (a)(2), (b) heading, (b)(1), (b)(2) introductory text, and (c) to read as follows:

§ 668.91 Filing of requests for hearings and appeals; confirmation of mailing and receipt dates.

(a) * * *

(1) A request by an institution or third-party servicer for a hearing or show-cause opportunity, other material submitted by an institution or third-party servicer in response to a notice of proposed action under this subpart, or an appeal to the Secretary under this subpart must be filed with the designated department official by hand-delivery, mail, or facsimile transmission.

(2) Documents filed by facsimile transmission must be transmitted to the designated department official identified, either in the notice initiating the action, or, for an appeal, in instructions provided by the hearing official, as the individual responsible to receive them. A party filing a document by facsimile transmission must confirm that a complete and legible copy of the document was received by the Department of Education, and may be required by the designated department official to provide a hard copy of the document.

* * * * *

(b) *Confirmation of mailing and receipt dates.* (1) The mailing date of a notice from a designated department official initiating an action under this subpart is the date evidenced on the original receipt of mailing from the U.S. Postal Service.

(2) The date on which a request for a show-cause opportunity, a request for a hearing, other material submitted in response to a notice of action under this subpart, a decision by a hearing official, or a notice of appeal is received is, as applicable—

* * * * *

(c) *Refusals.* If an institution or third-party servicer refuses to accept a notice mailed under this subpart, the Secretary considers the notice as being received on the date that the institution or servicer refuses to accept the notice.

(Authority: 20 U.S.C. 1094)

21. Section 668.92 is revised to read as follows:

§ 668.92 Fines.

(a) In determining the amount of a fine, the designated department official, hearing official, and Secretary take into account—

(1)(i) The gravity of an institution's or third-party servicer's violation or failure to carry out the relevant statutory provision, regulatory provision, special arrangement, agreement, or limitation; or

(ii) The gravity of the institution's or servicer's misrepresentation;

(2) The size of the institution;

(3) The size of the servicer's business, including the number of institutions and students served by the servicer;

(4) In the case of a violation by a third-party servicer, the extent to which the servicer can document that the institution contributed to that violation; and

(5)(i) For purposes of assessing a fine on a third-party servicer, the extent to which violations are caused by repeated mechanical systemic unintentional errors.

(ii) The Secretary counts the total of violations caused by repeated mechanical systemic unintentional errors as a single violation.

(b) In determining the gravity of the institution's or servicer's violation, failure, or misrepresentation under paragraph (a) of this section, the designated department official, hearing official, and Secretary take into account the amount of any liability owed by the institution and any third-party servicer that contracts with the institution, and the number of students affected as a result of that violation, failure, or misrepresentation on—

(1) Improperly expended or unspent Title IV, HEA program funds received by the institution or servicer, as applicable; or

(2) Required refunds.

(c) Upon the request of the institution or third-party servicer, the Secretary may compromise the fine.

(Authority: 20 U.S.C. 1094)

22. Section 668.93 is revised to read as follows:

§ 668.93 Limitation.

A limitation may include, as appropriate to the Title IV, HEA program in question—

(a) A limit on the number or percentage of students enrolled in an institution who may receive Title IV, HEA program funds;

(b) A limit, for a stated period of time, on the percentage of an institution's total receipts from tuition and fees derived from Title IV, HEA program funds;

(c) A limit on the number or size of institutions with which a third-party servicer may contract;

(d) A limit on the number of borrower or loan accounts that a third-party servicer may service under a contract with an institution;

(e) A limit on the responsibilities that a third-party servicer may perform under a contract with an institution;

(f) A requirement for a third-party servicer to perform additional responsibilities under a contract with an institution;

(g) A requirement that an institution obtain surety, in a specified amount, to assure its ability to meet its financial obligations to students who receive Title IV, HEA program funds;

(h) A requirement that a third-party servicer obtain surety, in a specified amount, to assure the servicer's ability to meet the servicer's financial obligations under a contract; or

(i) Other conditions as may be determined by the Secretary to be reasonable and appropriate.

(Authority: 20 U.S.C. 1094)

23. Section 668.94 is revised to read as follows:

§ 668.94 Termination.

(a) A termination—

(1) Ends an institution's participation in a Title IV, HEA program or ends a third-party servicer's eligibility to contract with any institution to administer any aspect of the institution's participation in a Title IV, HEA program;

(2) Ends the authority of a third-party servicer to administer any aspect of any institution's participation in that program;

(3) Prohibits an institution or third-party servicer, as applicable, or the Secretary from making or increasing awards under that program;

(4) Prohibits an institution or third-party servicer, as applicable, from making any other new commitments of funds under that program; and

(5) If an institution's participation in the Federal Stafford Loan, Federal PLUS, or Federal SLS Program has been terminated, prohibits further guarantee commitments by the Secretary for loans under that program to students to attend that institution, and, if the institution is a lender under that program, prohibits further disbursements by the institution (whether or not guarantee commitments have been issued by the Secretary or a guaranty agency for those disbursements).

(b) After its participation in a Title IV, HEA program has been terminated, an institution may disburse or deliver funds under that Title IV, HEA program to students enrolled at the institution only in accordance with § 668.26 and with any additional requirements imposed under this part.

(c) If a third-party servicer's eligibility is terminated, the servicer must return to each institution that contracts with the servicer any funds received by the servicer under the applicable Title IV, HEA program on behalf of the institution or the institution's students or otherwise dispose of those funds under instructions from the Secretary. The servicer also must return to each institution that contracts with the servicer all records pertaining to the servicer's administration of that program on behalf of that institution.

(Authority: 20 U.S.C. 1094)

24. Section 668.95 is revised to read as follows:

§ 668.95 Reimbursements, refunds, and offsets.

(a) The designated department official, hearing official, or Secretary may require an institution or third-party servicer to take reasonable and appropriate corrective action to remedy the institution's or servicer's violation, as applicable, of any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation.

(b) The corrective action may include payment of any funds to the Secretary, or to designated recipients, that the institution or servicer, as applicable, improperly received, withheld, disbursed, or caused to be disbursed. Corrective action may, for example, relate to—

(1) With respect to the Federal Stafford Loan, Federal PLUS, and Federal SLS programs—

(i) Ineligible interest benefits, special allowances, or other claims paid by the Secretary; and

(ii) Discounts, premiums, or excess interest paid in violation of 34 CFR part 682; and

(2) With respect to all Title IV, HEA programs—

(i) Refunds required under program regulations; and

(ii) Any grants, work-study assistance, or loans made in violation of program regulations.

(c) If any final decision requires an institution or third-party servicer to reimburse or make any other payment to the Secretary, the Secretary may offset these claims against any benefits or claims due to the institution or servicer.

(Authority: 20 U.S.C. 1094)

25. Section 668.96 is revised to read as follows:

§ 668.96 Reinstatement after termination.

(a)(1) An institution whose participation in a Title IV, HEA program has been terminated may file a request for reinstatement of that participation.

(2) A third-party servicer whose eligibility to contract with any institution to administer any aspect of the institution's participation in a Title IV, HEA program has been terminated may file a request for reinstatement of that eligibility.

(b) An institution whose participation has been terminated or a third-party servicer whose eligibility has been terminated may request reinstatement only after the later of the expiration of—

(1) Eighteen months from the effective date of the termination; or

(2) A debarment or suspension under Executive Order 12549 or the Federal Acquisition Regulations, 48 CFR part 9, subpart 9.4.

(c) To be reinstated, an institution or third-party servicer must submit its request for reinstatement in writing to the Secretary and must—

(1) Demonstrate to the Secretary's satisfaction that it has corrected the violation or violations on which its termination was based, including payment in full to the Secretary or to other recipients of funds that the institution or servicer, as applicable, has improperly received, withheld, disbursed, or caused to be disbursed;

(2) Meet all applicable requirements of this part; and

(3) In the case of an institution, enter into a new program participation agreement with the Secretary.

(d) The Secretary, within 60 days of receiving the reinstatement request—

(1) Grants the request;

(2) Denies the request; or

(3) Grants the request subject to a limitation or limitations.

(Authority: 20 U.S.C. 1094; E.O. 12549 (3 CFR, 1987 Comp., p. 189), 12689 (3 CFR, 1989 Comp., p. 235))

26. Section 668.97 is revised to read as follows:

§ 668.97 Removal of limitation.

(a) An institution whose participation in a Title IV, HEA program has been limited may not apply for removal of the limitation before the expiration of 12 months from the effective date of the limitation.

(b) A third-party servicer whose eligibility to contract with any institution to administer any aspect of the institution's participation in a Title IV, HEA program has been limited may request removal of the limitation.

(c) The institution or servicer may not apply for removal of the limitation before the later of the expiration of—

(1) Twelve months from the effective date of the limitation; or

(2) A debarment or suspension under Executive Order 12549 or the Federal Acquisition Regulations, 48 CFR part 9, subpart 9.4.

(d) If the institution or servicer requests removal of the limitation, the request must be in writing and show that the institution or servicer, as applicable, has corrected the violation or violations on which the limitation was based.

(e) No later than 60 days after the Secretary receives the request, the Secretary responds to the institution or servicer—

(1) Granting its request;

(2) Denying its request; or

(3) Granting the request subject to other limitation or limitations.

(f) If the Secretary denies the request or establishes other limitations, the Secretary grants the institution or servicer, upon the institution's or servicer's request, an opportunity to show cause why the participation or eligibility, as applicable, should be fully reinstated.

(g) The institution's or servicer's request for an opportunity to show cause does not waive—

(1) The institution's right to participate in any or all Title IV, HEA programs if it complies with the continuing limitation or limitations pending the outcome of the opportunity to show cause; and

(2) The servicer's right to contract with any institution to administer any aspect of the institution's participation in any Title IV, HEA program, if the servicer complies with the continuing limitation pending the outcome of the opportunity to show cause.

(Authority: 20 U.S.C. 1094; E.O. 12549 (3 CFR, 1987 Comp., p. 189), 12689 (3 CFR, 1989 Comp., p. 235))

27. Section 668.111 is amended by revising paragraphs (a) and (b) to read as follows:

§ 668.111 Scope and purpose.

(a) This subpart establishes rules governing the appeal by an institution or third-party servicer from a final audit determination or a final program review determination arising from an audit or program review of the institution's participation in any Title IV, HEA program or of the servicer's administration of any aspect of an institution's participation in any Title IV, HEA program.

(b) This subpart applies to any participating institution or third-party servicer that appeals a final audit determination or final program review determination.

* * * * *

28. Section 668.112 is revised to read as follows:

§ 668.112 Definitions.

The following definitions apply to this subpart:

(a) *Final audit determination* means the written notice of a determination issued by a designated department official based on an audit of—

(1) An institution's participation in any or all of the Title IV, HEA programs; or

(2) A third-party servicer's administration of any aspect of an institution's participation in any or all of the Title IV, HEA programs.

(b) *Final program review determination* means the written notice of a determination issued by a designated department official and resulting from a program compliance review of—

(1) An institution's participation in any or all of the Title IV, HEA programs; or

(2) A third-party servicer's administration of any aspect of an institution's participation in any Title IV, HEA program.

(Authority: 20 U.S.C. 1094)

29. Section 668.113 is revised to read as follows:

§ 668.113 Request for review.

(a) An institution or third-party servicer seeking the Secretary's review of a final audit determination or a final program review determination shall file a written request for review with the designated department official.

(b) The institution or servicer shall file its request for review and any records or materials admissible under the terms of § 668.116 (e) and (f), no later than 45 days from the date that the institution or servicer receives the final audit determination or final program review determination.

(c) The institution or servicer shall attach to the request for review a copy of the final audit determination or final program review determination, and shall—

(1) Identify the issues and facts in dispute; and

(2) State the institution's or servicer's position, as applicable, together with the pertinent facts and reasons supporting that position.

(Authority: 20 U.S.C. 1094)

30. Section 668.114 is revised to read as follows:

§ 668.114 Notification of hearing.

(a) Upon receipt of an institution's or third-party servicer's request for review, the designated department official arranges for a hearing before a hearing official.

(b) Within 30 days of the designated department official's receipt of an institution's or third-party servicer's request for review, the hearing official notifies the designated department official and the institution or, in the case of a third-party servicer, the servicer and each institution that contracts with the servicer of the schedule for the submission of briefs by both the designated department official and, as applicable, the institution or servicer.

(c) The hearing official schedules the submission of briefs and of accompanying evidence admissible under the terms of § 668.116 (e) and (f) to occur no later than 120 days from the date that the hearing official notifies the institution or servicer.

(Authority: 20 U.S.C. 1094)

31. Section 668.116 is amended by revising paragraphs (b), (d), (e)(1), (f), and (g) to read as follows:

§ 668.116 Hearing.

* * * * *

(b) The hearing process consists of the submission of written briefs to the hearing official by the institution or third-party servicer, as applicable, and by the designated department official, unless the hearing official determines, under paragraph (g) of this section, that an oral hearing is also necessary.

* * * * *

(d) An institution or third-party servicer requesting review of the final audit determination or final program review determination issued by the designated department official shall have the burden of proving the following matters, as applicable:

(1) That expenditures questioned or disallowed were proper.

(2) That the institution or servicer complied with program requirements.

(e)(1) A party may submit as evidence to the hearing official only materials within one or more of the following categories:

(i) Department of Education audit reports and audit work papers for audits performed by the department's Office of Inspector General.

(ii) In the case of an institution, institutional audit work papers, records, and other materials, if the institution provided those work papers, records, or materials to the department no later than the date by which the institution

was required to file its request for review in accordance with § 668.113.

(iii) In the case of a third-party servicer, the servicer's audit work papers and the records and other materials of the servicer or any institution that contracts with the servicer, if the servicer provided those work papers, records, or materials to the Department of Education no later than the date that the servicer was required to file the request for review under § 668.113.

(iv) Department of Education program review reports and work papers for program reviews.

(v) Institutional or servicer records and other materials (including records and other materials of any institution that contracts with the servicer) provided to the Department of Education in response to a program review, if the records or materials were provided to the Department of Education by the institution or servicer no later than the date by which the institution or servicer was required to file its request for review in accordance with § 668.113.

(vi) Other Department of Education records and materials if the records and materials were provided to the hearing official no later than 3 days after the institution's or servicer's filing of its request for review.

* * * * *

(f) The hearing official accepts only evidence that is both admissible and timely under the terms of paragraph (e) of this section, and relevant and material to the appeal. Examples of evidence that shall be deemed irrelevant and immaterial except upon a clear showing of probative value respecting the matters described in paragraph (d) of this section include—

(1) Evidence relating to a period of time other than the period of time covered by the audit or program review;

(2) Evidence relating to an audit or program review of an institution or third-party servicer other than the institution or servicer bringing the appeal, or the resolution thereof; and

(3) Evidence relating to the current practice of the institution or servicer bringing the appeal in the program areas at issue in the appeal.

(g)(1) The hearing official may schedule an oral argument if he or she determines that an oral argument is necessary to clarify the issues and the positions of the parties as presented in the parties' written submissions.

(2) In the event that an oral argument is conducted, the designated department official makes a transcribed record of the proceedings and makes that record available to the institution or servicer and any institution that contracts with the servicer upon the institution's or servicer's request and upon its payment of a fee consistent with that prescribed under the Department of Education Freedom of Information Act regulations (34 CFR Part 5).

* * * * *

32. Section 668.123 is revised to read as follows:

§ 668.123 Collection.

To the extent that the decision of the Secretary sustains the final audit determination or program review determination, subject to the provisions of § 668.24(c)(3), the Department of Education will take steps to collect the debt at issue or otherwise effect the determination that was subject to the request for review.

(Authority: 20 U.S.C. 1094)

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAMS

33. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C 1071 to 1087–2, unless otherwise noted.

34. Section 682.200 is amended in paragraph (b) by revising paragraph (1) and adding a new paragraph (5) in the definition of "Lender" and adding a new definition of "Third- party servicer" in alphabetical order, and by revising the authority citation to read as follows:

§ 682.200 Definitions.

* * * * *

(b) * * *

Lender. (1) The term "eligible lender" is defined in section 435(d) of the Act, and in paragraphs (2) through (5) of this definition.

* * * * *

(5) The term eligible lender does not include any lender that—

(i) Is debarred or suspended, or any of whose principals or affiliates (as those terms are defined in 34 CFR part 85) is debarred or suspended under Executive Order (E.O.) 12549 (3 CFR, 1987 Comp., p. 189) or the Federal Acquisition Regulation (FAR), 48 CFR part 9, subpart 9.4;

(ii) Is an affiliate, as defined in 34 CFR part 85, of any person who is debarred or suspended under E.O. 12549 or the FAR, 48 CFR part 9, subpart 9.4; or

(iii) Employs a person who is debarred or suspended under E.O. 12549 or the FAR, 48 CFR part 9, subpart 9.4, in a capacity that involves the administration or receipt of FFEL Program funds.

* * * * *

Third-party servicer. Any State or private, profit or nonprofit organization or any individual that enters into a contract with a lender or guaranty agency to administer, through either manual or automated processing, any aspect of the lender's or guaranty agency's FFEL programs required by any statutory provision of or applicable to title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation that governs the FFEL programs, including, any applicable function described in the definition of third-party servicer in 34 CFR part 668; originating, guaranteeing, monitoring, processing, servicing, or collecting loans; claims submission; or billing for interest benefits and special allowance.

* * * * *

(Authority: 8 U.S.C 1101; 20 U.S.C. 1070 to 1087–2, 1088–1098, 1141; E.O. 12549 (3 CFR, 1987 Comp., p. 189), 12689 (3 CFR, 1989 Comp., p. 235))

35. Section 682.401 is amended by adding a new paragraph (b)(23) to read as follows:

§ 682.401 Basic program agreement.

* * * * *

(b) * * *

(23) *Third-party servicers.* The guaranty agency may not enter into a contract with a third-party servicer that the Secretary has determined does not meet the financial and compliance standards under § 682.416. The guaranty agency shall provide the Secretary with the name and address of any third-party servicer with which the agency enters into a contract and, upon request by the Secretary, a copy of that contract.

* * * * *

36. Section 682.413 is amended by revising paragraphs (a), (b), (c), and (d) to read as follows:

§ 682.413 Remedial actions.

(a)(1) The Secretary requires a lender and its third-party servicer administering any aspect of the FFEL programs under a contract with the lender to repay interest benefits and special allowance or other compensation received on a loan guaranteed by a guaranty agency, pursuant to paragraph (a)(2) of this section—

(i) For any period beginning on the date of a failure by the lender or servicer, with respect to the loan, to comply with any of the requirements set forth in § 682.406(a)(1)-(a)(6), (a)(9), and (a)(12);

(ii) For any period beginning on the date of a failure by the lender or servicer, with respect to the loan, to

meet a condition of guarantee coverage established by the guaranty agency, to the date, if any, on which the guaranty agency reinstated the guarantee coverage pursuant to policies and procedures established by the agency;

(iii) For any period in which the lender or servicer, with respect to the loan, violates the requirements of subpart C of this part; and

(iv) For any period beginning on the day after the Secretary's obligation to pay special allowance on the loan terminates under § 682.302(d).

(2) For purposes of this section, a lender and any applicable third-party servicer shall be considered jointly and severally liable for the repayment of any interest benefits and special allowance paid as a result of a violation of applicable requirements by the servicer in administering the lender's FFEL programs.

(3) For purposes of paragraph (a)(2) of this section, the relevant third party servicer shall repay any outstanding liabilities under paragraph (a)(2) of this section only if—

(i) The lender has not repaid in full the amount of the liability within 30 days; or

(ii) The lender has not made other satisfactory arrangements to pay the amount of the liability.

(b) The Secretary requires a guaranty agency to repay reinsurance payments received on a loan if the lender, third-party servicer, if applicable, or the agency failed to meet the requirements of § 682.406(a).

(c)(1) In addition to requiring repayment of reinsurance payments pursuant to paragraph (b) of this section, the Secretary may take one or more of the following remedial actions against a guaranty agency or third-party servicer administering any aspect of the FFEL programs under a contract with the guaranty agency, that makes an incomplete or incorrect statement in connection with any agreement entered into under this part or violates any applicable Federal requirement:

(i) Require the agency to return payments made by the Secretary to the agency.

(ii) Withhold payments to the agency.

(iii) Limit the terms and conditions of the agency's continued participation in the FFEL programs.

(iv) Suspend or terminate agreements with the agency.

(v) Impose a fine on the agency or servicer. For purposes of assessing a fine, repeated mechanical systemic unintentional errors shall be counted as one violation.

(vi) Require repayment from the agency and servicer pursuant to paragraph (c)(2) of this section, of interest, special allowance, and reinsurance paid on Consolidation loan amounts attributed to Consolidation loans that violate § 682.206(f)(1).

(vii) Require repayment from the agency or servicer, pursuant to paragraph (c)(2) of this section, of any related payments that the Secretary became obligated to make to others as a result of an incomplete or incorrect statement or a violation of an applicable Federal requirement.

(2) For purposes of this section, a guaranty agency and any applicable third-party servicer shall be considered jointly and severally liable for the repayment of any interest benefits, special allowance, reinsurance paid, or other compensation on Consolidation loan amounts attributed to Consolidation loans that violate § 682.206(f)(1) as a result of a violation by the servicer administering any aspect of the FFEL programs under a contract with that guaranty agency.

(3) For purposes of paragraph (c)(2) of this section, the relevant third-party servicer shall repay any outstanding liabilities under paragraph (c)(2) of this section only if—

(i) The Secretary has determined that the servicer is jointly and severally liable for the liabilities; and

(ii)(A) The guaranty agency has not repaid in full the amount of the liability within 30 days; or

(B) The guaranty agency has not made other satisfactory arrangements to pay the amount of the liability.

(d)(1) The Secretary follows the procedures described in 34 CFR part 668, subpart G, applicable to fine proceedings against schools, in imposing a fine against a lender, guaranty agency, or third-party servicer. References to "the institution" in those regulations shall be understood to mean the lender, guaranty agency, or third-party servicer, as applicable, for this purpose.

(2) The Secretary also follows the provisions of section 432(g) of the Act in imposing a fine against a guaranty agency or lender.

* * * * *

37. Section 682.414 is amended by revising paragraph (a)(1)(i) to read as follows:

§ 682.414 Records, reports, and inspection requirements for guaranty agency programs.

(a) *Records.* (1)(i) The guaranty agency shall maintain current, complete, and accurate records of each loan that it holds, including, but not limited to, the records described in paragraph (a)(1)(ii) of this section. The records must be maintained in a system that allows ready identification of each loan's current status, updated at least once every 10 business days. Any reference to a guaranty agency under this section includes a third-party servicer that administers any aspect of the FFEL programs under a contract with the guaranty agency, if applicable.

* * * * *

38. A new § 682.416 is added to subpart D to read as follows:

§ 682.416 Requirements for third-party servicers and lenders contracting with third-party servicers.

(a) *Standards for administrative capability.* A third-party servicer is considered administratively responsible if it—

(1) Provides the services and administrative resources necessary to fulfill its contract with a lender or guaranty agency, and conducts all of its contractual obligations that apply to the FFEL program in accordance with FFEL program regulations;

(2) Has business systems that are capable of meeting the requirements of part B of Title IV of the Act and with the FFEL program regulations; and

(3) Has adequate personnel who are knowledgeable about the FFEL programs.

(b) *Standards of financial responsibility.* The Secretary applies the provisions of 34 CFR 668.13(c), (d), (g), and (h) to determine that a third-party servicer is financially responsible under this part. References to "the institution" in those provisions shall be understood to mean the third-party servicer, for this purpose.

(c) *Special review of third-party servicer.* (1) The Secretary may review a third-party servicer to determine that it meets the administrative capability and financial responsibility standards in this section.

(2) In response to a request from the Secretary, the servicer shall provide evidence to demonstrate that it meets the administrative capability and financial responsibility standards in this section.

(3) The servicer may also provide evidence of why administrative action is unwarranted if it is unable to demonstrate that it meets the standards of this section.

(4) Based on the review of the materials provided by the servicer, the Secretary determines if the servicer meets the standards in this part. If the servicer does not, the Secretary may initiate an administrative proceeding under subpart G.

(d) *Past performance of third-party servicer or persons affiliated with*

servicer. Notwithstanding paragraph (b) of this section, a third-party servicer is not financially responsible if—

(1) (i) The servicer; its owner, majority shareholder, or chief executive officer; any person employed by the servicer in a capacity that involves the administration of a Title IV, HEA program or the receipt of Title IV, HEA program funds; any person, entity, or officer or employee of an entity with which the servicer contracts in a capacity that involves the administration of a Title IV, HEA program or the receipt of Title IV, HEA program funds has been convicted of, or has pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of Federal, State, or local government funds, or has been administratively or judicially determined to have committed fraud or any other material violation of law involving such funds, unless—

(A) The funds that were fraudulently obtained, or criminally acquired, used, or expended have been repaid to the United States, and any related financial penalty has been paid;

(B) The persons who were convicted of, or pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of the funds are no longer incarcerated for that crime; and

(C) At least five years have elapsed from the date of the conviction, *nolo contendere* plea, guilty plea, or administrative or judicial determination; or

(ii) The servicer, or any principal or affiliate of the servicer (as those terms are defined in 34 CFR part 85), is—

(A) Debarred or suspended under Executive Order (E.O.) 12549 or the Federal Acquisition Regulations (FAR), 48 CFR part 9, subpart 9.4; or

(B) Engaging in any activity that is a cause under 34 CFR 85.305 or 85.405 for debarment or suspension under E.O. 12549 or the FAR, 48 CFR part 9, subpart 9.4; and

(2) Upon learning of a conviction, plea, or administrative or judicial determination described in paragraph (d)(1) of this section, the servicer does not promptly remove the person, agency, or organization from any involvement in the administration of the servicer's participation in Title IV, HEA programs, including, as applicable, the removal or elimination of any substantial control, as determined under 34 CFR 668.13, over the servicer.

(e) *Independent audits.* (1) A third-party servicer shall arrange for an independent audit of its administration of the FFEL program loan portfolio unless—

(i) The servicer contracts with only one lender or guaranty agency; and

(ii) The audit of that lender's or guaranty agency's FFEL programs involves every aspect of the servicer's administration of those FFEL programs.

(2) The audit must—

(i) Examine the servicer's compliance with the Act and applicable regulations;

(ii) Examine the servicer's financial management of its FFEL program activities;

(iii) Be conducted in accordance with the standards for audits issued by the United States General Accounting Office's (GAO's) Standards for Audit of Governmental Organizations, Programs, Activities, and Functions. Procedures for audits are contained in an audit guide developed by and available from the Office of Inspector General of the Department of Education; and

(iv) Except for the initial audit, be conducted at least annually and be submitted to the Secretary within six months of the end of the audit period. The initial audit must be an annual audit of the servicer's first full fiscal year beginning after July 1, 1994, and include any period from the beginning of the first full fiscal year. The audit report must be submitted to the Secretary within six months of the end of the audit period. Each subsequent audit must cover the servicer's activities for the one-year period beginning no later than the end of the period covered by the preceding audit.

(3) Notwithstanding paragraph (e)(2)(iv) of this section the servicer shall have an audit performed at least once every two years if—

(i) The servicer administers less than $1,000,000 under the Title IV, HEA programs for the period covered by the audit; or

(ii) The servicer had no material exceptions identified in its most recently submitted audit report and that report was submitted in a timely fashion.

(4) The servicer is not required to have an audit performed for any year in which the servicer administers less than $250,000 of the principal value of the loans under the Title IV, HEA programs.

(5) Notwithstanding paragraphs (e)(3) and (4) of this section, the Secretary may, as the Secretary deems necessary, request any third-party servicer to have an audit performed on an annual basis.

(6) With regard to a third-party servicer that is a governmental entity, the audit required by this paragraph must be conducted in accordance with 31 U.S.C. 7502 and 34 CFR part 80, appendix G.

(7) With regard to a third-party servicer that is a nonprofit organization, the audit required by this paragraph must be conducted in accordance with Office of Management and Budget (OMB) Circular A–133, "Audit of Institutions of Higher Education and Other Nonprofit Institutions," as incorporated in 34 CFR 74.61(h)(3).

(f) *Contract responsibilities.* A lender that participates in the FFEL programs may not enter into a contract with a third-party servicer that the Secretary has determined does not meet the requirements of this section. The lender must provide the Secretary with the name and address of any third-party servicer with which the lender enters into a contract and, upon request by the Secretary, a copy of that contract. A third-party servicer that is under contract with a lender to perform any activity for which the records in § 682.414(a)(3)(ii) are relevant to perform the services for which the servicer has contracted shall maintain current, complete, and accurate records pertaining to each loan that the servicer is under contract to administer on behalf of the lender. The records must be maintained in a system that allows ready identification of each loan's current status.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082; E.O. 12549 (3 CFR, 1987 Comp., p. 189), 12689 (3 CFR, 1989 Comp., p. 235))

39. The title of subpart G is revised to read as follows: Subpart G—Limitation, Suspension, or Termination of Lender or Third-party Servicer Eligibility and Disqualification of Lenders and Schools

40. Section 682.700 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 682.700 Purpose and scope.

(a) This subpart governs the limitation, suspension, or termination by the Secretary of the eligibility of an otherwise eligible lender to participate in the FFEL programs or the eligibility of a third-party servicer to enter into a contract with an eligible lender to administer any aspect of the lender's FFEL programs. The regulations in this subpart apply to a lender or third-party servicer that violates any statutory provision governing the FFEL programs or any regulations, special arrangements, agreements, or limitations prescribed under those programs. These regulations apply to lenders that participate only in a guaranty agency program, lenders that participate in the FFEL programs, and third-party servicers that administer aspects of a lender's FFEL program portfolio. These regulations also govern the Secretary's disqualification of a lender or school

from participation in the FFEL programs under section 432 (h)(2) and (h)(3) of the Act.

(b) * * *

(1) (i) To a determination that an organization fails to meet the definition of "eligible lender" in section 435(d)(1) of the Act or the definition of "lender" in § 682.200, for any reason other than a violation of the prohibitions in section 435(d)(5) of the Act; or

(ii) To a determination that an organization fails to meet the standards in § 682.416;

* * * * *

41. Section 682.701 is amended by revising the definitions of "Limitation", "Suspension", and "Termination" to read as follows:

§ 682.701 Definitions of terms used in this subpart.

* * * * *

Limitation: The continuation of a lender's or third-party servicer's eligibility subject to compliance with special conditions established by agreement with the Secretary or a guaranty agency, as applicable, or imposed as the result of a limitation or termination proceeding.

Suspension: The removal of a lender's eligibility, or a third-party servicer's eligibility to contract with a lender or guaranty agency, for a specified period of time or until the lender or servicer fulfills certain requirements.

Termination: (1) The removal of a lender's eligibility for an indefinite period of time—

(i) By a guaranty agency; or

(ii) By the Secretary, based on an action taken by the Secretary, or a designated Departmental official under § 682.706; or

(2) The removal of a third-party servicer's eligibility to contract with a lender or guaranty agency for an indefinite period of time by the Secretary based on an action taken by the Secretary, or a designated Departmental official under § 682.706.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

42. Section 682.702 is amended by redesignating paragraph (c) as paragraph (d); adding a new paragraph (c); and removing "(c)" in paragraph (a) and adding, in its place "(d)" to read as follows:

§ 682.702 Effect on participation.

* * * * *

(c) A limitation imposes on a third-party servicer—

(1) A limit on the number of loans or accounts or total amount of loans that the servicer may service;

(2) A limit on the number of loans or accounts or total amount of loans that the servicer is administering under its contract with a lender or guaranty agency; or

(3) Other reasonable requirements or conditions, including those described in § 682.709.

* * * * *

43. Section 682.703 is amended by revising paragraph (a) and paragraph (b) introductory text to read as follows:

§ 682.703 Informal compliance procedure.

(a) The Secretary may use the informal compliance procedure in paragraph (b) of this section if the Secretary receives a complaint or other reliable information indicating that a lender or third-party servicer may be in violation of applicable laws, regulations, special arrangements, agreements, or limitations.

(b) Under the informal compliance procedure, the Secretary gives the lender or servicer a reasonable opportunity to—

* * * * *

44. Section 682.704 is amended by revising paragraphs (a)(1), (b), (c), and (d)(2)(ii) to read as follows:

§ 682.704 Emergency action.

(a) * * *

(1) Receives reliable information that the lender or a third-party servicer with which the lender contracts is in violation of applicable laws, regulations, special arrangements, agreements, or limitations pertaining to the lender's portfolio of loans;

* * * * *

(b) The Secretary begins an emergency action by notifying the lender or third-party servicer, by certified mail, return receipt requested, of the action and the basis for the action.

(c) The action becomes effective on the date the notice is mailed to the lender or third-party servicer.

(d) * * *

(2) * * *

(ii) Upon the written request of the lender or third-party servicer, the Secretary may provide the lender or servicer with an opportunity to demonstrate that the emergency action is unwarranted.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

45. Section 682.705 is revised to read as follows:

§ 682.705 Suspension proceedings.

(a) *Scope.* (1) A suspension by the Secretary removes a lender's eligibility under the FFEL programs or a third-party servicer's ability to enter into contracts with eligible lenders, and the Secretary does not guarantee or reinsure a new loan made by the lender or new loan serviced by the servicer during a period not to exceed 60 days from the date the suspension becomes effective, unless—

(i) The lender or servicer and the Secretary agree to an extension of the suspension period, if the lender or third-party servicer has not requested a hearing; or

(ii) The Secretary begins a limitation or a termination proceeding.

(2) If the Secretary begins a limitation or a termination proceeding before the suspension period ends, the Secretary may extend the suspension period until the completion of that proceeding, including any appeal to the Secretary.

(b) *Notice.* (1) The Secretary, or a designated Departmental official, begins a suspension proceeding by sending the lender or servicer a notice by certified mail with return receipt requested.

(2) The notice—

(i) Informs the lender or servicer of the Secretary's intent to suspend the lender's or servicer's eligibility for a period not to exceed 60 days;

(ii) Describes the consequences of a suspension;

(iii) Identifies the alleged violations on which the proposed suspension is based;

(iv) States the proposed date the suspension becomes effective, which is at least 20 days after the date of mailing of the notice;

(v) Informs the lender or servicer that the suspension will not take effect on the proposed date, except as provided in paragraph (c)(8) of this section, if the Secretary receives at least five days prior to that date a request for an oral hearing or written material showing why the suspension should not take effect; and

(vi) Asks the lender or servicer to correct voluntarily any alleged violations.

(c) *Hearing.* (1) If the lender or servicer does not request an oral hearing but submits written material, the Secretary, or a designated Departmental official, considers the material and—

(i) Dismisses the proposed suspension; or

(ii) Determines that the proposed suspension should be implemented and notifies the lender or servicer of the effective date of the suspension.

(2) If the lender or servicer requests an oral hearing within the time specified in paragraph (b)(2)(v) of this section, the Secretary schedules the date and place of the hearing. The date is at least 15 days after receipt of the request from the lender or servicer. No proposed suspension takes effect until a hearing is held.

(3) The oral hearing is conducted by a presiding officer who—

(i) Ensures that a written record of the hearing is made;

(ii) Considers relevant written material presented before the hearing and other relevant evidence presented during the hearing; and

(iii) Issues a decision based on findings of fact and conclusions of law that may suspend the lender's or servicer's eligibility only if the presiding officer is persuaded that the suspension is warranted by the evidence.

(4) The formal rules of evidence do not apply, and no discovery, as provided in the Federal Rules of Civil Procedure (28 U.S.C. Appendix), is required.

(5) The presiding officer shall base findings of fact only on evidence considered at or before the hearing and matters given official notice.

(6) The initial decision of the presiding officer is mailed to the lender or servicer.

(7) The Secretary automatically reviews the initial decision of the presiding officer. The Secretary notifies the lender or servicer of the Secretary's decision by mail.

(8) A suspension takes effect on either a date that is at least 20 days after the date the notice of a decision imposing the suspension is mailed to the lender or servicer, or on the proposed effective date stated in the notice sent under paragraph (b) of this section, whichever is later.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

46. Section 682.706 is revised to read as follows:

§ 682.706 Limitation or termination proceedings.

(a) *Notice.* (1) The Secretary, or a designated Departmental official, begins a limitation or termination proceeding, whether a suspension proceeding has begun, by sending the lender or third-party servicer a notice by certified mail with return receipt requested.

(2) The notice—

(i) Informs the lender or servicer of the Secretary's intent to limit or terminate the lender's or servicer's eligibility;

(ii) Describes the consequences of a limitation or termination;

(iii) Identifies the alleged violations on which the proposed limitation or termination is based;

(iv) States the limits which may be imposed, in the case of a limitation proceeding;

(v) States the proposed date the limitation or termination becomes effective, which is at least 20 days after the date of mailing of the notice;

(vi) Informs the lender or servicer that the limitation or termination will not take effect on the proposed date if the Secretary receives, at least five days prior to that date, a request for an oral hearing or written material showing why the limitation or termination should not take effect;

(vii) Asks the lender or servicer to correct voluntarily any alleged violations; and

(viii) Notifies the lender or servicer that the Secretary may collect any amount owed by means of offset against amounts owed to the lender by the Department and other Federal agencies.

(b) *Hearing.* (1) If the lender or servicer does not request an oral hearing but submits written material, the Secretary, or a designated Departmental official, considers the material and—

(i) Dismisses the proposed limitation or termination; or

(ii) Notifies the lender or servicer of the date the limitation or termination becomes effective.

(2) If the lender or servicer requests a hearing within the time specified in paragraph (a)(2)(vi) of this section, the Secretary schedules the date and place of the hearing. The date is at least 15 days after receipt of the request from the lender or servicer. No proposed limitation or termination takes effect until a hearing is held.

(3) The hearing is conducted by a presiding officer who—

(i) Ensures that a written record of the hearing is made;

(ii) Considers relevant written material presented before the hearing and other relevant evidence presented during the hearing; and

(iii) Issues an initial decision, based on findings of fact and conclusions of law, that may limit or terminate the lender's or servicer's eligibility if the presiding officer is persuaded that the limitation or termination is warranted by the evidence.

(4) The formal rules of evidence do not apply, and no discovery, as provided in the Federal Rules of Civil Procedure, is required.

(5) The presiding officer shall base findings of fact only on evidence presented at or before the hearing and matters given official notice.

(6) If a termination action is brought against a lender or third-party servicer and the presiding officer concludes that a limitation is more appropriate, the presiding officer may issue a decision imposing one or more limitations on a lender or third-party servicer rather than terminating the lender's or servicer's eligibility.

(7) The initial decision of the presiding officer is mailed to the lender or servicer.

(8) Any time schedule specified in this section may be shortened with the approval of the presiding officer and the consent of the lender or servicer and the Secretary or designated Departmental official.

(9) The presiding officer's initial decision automatically becomes the Secretary's final decision 20 days after it is issued and received by both parties unless the lender, servicer, or designated Departmental official appeals the decision to the Secretary within this period.

(c) Notwithstanding the other provisions of this section, if a lender or a lender's owner or officer or third-party servicer or servicer's owner or officer, respectively, is convicted of or pled *nolo contendere* or guilty to a crime involving the unlawful acquisition, use, or expenditure of FFEL program funds, that conviction or guilty plea is grounds for terminating the lender's or servicer's eligibility, respectively, to participate in the FFEL programs.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

47. Section 682.707 is amended by revising paragraphs (a) introductory text and (d) to read as follows:

§ 682.707 Appeals in a limitation or termination proceeding.

(a) If the lender, third-party servicer, or designated Departmental official appeals the initial decision of the presiding officer in accordance with § 682.706(b)(9)—

* * * * *

(d) If the presiding officer's initial decision would limit or terminate the lender's or servicer's eligibility, it does not take effect pending the appeal unless the Secretary determines that a stay of the date it becomes effective would seriously and adversely affect the FFEL programs or student or parent borrowers.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

48. Section 682.708 is amended by revising paragraph (b) to read as follows:

§ 682.708 Evidence of mailing and receipt dates.

* * * * *

(b) If a lender or third-party servicer refuses to accept a notice mailed under this subpart, the Secretary considers the notice as being received on the date that the lender or servicer refuses to accept the notice.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

49. Section 682.709 is revised to read as follows:

§ 682.709 Reimbursements, refunds, and offsets.

(a) As part of a limitation or termination proceeding, the Secretary, or a designated Departmental official, may require a lender or third-party servicer to take reasonable corrective action to remedy a violation of applicable laws, regulations, special arrangements, agreements, or limitations.

(b) The corrective action may include payment to the Secretary or recipients designated by the Secretary of any funds, and any interest thereon, that the lender, or, in the case of a third-party servicer, the servicer or the lender that has a contract with a third-party servicer, improperly received, withheld, disbursed, or caused to be disbursed. A third-party servicer may be held liable up to the amounts specified in § 682.413(a)(2).

(c) If a final decision requires a lender, a lender that has a contract with a third-party servicer, or a third-party servicer to reimburse or make any payment to the Secretary, the Secretary may, without further notice or opportunity for a hearing, proceed to offset or arrange for another Federal agency to offset the amount due against any interest benefits, special allowance, or other payments due to the lender, the lender that has a contract with the third-party servicer, or the third-party servicer. A third-party servicer may be held liable up to the amounts specified in § 682.413(a)(2).

(Authority: 20 U.S.C. 1080, 1082, 1094)

50. Section 682.710 is amended by revising paragraphs (a), (b), and (d) to read as follows:

§ 682.710 Removal of limitation.

(a) A lender or third-party servicer may request removal of a limitation imposed by the Secretary in accordance with the regulations in this subpart at any time more than 12 months after the date the limitation becomes effective.

(b) The request must be in writing and must show that the lender or servicer has corrected any violations on which the limitation was based.

* * * * *

(d)(1) If the Secretary denies the request or establishes other limitations, the lender or servicer, upon request, is given an opportunity to show why all limitations should be removed.

(2) A lender or third-party servicer may continue to participate in the FFEL programs, subject to any limitation imposed by the Secretary under paragraph (c)(3) of this section, pending a decision by the Secretary on a request under paragraph (d)(1) of this section.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

51. Section 682.711 is amended by revising paragraphs (a), (b)(1), (b)(2), (e), and the authority citation following the section to read as follows:

§ 682.711 Reinstatement after termination.

(a) A lender or third-party servicer whose eligibility has been terminated by the Secretary in accordance with the regulations in this subpart may request reinstatement of its eligibility at any time more than 18 months after the date the termination becomes effective.

(b) * * *

(1) The lender or servicer has corrected any violations on which the termination was based; and

(2) The lender or servicer meets all requirements for eligibility.

* * * * *

(e)(1) If the Secretary denies the lender's or servicer's request or allows reinstatement subject to limitations, the lender or servicer, upon request, is given an opportunity to show why its eligibility should be reinstated and all limitations removed.

(2) A lender or third-party servicer whose eligibility to participate in the FFEL programs is reinstated subject to limitations imposed by the Secretary pursuant to paragraph (d)(3) of this section, may participate in those programs, subject to those limitations, pending a decision by the Secretary on a request under paragraph (e)(1) of this section.

(Authority: 20 U.S.C. 1080, 1082, 1085, 1094)

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BILLING CODE 4000–01–U

federal register

Thursday
February 17, 1994

Part III

Department of Education

Federal Direct Student Loan Program; Notice

DEPARTMENT OF EDUCATION

Federal Direct Student Loan Program

AGENCY: Department of Education.

ACTION: Notice of standards for participation and solicitation of applications.

SUMMARY: The Secretary of Education issues standards for participation in the Federal Direct Student Loan (Direct Loan) Program for the 1995–1996 academic year, which is the academic year beginning July 1, 1995. The Secretary also invites applications from schools to participate in the Direct Loan Program for the 1995–1996 academic year. This notice relates to the Federal Direct Stafford Loan Program, the Federal Direct Unsubsidized Stafford Loan Program, and the Federal Direct PLUS Program, collectively referred to as the Direct Loan Program.

EFFECTIVE DATES: Deadline dates for the transmittal of applications are given elsewhere in this notice. The standards for participation in this notice are effective 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 standards, call or write to the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Barbara Ragon, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202–5162. 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: The Student Loan Reform Act of 1993, enacted on August 10, 1993, established the Direct Loan Program under the Higher Education Act of 1965, as amended (HEA). See Subtitle A of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66). Under the Direct Loan Program, loan capital is provided directly to student and parent borrowers by the Federal Government rather than through private lenders.

Background

The statute directs the Secretary to exercise his discretion in the selection of schools so that the loans made under the Direct Loan Program will represent 40 percent of the new student loan volume for academic year 1995–1996, the second year of this program. See section 453(a)(2) of the HEA.

The standards for participation in the second year of the Direct Loan Program are issued in this notice in final form. They do not encompass standards, criteria, procedures, and other regulations to implement the Direct Loan Program in the 1995–1996 and subsequent academic years. Those program regulations will be developed through negotiated rulemaking to the extent practicable. The Secretary expects to publish final program regulations by December 1, 1994. The Secretary anticipates publishing standards for repayment of Direct Loans and standards for Federal Direct Consolidation Loans for the 1994–1995 academic year by May 1994. In addition, the Secretary anticipates publishing standards and procedures for loan origination for the 1995–1996 academic year by April 1994. Both sets of standards, which will be published in final form, will be determined with as much input from the higher education community as practicable.

A school may participate in both the Federal Family Education Loan (FFEL) Program and the Direct Loan Program or only in the Direct Loan Program. A school that is selected to participate in the Direct Loan Program but wishes to withdraw after publication of the rules for loan origination or the other program regulations for the 1995–1996 academic year will be allowed a reasonable period to do so.

I. Eligibility Requirements

A. Eligibility for Federal Family Education Loan Program

To participate in the Direct Loan Program in the 1995–1996 academic year, a school must be eligible to participate in the FFEL Program. Among other requirements, a school must have a cohort default rate of less than 25 percent for one of the three most recent fiscal years for which data are available, unless the school is exempt from this requirement under section 435(a)(3)(C) of the HEA. That section provides that until July 1, 1994, (a) Historically Black Colleges and Universities as defined in section 322(2) of the HEA, (b) tribally controlled community colleges within the meaning of section 2(a)(4) of the Tribally Controlled Community College Assistance Act of 1978, and (c) Navajo Community Colleges under the Navajo Community College Act are exempt from the cohort default rate requirement.

B. Default Rate Requirement for the Direct Loan Program

The Secretary believes that it is not in the best interest of the Direct Loan Program to allow a school to participate in the 1995–1996 academic year if there is a high probability that the school will lose its statutory eligibility to participate in the Federal student loan programs. Therefore, the Secretary will continue to select schools for the Direct Loan Program that also meet the stricter default rate requirements adopted for that program for the 1994–1995 academic year. Consequently, in order for a school to participate in the 1995–1996 academic year, the school must also have a cohort default rate of less than 25 percent in one of the two most recent fiscal years for which data are available at the time of the first selection decision following its application.

If a statutory exemption from the three-year default rate requirement in section 435(a) is extended beyond July 1, 1994, the Secretary reserves the right to waive the two-year cohort default rate requirement for any school exempted from the three-year requirement. The Secretary may select a school that is currently exempt from the statutory requirement on a provisional basis pending a decision by the Congress on extending the exemption.

C. Consortia

If schools apply as a consortium, each school must be an eligible institution. Schools in a consortium interact with the Secretary in the same manner as other schools with one exception: communication between the Secretary and the schools in the consortium is consolidated and channeled through a single point.

II. Selection Criteria

The Secretary will select schools to participate in the Direct Loan Program in the 1995–1996 academic year from among those that apply to participate. An application will be evaluated on the basis of whether the school is willing to participate electronically and whether it is capable of administering the program. From among eligible schools that meet these criteria, the Secretary will, to the extent possible, select schools that are reasonably representative in terms of several factors.

A. Electronic capability

Schools participating in the campus-based programs, which include the Federal Perkins Loan Program, the Federal Supplemental Educational Opportunity Grant Program, and the Federal Work-Study Program, must do so electronically. The majority of schools participating in the Federal Pell Grant Program also do so electronically. The Secretary intends to make maximum use of available technology in

the Direct Loan Program and will therefore give strong consideration to whether the school is willing to participate in the program electronically.

B. Administrative Capability

In selecting schools for the 1995–1996 academic year, the Secretary will evaluate a school's demonstrated capability in administering student financial aid programs. While the Secretary retains discretion to evaluate all relevant circumstances, the Secretary has identified certain factors as indicators of a lack of administrative capability. These factors are listed in the standards for participation in this notice.

C. Representativeness

In selecting schools from among eligible applicants that are capable of administering the Direct Loan Program and are willing to participate electronically, the Secretary will select, to the extent practicable, schools that are reasonably representative in terms of several factors. These factors are listed in the standards for participation in this notice.

III. Selection Process

A. Currently Pending Applications

A school that has been selected to participate in the Direct Loan Program for the 1994–1995 academic year, and an eligible school that applied to participate in the program for that year but was not selected, need not submit an application for the 1995–1996 academic year. If an eligible school that applied but was not selected for participation in the first year wishes not to be considered for participation in the second year, it should notify the Secretary.

B. Rolling Application and Selection Process

At the request of the higher education community, the Secretary will employ a rolling application and selection process. As provided in the solicitation of applications in this notice, the Secretary has established up to three deadlines. The first is March 30, 1994. By June 15, 1994, the Secretary will select schools from all applications received by the first deadline, including applications submitted for the 1994–1995 academic year. If the loan volume of the selected schools represents less than 40 percent of the new student loan volume for the 1995–1996 academic year, the Secretary will select additional schools from applications submitted by July 1, 1994. The Secretary will select these schools by September 15, 1994. At this point, if the loan volume of all selected schools represents less than 40 percent of the new student loan volume for the 1995–1996 academic year, the Secretary will select additional schools from applications submitted by October 1, 1994. The Secretary will select these schools by November 15, 1994.

Shortly after each selection, the Secretary will publish lists of selected schools in the **Federal Register**. The Secretary emphasizes that the Department will stop selecting schools for the 1995–1996 academic year as soon as the new student loan volume of the selected schools comprises 40 percent of the total volume for that academic year. It is possible that the 40 percent cut-off will be reached by the first or second application deadline. Thus, potential participants are strongly encouraged to submit applications early.

Waiver of Rulemaking

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. While the Secretary has consulted with members of the higher education community in the development of the standards in this notice, the timely implementation of the Direct Loan Program for the 1995–1996 academic year does not permit the solicitation of further public comment.

The increase from five percent of new student loan volume in the first year of the program to 40 percent in the second year means that the number of schools participating in the program in the second year is likely to increase from 104 to over 2,000. Several thousand applications are expected to be reviewed. In order to determine each applicant's eligibility and evaluate its administrative capability, the Secretary must research several different types of records. The Secretary estimates that up to 75 days will be needed to complete the review of the expected volume of applications and make selection decisions.

To ensure successful implementation of the Direct Loan Program in the second year, schools need to receive program and software training, integrate Direct Loan Program materials into school publications, and interface Direct Loan software and origination procedures with the school's own systems and procedures. The Secretary believes that the training of school personnel, the development and distribution of materials, and the updating of direct loan systems and procedures must begin by June 1994. These preparations require that the Secretary initiate the school selection process as soon as possible.

In light of the preparations required to accommodate the dramatic growth in the Direct Loan Program in the 1995–1996 academic year, the Secretary finds that the requirements for the second-year implementation of the program do not permit the solicitation of further public comment on the standards for participation in that year. Therefore, the Secretary finds that such a solicitation would be impracticable and contrary to the public interest under 5 U.S.C. 553(b)(B).

STANDARDS FOR PARTICIPATION IN THE DIRECT LOAN PROGRAM—1995–1996 ACADEMIC YEAR

I. Eligibility Requirements

A. In order to participate in the Direct Loan Program, a school must meet the eligibility requirements in section 435(a) of the HEA and in paragraph I.C. of these standards. If schools apply as a consortium, each school must meet these eligibility requirements.

B. Under section 435(a), a school must have a cohort default rate of less than 25 percent for at least one of the three most recent fiscal years for which data are available, unless the school is exempt from this requirement under section 435(a)(3)(C). That section provides that until July 1, 1994, (a) Historically Black Colleges and Universities are defined in section 322(2) of the HEA, (b) tribally controlled community colleges within the meaning of section 2(a)(4) of the Tribally Controlled Community College Assistance Act of 1978, and (c) Navajo Community Colleges under the Navajo Community College Act are exempt from the cohort default rate requirement. C.1. In order to participate in the Direct Loan Program, a school must also have a cohort default rate of less than 25 percent for one of the two most recent fiscal years for which data are available at the time of the first selection decision following its application.

2. If a statutory exemption from the three-year default rate requirement in section 435(a) is extended beyond July 1, 1994, the Secretary reserves the right to waive the two-year cohort default rate requirement for any school exempted from the three-year requirement.

II. Selection Criteria

A. The Secretary selects schools to participate in the Direct Loan Program in the 1995–1996 academic year from among those that apply to participate. In evaluating an application from a school that is eligible to participate in the Direct Loan Program, the Secretary considers two factors:

1. Whether the school is willing to participate (*i.e.* communicate with the Secretary) electronically.

2. Whether the school is capable of administering the Direct Loan Program. While the Secretary retains discretion to evaluate all relevant circumstances, any of the following factors would indicate that the school is not administratively capable:

a. The school is on the reimbursement system of payment for any of the programs under subparts 1 or 3 of part A, part C, or part E of title IV of the HEA.

b. The school is overdue on program or financial reports or audits required under title IV of the HEA.

c. The school is subject to an emergency action or a proposed or final limitation, suspension, or termination action under sections 428(b)(1)(T), 432(h), or 487(c) of the HEA.

d. In the opinion of the Secretary, the school has had significant deficiencies for any of the programs under title IV of the HEA, including deficiencies demonstrated by audits or program reviews submitted or conducted during the five calendar years immediately preceding the date of application.

B. In selecting schools from among eligible applicants that are capable of administering the Direct Loan Program and are willing to participate electronically, the Secretary, to the extent possible, selects schools that are reasonably representative in terms of anticipated loan volume, length of academic program, control of the school, highest degree offered, size of student enrollment, geographic location, annual loan volume, and default experience.

III. Selection Process

A. A school that has been selected to participate in the Direct Loan Program for the 1994–1995 academic year, and an eligible school that applied to participate in the program for that year but was not selected, need not submit an application for the 1995–1996 academic year.

B. By June 15, 1994, the Secretary will select schools from all applications received by March 30, 1994.

C. If the loan volume of the selected schools represents less than 40 percent of the new student loan volume for the 1995–1996 academic year, the Secretary will select additional schools from applications submitted by July 1, 1994. The Secretary will select these schools by September 15, 1994.

D. If the loan volume of all selected schools represents less than 40 percent of the new student loan volume for the 1995–1996 academic year, the Secretary will select additional schools from applications submitted by October 1, 1994. The Secretary will select these schools by November 15, 1994. (20 U.S.C. 1087a *et seq.*)

Solicitation of Applications for Participation in the Direct Loan Program—1995–1996 Academic Year

Purpose of program: To provide loans to enable a student or parent to pay the costs of the student's attendance at a postsecondary school. Under the Direct Loan Program, loan capital is provided directly to student and parent borrowers by the Federal Government rather than through private lenders.

Eligible applicants: Colleges, universities, graduate and professional schools, and vocational and technical schools that meet the definition of an eligible institution under section 435(a) of the HEA.

Deadlines for transmittal of applications: March 30, 1994; July 1, 1994; and October 1, 1994.

For information contact: Barbara Ragon, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–5162. 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.

Application form and instructions: The Secretary has developed an application form for a school to use to apply to participate in the Direct Loan Program. A copy of the application form is included as an Appendix to this notice. On this form, the signature of the President or Chief Executive Officer (CEO) of the institution is required.

If a school desires to participate in both the FFEL Program and the Direct Loan Program, it must include an estimate of the percentage of the institution's anticipated new student loan volume that will be made under the Direct Loan Program. In addition, an applying school must indicate whether it is willing to participate in the Direct Loan Program electronically.

If a school is applying as part of a consortium, it must indicate the exact names of all schools in the consortium and the name of the destination point (school or outside entity) for the consortium.

In order to be considered for participation in the 1995–1996 academic year, a school must complete the application and submit it to the address below as soon as possible, but no later than the final deadline date.

A school may mail or fax the application to: U.S. Department of Education, Office of Postsecondary Education, ROB–3, Federal Direct Loan Task Force, room 4025, 400 Maryland Avenue, SW., Washington, DC 20202–5162, FAX: (202) 260–6718, (202) 260–6705, or (202) 260–6706.

(Catalog of Federal Domestic Assistance Number 84.268, Federal Direct Student Loan Program)

Dated: February 9, 1994.

Richard W. Riley,

Secretary of Education.

BILLING CODE 4000-01-P-M

Form Approved - O.M.B. No. 1840-0664 Expiration Date: 5/94

Federal Direct Student Loan Program School Participation Application

Section I: School Information

Please see Instructions on back of Application.

I-A. School Name: _____

I-B. Federal Family Education Loan Program Code: _____

I-C. Address of School President or Chief Executive Officer: _____

_____

_____

I-D. Telephone Number of School President or Chief Executive Officer: _____

I-E. FAX Number of School President or Chief Executive Officer: _____

I-F. IRS Employer Identification Number: _____

I-G. Printed Name of School President or Chief Executive Officer: _____

I-H. Signature of School President or Chief Executive Officer: _____

Section II: School Participation

II-A. Are you willing to participate in the Direct Loan Program electronically? Yes ☐ No ☐

II-B. Would you like to participate in both the Direct Loan Program and the FFEL Program? Yes ☐ No ☐

II-C. If you indicated "yes" in II-B, what percentage of estimated loan volume would be made under the Direct Loan Program? _____

If you are not applying as a consortium, then you do not need to complete Section III.

Section III: School Consortium Information

Note that all schools in the consortium must file an application and be sure to complete the matrix below:

Destination Point: _____ FFEL # of Destination Point (if a school) _____

NAME OF SCHOOL	FFEL # OF SCHOOL

Continue on a separate sheet of paper if necessary.

Direct Loans

Direct Loan Program Application Instructions

I-A School Name - Enter the name of your institution as it appears on the Federal Family Education Loan (FFEL) Program Participation Agreement (PPA). If the name of the school has changed since the PPA was signed, enter the school's new name, which should be currently on file with the Department.

I-B FFELP Code - Enter the six-digit school identification number under which your school receives its FFEL funds and FFEL default rate notifications. Note that only one FFEL code per application will be accepted. Institutions which receive funds from the Department under more than one FFEL code and are consequently notified of more than one default rate must apply for the Direct Loan Program under separate FFEL numbers.

I-C President/CEO Address - Enter the address of the president or chief executive officer who is authorizing the school's application to the Direct Loan Program. If the address of the school has changed since the PPA, enter the new address, which should be currently on file with the Department.

I-D Telephone Number - Enter the telephone number of the president or chief executive officer authorizing your school's application to the Direct Loan Program.

I-E FAX Number - Enter the FAX number of the president or chief executive officer authorizing your school's application to the Direct Loan Program.

I-F IRS Employer Identification Number - Enter your school's nine-digit IRS employer identification number. This is the tax identification number issued to businesses by the IRS.

I-G President/CEO Printed Name - Please print the name of the president or chief executive officer authorizing your school's application to the Direct Loan Program and whose signature is in the signature block.

I-H President/CEO Signature - The signature of the president or chief executive officer authorizes the school's application to the Direct Loan Program. This signature is necessary for a school to be considered for acceptance into the Direct Loan Program.

II-A Method of Participation - Check the box that indicates whether your school is willing to participate electronically in the Direct Loan Program. Electronic participation means that a school will process loans using either a mainframe or personal computer.

II-B Type of Participation - If your school wishes to administer all of its new loans through the Direct Loan Program, check the box which indicates No and skip question II-C. If your school wishes to administer some of its new loans through the FFEL Program and some of its new loans through the Direct Loan Program, check the box which indicates Yes and do not skip question II-C.

II-C Percentage of Loan Volume - Enter the percentage that you anticipate will be made under the Direct Loan Program. For example, if a school anticipates that roughly three quarters of the school's total loan volume will be committed to the Direct Loan Program, then the school should indicate 75% in this blank.

III Consortium Information - For a school to be a part of a consortium it must possess a six-digit school identification number under which it has received its FFEL funds and FFEL default rates. Schools which are part of a consortium will participate in the Direct Loan Program in the same manner as the other Direct Loan schools except that the communication between the Secretary and the schools in consortia is through a single destination point, which may be a school or another entity.

In the space provided please indicate the name (and FFEL number if the destination point is a school) of the destination point for your consortium. In the additional space provided, list the names and corresponding FFEL numbers of all members of your consortium.

Public reporting burden for this collection of information is estimated to average 12 minutes per response, the estimated burden to complete the statement is 20 minutes, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project, 1840-0664, Washington, DC 20503.

Applications should be sent to:

U.S. Department of Education
Office of Postsecondary Education, ROB-3
Federal Direct Loan Task Force, Room 4025
400 Maryland Avenue, SW
Washington, DC 20202-5162
FAX (202) 260-6718, (202) 260-6705, or (202) 260-6706

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federal register

Thursday
February 17, 1994

Part IV

Department of Transportation

Coast Guard

33 CFR Part 151
Shipboard Oil Pollution Emergency Plans; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 151

[CGD 93–030]

RIN 2115–AE44

Shipboard Oil Pollution Emergency Plans

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes regulations to require all U.S. flag oil tankers of 150 gross tons and above and all other U.S. flag ships of 400 gross tons and above, to carry approved shipboard oil pollution emergency plans. These regulations would also require foreign oil tankers of 150 gross tons and above and other foreign ships of 400 gross tons and above, to carry evidence of compliance with Regulation 26 when in the navigable waters of the United States. This proposal would implement the requirements of Regulation 26 of Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978, as amended (MARPOL 73/78). The purpose of Regulation 26 is to improve response capabilities and minimize the environmental impact of oil discharges from ships.

DATES: Comments must be received on or before April 18, 1994.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 93–030), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. Comments on collection of information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection and copying in room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Ms. Jacqueline L. Sullivan, Project Counsel and Project Manager, Oil Pollution Act (OPA 90) Staff (G–MS), (202) 267–6404, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 93–030) and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal after reviewing the comments.

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

Drafting Information

The principal person involved in drafting this document is Ms. Jacqueline L. Sullivan, Project Counsel and Project Manager.

Background and Purpose

MARPOL 73/78

The Act to Prevent Pollution from Ships (33 U.S.C. 1901 *et seq.*) (the Act) authorizes the Coast Guard to administer and enforce Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978, as amended (MARPOL 73/78). Annex I of MARPOL 73/78 is entitled "Regulations for the Prevention of Pollution by Oil" and is designed to prevent the discharge of oil into the marine environment. MARPOL 73/78 defines oil as petroleum in any form, including crude oil, fuel oil, sludge, oil refuse and refined products; it does not include animal or vegetable based oil or noxious liquid substances.

Regulation 26

The Marine Environment Protection Committee (MEPC) of the International Maritime Organization (IMO) adopted Regulation 26 of Annex I of MARPOL 73/78 at its 31st session in July 1991. Regulation 26 requires every oil tanker of 150 gross tons and above and every other ship of 400 gross tons and above to carry on board a shipboard oil pollution emergency plan approved by its flag state. This requirement entered into force for party states, including the United States, on April 4, 1993, for new ships and enters into force on April 4, 1995, for existing ships.

The 32nd session of IMO in March 1992 adopted a set of guidelines (Resolution MEPC.54(32)) with more specific information for the preparation of shipboard oil pollution emergency plans. The guidelines are intended to assist parties to Annex I of MARPOL 73/78 in developing regulations for domestic implementation of Regulation 26, and are the basis of this proposal.

Shipboard Oil Pollution Emergency Plans

Regulation 26 requires that plans be prepared according to the guidelines developed by IMO and written in the working language of the ship's master and officers. Plans must consist at least of—

(1) The procedure to be followed by the master or other persons having charge of the ship to report an oil pollution incident, as required in article 8 and Protocol I of MARPOL 73/78;

(2) The list of authorities or persons to be contacted in the event of an oil pollution incident;

(3) A detailed description of the actions to be taken immediately by persons on board to reduce or control the discharge of oil following the incident; and

(4) The procedures and point of contact on the ship for coordinating shipboard activities with national and local authorities in responding to the pollution.

The Regulation 26 guidelines expand on the four mandatory provisions of Regulation 26, and also address the following non-mandatory provisions: Plans and diagrams, ship-carried response equipment, public affairs, recordkeeping, plan review, and plan testing.

Definitions

The proposed regulations would be inserted in part 151 of title 33 of the Code of Federal Regulations (CFR), which implements other provisions of MARPOL 73/78. Most of the terms used in the proposal are currently defined in 33 CFR 151.05. Some of the more important definitions are repeated here

as an aid to understanding this proposal.

Ship means a vessel of any type whatsoever, operating in the marine environment. This includes hydrofoils, air-cushion vehicles, submersibles, floating craft whether self-propelled or not, and fixed or floating drilling rigs and other platforms.

Oceangoing ship means a ship that—

(1) Is operated under the authority of the United States and engages in international voyages;

(2) Is operated under the authority of the United States and is certificated for ocean service;

(3) Is operated under the authority of the United States and is certificated for coastwise service beyond 3 miles from land;

(4) Is operated under the authority of the United States and operates at any time seaward of the outermost boundary of the territorial sea of the United States as defined in 33 CFR 2.05; or

(5) Is operated under the authority of a country other than the United States.

The term "oceangoing" ship is used to apply MARPOL 73/78 requirements in 33 CFR parts 151 and 155, while the term "seagoing" ship is used in 33 CFR part 157. Both terms have been used to implement the Act, which applies Annexes I and II of MARPOL 73/78 only to "seagoing" vessels in 33 U.S.C. 1903. For the purposes of this proposed regulation, the two terms are synonymous.

Oil tanker means a ship constructed or adapted primarily to carry oil in bulk in its cargo spaces and includes combination carriers and any "chemical tanker" as defined in Annex II of MARPOL 73/78 when it is carrying a cargo or part cargo of oil in bulk.

The proposed regulations define the following terms:

New ship means a ship delivered on or after April 4, 1993.

Shipboard oil pollution emergency plan means a plan prepared, submitted, and maintained according to the provisions proposed in §§ 151.26 through 151.28 of this NPRM for United States ships; or maintained according to the provisions proposed in § 151.29(a) of this NPRM for foreign ships operated under the authority of a country that is party to MARPOL 73/78 while in the navigable waters of the United States.

Discussion of Proposed Amendments

The proposed regulations would apply to U.S. ships because the Act requires the Coast Guard to prescribe regulations implementing shipboard oil pollution emergency plans for ships of U.S. registry or nationality, or operating under the authority of the United States. In addition, the proposal would apply to Mobile Offshore Drilling Units (MODUs) only when they are not engaged in their primary mode of operation. Any fixed or floating drill rigs, or other offshore installations when engaged in the exploration, exploitation, or associated offshore processing of seabed mineral resources, which have oil pollution emergency plans approved by another Federal or State agency will be considered to be in compliance with Regulation 26.

Foreign ships operating in U.S. waters must also comply with Regulation 26. Ships of foreign countries that are party to MARPOL 73/78 must have a plan approved by their flag state.

Although only 10 percent of the world's tonnage belongs to states not party to Annex I of MARPOL 73/78, 33 U.S.C. 1902(c) requires that regulations be written to ensure that the ships of non-party states do not receive more favorable treatment than vessels of parties to MARPOL 73/78. In accordance with 33 CFR 151.21, these ships must comply with MARPOL 73/78, and carry evidence of such compliance issued by the government of a country that is party to MARPOL or by a recognized classification society. The Coast Guard may review the shipboard oil pollution emergency plans of these ships.

Regulation 26 does not apply to warships; naval auxiliary ships; or other ships owned or operated by a country when engaged in noncommercial service. In addition, the proposed regulation would exempt barges or other ships which are so constructed or operated that no oil can be discharged from any portion thereof, intentionally or unintentionally, including but not limited to, oil discharged as the result of the ships' casualties. This exemption is consistent with similar exemptions from certain MARPOL Annex I based requirements under 33 CFR parts 151 and 155. See 33 CFR §§ 151.17(d), 151.25(1), 155.350(c), and 155.370(e).

In accordance with 33 CFR 151.09, Canadian and U.S. ships operated exclusively on the Great Lakes or their connecting and tributary waters, or exclusively on the internal waters of the U.S. are not required to comply with MARPOL 73/78. This proposed regulations preserves the exclusion of ships operating exclusively in these waters. However, Canada recently acceded in Annexes I and II of MARPOL 73/78 and may apply MARPOL 73/78 requirements to ships in Canadian waters. Consequently, the Coast Guard is reconsidering whether Annexes I and II of MARPOL 73/78, including Regulation 26 provisions, should apply to ships operating in these waters. The Coast Guard solicits comments on the following questions pertaining to ships operating exclusively on the Great Lakes of North America or their connecting and tributary waters:

1. What will be the economic impact of requiring these ships to prepare, submit, and maintain shipboard oil pollution emergency plans?

2. Would an effective date of April 5, 1995, provide an owner of operator of a ship adequate time to prepare and submit a shipboard oil pollution emergency plan?

3. What will be the economic impact of these regulations on "small entities," under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b))?

Comments are not limited to the above and are invited on any aspect of implementing Regulation 26 on the Great Lakes.

This proposal addresses only the four mandatory provisions of Regulation 26 that must be included in shipboard emergency response plans: (1) An outline of procedures for reporting pollution incidents, (2) a list of authorities or persons to be contacted in the event of an incident, (3) a detailed description of the actions to be taken immediately by persons on board to reduce or control discharge of oil following an incident, and (4) a procedure for coordinating response efforts with national and local authorities. The four mandatory provisions of Regulation 26 are the basic items necessary for plans to serve as a tool for shipowners.

Proposed § 151.26(b)(6)(ii)(A) of this NPRM would require each plan to include a separate appendix listing agencies or officials of coastal state administrations responsible for receiving and processing incident reports. The list issued by the MEPC as MEPC/Circ.267 may assist shipowners in complying with this provision. Although inclusion of the MEPC list, or a similar successor list issued by IMO, is not mandated by the proposed regulation, its use would be considered prime facie evidence of compliance with this requirement for enforcement purposes. If a shipowner includes an alternate list in the plan, it should contain comparable information.

The non-mandatory provisions of the Regulation 26 guidelines provide guidance on additional information that could be included in the shipboard oil pollution emergency plans, such as diagrams, response equipment, public affairs practices, recordkeeping, regular plan review by the shipowner and exercising. The Coast Guard is soliciting comments on whether plans should be

required to address any or all of the non-mandatory provisions, particularly those addressing response equipment, plan review, and plan testing.

This proposed regulation would require a shipowner to prepare and submit two English language copies of its plan to the Captain of the Port (COTP) or Officer in Charge, Marine Inspection (OCMI) at the ship's home port for review and approval. The approval period for the plan is five years. When the approval period expires, the shipowner would be required to resubmit the entire plan for review and reapproval. The proposed regulation would also require a shipowner to review its plan annually and submit a letter to the COTP or OCMI at the ship's home port certifying that the review has been completed.

Some of the provisions in this proposed regulation are similar to those of the vessel response plan (VRP) interim final rule (IFR) (58 FR 7376; February 5, 1993) issued under the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101–380). The OPA 90 VRP IFR establishes requirements for tank vessels which include many of the non-mandatory provisions of the Regulation 26 guidelines, in addition to many of the mandatory provisions. Like the VRP IFR, this proposed regulation would require resubmission of shipboard oil pollution emergency plans every five years. However, differences between this proposed regulation and the VRP IFR remain. Some of the more important differences include the following:

(1) This proposed regulation would apply to oil tankers of 150 gross tons and above and other ships of 400 gross tons and above, while the VRP IFR requirements apply to all tank vessels which carry oil in bulk as cargo, regardless of size;

(2) This proposed regulation would require the creation and maintenance of a list of contacts in all regular ports of call worldwide. The VRP IFR requires a complete geographic-specific listing of contacts and response resources for U.S. ports only.

(3) This proposed regulation would require planning the response to all oil discharges, including the ship's fuel oil, while the VRP IFR applies only to oil carried in bulk as cargo.

(4) This proposed regulation would require procedures and a point of contact on the ship for coordinating response action with shore-based authorities. The VRP IFR generally requires more structured (formalized) arrangements with response organizations in all U.S. ports of call, as well as a shore-based qualified individual to obligate funds on the part of the shipowner or operator.

Tank vessel owners or operators may find it helpful to refer to § 155.1030 of the VRP IFR for additional requirements. The VRP IFR allows for the submission of a vessel response plan which complies with both sets of response plan requirements. This proposed regulation would require a combined shipboard oil pollution emergency plan and vessel response plan to be submitted to Coast Guard Headquarters for review and approval. To facilitate compliance, the approval period is the same for both plans.

For foreign flag tank vessels operating in U.S. waters, the OPA 90 VRP requirements may be considered a local requirement under section 3.1 of the guidelines issued as Resolution MEPC.54(32), and may be included as an appendix to a Regulation 26 plan.

On March 5, 1993, the Coast Guard released Navigation and Vessel Inspection Circular (NVIC) No. 2–93 to provide guidance to the affected community on compliance before Regulation 26 became effective for new ships on April 4, 1993. The NVIC has no regulatory force; it simply provides guidance pending the issuance of regulations. The Coast Guard also issued Change 1 to NVIC 2–93 on July 28, 1993, providing shipowners with the current list of national operational contact points adopted by the MEPC.

Submission of Shipboard Oil Pollution Emergency Plans

Owners or operators of all U.S. Ships to which this regulation applies must prepare and submit two English language copies of the shipboard oil pollution emergency plans to the appropriate Coast Guard Captain of the Port (COTP) or Officer in Charge, Marine Inspection (OCMI) for review and approval. Under Regulation 26, owners or operators of new ships should have submitted plans by April 4, 1993. The term "new ship" means a ship that has been delivered on or after April 4, 1993. For ships delivered after April 4, 1993, plans must be submitted at least 60 days before the owners or operators intend to begin operations. Owners or operators of existing ships will be required to submit plans at least 60 days prior to April 4, 1995, and must have an approved plan on board by April 4, 1995. The term "existing ship" is currently defined in § 151.05 as "a ship that is not a new ship." Therefore, for the purposes of this proposed regulation, "existing ship" means a ship that has been delivered before April 4, 1993. Plans must be resubmitted every five years for review and approval.

Owners or operators of tank vessels that must comply with OPA 90 VRP requirements may meet the requirements of Regulation 26 by submitting one response plan, pursuant to § 155.1030, if the plan addresses the following Regulation 26 requirements in addition to the OPA 90 requirements: (1) Discharges of all oils defined under Annex I of MARPOL 73/78, whether carried as cargo or as fuel; (2) contacts for all coastal state and regular ports of call worldwide; and (3) the procedures and point of contact on the ship for coordinating shipboard action with national and local authorities in combating the pollution. The letter of transmittal should clearly state that the plan is intended to comply with the requirements of both Regulation 26 and OPA 90. Combined Regulation 26 and OPA 90 VRP plans must be submitted to the Coast Guard at the following address: Commandant (G–MEP–6), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001.

Regulatory Evaluation

This proposal is not a significant regulatory action under Section 3(f)(1) of Executive Order 12866 and does not require an assessment of potential costs and benefits under Section 6(a)(3) of that Order. It is not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979). A draft evaluation has been prepared and is available in the docket for inspection or copying where indicated under **ADDRESSES.** This evaluation is summarized below. This proposal will not result in annual costs of $100 million or more; will have no significant adverse effects on competition, employment, or other aspects of the economy, and will not result in a major increase in costs and prices.

The Coast Guard estimates that 1,534 U.S. flag ships must comply with Regulation 26 of Annex I of MARPOL 73/78. The Coast Guard assumes that 1,234 existing non-tank vessels will prepare Shipboard Oil Pollution Emergency Plans to meet the requirements of Regulation 26. In addition, the Coast Guard assumes that 284 existing tank vessels will prepare and submit combined Shipboard Oil Pollution Emergency Plans and OPA 90 Vessel Response Plans. The Coast Guard estimates that 16 ships will be constructed in the U.S. between April 4, 1993 and April 4, 1995. Therefore, the total number of ships which must comply with this regulation will equal 1,534.

Based on hourly cost data of those required to comply with Regulation 26,

it is estimated to cost $4,320.00 to prepare a Shipboard Oil Pollution Emergency Plan. It is estimated to cost $855.00 to prepare the additional requirements of a VRP that complies with MARPOL Regulation 26. The total annualized cost to respondents for initial plan preparation between 1993 and 1995 is estimated to be $5,642,820. The Coast Guard will review submitted Shipboard Oil Pollution Emergency Plans to ensure compliance with Regulation 26. Total government annualized costs associated with review of the Shipboard Oil Pollution Emergency Plans are estimated to be $78,663 between 1993 and 1995. The net present value of the costs of the proposed regulation, discounted at 7 percent, is $4,675,060.

The dollar value of direct societal benefits derived from the proposed rule are not quantifiable, but may be substantial. Historical data is insufficient to quantify benefits. However, this program should improve response capabilities and minimize the environmental impact of oil discharges from ships. If efficiencies in the cleanup of spilled oil go up by only a small percentage, the savings that would accrue to the maritime industry and to the public would exceed the costs.

Small Entities

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

The Coast Guard expects that few new cost will be associated with this rule because few small entities own ships of the gross tonnage to which this proposed regulation would apply. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection of information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection of information requirements include reporting, recordkeeping, notification, and other, similar requirements.

This proposal contains collection of information requirements in the following sections: 151.26, 151.27, and 151.28. The following particulars apply:

DOT No.: 2115.

OMB Control No.: 2115–XXXX.

Administration: U.S. Coast Guard.

Title: Shipboard Oil Pollution Emergency Plans.

Need for Information: This proposed regulation would direct shipowners to prepare, submit, and maintain shipboard oil pollution emergency plans.

Proposed Use of Information: The Coast Guard will review submitted plans to ensure compliance with Regulation 26 of Annex I of MARPOL 73/78. The information contained in the plans will improve the capabilities of individual vessel operators to respond to oil spills and will enhance cooperative response efforts of the vessel operators and the government agencies. Also, Coast Guard issuance of a vessel's International Oil Pollution Prevention (IOPP) Certificate evidencing compliance with Regulation 26 will facilitate the oceangoing trade of U.S. vessels with foreign countries that are parties to MARPOL 73/78.

Frequency of Response: Plans must be resubmitted every 5 years for review and approval. However, if there are any revisions or amendments requiring approval, the plan must be resubmitted as appropriate. In addition, a letter certifying that the annual review has been completed must be submitted annually.

Burden Estimate: 125,396 hours.

Respondents: All owners of U.S. flag oil tankers of 150 gross tons and above and all other U.S. flag ships of 400 gross tons and above.

Form(s): None.

Average Burden Hours per Respondent: 82 hours.

The Coast Guard has submitted the requirements to OMB for review under section 3504(h) of the Paperwork Reduction Act. Persons submitting comments on the requirements should submit their comments both to OMB and to the Coast Guard where indicated under **ADDRESSES.**

Federalism

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

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. This proposal is expected to contribute to the reduction of the occurrence of ship-generated oil spills in the marine environment. A Categorical Exclusion Determination is available in the docket for inspection of copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 151 as follows:

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE AND MUNICIPAL OR COMMERCIAL WASTE

Subpart A—Implementation of MARPOL 73/78

1. The authority citation for 33 CFR part 151, subpart A, continues to read as follows:

Authority: 33 U.S.C. 1321(j)(1)(c) and 1903(b); Executive Order 11735; 3 CFR 1971–1975 Comp. p. 793; 49 CFR 1.46.

2. Section 151.05 is amended by adding paragraph (5) under the definition of *New ship* and adding a definition of *Shipboard oil pollution emergency plan* to read as follows:

Subpart A—Implementation of MARPOL 73/78

§ 151.05 Definitions

* * * * *

New ship means a ship—

* * * * *

(5) For the purposes of §§ 151.26 through 151.28, which is delivered on or after April 4, 1993.

* * * * *

Shipboard oil pollution emergency plan means a plan prepared, submitted, and maintained according to the provisions of §§ 151.26 through 151.28 of this subpart for United States ships or maintained according to the provisions of § 151.29(a) of this subpart for foreign ships operated under the authority of a country that is party to MARPOL 73/78 while in the navigable waters of the United States.

* * * * *

3. Section 151.09 is amended by adding paragraphs (c) and (d) to read as follows:

§ 151.09 Applicability.

* * * * *

(c) Sections 151.26 through 151.28 apply to each United States oceangoing ship specified in paragraphs (a)(1) through (a)(4) of this section which is—

(1) An oil tanker of 150 gross tons and above or other ship of 400 gross tons and above; or

(2) A fixed or floating drilling rig or other platform, when not engaged in the exploration, exploitation, or associated offshore processing of seabed mineral resources.

(d) Sections 151.26 through 151.28 do not apply to—

(1) The ships specified in paragraph (b) of this section;

(2) Any barge or other ship which is constructed or operated in such a manner that no oil can be discharged from any portion thereof, intentionally or unintentionally, including, but not limited to, oil discharged as the result of a casualty to the ship.

§ 151.21 [Amended]

4. Section 151.21(a) is amended by adding the words "that is party to MARPOL 73/78" in the last sentence after the word "country".

5. Sections 151.26 through 151.29 are added to read as follows:

§ 151.26 Shipboard oil pollution emergency plans.

(a) *Language of the plan.* The shipboard oil pollution emergency plan must be available on board in English and in the working language of the master and the officers of the ship, if different.

(b) *Plan format.* The plan must contain the following six sections. A seventh non-mandatory section may be included at the shipowner's discretion:

(1) *Introduction.* This section must contain the following introductory text:

"(i) This plan is written in accordance with the requirements of Regulation 26 of Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78).

(ii) The purpose of the plan is to provide guidance to the master and officers on board the ship with respect to the steps to be taken when a pollution incident has occurred or is likely to occur.

(iii) The plan contains all information and operational instructions required by the guidelines (Resolution MEPC.54(32)). The appendices contain names, telephone numbers, telex numbers, etc. of all contacts referenced in the plan, as well as other reference material.

(iv) This plan has been approved by the Coast Guard and, except as provided below, no alteration or revision may be made to any part of it without the prior approval of the Coast Guard.

(v) Changes to the seventh section of the plan and the appendices do not require approval by the Coast Guard. The appendices must be maintained up-to-date by owners, operators, and managers."

(2) *Preamble.* This section must contain an explanation of the purpose and use of the plan and indicate how the shipboard plan relates to other shore-based plans.

(3) *Reporting requirements.* This section of the plan must include information relating to the following:

(i) *When to report.*

(A) A report shall be made whenever an incident involves—

(1) A discharge of oil resulting from damage to the ship or its equipment, or for the purpose of securing the safety of a ship or saving life at sea;

(2) A discharge of oil during the operation of the ship in excess of the quantities or instantaneous rate permitted in § 151.10 of this subpart or in § 157.37 of this subchapter; or

(3) A probable discharge. Factors to be considered in determining whether a discharge is probable include, but are not limited to: Ship location and proximity to land or other navigational hazards, weather, tide, current, sea state, and traffic density. The master must make a report in cases of collision, grounding, fire, explosion, structural failure, flooding or cargo shifting, or an incident resulting in failure or breakdown of steering gear, propulsion, electrical generating system, or essential shipborne navigational aids.

(B) [Reserved]

(ii) *Information required.* This section of the plan must include a notification form, such as that depicted in Table 151.26(b)(3)(ii)(A), that contains information to be provided in the initial and follow-up notifications. The initial notification should include as much of the information on the form as possible, and supplemental information, as appropriate. However, the initial notification must not be delayed pending collection of all information. Copies of the form must be placed at the location(s) on the ship from which notification may be made.

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TABLE 151.26(b)(3)(ii)(A)

SHIPBOARD OIL POLLUTION EMERGENCY PLAN SAMPLE FORMAT FOR INITIAL NOTIFICATION	
AA (SHIP NAME, CALL SIGN, FLAG)	
BB (DATE AND TIME OF EVENT, UTC) D D H H M M	
CC (POSITION, LAT, LONG) d d m m [N] [S] d d d m m [E] [W]	DD (BEARING, DISTANCE FROM LANDMARK) d d d N miles
EE (COURSE) d d d	FF (SPEED, KNOTS) kn kn 1/10
LL (INTENDED TRACK)	
MM (RADIO STATIONS(S) GUARDED)	
NN (DATE AND TIME OF NEXT REPORT, UTC) D D H H M M	
PP (TYPE AND QUANTITY OF CARGO/BUNKERS ON BOARD)	
QQ (BRIEF DETAILS OF DEFECTS/DEFICIENCIES/DAMAGE)	

TABLE 151.26(b)(3)(ii)(A) Continued

RR (BRIEF DETAILS OF POLLUTION, INCLUDING ESTIMATE OF QUANTITY LOST)
SS (BRIEF DETAILS OF WEATHER AND SEA CONDITIONS) WIND — DIRECTION ⌊_⌊_⌊_⌋ / SPEED (Beaufort) SWELL — DIRECTION ⌊_⌊_⌊_⌋ / HEIGHT (m)
TT (CONTACT DETAILS OF SHIP'S OWNER/OPERATOR/AGENT)
UU (SHIP SIZE AND TYPE) LENGTH: (m) BREADTH: (m) DRAUGHT: (m) TYPE:
XX (ADDITIONAL INFORMATION) BRIEF DETAILS OF INCIDENT: NEED FOR OUTSIDE ASSISTANCE: ACTIONS BEING TAKEN: NUMBER OF CREW AND DETAILS OF ANY INJURIES: DETAILS OF P&I CLUB & LOCAL CORRESPONDENT: OTHERS:

Note: The alphabetical reference letters in the above format are from "General principles for ship reporting systems and ship reporting requirements, including guidelines for reporting incidents involving dangerous goods, harmful substances and/or marine pollutants" adopted by the International Maritime Organization by resolution A648(16). The letters do not follow the complete alphabetical sequence as certain letters are used to designate information required for other standard reporting formats, e.g. those used to transmit route information.

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(B) [Reserved]

(iii) *Whom to contact.*

(A) This section of the plan must make reference to the appendices listing coastal state contacts, port contacts, and ship interest contacts.

(B) For actual or probable discharges of oil, the reports must comply with the procedures described in MARPOL Protocol I.

(4) *Steps to control a discharge.* This section of the plan must contain a discussion of procedures to address the following scenarios:

(i) *Operational spills:* The plan must outline procedures for removal of oil spilled and contained on deck. The plan must also provide guidance to ensure proper disposal of recovered oil and clean-up materials;

(A) *Pipe leakage:* The plan must provide specific guidance for dealing with pipe leakage;

(B) *Tank overflow:* The plan must include procedures for dealing with tank overflows. It must provide alternatives such as transferring cargo or bunkers to empty or slack tanks, or readying pumps to transfer the excess ashore;

(C) *Hull leakage:* The plan must outline procedures for responding to spills due to suspected hull leakage, including guidance on measures to be taken to reduce the head of oil in the tank involved either by internal transfer or discharge ashore. Procedures to handle situations where it is not possible to identify the specific tank from which leakage is occurring must also be provided. Procedures for dealing with suspected hull fractures must be included. These procedures must take into account the effect of corrective actions on hull stress and stability.

(ii) *Spills resulting from casualties:* Each of the casualties listed in this paragraph must be treated in the plan as a separate section comprised of various checklists or other means which will ensure that the master considers all appropriate factors when addressing the specific casualty. These checklists must be tailored to the specific ship. In addition to the checklists, specific personnel assignments for anticipated tasks must be identified. Reference to existing fire control plans and muster lists is sufficient to identify personnel responsibilities in the following situations:

(A) Grounding;

(B) Fire or explosion;

(C) Collision;

(D) Hull failure; and

(E) Excessive list.

(iii) In addition to the checklist and personnel duty assignments required by paragraph (b)(4)(ii) of this section, the plan must include—

(A) Priority actions to ensure the safety of personnel and the ship, assess the damage to the ship, and take appropriate further action;

(B) Information for making damage stability and longitudinal strength assessments, or contacting classification societies to acquire such information. Nothing in this section shall be construed as creating a requirement for damage stability plans or calculations beyond those required by law or regulation; and

(C) Lightening procedures to be followed in cases of extensive structural damage. The plan must contain information on procedures to be followed for ship-to-ship transfer of cargo. Reference may be made in the plan to existing company guides. A copy of such company procedures for ship-to-ship transfer operations must be kept in the plan. The plan must address the coordination of this activity with the coastal or port state, as appropriate.

(5) *National and local coordination.* This section of the plan must contain information to assist the master in initiating action by the coastal State, local government, or other involved parties. This information must include guidance to assist the master with organizing a response to the incident should a response not be organized by the shore authorities. Detailed information for specific areas may be included as appendices to the plan.

(6) *Appendices.* Appendices must include the following information:

(i) Twenty-four hour contact information and alternates to the designated contacts. These details must be routinely updated to account for personnel changes and changes in telephone, telex, and telefacsimile numbers. Clear guidance must also be provided regarding the preferred means of communication.

(ii) The following lists, each identified as a separate appendix:

(A) A list of agencies or officials of coastal state administrations responsible for receiving and processing incident reports;

(B) A list of agencies or officials in regularly visited ports. When this is not feasible, the master must obtain details concerning local reporting procedures upon arrival in port; and

(C) A list of all parties with a financial interest in the ship, including, but not limited to, ship and cargo owners, insurers, and salvage interests.

(D) A list which specifies who will be responsible for informing the parties listed and the priority in which they must be notified.

(iii) A record of annual reviews and changes.

(7) *Non-mandatory provisions.* If this section is included by the shipowner, it should include the following types of information or any other information that may be appropriate:

(i) Diagrams;

(ii) Response equipment;

(iii) Public affairs practices;

(iv) Recordkeeping; and

(v) Plan exercising.

§ 151.27 Plan submission and approval.

(a) No ship subject to this part may operate unless it carries on board a shipboard oil pollution emergency plan approved by the Coast Guard. For new ships, plans must be submitted at least 60 days before the ship intends to begin operations. For existing ships, plans must be submitted at least 60 days prior to April 4, 1995, and an approved plan must be on board by April 4, 1995.

(b) An owner or operator of a ship to which this part applies shall prepare and submit two English language copies of the shipboard oil pollution emergency plan to the Captain of the Port (COTP) or Officer in Charge, Marine Inspection (OCMI) at the ship's home port, for review and approval.

(c) Combined shipboard oil pollution emergency plans and response plans meeting the requirements of subparts D and E of part 155 of this chapter must be prepared according to § 155.1030(j) of this chapter and submitted to the Coast Guard at the following address: Commandant (G–MEP–6), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001.

(d) If the Coast Guard determines that the plan meets all requirements of this section, the Coast Guard will notify the owner or operator of the ship and return one copy of the approved plan along with an approval letter. The approval period for a plan expires 5 years after the plan approval date.

(e) If the Coast Guard determines that the plan does not meet all of the requirements, the Coast Guard will notify the owner or operator of the plan's deficiencies. The owner or operator must then resubmit two copies of the revised plan, or corrected portions of the plan, within 45 days of receipt of the notice of deficiency.

§ 151.28 Plan review and revision.

(a) An owner or operator of a ship to which this part applies must review the shipboard oil pollution emergency plan annually and submit a letter to the COTP or OCMI at the ship's home port certifying that the review has been completed. This review must occur within 1 month of the anniversary date of Coast Guard approval of the plan.

(b) The owner or operator shall submit any plan amendments to the COTP or OCMI at the ship's home port for information or approval.

(c) The entire plan must be resubmitted to the COTP or OCMI at the ship's home port for reapproval 6 months before the end of the Coast Guard approval period identified in § 151.27(d) of this subpart.

(d) A record of annual review and changes to the plan must be maintained in the appropriate appendices.

(e) The owner or operator shall submit revisions or amendments to an approved plan for information or approval after there is—

(1) A significant change in the ship's configuration that affects the information included in the plan;

(2) A significant change in the ship's procedures to control a discharge; and

(3) A change in the owner or operator of the ship; or

(4) Any other significant changes that affect implementation of the plan.

§ 151.29 Foreign ships.

(a) Each oil tanker of 150 gross tons and above and each other ship of 400 gross tons and above, operated under the authority of a country other than the United States that is party to MARPOL 73/78, shall carry on board a shipboard oil pollution emergency plan approved by its flag state while in the navigable waters of the United States or while at a port or terminal under the jurisdiction of the United States.

(b) Each oil tanker of 150 gross tons and above and each other ship of 400 gross tons and above, operated under the authority of a country that is not a party to MARPOL 73/78, must comply with § 151.21 of this subpart while in the navigable waters of the United States.

Dated: February 10, 1994.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

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Part V

Department of Transportation

Coast Guard

33 CFR Part 150

Louisiana Offshore Oil Port: Expansion of Deepwater Port Safety Zone Boundaries; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 150

[CGD 93–080]

RIN 2115–AE69

Louisiana Offshore Oil Port: Expansion of Deepwater Port Safety Zone Boundaries

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to expand the boundaries of the safety zone for the Louisiana Offshore Oil Port (LOOP). A deepwater port safety zone constitutes an area within which the erection of structures or mobile drilling operations for the exploration for or extraction of oil or gas is prohibited. An expanded safety zone would enlarge the approach to the terminal portion of the safety zone and provide more unobstructed maneuvering room for vessels arriving and departing from LOOP. This would reduce the risk of a marine casualty and subsequent pollution.

DATES: Comments must be received on or before March 21, 1994.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 93–080), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, or may be delivered to room 3406, at the same address, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Walter (Bud) Hunt, Project Manager, Oil Pollution Act (OPA 90) Staff, (G–MS–1), (202) 267–6740. This telephone is equipped to record messages on a 24-hour basis.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 93–080), and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound materials is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard encourages individuals or organizations that commented on the notice of petition for rulemaking to submit comments on this notice of proposed rulemaking (NPRM).

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

Drafting Information

The principal persons involved in drafting this document are Lieutenant Commander Walter (Bud) Hunt, Project Manager, and Jacqueline Sullivan, Project Counsel, Oil Pollution Act (OPA 90) Staff, (G–MS–1).

Background and Purpose

The Deepwater Port Act of 1974 (33 U.S.C. 1501 *et seq.*) requires the Secretary of Transportation to designate a zone of appropriate size around and including any deepwater port for the purpose of navigational safety and to protect the marine environment. This responsibility was delegated to the Coast Guard in 49 CFR 1.46(s). A deepwater port safety zone is designed to promote safety of life and property, marine environmental protection and navigational safety at any deepwater port and adjacent waters. No installations, structures, or uses that are incompatible with port operations are permitted in a deepwater safety zone. 33 CFR part 150 establishes the geographic boundaries of the safety zone for the Louisiana Offshore Oil Port (LOOP) in Annex A and provides for the modification of safety zone boundaries as experience is gained in deepwater port operations. Changes in a safety zone at a deepwater port are subject to notification and consideration of the views of interested parties.

On December 29, 1980, the Coast Guard established a safety zone to protect three single-point moorings at the Louisiana Offshore Oil Port (LOOP) (45 FR 85644). The rulemaking was considered "nonsignificant" under existing Department of Transportation (DOT) and Coast Guard regulatory guidelines. On May 13, 1982, the Coast Guard established a safety fairway to provide unobstructed approach for vessels transmitting to the LOOP safety zone (47 FR 20580).

On January 16, 1984, LOOP submitted to the Coast Guard a request for a waiver of the requirements of 33 CFR 150.337(a) which prohibits a tanker from entering or departing a safety zone by other than a designated safety fairway. LOOP submitted to the Coast Guard chart 11359 and indicated two uncharted areas adjacent to the safety zone which they referred to as excursion zones. LOOP requested that vessels calling at the deepwater port be provided with additional maneuvering room by allowing use of these excursion zones when departing or entering the LOOP safety zone. Deviations from the safety fairway into these zones came to be known as "excursions." On February 20, 1987, the Coast Guard granted for 1 year a waiver of the requirements that tankers enter and leave the safety zone by the safety fairway. LOOP was required to document the number of tanker maneuverings requiring transit outside the existing safety zone, the percentage of excursions which occurred within the two uncharted areas identified as excursion zones, and the date, time, and approximate track line used for each excursion. Since then, the Coast Guard has renewed the waiver on an annual basis.

On December 30, 1987, LOOP asked the Coast Guard to make the waiver permanent. On February 8, 1988, the request was denied on the grounds that future exploration for or extraction of oil or gas might occur within one or both excursion zones. If such activity took place, the Coast Guard might have to revoke the waiver for the sake of safety.

In May 1988, CONOCO, Inc. (CONOCO) was issued an oil and gas lease by the Department of the Interior's Minerals Management Service (MMS) under the Outer Continental Shelf and Lands Act (OCSLA) (43 U.S.C. 1331 *et seq.*) in the area that was in the uncharted existing excursion zone. The lease included a provision for the government to suspend or cancel the lease with compensation when provided by the OCSLA. In August 1990, LOOP notified the Coast Guard that CONOCO intended to drill under authority of Lease OCS–G 9678 within Grand Isle Block 59, approximately 500 yards outside of the existing safety zone and safety fairway and inside the uncharted

southerly excursion zone. The Coast Guard is concerned that a vessel casualty could result in a catastrophic pollution incident if a vessel collided with a drilling platform located in the existing excursion area. However, neither MMS policy nor budget provided for repurchasing a lease. While MMS supports the Coast Guard's interest in minimizing the risk of a catastrophic pollution incident at LOOP, it contends that CONOCO has a legal right of access to explore for and produce oil or gas from the lease.

On January 21, 1992, the Coast Guard published a notice of petition for rulemaking and request for comments in the **Federal Register** announcing a request by LOOP that the Coast Guard expand the safety zone that surrounds the deepwater port (57 FR 2236). LOOP requested the Coast Guard to make the waiver permanent thereby enlarging the safety zone by adding the two excursion zones, and prohibiting structures. The proposed safety zone would broaden the entrance to LOOP and prohibit the erection of structures or mobile drilling operations. As a result, the enlarged safety zone would reduce the number of required vessel maneuverings, eliminate structures from the zone, possibly reducing the risk of accidents and subsequent pollution. The proposed safety zone reflects actual tanker activity at LOOP based on detailed records the Coast Guard has required LOOP to maintain.

The Coast Guard received 48 comments in response to the notice of petition for rulemaking. Forty-three responses, mostly from mooring masters and shipping companies, offered strong support for the safety zone expansion. Opposition to the proposal came from CONOCO, MMS, and three oil exploration companies. MMS suggested that if CONOCO or other lessees are denied access to potential oil and gas resources, restitution should be provided by either LOOP or the Coast Guard. Neither the Coast Guard nor the DOT is prepared to provide restitution to CONOCO for loss of potential revenues or costs already incurred in conjunction with oil or gas exploration.

To resolve the conflicting use problems in the excursion zones, LOOP has agreed to purchase from CONOCO the oil and gas leases for Grand Isle Blocks 53, 58, 59, and 65. LOOP would then relinquish these blocks to MMS. LOOP would not seek further expansion of the safety zone or oppose any exploration and production activity outside or adjacent to the expanded safety zone.

On November 2, 1993, in a letter to the Department of Transportation, the MMS stated that it supports the agreement between CONOCO and LOOP. MMS stated that it is prepared to prohibit surface occupancy of offshore oil and gas facilities in the proposed safety zone. However, MMS stated that it may be economically and technically feasible to develop the resources lying beneath the safety zone by directional drilling. MMS would not preclude subseabed access provided that any surface facilities are located outside the safety zone. Such subseabed activity within the safety zone would not interfere with vessel activity in the safety zone.

Under the Deepwater Port Act of 1974, as amended (33 U.S.C. 1509(d)(1)), the Secretary of Transportation is required to consult with the Secretary of State, the Secretary of Defense, the Secretary of the Interior, and the Secretary of Commerce prior to issuing the safety zone around any deepwater port for the purposes of navigational safety. The Coast Guard has informed the noted Departments of the proposed safety zone.

Discussion of Proposed Amendment

Appendix A, Annex A, section (a) of 33 CFR part 150 is amended to expand the boundaries of the deepwater port safety zone at LOOP. This is being done at the request of LOOP, Inc. to enlarge the approach to the terminal portion and provide more maneuvering area for tank vessels arriving or departing from the deepwater port. It does not amend the Areas to be Avoided or the Anchorage Area listed in sections (b) and (c), respectively, in Annex A to Appendix A of 33 CFR part 150.

Regulatory Assessment

This proposal is not a significant regulatory action under Section 3(F)(1) of Executive Order 12866 (58 FR 51735; October 4, 1993) and it does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It is not a significant regulation under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic consequences of this rulemaking to be minimal. Potential economic effects include impacts on mineral extraction and the commercial fishing industry. The proposed expansion is relatively insignificant, comprising an approximate 15 percent increase in the size of the safety zone.

When the original safety zone was established, it was not expected that there would be significant interference with mineral extraction or navigation. Due to the relative size of the expansion, no impacts on mineral extraction or navigation are expected in this case either. Access is available via alternative methods such as directional drilling.

The economic consequences of the proposed rulemaking are expected to primarily impact commercial vessels, including commercial fishing vessels. Commercial fishing vessels are permitted restricted use of portions of the safety zone as provided in 33 CFR Table 150.345(a). Therefore, the impact on fishing activities would be negligible due to the small additional area involved. No opposition to the notice of petition for rulemaking was received from the commercial fishing industry.

In addition, this proposed rulemaking will result in permanent safety benefits. Providing additional maneuvering area minimizes the likelihood of a catastrophic pollution incident resulting from a vessel colliding with any portion of the LOOP facility. Therefore, it is expected that expansion of the safety zone will reduce the environmental hazard.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), the Coast Guard must consider whether this proposed safety zone will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small business concerns under section 3 of the Small Business Act (15 U.S.C. 632). The small entities affected by this proposed rule are commercial fishing activities at the deepwater port. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed safety zone will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposed rule does not require the collection of information under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have federalism implications and does not warrant the preparation of a Federalism Assessment. LOOP is located beyond State waters where only Federal jurisdiction applies.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2(c) of Commandant Instruction M16475.1B, this proposed rule is categorically excluded from further environmental documentation. This rule will not result in significant impact on the quality of the human environment, as defined by the National Environmental Policy Act. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 150

Harbors, Marine safety, Navigation (water), Occupational safety and health, Oil pollution, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 150 as follows:

PART 150—OPERATIONS

1. The authority citation for part 150 continues to read as follows: 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5), (j)(6) and (m)(2), 1509; sec. 2, E.O. 12777, 56 FR 54757; 49 CFR 1.46.

2. Appendix A to part 150, Annex A, is amended by revising paragraph (a) to read as follows:

Appendix A to Part 150—Deepwater Port Safety Zone Boundaries

* * * * *

ANNEX A—LOOP, INC. DEEPWATER PORT, GULF OF MEXICO

Latitude N.	Longitude W.
(a) *Deepwater Port Safety Zone:*	
(1) Starting at:	
28°55′23″	90°00′37″
(2) A rhumb line to:	
28°53′50″	90°04′07″
(3) Then an arc with a 4,465 meter (4,883 yard) radius centered at the port pumping platform complex (PPC),	
28°53′06″	90°01′30″
(4) To a point:	
28°51′07″	90°03′06″
(5) Then a rhumb line to:	
28°50′09″	90°02′24″
(6) Then a rhumb line to:	
28°49′05″	89°55′54″
(6) Then a rhumb line to:	
28°48′36″	89°55′00″
(8) Then a rhumb line to:	
28°52′04″	89°52′42″
(9) Then a rhumb line to:	
28°53′10″	89°53′42″
(10) Then a rhumb line to:	
28°54′52″	89°57′00″
(11) Then a rhumb line to:	
28°54′52″	89°59′36″
(12) Then an arc with a 4,465 meter (4,883 yard) radius centered again at the port PPC,	
28°53′06″	90°01′30″
(13) To the point of starting:	
28°55′23″	90°00′37″

* * * * *

Dated: January 31, 1994.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

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Thursday
February 17, 1994

Part VI

Department of Transportation

Coast Guard

46 CFR Part 25

Emergency Position Indicating Radio Beacons and Visual Distress Signals for Uninspected Vessels; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 25

[CGD 87–016b]

RIN 2115–AC69

Emergency Position Indicating Radio Beacons and Visual Distress Signals for Uninspected Vessels

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the uninspected vessel regulations by requiring an emergency position indicating radio beacon (EPIRB) on certain uninspected passenger vessels and uninspected vessels engaged as vessel assistance towing vessels. The proposed EPIRB requirement would apply to these vessels operating more than 3 nautical miles from the coastline or more than 4.8 Km (3 statute miles) from the coastline of the Great Lakes. However, under specific circumstances, these vessels would be exempt from this proposed EPIRB requirement. The Coast Guard also proposes requiring visual distress signals on all uninspected vessels, not presently required to carry them, when operating in coastal waters.

The "EPIRB's on Uninspected Vessels Requirements Act" amended the shipping laws of the United States by requiring uninspected commercial vessels to carry alerting and locating devices, including EPIRBs, as prescribed by regulations. By implementing this law, the regulations will provide improved search and rescue assistance during emergency situations, thereby reducing the potential for the loss of life and property.

DATES: Comments must be received on or before June 17, 1994.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA–2/3406) (CGD 87–016b), U.S. Coast Guard Headquarters, 2100 Second St. SW, Washington, DC 20593–0001, or may be delivered to Room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at Room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: ENS. Stephen H. Ober, Survival Systems Branch, (202) 267–1444. Normal office hours are from 8 a.m. to 4 p.m. Monday through Friday, except federal holidays.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments to the Coast Guard. Persons submitting comments should include their name and address, identify the rulemaking (CGD 87–016b) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons requesting acknowledgement of receipt of their comments should enclose a stamped, self-addressed postcard or envelope.

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

The Coast Guard plans no pubic hearing.Persons may request a public hearing by writing to the Marine Safety Council at the address under ADDRESSES. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a pubic hearing at a time and place announced by a later notice in the Federal Register.

Drafting Information

The principal persons involved in drafting these regulations are Mr. Robert L. Markle and ENS. Stephen H. Ober, Office of Marine Safety, Security and Environmental Protection, and Mr. Nicholas E. Grasselli, Project Counsel, Office of Chief Counsel.

Regulatory History

On April 19, 1990, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Emergency Position Indicating Radio Beacons for Uninspected Vessels; (CGD 87–016a) in the Federal Register (55 FR 14922). The Coast Guard received 125 letters commenting on the NPRM. A public hearing was not requested and one was not held.

On March 10, 1993, the Coast Guard published a final rule requiring EPIRBs on certain uninspected vessels, excluding uninspected passenger vessels and vessel assistance towing vessels (58 FR 13364). The preamble of that final rule sated that an additional supplemental notice of proposed rulemaking (SNPRM) would propose new EPIRB regulations and visual distress signal requirements for uninspected vessels not presently required to carry them. Uninspected passenger vessels are those vessels carrying 6 or less passengers for hire and are commonly known as "charterboats."

Background and Purpose

Public Law 100–540, known as the "EPIRB's On Uninspected Vessels Requirements Act" (102 Stat. 2719, October 28, 1988), amended 46 U.S.C. 4102 by requiring uninspected commercial vessels operating on the high seas and on the Great Lakes 4.8 Km (3 statute miles) from the coastline and beyond to carry alerting and locating equipment, including EPIRBs, as prescribed by regulation. Consistent with this law, this SNPRM proposes EPIRB requirements for uninspected passenger vessels and vessel assistance towing vessels, and proposes the carriage of visual distress signals for certain uninspected vessels not currently required to carry them. In response to the comments received to the NPRM of April 19, 1990 suggesting that EPIRBs were not needed on uninspected passenger vessels and vessel assistance towing vessels, the Coast Guard conducted a detailed study of the available casualty record for uninspected passenger vessels. A copy of this study entitled "Uninspected Passenger Vessel Casualties" is available for review and copying in the docket at the location identified in the ADDRESSES section near the beginning of this notice.

Discussion of Comments

In response to the NPRM of April 19, 1990, the Coast Guard received comments from charterboat operators, interested parties from the Great Lakes, various charterboat associations on the Great Lakes, New England charterboat captains, New England Charterboat associations, and charterboat captains in Florida. Additional comments were received from a publication serving the charterboat industry, and an association representing charterboat operators. The Coast Guard also received comments from the Radio Technical Commission for Maritime Services (RTCM), the National Transportation Safety Board (NTSB), a maritime hull and cargo surveyors corporation, and from interested parties that did not identify their affiliation.

Some comments supported the rule as written, expressing the view that safety of charterboat operations and their passengers would be greatly increased and would reduce search and rescue costs. Other comments from charterboat interests expressed opposition to the proposed rule. The primary objections to the proposed requirement were: (1)

The price of the EPIR and the ability of the EPIRB to operate in the marine environment; (2) the actual need for the EPIRB; and (3) the type of EPIRB.

(1) *The price of the EPIRB and the ability of the EPIRB to operate in the marine environment:* The cost of the 406 MHz Satellite EPIRB has been dropping steadily since its introduction. The current advertised price of Satellite EPIRBs averages around $1350. This is one-half the estimated cost used in the NPRM dated April 19, 1990, and confirms the prediction stated in the NPRM that prices would fall. The Coast Guard expects that the cost of the EPIRBs will continue to fall as a result of the combination of bulk purchase orders through associations and marketplace response to keener competition.

The Coast Guard recognizes that exposure to the marine environment can be extremely detrimental, especially to electronic equipment. With this in mind, the Radio Technical Commission for Maritime Services (RTCM) developed a standard for the manufacture of the 406 MHz Satellite EPIRB. This standard incorporates rigorous environmental tests that include long term exposure to salt, fog, and extreme vibrations. These tests were developed to ensure that the 406 MHz Satellite EPIRB will provide successful service throughout its expected life. The Federal Communications Center requires U.S. type accepted 406 MHz satellite EPIRBs to meet the RTCM standards.

(2) *The actual need for an EPIRB:* In response to the comments that EPIRBs were not needed on uninspected passenger vessels and vessel assistance towing vessels, the Coast Guard conducted a detailed study of the available casualty record for uninspected passenger vessels. A copy of this study entitled "Uninspected Passenger Vessel Casualties" is available for review and copying in the docket at the location identified in the ADDRESSES section near the beginning of this notice.

The casualty study revealed that although there are a significant number of accidents involving charterboats with deaths resulting, only a few lives would have been saved if these vessels were required to carry EPIRBs. This is because help usually came in one of two ways. One source of assistance has come from other nearby vessels which saw that a vessel was in distress. The other frequent means of obtaining assistance came from the use of a radio, used either to summon the Coast Guard or a nearby vessel.

The Coast Guard disagrees that EPIRBs are not needed on uninspected passenger vessels and vessel assistance towing vessels. However, as a result of the study, the Coast Guard believes that the uninspected passenger vessels in need of EPIRBs are primarily those that operate: (1) At night; (2) out of sight of other vessels; or (3) out of radio range to call for assistance.

(3) *The type of EPIRB:* The comments to the NPRM suggested allowing the carriage of a Category 2, 406 MHz Satellite EPIRB for a boat manufactured under the level flotation requirements of 33 CFR Part 183. The comment expressed an opinion that the construction of a vessel with level flotation defeats the design operation of the Category 1 EPIRB. The Coast Guard is proposing to adopt the recommendation made in these comments.

The Category 1, 406 MHz Satellite EPIRB is a fully automatic, float-free device. It is mounted on the outside of a vessel in a manner so that if a vessel sinks quickly, or unexpectedly, the device will float free, activate, and alert authorities of the distress. The Category 2 406 MHz Satellite EPIRB is manually operated, manually launched, and depends upon a person on the vessel to launch the device.

The Coast Guard requirement for level flotation construction in 33 CFR Part 183 applies only to recreational vessels 6.06 meters (20 ft) in length and under. When a vessel of greater than 6.06 meters (20 ft) in length is manufactured with enough flotation material to keep the boat afloat, this must be substantiated by a certification by the manufacturer that the construction of the vessel includes inherently buoyant material which will prevent the vessel from sinking.

Discussion of Proposed Amendments

Due to information obtained from the casualty study and comments received from the NPRM, the Coast Guard reconsidered the EPIRB proposals for uninspected passenger vessels and vessel assistance towing vessels. The uninspected passenger vessels that are affected by this proposed rule are mostly charterboats. These boats typically make day fishing trips with six or fewer paying passengers on board.

The statutory language requires manned uninspected vessels to carry an EPIRB. The legislative history clearly indicates that Congress intended the EPIRB requirement to apply to manned uninspected vessels including tug boats, towing vessels, offshore supply vessels, oceanographic research vessels, and passenger vessels carrying 6 or less passengers. Consistent with the legislative history, the Coast Guard believes that applying the EPIRB requirement to manned barges is unnecessary since these vessels can not operate without the assistance of another vessel required to carry an EPIRB. Therefore, the Coast Guard proposes that this rule apply to self-propelled uninspected vessels.

The proposed rules would make 406 MHz satellite EPIRBs generally required on uninspected passenger vessels and vessel assistance towing vessels operating more than 3 nautical miles from the coastline or more than 4.8 km (3 statute miles) from the coastline of the Great Lakes, subject to the exceptions discussed below. These are the same areas in which EPIRBs are required on other uninspected commercial vessels. However, the Coast Guard believes that virtually all uninspected passenger vessels operating on these waters are charterboats, and that the proposed exemption conditions would probably exempt most charterboats from the EPIRB requirement.

An uninspected vessel and vessel assistance towing vessel would be exempt from the rule between one hour before sunrise and one hour before sunset if the vessel: (1) Operates between 3 and 20 miles from shore and is equipped with an operable VHF radio capable of transmitting and receiving on channels 6, 13, 16, and 22A and operates within the VHF radio range of at least 1 VHF coast station (same as sea area A1 as defined in 47 CFR 80.1069) or (2) When operating more than 20 miles from shore the vessel must be "in company" with at least one other vessel at all times and the vessels are equipped with an operable VHF radio capable of transmitting and receiving on channels 6, 13, 16, and 22A.

The Coast Guard's proposal for a one hour before sunrise to one hour before sunset exemption criterion is intended to incorporate, in principle, the recommendation from the charterboat operators to exempt vessels on voyages of less than 12 hours duration. The proposed rule would allow day trips to get underway before sunrise. If trouble developed early in a trip, search and rescue operations would still be able to take place in daylight. The proposed rule would also require boats without EPIRBs to be within 3 nautical miles of shore (4.8 Km/3 statute miles on the Great Lakes) at least one hour before sunset.

The Coast Guard is proposing to define the term "in company" to mean 2 or more vessels operating together in the same area, remaining within visual and VHF radio contact, by predetermined agreement prior to

getting underway, for the purpose of ensuring mutual safety.

The condition to have a VHF radio and operate within range of a coast station recognizes the importance radio plays in summoning assistance from the Coast Guard or other vessels. The specified channels are those most likely to be needed in a search and rescue operation. However, in an accident involving a sudden capsizing or sinking, or one that quickly results in a loss of power, an operator who chooses to comply with the regulation by carrying a VHF radio may still be unable to summon help if out of sight of other vessels.

One way of dealing with a possible rapid loss of a vessel's power is to require an emergency battery that is not part of the vessel's main power system. The Coast Guard is specifically interested in receiving comments addressing a requirement that to be eligible for the EPIRB exemption, uninspected passenger vessels be required to have a VHF radio that can be operated using an emergency battery that is not part of the vessel's main power system. Comments are invited on the practicality of such an arrangement and whether this should be an additional condition of the final rule. If the battery-powered operation is considered feasible, should a minimum operating period be specified?

Additionally, the Coast Guard is considering requiring uninspected vessels and vessel assistance towing vessels that operate beyond 20 nautical miles from shore to have a 406 MHz satellite EPIRB. The Coast Guard specifically requests comments on the practicality of such an arrangement and whether this should be an additional condition of the final rule.

This notice also proposes requiring all uninspected commercial vessels to carry the same visual distress signals now required to be carried on commercial fishing vessels in 46 CFR 28.145. For vessels operating in coastal waters within 3 miles of the coastline, the requirements would be the same as the visual distress signals now required on recreational boats in 33 CFR part 175 subchapter C. Vessels operating beyond 3 miles from the coastline would be required to have brighter and longer-burning flares.

The casualty study shows that being seen by another vessel is a primary way in which assistance is obtained. Flares and other visual distress signals are recognized by mariners as signals indicating that assistance is required, so they play an important role where rescue depends on visual detection. The Coast Guard believes that most uninspected passenger vessels and vessel assistance towing vessels already carry visual distress signals since those signals are now required whenever such a vessel is operated as a recreational boat in coastal waters. These flares can be bought for about $20. Therefore, the cost of this requirement would be minimal.

As proposed in this SNPRM, all vessels less than 11 meters (36 feet) in length and vessels of any length with positive flotation could meet the EPIRB requirement by carrying either an installed Category 1 406 MHz Satellite EPIRB or a readily accessible Category 2 (manual) 406 Satellite EPIRB mounted at or near the principal steering station of the vessel. For purposes of this regulation, length is defined as the length listed on a vessel's Certificate of Documentation or Certificate of Number.

Regulatory Evaluation

This proposal is not significant regulatory action under Executive Order 12866 and is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). A draft Regulatory Evaluation is available in the docket for inspection or copying where indicated under **ADDRESSES**.

The specific number of vessels that would be affected by a regulation requiring EPIRBs on uninspected passenger vessels and assistance towing vessels is difficult to determine. The largest group of these vessels are charterboats, most of which make day fishing trips, but some are involved in overnight trips. Others operate as dive boats, excursion boats, parasail boats, vessel towing assistance vessels, water taxis, and other services. Those over five net tons are documented by the Coast Guard, and major accidents involving these vessels are required to be reported to the Coast Guard. Smaller boats are state numbered, are difficult to distinguish from recreational boats, and are often not captured in the Coast Guard's data on commercial vessels.

Furthermore, the number of uninspected passenger vessels is constantly changing since a boat used as a charterboat one day may be used for the owner's recreational purposes on another day. When operating as a charterboat, the boat comes under the regulations for uninspected commercial vessels in 46 CFR subchapter C. When used strictly for recreational purposes with no paying passengers on board, the boat comes under the regulations in 33 CFR subchapter S.

Although there are about 65,000 persons licensed to operate uninspected passenger vessels in the U.S., the Coast Guard believes that less than half of these licensed persons are actively employed as vessel operators. This proposed rule would only apply to those vessels that operate more than 3 nautical miles from the coastline or more than 3 statutory miles from the coastline of the Great Lakes. Consistent with a comment received to the NPRM, the Coast Guard believes that approximately 12,000 charterboats would be affected by this proposed rule.

EPIRB regulations would only affect those vessels operating more than 3 nautical miles from the coastline or more than 4.8 Km (3 statute miles) from the coastline of the Great Lakes. Therefore, if half of the uninspected vessels operate in rivers, inland lakes, bays, or sounds, or within 4.8 Km (3 statute miles) of the coastline of the Great Lakes, about 15,000 uninspected passenger vessels would remain as being potentially affected by an EPIRB rule under the authority in 46 U.S.C. 4102(e).

This number is fairly consistent with an estimate by the association of charterboat operators in one of its letters, that 12,000 charterboats would be affected by the rules proposed in the NPRM. Coast Guard used the association's 12,000 vessel estimate in assessing the potential effects of the rules proposed in this notice.

The draft evaluation uses a cost estimate of $1350 for Category 1 406 MHz Satellite EPIRBs, and $1150 for Category 2 406 MHz Satellite EPIRBS. A set of visual distress signals would cost most vessels about $20. The draft Evaluation estimates that about 1200 charterboats would not qualify for the EPIRB carriage exemption, and would have to purchase a 406 MGz Satellite EPIRB. It also estimates that another 1200 vessels would have to purchase VHF–FM marine radios at $400 each in order to qualify for the EPIRB exemption within Sea Area A1. In addition, an estimated 8500 uninspected vessels would be required to carry visual distress signals for the first time. The estimated present value cost of the proposed regulations to the industry, is about $3 million over 10 years. The number of lives that may be saved through mandatory EPIRB and visual distress signal requirements cannot be accurately predicted. However, economic research indicates that $2.5 million per statistical life saved is a reasonable estimate of people's willingness to pay for safety. The saving of only two lives in ten years would justify the cost of these rules.

In addition to the saving of lives, primary benefits of the regulations

include more timely notification to the authorities that a casualty has occurred and more accurate identification of the object of the search and the search area, which should contribute to large savings of money for the Coast Guard and other organizations involved in a search. This rule, in effect, shifts some of the cost burden for search and rescue from the Coast Guard to owners and operators of uninspected vessels. Many unsuccessful searches for overdue vessels have cost millions of dollars before being abandoned. In contrast, a number of searches for pleasure, charter, and fishing vessels have been expedited by EPIRBs carried voluntarily. The savings to the government as a result of elimination or significant reduction of only three or four large-scale searches would justify the cost of these rules, even without considering the lives that may be saved by more timely location of vessels in distress.

Small Entities

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

Generally, uninspected vessel operators are considered to be small entities. They are typically not part of large diversified corporations, and generally own no more than one or two vessels. When compared to the potential cost associated with the loss of a vessel and/or human life or lives, and in comparison to the cost of most associated equipment necessary to properly and safely operate most of these vessels, the Coast Guard believes the cost of an $1150 to $1350 EPIRB is not considered significant.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business qualifies as a small entity and that this proposal will have a significant economic impact on your business, please submit a comment (see **ADDRESSES**) explaining why you think your business qualifies and in what way and to what degree this proposal will economically affect your business.

Collection of Information

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

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612, and determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism assessment. This notice proposes amending the regulations for uninspected commercial vessels, by requiring certain vessels to carry EPIRBs and visual distress signals. The proposed rule would apply to certain vessels operating in coastal waters, on the high seas, and on the Great Lakes. Since this rule affects specific vessels both inside and outside of state waters, the Coast Guard intends to preempt State action addressing the same subject matter.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. This proposal is made to enhance the safety of personnel at sea, as well as improving the effectiveness of search and rescue, and is expected to have no environmental impact. A Categorical Exclusion Determination is available in the docket for examination and copying where indicated under **ADDRESSES**.

List of Subjects in 46 CFR Part 25

Fire prevention, Incorporation by reference, Marine safety, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard proposes to amend 46 CFR part 25 as follows:

PART 25—REQUIREMENTS

1. The authority citation for part 25 would continue to read as follows:

Authority: 33 U.S.C. 1903(b); 46 U.S.C. 2103, 3306, and 4302; 49 CFR 1.46.

2. By amending 25.26–1 to add a definition for "vessel assistance towing vessel" and "in company" in the appropriate alphabetical order, revising the definition of "uninspected passenger vessel", and removing the NOTE following the definition of "uninspected passenger vessel", to read as follows:

§ 25.26–1 Definitions.

In company means 2 or more vessels operating together in the same area, remaining within visual and VHF radio contact by predetermined agreement prior to getting underway, for the purpose of ensuring mutual safety.

* * * * *

Uninspected passenger vessel means a vessel engaged in the carriage of passengers for hire, and which is not inspected by the Coast Guard under any other 46 CFR subchapter.

Vessel assistance towing vessel means a vessel engaged in providing non-emergency assistance to boaters, and which is not inspected by the Coast Guard under any other 46 CFR subchapter.

3. By revising paragraphs (b)(3) and (c)(2) of § 25.26–5 to read as follows:

§ 25.26–5 Commercial fishing industry vessels.

* * * * *

(b) * * *

(3) Until February 1, 1998, a 121.5/243.0 MHz EPIRB meeting § 25.26–30(a).

(c) * * *

(2) Until February 1, 1998, a 121.5/243.0 MHz EPIRB meeting § 25.26–30(a).

4. By revising § 25.26–10 to read as follows:

§ 25.26–10 Uninspected passenger vessels and vessel assistance towing vessels.

(a) After (one year after date of publication of the final rule in the **Federal Register**), each owner or operator of an uninspected passenger vessel or vessel assistance towing vessel 11 meters (36 feet) or more in length, shall ensure that the vessel does not operate more than 3 nautical miles from the coastline or more than 4.8 Km (3 statute miles) from the coastline of the Great Lakes, except as provided for in paragraphs (b) and (c) of this section, unless it has on board—

(1) A float-free, automatically activated Category 1 406 MHz EPIRB stowed in a manner so that it will float free if the vessel sinks; or

(2) Until August 1, 1998, a 121.5/243.0 MHz EPIRB meeting § 25.26–30(b) of this subpart.

(b) After (one year after date of publication of the final rule in the **Federal Register**), the owner or operator of an uninspected passenger vessel or assistance towing vessel less than 11 meters (36 feet) in length, or an uninspected passenger vessel or assistance towing vessel 11 meters (36 feet) or more in length which has a builder's certification that the vessel is

constructed with inherently buoyant material to keep the flooded vessel afloat, shall ensure that the vessel does not operate 3 nautical miles from the coastline or beyond 4.8 Km (3 statute miles) from the coastline of the Great Lakes, except as provided for in paragraph (c) of this section, unless it has—

(1) A manually activated Category 2 406 MHz EPIRB installed in a readily accessible location at or near the principal steering station; or

(2) A float-free, automatically activated Category 1 406 MHz EPIRB installed in a readily accessible location at or near the principal steering station; or

(3) A float-free, automatically activated Category 1 406 MHz EPIRB installed in a manner so that it will float free if the vessel capsizes or sinks; or

(4) Until August 1, 1998, a 121.5/243.0 MHz EPIRB meeting § 25.26–30(b) of this subpart.

(c) A vessel identified in paragraphs (a) and (b) is not required to carry an EPIRB between one hour before sunrise and one hour before sunset if it—

(1) Operates between 3 and 20 minutes from shore and is equipped with an operable VHF radio capable of transmitting and receiving on channels 6, 13, 16, and 22A and operates within the VHF radio range of at least 1 VHF coast station (same as sea area A1 as defined in 47 CFR 80.1069) or

(2) Operates more than 20 miles from shore "in company" with at least one other vessel at all times and each vessel is equipped with an operable VHF radio capable of transmitting and receiving on channels 6, 13, 16, and 22A.

5. By revising the section heading and paragraphs (a) introductory text, (a)(2), (b) introductory text and (b)(3) of § 25.26–20 to read as follows:

§ 25.26–20 Other self-propelled uninspected commercial vessels.

(a) After March 10, 1994, the owner or operator of a self-propelled uninspected commercial vessel 11 meters (36 feet) or more in length, other than a vessel under § 25.26–5 or § 25.26–10 or under paragraph (b) of this section shall ensure that the vessel does not operate more than 3 nautical miles from the coastline or more than 4.8 Km (3 statute miles) from the coastline of the Great Lakes unless it has on board—

(1) * * *

(2) Until February 1, 1998, a 121.5/243.0 MHz EPIRB meeting § 25.26–30(a) of this subpart.

(b) After March 10, 1994, the owner or operator of a self-propelled uninspected commercial vessel 11 meters (36 feet) or more in length, or 11 meters (36 feet) or more in length which has a builder's certification that the vessel is constructed with sufficient inherently buoyant material to keep the flooded vessel afloat, shall ensure that the vessel does not operate more than 3 nautical miles from the coastline or more than 4.8 Km (3 statute miles) from the coastline of the Great Lakes, unless it has installed in a readily accessible location at or near the principal steering station—

(1) * * *

(2) * * *

(3) Until February 1, 1998, a 121.5/243.0 MHz EPIRB meeting § 25.26–30(a) of this subpart.

6. By revising § 25.26–30 to read as follows:

§ 25.26–30 121.5/243.0 MHz EPIRBs.

(a) A 121.5/243.0 MHz EPIRB manufactured after October 1, 1988, may be used to meet certain requirements of § 25.26–5 and § 25.26–20, if the EPIRB is operable and was installed on the vessel on or before April 26, 1993. The EPIRB must be a Class A EPIRB, or a Class B EPIRB which is watertight, self-buoyant, and stable in a floating position to properly transmit a distress signal.

(b) A 121.5/243.0 MHz EPIRB manufactured after October 1, 1988, may be used to meet the requirements of § 25.26–10 of this part, if the EPIRB is operable and was installed on the vessel on or before [date 45 days after date of publication in the **Federal Register** of the final rule]. The EPIRB must be a Class A EPIRB, or a Class B EPIRB which is watertight, self-buoyant, and stable in a floating position to properly transmit a distress signal.

7. By adding a new Subpart 25.27 to read as follows:

Subpart 25.27—Distress Signals

Sec.

Subpart 25.27—Distress Signals

§ 25.27–1 Definitions.

As used in this subpart:

Coastal waters means coastal waters as defined in 33 CFR 175.105.

§ 25.27–5 Visual distress signals.

Except for a commercial fishing industry vessel required to carry distress signals under § 28.145 of this chapter, after (one year after date of publication of the final rule in the **Federal Register**, each self-propelled uninspected vessel must be equipped with the distress signals specified in table 25.27–5.

TABLE 25.27–5.—VISUAL DISTRESS SIGNALS

Area	Devices required
Ocean, more than 50 miles from coastline	3 parachute flares, approval series 160.136; plus 6 hand flares, approval series 160.121; plus 3 smoke signals, approval series 160.122.
Ocean, 3 miles—50 miles from coastline; or more than 4.8 Km (3 statute miles) from the coastline of the Great Lakes.	3 parachute flares, approval series 160.136 or 160.036; plus 6 hand flares, approval series 160.121 or 160.021; plus 3 smoke signals, approval series 160.122, 160.022, or 160.037.
Coastal waters, excluding the Great Lakes; or within 4.8 Km (3 statute miles) of the coastline of the Great Lakes.	Night visual distress signals consisting of one electric distress light, approval series 161.013 or 3 approved flares; plus Day visual distress signals consisting of one distress flag, approval series 160.072, or 3 approved flares, or 3 approved smoke signals.[1]

[1] If flares are carried, the same 3 flares may be counted toward meeting both the day and night requirement.

Dated: November 23, 1993.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–3519 Filed 2–16–94; 8:45 am]

BILLING CODE 4910–14–M

federal register

Thursday
February 17, 1994

Part VII

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 9 et al.
Federal Acquisition Regulation; Past Performance Information; Proposed Rule

DEPARTMENT OF DEFENSE

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 9, 15, and 42

[FAR Case 93–2]

Federal Acquisition Regulation; Past Performance Information

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) are proposing a change to the Federal Acquisition Regulation (FAR) to address requirements for use of past performance information in the contractor selection process.

DATES: Comments should be submitted on or before April 18, 1994 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 16th & F Streets NW., room 4037, Washington, DC 20405.

Please cite FAR case 93–2 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Shirley Scott at (202) 501–0168 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4035, GS Building, Washington, DC 20405; telephone: (202) 501–4755. Please cite FAR case 93–2.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule implements Office of Federal Procurement Policy Letter 92–5, Past Performance Information, which was published in the **Federal Register** at 58 FR 3573 on January 11, 1993.

B. Regulatory Flexibility Act

The proposed changes to FAR Parts 9, 15, and 42 may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the requirements for use of past performance information in contract award decisions may preclude award to otherwise successful offerors. The extent of the impact is not known. An Initial Regulatory Flexibility Analysis has been prepared and is summarized as follows:

The proposed rule implements Office of Federal Procurement Policy Letter 92–5, Past Performance Information. The OFPP policy letter requires Federal agencies to evaluate contractor performance on all new contracts over $100,000, to use past performance information in making responsibility determinations in both sealed bid and competitively negotiated procurements, and to specify past performance as an evaluation factor in solicitations for competitively negotiated contracts expected to exceed $100,000. The rule establishes procedures for use of past performance information in the contractor selection process. A satisfactory performance record is a prerequisite to being determined a "responsible source" pursuant to 41 U.S.C. 403. The rule will apply to all large and small entities who perform or are interested in performing Government contracts. The rule will impose no new reporting or recordkeeping requirements on large or small entities. The rule implements OFPP Policy Letter 92–5, but does not duplicate, overlap, or conflict with any other Federal rules. There are no known alternatives which would accomplish the objectives of OFPP Policy Letter 92–5.

A copy of the Initial Regulatory Flexibility Analysis has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite FAR case 93–2 in the correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule does not impose recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 9, 15 and 42

Government procurement.

Dated: February 14, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 9, 15, and 42 be amended as set forth below:

1. The authority citation for 48 CFR parts 9, 15, and 42 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 9—CONTRACTOR QUALIFICATIONS

9.104–1 [Amended]

2. Section 9.104–1, paragraph (c) is amended by adding the words "and subpart 42.15" at the end.

3. Section 9.105–1, paragraph (c) introductory text, is revised as follows:

9.105–1 Obtaining information.

* * * * *

(c) The contracting officer shall consider relevant past performance information (see subpart 42.15) in making determinations of responsibility or nonresponsibility. In addition, the contracting officer should use the following sources of information to support such determinations:

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

4. Section 15.605, paragraph (b) is revised to read as follows:

15.605 Evaluation factors.

* * * * *

(b)(1) The evaluation factors that apply to an acquisition and the relative importance of those factors are within the broad discretion of agency acquisition officials except that—

(i) Price or cost to the Government shall be included as an evaluation factor in every source selection.

(ii) Past performance shall be evaluated in all competitively negotiated acquisitions expected to exceed $100,000, unless the contracting officer documents in the contract file the reasons why past performance should not be evaluated. Past performance may be evaluated in competitively negotiated acquisitions estimated at $100,000 or less at the discretion of the contracting officer.

(iii) Quality shall be addressed in every source selection. In evaluation factors, quality may be expressed in terms of technical excellence, management capability, personnel qualifications, prior experience, and schedule compliance.

(2) Any other relevant factors, such as cost realism, may also be included.

* * * * *

5. Section 15.608 is amended in the introductory text of paragraph (a) by removing the parenthetical phrase "(as conveyed by the proposal)", and by adding paragraph (a)(3) as follows:

15.608 Proposal evaluation.

(a) * * *

(3) *Past performance evaluation.* (i) Past performance information should be used in assessing performance risk. The

assessment of performance risk should consider the relative merits of the offeror's prior experience and performance as compared to that of other competing offerors. The number and severity of an offeror's problems, the effectiveness of corrective actions taken, the offeror's overall work record, and the age and relevance of past performance information should be considered at the time it is used.

(ii) Past performance information may be obtained from a variety of sources, including private firms. The source and type of past performance information to be included in the evaluation is within the broad discretion of agency acquisition officials and should be tailored to the circumstances of each procurement. Evaluations of contractor performance prepared in accordance with subpart 42.15 are one source of performance information which may be used.

(iii) firms shall be allowed to compete for contracts even though they lack a history of relevant past performance.

* * * * *

PART 42—CONTRACT ADMINISTRATION

6. Section 42.302 is amended by adding paragraph (b)(11) to read as follows:

42.302 Contract administration functions.

* * * * *

(b) * * *

(11) Prepare evaluations of contractor performance in accordance with subpart 42.15.

* * * * *

7. Subpart 42.15, consisting of sections 42.1500 through 42.1503, is added to read as follows:

Subpart 42.15—Contractor Performance Information

42.1500 Scope of subpart.

This subpart provides policies and establishes responsibilities for recording and maintaining contractor performance information. It implements Office of Federal Procurement Policy Letter 92–5, Past Performance Information. This subpart does not apply to procedures used by agencies in determining fees under award or incentive fee contracts.

42.1501 General.

Past performance information is relevant information regarding a contractor's actions under previously awarded contracts. It includes, for example, the contractor's record of conforming to specifications and to standards of good workmanship; the contractor's record of forecasting and containing costs on any previously performed contracts; the contractor's adherence to contract schedules, including the administrative aspects of performance; the contractor's history for reasonable and cooperative behavior and commitment to customer satisfaction; and generally, the contractor's business-like concern for the interest of the customer. This information may be used in preparing evaluations of contractor performance under this subpart.

42.1502 Policy.

(a) Except as provided in paragraph (b) of this section, agencies shall prepare an evaluation of contractor performance for each contract in excess of $100,000 at the time the work under the contract is completed. Additional evaluations may be prepared during the term of the contract. The content and format of performance evaluations shall be established in accordance with agency procedures and should be tailored to the size, content, and complexity of the contractual requirements.

(b) Agencies shall evaluate construction contractor performance and architect/engineer contractor performance in accordance with 36.201 and 36.604, respectively.

42.1503 Procedures.

(a) Agency evaluations of contractor performance prepared under this subpart shall be provided to the contractor as soon as practicable after completion of the evaluation. Contractors shall be given a minimum of 30 days to submit comments, rebutting statements, or additional information. The ultimate conclusion and content of an evaluation is a decision of the contracting agency. Copies of the contractor response shall be permanently retained as part of the evaluation.

(b) Departments and agencies are encouraged to share past performance information with other departments and agencies when considered appropriate and to the extent practicable to support future award decisions. However, past performance information including evaluations of contractor performance, shall not be provided to any private party without the contractor's consent, except in accordance with subpart 24.2.

(c) Any past performance information systems, including automated systems, used for maintaining contractor performance information and/or evaluations should include appropriate management and technical controls to ensure that only authorized personnel have access to the data.

(d) Past performance information should be updated as often as necessary to maintain the currency of the information, and shall not be retained for more than six years without being updated.

[FR Doc. 94–3666 Filed 2–16–94; 8:45 am]
BILLING CODE 6820–34–M

federal register

Thursday
February 17, 1994

Part VIII

The President

Federal Register
Vol. 59, No. 33
Thursday, February 17, 1994

Presidential Documents

Title 3—

The President

Executive Order 12899 of February 15, 1994

Establishing an Emergency Board To Investigate a Dispute Between The Long Island Rail Road and Certain of Its Employees Represented by the United Transportation Union

A dispute exists between The Long Island Rail Road and certain of its employees represented by the United Transportation Union.

The dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended (the "Act").

A first emergency board to investigate the dispute was established by Executive Order No. 12874 on October 20, 1993. The emergency board terminated upon issuance of its report and, subsequently, its recommendations were not accepted.

A party empowered by the Act has requested that the President establish a second emergency board pursuant to section 9A of the Act (45 U.S.C. 159a).

Section 9A(e) of the Act provides that the President, upon such request, shall appoint a second emergency board to investigate and report on the dispute.

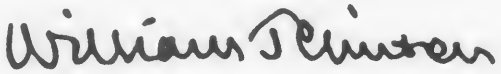
NOW, THEREFORE, by the authority vested in me by section 9A of the Act, it is hereby ordered as follows:

Section 1. *Establishment of the Board.* There is established, effective February 15, 1994, a board of three members to be appointed by the President to investigate this dispute. No member shall be interested pecuniarily or otherwise in any organization of railroad employees or any carrier. The board shall perform its functions subject to the availability of funds.

Sec. 2. *Report.* Within 30 days after creation of the board, the parties to the dispute shall submit to the board final offers for settlement of the dispute. Within 30 days after submission of final offers for settlement of the dispute, the board shall submit a report to the President setting forth its selection of the most reasonable offer.

Sec. 3. *Maintaining Conditions.* As provided by section 9A(h) of the Act, from the time a request to establish a board is made until 60 days after the board makes its report, the parties shall make no changes in the conditions out of which the dispute arose, except by agreement.

Sec. 4. *Expiration.* The board shall terminate upon submission of the report provided for in section 2 of this order.



THE WHITE HOUSE,
February 15, 1994.

[FR Doc. 94–3853
Filed 2–16–94; 11:06 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 6650 of February 16, 1994

To Amend the Generalized System of Preferences and for Other Purposes

By the President of the United States of America

A Proclamation

1. Pursuant to sections 501 and 502 of the Trade Act of 1974, as amended ("Trade Act") (19 U.S.C. 2461 and 2462), and having due regard for the eligibility criteria set forth therein, I have determined that it is appropriate to designate Kazakhstan and Romania as beneficiary developing countries for purposes of the Generalized System of Preferences ("GSP").

2. Proclamation No. 6579 of July 4, 1993, implemented an accelerated schedule of duty elimination and modified the rules of origin under the United States-Canada Free-Trade Agreement. Proclamation No. 6641 of December 15, 1993, implemented the North American Free Trade Agreement. Certain conforming changes and technical corrections to the Harmonized Tariff Schedule of the United States ("HTS") were omitted from these proclamations. I have decided that it is appropriate to modify the HTS to make such changes and corrections.

3. Section 604 of the Trade Act (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the provisions of that Act, and of other acts affecting import treatment, and actions thereunder.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to sections 501 and 604 of the Trade Act, do proclaim that:

(1) General note 4(a) to the HTS, listing those countries whose products are eligible for benefits of the GSP, is modified by inserting "Kazakhstan" and "Romania" in alphabetical order in the enumeration of independent countries.

(2) In order to make conforming changes and technical corrections in certain HTS provisions, pursuant to actions taken in Proclamation No. 6579 and Proclamation No. 6641, the HTS and Proclamation No. 6641 are modified as provided in the annex to this proclamation, effective as of the dates specified in such annex.

(3) Any provisions of previous proclamations and Executive orders inconsistent with the provisions of this proclamation are hereby superseded to the extent of such inconsistency.

(4) The modifications to the HTS made by paragraph (1) of this proclamation shall be effective with respect to articles that are: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after 15 days after the date of publication of this proclamation in the **Federal Register**.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of February, 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 eighteenth.

William J. Clinton

Billing code 3195-01-P

Annex

CONFORMING CHANGES AND TECHNICAL CORRECTIONS TO
THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

A. Effective with respect to goods of Canada, under the terms of general note 12 to the HTS, which are entered, or withdrawn from warehouse for consumption, on or after the date specified in a notice published in the Federal Register by the United States Trade Representative pursuant to section B of the annex to Presidential Proclamation 6579:

(1) The modifications made in section (B)(1) of the annex to Proclamation 6579 to subheading "8540.11.00" shall be made to subheadings "8540.11.10, 8540.11.20, 8540.11.30, 8540.11.40 and 8540.11.50".

(2) Subheading 9905.73.04 of the HTS, as established by section (B)(3) of the annex to Proclamation 6579, is modified by striking "7304.41.00" and by inserting in lieu thereof "7304.41.30, 7304.41.60".

B. Effective with respect to goods of Canada, under the terms of general note 12 to the HTS, which are entered, or withdrawn from warehouse for consumption, on or after January 1 of each year of the years listed below:

For subheading 6303.92.20, the Rates of Duty 1-Special subcolumn is modified (i) by deleting the rate of duty preceding the symbol "CA" in parentheses and inserting the rate of duty specified in the first dated column in the table below in lieu thereof, and (ii) for each of the subsequent dated columns, the rates of duty that are followed by the symbol "CA" in parentheses are deleted and the following rates of duty are inserted in lieu thereof:

	1995	1996	1997	1998
6303.92.20	3.8%	2.5%	1.2%	Free

C. Effective January 1, 1994:

(1) General note 1 to the HTS is modified by striking "3 and 4" and by inserting in lieu thereof "3 through 13, inclusive".

(2) For subheading 4504.90.20, in the Rates of Duty 1-Special subcolumn, insert in the parentheses following the "Free" rate in such subcolumn, the symbol "MX" in alphabetical order.

(3) General note 4(d) to the HTS is modified by striking "8471.92.40 Malaysia" and by inserting in lieu thereof "8471.92.32 Malaysia" and "8471.92.34 Malaysia".

(4) Subheadings 8471.92.32 and 8471.92.34 are each modified by striking the symbol "A" from the Rates of Duty 1-Special subcolumn and by inserting in lieu thereof "A*".

(5) The superior text immediately preceding subheading 8528.10.04 is modified by deleting "note 4" and inserting in lieu thereof "note 10".

(6) The superior text immediately preceding subheading 8529.90.10 (as in effect at the close of December 31, 1993) is stricken.

(7) The modification made in section (A)(102) of Annex II to Proclamation 6641 to U.S. note 3 to subchapter II of chapter 98 shall be made in subdivision (c) of such U.S. note 3.

(8) Annex III to Proclamation 6641 of December 15, 1993 is modified by:

(a) deleting subheading 4505.90.20 from section (A)(1)(a), and

(b) deleting 6303.92.90, 8529.90.56 and 8529.90.59 from section (D).

D. Effective with respect to goods of Mexico, under the terms of general note 12 to the HTS, entered, or withdrawn from warehouse for consumption, on or after January 1, 1994:

(1) Subheading 6307.90.99 is modified by striking "6.5% (MX)" and by inserting in the parenthetical expression following the "Free" rate of duty in the Rates of Duty 1-Special subcolumn the symbol ", MX" in alphabetical sequence.

(2) U.S. note 10 to subchapter VI of chapter 99 is modified by inserting the following new first effective period for imports entered under subheading 9906.07.08:

"Entered from January 1, 1994, to February 28, 1994 No limit".

(3) U.S. note 13 to subchapter VI of chapter 99 is modified by inserting the following new first effective period for imports entered under subheading 9906.07.42:

"Entered from January 1, 1994, to July 31, 1994 No limit".

(4) U.S. note 14 to subchapter VI of chapter 99 is modified by inserting the following new first effective period for imports entered under subheading 9906.07.47:

"Entered from January 1, 1994, to June 30, 1994 No limit".

[FR Doc. 94-3864
Filed 2-16-94; 11:27 am]
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H.R. 3759/P.L. 103–211

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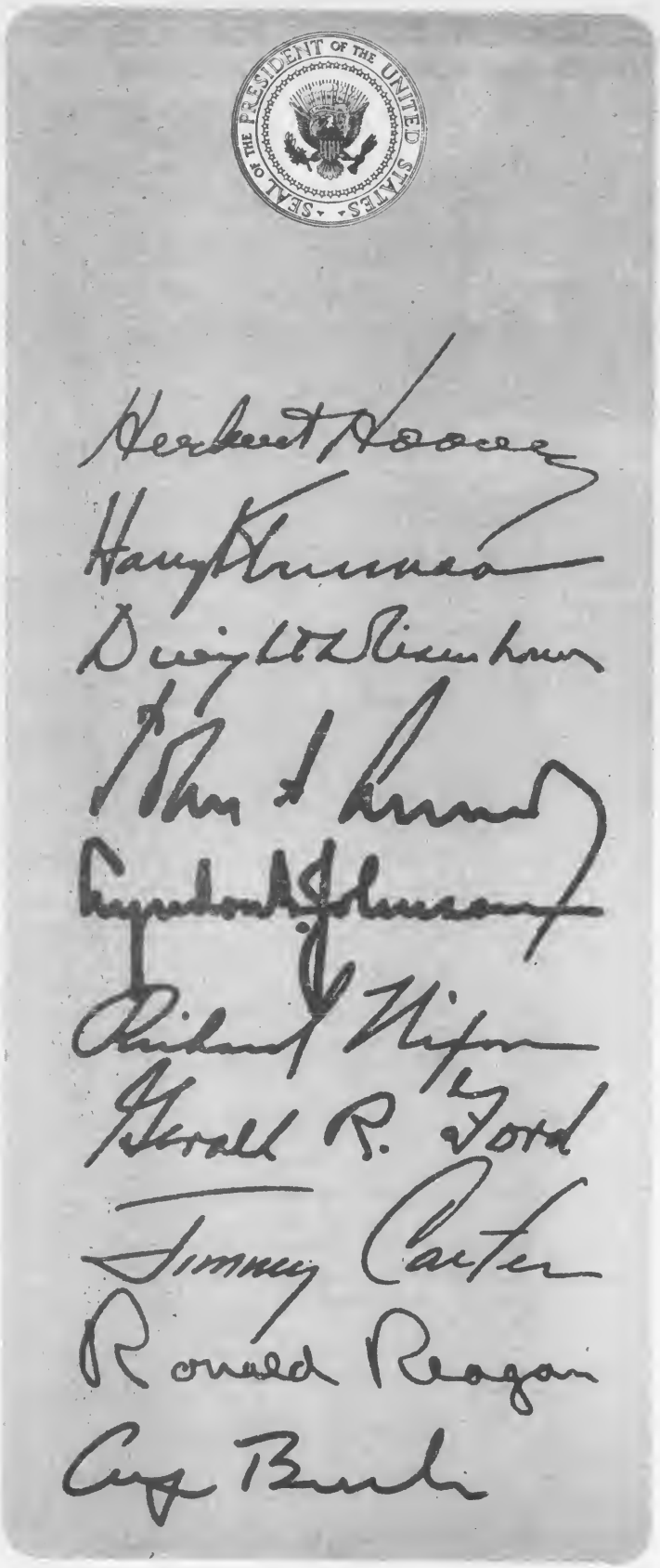

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