11–24–95
Vol. 60 No. 226
Pages 57889–58198

federal register

Friday
November 24, 1995

Briefings on How To Use the Federal Register
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WHO: Sponsored by the Office of the Federal Register.

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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 Sessions]

WHEN: November 28 at 9:00 am
December 5 at 9:00 am

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

RESERVATIONS: 202–523–4538

LONG BEACH, CA

WHEN: December 12, 1995 at 9:00 am

WHERE: Glenn M. Anderson Federal Building, Conference Room—Room 3470, 501 West Ocean Boulevard, Long Beach, CA 90802

RESERVATIONS: 310–980–3447

SEATTLE, WA

[Two Sessions]

WHEN: December 13, 1995 at 9:00 am and 1:00 pm

WHERE: National Archives—Pacific Northwest Region, Conference Room, 6125 Sand Point Way, NE., Seattle, WA 98115

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

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AG53

Prevailing Rate Systems; Abolishment of Certain Special Wage Schedules for Printing Positions

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule to abolish the Federal Wage System special wage schedules for printing positions in the Los Angeles, California; San Diego, California; San Francisco, California; and Seattle-Everett-Tacoma, Washington, wage areas. Printing and lithographic employees in these wage areas will now be paid rates from the regular wage schedule for their respective wage area.

EFFECTIVE DATE: December 26, 1995.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606–2848.

SUPPLEMENTARY INFORMATION: On September 6, 1995, OPM published an interim rule to abolish the Federal Wage System special wage schedules for printing positions in the Los Angeles, California; San Diego, California; San Francisco, California; and Seattle-Everett-Tacoma, Washington, wage areas. Printing and lithographic employees in these wage areas will now be paid rates from the regular wage schedule for their respective wage area.

The Department of Defense recommended to the Office of Personnel Management that these special wage schedules for printing positions be abolished and that the regular wage schedule for each area apply to printing employees. Federal employment in printing and lithographic occupations in these wage areas has declined in recent years. Only a small number of employees are now paid from these special wage schedules, and only a few of these employees actually benefit by being paid from the special rather than the regular wage schedule. Most of the covered employees are paid ''floor rates'' established under the 5 CFR 532.279 provision that no maximum rate on a special printing schedule may be less than the maximum rate for the corresponding grade on the regular wage schedule for the wage area. In addition, with the reduced number of employees, it has been difficult to comply with the requirement that workers paid from the special printing schedule participate in the special wage survey process.

The interim rule provided a 30-day period for public comment. OPM received no comments during the comment period. Therefore, the interim rule is being adopted as a final rule.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Accordingly, under the authority of 5 U.S.C. 5343, the interim rule amending 5 CFR part 532 published on September 6, 1995 (60 FR 46213), is adopted as final without any changes.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 95–28714 Filed 11–22–95; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Part 950

RIN 3206–AG50

Solicitation of Federal Civilian and Uniformed Service Personnel for Contributions to Private Voluntary Organizations

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations governing the solicitation of Federal civilian and uniformed personnel for contribution to private voluntary organizations under the authority of Executive Order 12353 (March 23, 1982). Combined Federal Campaign (CFC) participants and OPM's Inspector General have indicated a need for clarifying or changing current procedures for soliciting Federal employees in the workplace. These changes improve procedural operations and accountability for the annual charitable solicitation campaign conducted by Federal personnel in their Government workplaces and set forth ground rules under which charitable organizations may receive contributions from Federal personnel through the CFC.

EFFECTIVE DATE: November 24, 1995.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Lee, 202–606–2564.

SUPPLEMENTARY INFORMATION: These regulations are to implement a number of procedural changes to the operations of the Combined Federal Campaign (CFC). The final regulations contain most of the provisions proposed in the February 16, 1995 Federal Register; they include, but are not limited to:

More clearly defining the scope and meaning of workplace solicitations in the Federal Government;

Identification of the circumstances where the Director may authorize solicitations of Federal employees in the workplace outside of the CFC;

Clarification of procedural requirements for charitable organizations seeking participation in the CFC;

Expanding local eligibility by defining and enumerating criteria for organizations that provide services on a statewide basis;

Removing all general designation options not required by statute;

Expanding the solicitation methods and the pool of potential donors.

Other provisions contained in the proposed regulations were not retained in the final version. Several hundred comments were received and considered. The following provisions received overwhelming objections and were deleted:

Expanding the duration of a payroll allotment to an unlimited term or ''perpetual pledge'' proved to be administratively undesirable and potentially adverse;

Authorizing a fee of 15 percent of undesignated funds to the PCFO proved to create an appearance of conflict of interest;

Automatic ineligibility for organizations that exceed the 25 percent administrative and fundraising expenses cap for more than 2 years proved to be unreasonable given the totality of circumstances.

These regulations are consistent with the restrictions placed on OPM by section 618 of the Treasury, Postal Service, and General Government Appropriations Act for 1988.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because it will only effect those charitable organizations that participate in the CFC.

Paperwork Reduction Act

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 3206–0131.

List of Subjects in 5 CFR Part 950

Administrative practice and procedures, Charitable contributions, Government employee, Military personnel, Nonprofit organizations, Reporting and recordkeeping requirements.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is revising 5 CFR part 950 as follows:

PART 950—SOLICITATION OF FEDERAL CIVILIAN AND UNIFORMED SERVICE PERSONNEL FOR CONTRIBUTIONS TO PRIVATE VOLUNTARY ORGANIZATIONS

Subpart A—General Provisions

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950.801 Campaign schedule.

Subpart I—Payroll Withholding

950.901 Payroll allotment.

Authority: E.O. 12353 (March 23, 1982), 47 FR 12785 (March 25, 1982). 3 CFR, 1982 Comp., p. 139. E.O. 12404 (February 10, 1983), 48 FR 6685 (February 15, 1983), Pub. L. 100–202, and Pub. L. 102–393 (5 U.S.C. 1101 Note).

Subpart A—General Provisions

§ 950.101 Definitions.

Administrative Expenses, PCFO Expenses, Campaign Expenses, or *CFC Expenses* means all documented expenses identified in the PCFO application relating to the conduct of a local CFC and approved by the LFCC in accordance with these regulations.

Campaign Year means the calendar year in which Federal employees are solicited for contributions to the Combined Federal Campaign.

Combined Federal Campaign or *Campaign* or *CFC* means the charitable fundraising program established and administered by the Director of the Office of Personnel Management (OPM) pursuant to Executive Order No. 12353, as amended by Executive Order No. 12404, and all subsidiary units of such program.

Designated Funds means those contributions which the contributor has designated to a specific charitable organization(s), federation(s), or general option(s).

Director means the Director of the Office of Personnel Management or his/her designee.

Domestic Area means the several United States, the District of Columbia, the Commonwealth of Puerto Rico, and the United States Virgin Islands.

Employee means any person employed by the Government of the United States or any branch, unit, or instrumentality thereof, including persons in the civil service, uniformed service, foreign service, and the postal service.

Federation or *Federated Group* means a group of voluntary charitable human health and welfare organizations created to supply common fundraising, administrative, and management services to its constituent members.

International General Designation Option means that the donor wishes that his or her gift be distributed to all of the international organizations listed in the International Section of the campaign brochure in the same proportion as all of the international organizations received designations in the local CFC. This option will have the code IIII.

International Organization means a charitable organization that provides services either exclusively or in a substantial preponderance to persons in non-domestic areas.

Local Federal Coordinating Committee or *LFCC* means the group of Federal officials designated by the Director to conduct the CFC in a particular community.

Organization or *Charitable Organization* means a private, non-profit, philanthropic, human health and welfare organization.

Overseas Area means the Department of Defense (DoD) Overseas Campaign which includes all areas other than those included in the domestic area.

Principal Combined Fund Organization or *PCFO* means the federated group or combination of groups, or a charitable organization selected by the LFCC to administer the local campaign under the direction and control of the LFCC and the Director.

Solicitation means any action requesting money, either by cash, check or payroll deduction, on behalf of charitable organizations.

Undesignated Funds means those contributions which the contributor has not designated to a specific charitable organization(s), federation(s), or the International General Designation Option.

§ 950.102 Scope of the Combined Federal Campaign.

(a) The CFC is the only authorized solicitation of employees in the Federal workplace on behalf of charitable organizations. A campaign may be conducted during a 6 week period, as determined by the LFCC, from September 1 through December 15 at

every Federal agency in the campaign community in accordance with these regulations. Except as provided in this section, no other solicitation on behalf of charitable organizations may be conducted in the Federal workplace. Upon written request, the Director may grant permission for solicitations of Federal employees, outside the CFC, in support of victims in cases of emergencies and disasters. Emergencies and disasters are defined as any hurricane, tornado storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the world. No such permission will be granted for such solicitations during the period September 1 through December 15.

(b) These regulations do not apply to the collection of gifts-in-kind, such as food, clothing and toys, or to the solicitation of Federal employees outside of the Federal workplace as defined by the applicable Agency Head consistent with General Services Administration regulations and any other applicable laws or regulations.

(c) The Director exercises general supervision over all operations of the CFC, and takes all necessary steps to ensure the achievement of campaign objectives. Any disputes relating to the interpretation or implementation of this part may be submitted to the Director for resolution. The decisions of the Director are final for administrative purposes.

(d) Heads of departments or agencies may establish policies and procedures applicable to solicitations conducted by organizations composed of civilian employees or members of the uniformed services among their own members for organizational support or for the benefit of welfare funds for their members. Such solicitations are not subject to these regulations, and therefore do not require permission of the Director.

§ 950.103 Establishing a local campaign.

(a) The Director establishes and maintains the official list of local campaigns and the geographical area each covers. There is no prerequisite regarding the Federal employee population needed to establish or maintain a CFC. However, rather than establishing or maintaining small campaigns, OPM encourages mergers and expansions of campaigns to promote efficiency and economy.

(b) The Director establishes an LFCC to govern the conduct of the local CFC. The LFCC will, whenever possible, be comprised of members of local Federal inter-agency organizations, such as Federal Executive Boards, Federal Executive Associations, Federal Business Associations or, in the absence of such organizations, self-organized associations of local Federal officials. These groups will include local Federal agency heads or their representatives. It may also include representatives of employee unions and other employee groups. Rotation of the LFCC Chair position among the LFCC members is encouraged. For continuity, each LFCC should appoint a Vice Chair who would be expected to serve at the conclusion of the Chair's term.

(c) The agency head at each Federal installation within a campaign area shall:

(1) Become familiar with all CFC regulations,

(2) Cooperate with the representatives of the LFCC and PCFO in organizing and conducting the campaign,

(3) Initiate official campaigns within their offices or installations and provide support for the campaign, and

(4) Assure the campaign is conducted in accordance with these regulations.

(d) Once a campaign has been established, agency heads may not discontinue solicitation of Federal employees within their organization without the written approval of the Director.

(e) Any change in the geographical boundaries of local campaigns may be made only upon the express written permission of the Director.

(f) Each year the LFCC must establish the 6 week time period to solicit employees. Each campaign should not be conducted for more than a 6 week period. However, in unusual circumstances the LFCC may extend the campaign as local conditions require. The solicitation may not begin before September 1 and in no event will it extend beyond December 15 of each year.

(g) Current Federal civilian and active duty military employees may be solicited for contributions using payroll deduction, checks, money orders or cash. Contractor personnel, credit union employees and other persons employed on Federal premises, as well as retired Federal employees, may make single contributions to the CFC through check or money order. These non-Federal employees may not be solicited, but are to be provided the opportunity to participate in the CFC.

(h) A Federal employee whose official duty station is outside the geographic boundaries of an established CFC may not be solicited in that CFC. A Federal employee may participate in a particular CFC only if that employee's official duty station is located within the geographic boundaries of that CFC.

§ 950.104 Local Federal Coordinating Committee responsibilities.

(a) All members of the LFCC should develop an understanding of campaign regulations and procedures. The LFCC is the central point of information regarding the CFC among Federal employees.

(b) The responsibilities of the LFCC include, but are not limited to, the following:

(1) Maintaining minutes of LFCC meetings and responding promptly to any request for information from the Director.

(2) Naming a campaign chairperson and notifying the Director when the chairperson changes.

(3) Determining the eligibility of local organizations that apply to participate in the local campaign. This is the exclusive responsibility of the LFCC and may not be delegated to the PCFO.

(4) Ensuring that the list of charities determined by the Director to be nationally eligible to participate in all local campaigns is reproduced in the local brochure in accordance with OPM instructions.

(5) Ensuring that the local brochure and pledge card are produced in accordance with these regulations and instructions from the Director.

(6) Encouraging local Federal agencies to appoint loaned executives to assist in the campaign. Federal agency heads are encouraged to grant administrative leave to all loaned executives appointed to assist in the conduct of the CFC. Federal loaned executives are prohibited from working on non-CFC fundraising activities during duty hours.

(7) Establishing a network of employee keyworkers and volunteers and participating in interagency briefing sessions and kick-off meetings.

(8) Ensuring that, to the extent reasonably possible, every employee is given the opportunity to participate in the CFC, and ensuring employee designations are honored.

(9) Ensuring that the PCFO includes in keyworker training instructions to encourage employees to designate the charitable organizations they wish to receive their donations and specific information on how general designation monies are distributed.

(10) Ensuring that contributions are distributed in accordance with the method described in these regulations.

(11) Ensuring that no employee is coerced in any way to participate in the campaign.

(12) Bringing allegations of coercion to the attention of the Director and the

employee's agency and providing a mechanism to review employee complaints of undue pressure and coercion in Federal fundraising. Federal agencies shall provide procedures and assign responsibility for the investigation of such complaints. Personnel offices shall be responsible for informing employees of the proper channels for pursuing such complaints.

(13) Notifying the Director of any significant problems or controversies concerning the campaign that the LFCC cannot resolve by applying these regulations. The LFCC must abide by the Director's decisions on all matters concerning the campaign.

(14) Ensuring the PCFO does not use the services of consulting firms, advertising firms or similar business organizations to perform the policy-making or decisionmaking functions in the CFC. A PCFO may, however, contract with entities or individuals such as banks, accountants, lawyers, and other vendors of goods and/or services to assist in accomplishing its administrative tasks.

(15) Ensuring that the activities and functions required of the PCFO are kept separate from any non-CFC operations of the organization. The LFCC must verify that the PCFO keeps and maintains CFC financial records and interest bearing bank accounts separate from the PCFO's non-CFC financial records and bank accounts.

(16) Monitoring the work of the PCFO, and inspecting closely the annual audit required of the PCFO pursuant to § 950.105(d)(9) for compliance with these regulations.

(17) Authorizing to the PCFO reimbursement of only those campaign expenses that are legitimate CFC costs and are adequately documented. Total reimbursable expenses may not exceed the approved campaign budget by more than 10 percent.

(c) The LFCC must annually solicit applications for the PCFO via public notice no later than February 1 of each calendar year. The PCFO application period must be open a minimum of 14 calendar days. Cost incurred in providing the public notice should be added to the PCFO budget for the current campaign year as an administrative cost. The LFCC shall select a PCFO to act as its fiscal agent and campaign coordinator on the basis of presentations made to the local committee as described in § 950.105. The LFCC shall consider the efficiency and effectiveness of the campaign as the primary factors in selecting a PCFO.

§ 950.105 Principal Combined Fund Organization (PCFO) responsibilities.

(a) Only federations, charitable organizations or combinations thereof may serve as the PCFO.

(b) the primary goal of the PCFO is to conduct an effective and efficient campaign in a fair and even-handed manner aimed at collecting the greatest amount of charitable contributions possible. Therefore, PCFO's should afford federated groups and agencies with representatives in the local campaign area adequate opportunity to offer suggestions relating to the operation of the campaign, printed campaign material, and training. If requested in writing to either the LFCC or PCFO, federated groups and agencies must be given the opportunity to attend all campaign meetings, kick-off events, and training sessions. The PCFO must provide representatives of federated groups, agencies and the general public the opportunity to review at the PCFO office all reports, budgets, audits, training materials, and other records pertaining to the CFC.

(c) Any federation, charitable organization or combinations thereof wishing to be selected for the PCFO must submit a timely application in accordance with the deadline set by the LFCC, that includes:

(1) A written campaign plan sufficient in detail to allow the LFCC to determine if the applicant could administer an efficient and effective CFC. The campaign plan must include a CFC budget that details all estimated costs required to operate the CFC. The budget may not be based on the percentage of funds raised in the local campaign.

(2) A statement signed by the applicant's local director or equivalent pledging to:

(i) administer the CFC fairly and equitably,

(ii) conduct campaign operations, such as training, kick-off and other events, and fiscal operations, such as banking, auditing, reporting and distribution separate from the applicant's non-CFC operations, and

(iii) abide by the directions, decisions, and supervision of the LFCC and/or Director.

(3) A statement signed by the applicant's local director or equivalent acknowledging the applicant is subject to the provisions of § 950.403 and § 950.603.

(d) The specific responsibilities of the PCFO include but are not limited to:

(1) Honoring employee designations.

(2) Helping to ensure no employee is coerced in any way regarding participation in the campaign and that allegations of coercion are brought to the attention of the appropriate Federal officials.

(3) Training agency loaned executives, coordinators, and keyworkers in the methods of non-coercive solicitation. This training must be completely separate from training given for other types of charitable campaign drives. Additionally, keyworkers should be trained to check to ensure the pledge card is legible on each copy, verify arithmetical calculations, and ensure the block on the pledge card concerning the release of the employee's name and address is completed fully.

(4) Ensuring that no employee is questioned in any way as to his or her designation or its amount except by keyworkers, loaned executives, or other non-supervisory Federal personnel.

(5) Preparing pledge cards and brochures that are consistent with these regulations and instructions by the Director.

(6) Honoring the request of employees who indicate on the pledge card that their names not be released to the organization(s) that they designate.

(7) Maintaining a detailed schedule of its actual CFC administrative expenses with, to the extent possible, itemized receipts for the expenses. The expense schedule must be in a format that can be reconciled to the PCFO's budget submitted in accordance with paragraph (c)(1) of this section.

(8) Keeping and maintaining CFC financial records and interest-bearing bank accounts separate from the PCFO's internal organizational financial records and bank accounts. Interest earned on all CFC accounts must be distributed in the same manner as undesignated funds pursuant to § 950.501. All financial records and bank accounts must be kept in accordance with generally accepted accounting principles.

(9) Submitting to the LFCC an audit of collections and disbursements for each campaign managed no later than June 15 of the year in which the last disbursement is made. For example, for the 1994 CFC the audit of the 1994 campaign must be submitted to the LFCC no later than June 15, 1996. The audit must be performed by an independent certified public accountant in accordance with generally accepted auditing standards and OPM guidance.

(10) Absorbing the cost of any reprinting of campaign materials due to its noncompliance with these regulations, embezzlement, or loss of funds. A PCFO must also absorb campaign costs exceeding 10 percent of the approved budget.

(11) Designing and implementing CFC awards programs which are accessible to all employees and which reflect the

Government's commitment to non-coercion. Awards to Federal agencies or employees by individual federations or organizations for CFC accomplishments is prohibited.

(12) Producing any documents or information requested by the LFCC and/or the Director within 10 calendar days of the receipt of that request.

(13) Responding in a timely and appropriate manner to reasonable inquiries from participating organizations.

(e) A federated group(s) or charitable organization may be barred from serving as PCFO for 1 year if determined by the Director to have violated these regulations. A federated group(s) or charitable organization serving as PCFO will be notified of the Director's intent to bar and have an opportunity to submit written comments prior to its becoming effective. The Director's decision as to debarment shall be communicated in writing to the LFCC and PCFO, and the LFCC shall not consider an application from such group(s) or organization to serve as the PCFO during terms of debarment.

§ 950.106 PCFO expense recovery.

(a) The PCFO shall recover from the gross receipts of the campaign its expenses, approved by the LFCC, reflecting the actual costs of administering the local campaign. The amount recovered for campaign expenses shall not exceed 10 percent of the estimated budget submitted pursuant to § 950.105(c)(1) unless approved by the Director.

(b) The PCFO may only recover campaign expenses from receipts collected for that campaign year. Expenses incurred preparing for and conducting the CFC cannot be recovered from receipts collected in the previous year's campaign. The PCFO may absorb the costs associated with conducting the campaign from its own funds and be reimbursed, or obtain a commercial loan to pay for costs associated with conducting the campaign. If the commercial loan option is used, the amount of a reasonable rate of interest is an allowable campaign expense, subject to the approval of the LFCC when the PCFO budget is submitted.

(c) The campaign expenses will be shared proportionately by all the recipient organizations reflecting their percentage share of gross campaign receipts.

§ 950.107 Lack of a qualified PCFO.

There is no authority in statute or regulation for an LFCC or any Federal official or employee to assume the duties and responsibilities of the PCFO. In the event that there is no qualified PCFO, the LFCC Chairman will promptly inform the Director in writing. The Director will assist the LFCC in merging the campaign with an adjacent campaign that has a qualified PCFO or identifying an eligible organization to function as the campaign's PCFO. If the LFCC's of the adjacent campaigns elect not to merge and a qualified PCFO cannot be found, the local CFC will be canceled. No workplace solicitation of any Federal employee in the campaign area is authorized and payroll allotments cannot be accepted and honored during the duration of the cancellation of the CFC.

§ 950.108 Preventing coercive activity.

True voluntary giving is fundamental to Federal fundraising activities. Actions that do not allow free choices or create the appearance employees do not have a free choice to give or not to give, or to publicize their gifts or to keep them confidential, are contrary to Federal fundraising policy. Activities contrary to the non-coercive intent of Federal fundraising policy are not permitted in campaigns. They include, but are not limited to:

(a) Solicitation of employees by their supervisor or by any individual in their supervisory chain of command. This does not prohibit the head of an agency to perform the usual activities associated with the campaign kick-off and to demonstrate his or her support of the CFC in employee newsletters or other routine communications with the Federal employees.

(b) Supervisory inquiries about whether an employee chose to participate or not to participate or the amount of an employee's donation. Supervisors may be given nothing more than summary information about the major units that they supervise.

(c) Setting of 100 percent participation goals.

(d) Establishing personal dollar goals and quotas.

(e) Developing and using lists of non-contributors.

(f) Providing and using contributor lists for purposes other than the routine collection and forwarding of contributions and allotments, and as allowed under § 950.601.

(g) Using as a factor in a supervisor's performance appraisal the results of the solicitation in the supervisor's unit or organization.

§ 950.109 Avoidance of conflict of interest.

Any Federal employee who serves on the LFCC, on the eligibility committee, or as a Federal agency fundraising program coordinator, must not participate in any decisions where, because of membership on the board or other affiliation with a charitable organization, there could be or appear to be a conflict of interest under any statute, regulation, Executive order, or applicable agency standards of conduct. Under no circumstances may an LFCC member affiliated with an organization applying for inclusion on the local list, participate in the eligibility determinations.

§ 950.110 Prohibited discrimination.

Discrimination for or against any individual or group on account of race, color, religion, sex, national origin, age, handicap, or political affiliation is prohibited in all aspects of the management and the execution of the CFC. Nothing herein denies eligibility to any organization, which is otherwise eligible under this part to participate in the CFC, merely because such organization is organized by, on behalf of, or to serve persons of a particular race, color, religion, sex, national origin, age, or handicap.

Subpart B—Eligibility Provisions

§ 950.201 National list eligibility.

(a) The Director shall annually:

(1) Determine the timetable and other procedures regarding application for inclusion on the national list,

(2) Determine which organizations among those that apply qualify to be part of the national list and then provide the national list of qualified organizations to all local campaigns.

(b) The national list shall be reproduced in all local brochures in accordance with these regulations. The list will include each organization's national list number code. These number codes must be faithfully reproduced in the local brochures.

(c) An organization on the national list may elect to be removed from the national list and have its local affiliate or subunit listed on the local list of organizations in its stead. For the local affiliate or subunit to be listed in lieu of the organization on the national list, the following procedures must be followed:

(1) The organization must send a letter to the local affiliate or subunit in that particular CFC waiving its listing on the national list so that its eligible local affiliate or subunit on the local list of organizations will appear as that organization's sole listing in the CFC brochure.

(2) The local affiliate or subunit will include in its application to the LFCC a copy of the letter authorizing the removal of the organization from the national list as well as all the required

materials for completing a local organization application.

(3) Upon finding the local organization eligible, the waiver letter from the organization on the national list authorizes the LFCC to delete that organization from the national list.

§ 950.202 National list eligibility requirements.

All organizations seeking national list eligibility must:

(a) Certify that it provides or conducts real services, benefits, assistance, or program activities, in 15 or more different states or a foreign country over the 3 year period immediately preceding the start of the year involved. This requirement cannot be met on the sole basis of services provided through an ''800'' telephone number or by sending materials via the U.S. Postal Service or a combination thereof. A schedule listing those states (minimum 15) or the foreign countries (minimum 1) where the program activities have been provided and a detailed description of the activities in each state or foreign country must be included with the application. While it is not expected that an organization maintain an office in each state or foreign country, a clear showing must be made of the actual services, benefits, assistance or activities provided in each state or foreign country.

(b) Certify that it is recognized by the Internal Revenue Service as tax-exempt under 26 U.S.C. 501(c)(3) and to which contributions are tax-deductible pursuant to 26 U.S.C. 170. A copy of the letter from the Internal Revenue Service granting tax-exempt status under the Internal Revenue Code, 26 U.S.C. 501(c)(3), must be included with the application.

(c) Certify that the organization has no expenses connected with lobbying and attempts to influence voting or legislation at the local, State, or Federal level or alternatively, that those expenses would classify the organization as a tax-exempt organization under 26 U.S.C. 501(h).

§ 950.203 Public accountability standards.

(a) To insure organizations wishing to solicit donations from Federal employees in the workplace are portraying accurately their programs and benefits, several standards and certifications must be met annually by each organization seeking national list eligibility. Each organization wishing to participate must:

(1) Certify that the organization is a human health and welfare organization providing services, benefits, or assistance to, or conducting activities affecting, human health and welfare. The organization's application must provide documentation describing the human health and welfare benefits provided by the organization within the previous year.

(2) Certify that it accounts for its funds in accordance with generally accepted accounting principles and that an audit of the organization's fiscal operations is completed annually by an independent certified public accountant in accordance with generally accepted auditing standards. Such audit must show expenses by function. A copy of the organization's most recent annual audit must be included with the application. The audit must cover the fiscal year ending not more than 18 months prior to the January of the campaign year to which the organization is applying. For example, the audit included in the 1994 application must cover the fiscal period ending on or after June 30, 1992.

(3) Provide a completed copy of the organization's IRS Form 990, including signature, with the application regardless of whether or not the IRS requires the organization to file this form. IRS Forms 990EZ, 990PF, and comparable forms are not acceptable substitutes. However, smaller organizations that file the Form 990EZ may submit the 990EZ with pages 1 and 2 of the Form 990 attached. The IRS Form 990 and audit must cover the same fiscal period and, if revenue and expenses on the two documents differ, these amounts must be reconciled in an accompanying signed statement by the certified public accountant who completed the audit.

(4) Provide a computation of the organization's percentage of total support and revenue spent on administrative and fundraising. This percentage shall be computed from information on the IRS Form 990, submitted pursuant to § 950.203(a)(3), by adding the amount spent on ''management and general'' (line 14) to ''fundraising'' (line 15) and then dividing the sum by ''total revenue'' (line 12).

(i) If an organization's administrative and fundraising expenses exceed 25 percent of its total support and revenue, it must certify that its actual expenses for administration and fundraising are reasonable under all the circumstances presented. It must provide an explanation with its application and also include a formal plan to reduce these expenses below 25 percent.

(ii) The Director may reject any application from an organization with fundraising and administrative expenses in excess of 25 percent of total support and revenue, unless the organization demonstrates to the satisfaction of the Director that its actual expenses for those purposes and its plan to reduce them are reasonable under the circumstances.

(5) Certify that the organization is directed by an active and responsible governing body whose members have no material conflict of interest and, a majority of which serve without compensation.

(6) Certify that the organization's fundraising practices prohibit the sale or lease of its CFC contributor lists.

(7) Certify that its publicity and promotional activities are based upon its actual program and operations, are truthful and non-deceptive, and make no exaggerated or misleading claims.

(8) Certify that contributions are effectively used for the announced purposes of the charitable organization.

(9) Certify under which governmental entity the charitable organization is chartered, incorporated or organized (congressionally chartered or the state in which it is registered).

(10) Certify that the organization has received at least 20 percent of its total support and revenues from public sources as computed by adding lines 1a and 1b and dividing by line 12 from the IRS Form 990 submitted pursuant to § 950.203(a)(3).

(11) Certify that the organization prepares and makes available to the public upon request an annual report that includes a full description of the organization's activities and supporting services and identifies its directors and chief administrative personnel. A copy of the organization's annual report must be included with the application. The annual report must cover the fiscal year ending not more than 18 months prior to January of the campaign year to which the organization is applying. A more frequently published document, such as a quarterly newsletter, may be used to meet this requirement provided that such document is available to the general public upon request and describes the organization's activities and supporting services and identifies its directors and chief administrative personnel.

(12) Provide a statement that the certifying official is authorized by the organization to certify and affirm all statements required for inclusion on the national list.

(13) Provide a statement in 25 words or less describing the program activities of the charitable organization. The 25-word statement need not include the organization's name. In addition, organizations must provide a telephone number, dedicated solely for the

organization's use, through which the donors may receive further information about the organization. Except as provided in § 950.401(k), this information will be included in the campaign brochure along with the organization's administrative and fundraising percentage computed pursuant to § 950.203(a)(3).

(b) The Director shall review these applications for accuracy, completeness, and compliance with these regulations. Failure to supply any of this information may be judged a failure to comply with the requirements of public accountability, and the charitable organization may be ruled ineligible for inclusion on the national list.

(c) The Director may request such additional information as the Director deems necessary to complete these reviews. An organization that fails to comply with such requests within 10 calendar days from receipt of the request may be judged ineligible.

(d) The required certifications and documentation must have been completed and submitted prior to the application filing deadline. Applications received that are incomplete may not be perfected during the appeal process described in § 950.205.

(e) The Director may waive any of these standards and certifications upon a showing of extenuating circumstances.

§ 950.204 Local list eligibility.

(a) The LFCC shall establish an annual application process consistent with these regulations for organizations that wish to be listed in the local brochure.

(b) The requirements for an organization to be listed in the local brochure shall include the following:

(1) An organization must demonstrate to the satisfaction of the LFCC, that it has a substantial local presence in the geographical area covered by the local campaign, a substantial local presence in the geographical area covered by an adjacent local campaign, or substantial statewide presence.

(i) Substantial local presence is defined as a staffed facility, office or portion of a residence dedicated exclusively to that organization, available to members of the public seeking its services or benefits. The facility must be open at least 15 hours a week and have a telephone dedicated exclusively to the organization. The office may be staffed by volunteers. Substantial local presence cannot be met on the basis of services provided solely through an ''800'' telephone number or the U.S. Postal Service or a combination thereof.

(ii) Substantial statewide presence is defined as providing or conducting real services, benefits, assistance or program activities covering 30 percent of a state's geographic boundaries or providing or conducting real services, benefits, assistance or program activities affecting 30 percent of a state's population. Substantial statewide presence cannot be met on the basis of services provided solely through an ''800'' telephone number or the U.S. Postal Service or a combination thereof.

(2) An organization seeking local eligibility also must meet all requirements for national list eligibility in § 950.202 and § 950.203, with the following exceptions:

(i) Local charitable organizations are not required to have provided services or benefits in 15 states or a foreign country over the prior 3 years.

(ii) Local charitable organizations with annual revenue less than $100,000 are not required to be audited in accordance with generally accepted auditing standards and, hence, are not required to submit an audit report. Annual revenue is determined by line 12 of the IRS Form 990 covering the organization's most recent fiscal year ending not more than 18 months prior to the January of the campaign year to which the organization is applying.

(iii) Organizations seeking local eligibility in Puerto Rico or the U.S. Virgin Islands are exempt from the requirements of § 950.202(b). However, said organizations must include in their applications, the appropriate local forms demonstrating their status as charitable organizations.

(c) Family support and youth activities certified by the commander of a military installation as meeting the eligibility criteria contained in § 950.204(d) may appear on the list of local organizations and be supported from CFC funds. Family support and youth activities may participate in the CFC as a member of a federation at the discretion of the certifying commander.

(d) A family support and youth activity must:

(1) Be a nonprofit, tax-exempt organization that provides family service programs or youth activity programs to personnel in the Command. The activity must not receive a majority of its financial support from appropriated funds.

(2) Have a high degree of integrity and responsibility in the conduct of their affairs. Contributions received must be used effectively for the announced purposes of the organization.

(3) Be directed by the base Non-Appropriated Fund Council or an active voluntary board of directors which serves without compensation and holds regular meetings.

(4) Conduct its fiscal operations in accordance with a detailed annual budget, prepared and approved at the beginning of the fiscal year. Any significant variations from the approved budget must have prior authorization from the Non-Appropriated Fund Council or the directors. The family support and youth activities must have accounting procedures acceptable to an installation auditor and the inspector general.

(5) Have a policy and practice of nondiscrimination on the basis of race, color, religion, sex or national origin applicable to persons served by the organization.

(6) Prepare an annual report which includes a full description of the organization's activities and accomplishments. These reports must be made available to the public upon request.

(e) Local eligibility determinations. Within 15 business days after the closing date of the application period, the LFCC shall communicate its eligibility decisions via facsimile or U.S. Postal Service. Denial of the application by the LFCC must be sent via U.S. Postal Service certified or registered mail with a return receipt. Approvals may be sent via U.S. Postal Service regular first class mail or facsimile. LFCC's may authorize PCFO's to release eligibility determinations to applicant organizations via telephone. This has no effect on the deadline for LFCC's to receive local appeals. Applicants denied eligibility may appeal in accordance with § 950.205.

(f) No LFCC may print the campaign brochure while there are appeals of eligibility decisions from their campaign pending with the Director. LFCC's are obligated to check with OPM 21 calendar days after the mailing of the local appeal decision as to whether the Director is on notice of a pending timely appeal.

§ 950.205 Appeals.

(a) Organizations who apply and are denied eligibility for inclusion on the national list will be notified of the Director's decision by registered or certified mail of the U.S. Postal Service. Organizations may appeal the Director's decision by submitting a written request to reconsider the denial to the Director. This request must be received within 10 business days from the date of receipt of the Director's decision to deny eligibility and shall be limited to those facts justifying the reversal of the original decision. Requests for reconsideration may not be used to

supplement applications that had missing or outdated documents, and any such documents submitted with the request for reconsideration will not be considered.

(b) Applicants denied listing in the local brochure must first appeal in writing to the LFCC to reconsider its original decision. Such an appeal must be received by the LFCC within 7 business days from the date of receipt of the initial LFCC decision or 14 calendar days from the date the decision was mailed, whichever is earlier. The LFCC must consider all timely appeals and notify the appealing organization within a reasonable time period. Denial of the appeal by the LFCC must be sent via U.S. Postal Service certified or registered mail with a return receipt. Approval of local appeals may be sent via U.S. Postal Service regular first class mail or facsimile.

(c) A local applicant which is unsuccessful in its appeal to the LFCC may appeal to the Director. All appeals must:

(1) Be in writing;

(2) Be received by the Director within 10 business days of the date of receipt of the letter from the LFCC denying eligibility on appeal;

(3) Include a statement explaining the reason(s) why eligibility should be granted;

(4) Include a copy of the letter from the LFCC disapproving the original application, a copy of the organization's appeal to the LFCC, and a copy of the letter from the LFCC denying the appeal.

(d) If an organization fails to file a timely application or a timely appeal of an adverse eligibility determination in accordance with these regulations, such application or appeal to the Director will be dismissed as untimely.

(e) Appeals to the Director may not be used to supplement original applications that had missing or outdated documents. Any such supplemental documents will not be considered. Such appeals shall be limited to those facts justifying the reversal of the original decision.

(f) The Director's decision is final for administrative purposes.

Subpart C—Federations

§ 950.301 National federations eligibility.

(a) The Director may recognize national federations that conform to the requirements and are eligible to receive designations. The Director may from time to time place a moratorium on the recognition of national federations.

(b) By applying for inclusion in the CFC, federations consent to allow the Director complete access to it and its members' CFC books and records and to respond to requests for information by the Director.

(c) An organization may apply to the Director for inclusion as a national federation to participate in the CFC if the applicant has, as members of its proposed federation, 15 or more charitable organizations that meet the eligibility criteria of § 950.202 and § 950.203. The initial year an organization applies for federation status, it must submit the applications of all its proposed member organizations in addition to the federation application. Federations must re-establish eligibility each year, however, the applications of its member organizations need not accompany the annual federation application once an organization has obtained federation status, unless requested by the Director.

(d) After an organization has been granted federation status, it may certify that its member organizations meet all eligibility criteria of § 950.202 and § 950.203 to be included on the national list. Federation status in a prior campaign is not a guarantee of federation status in a subsequent campaign. Failure to meet minimum federation eligibility requirements shall not be deemed to be a decertification subject to a hearing on the record.

(e) An applicant for national federation status must annually certify and/or demonstrate:

(1) That all member organizations seeking participation in the CFC are qualified for inclusion on the national list. Applicants must provide a complete list of those member organizations it certified.

(2) That its financial records, practices and procedures conform to generally accepted accounting principles and that it is annually audited by an independent certified public accountant in accordance with generally accepted auditing standards. A copy of the audit must be included with the application. The audit must verify that the federation is honoring designations made to each member organization. The audit requirement is waived for newly created federations operating for less than a year.

(3) That it does not employ in its CFC operations the services of private consultants, consulting firms, advertising agencies or similar business organizations to perform its policy-making or decision-making functions in the CFC. It may, however, contract with entities or individuals such as banks, accountants, lawyers, and other vendors of goods and/or services to assist in accomplishing its administrative tasks.

(f) The Director will notify a federation if it is determined that the federation does not meet the eligibility requirements of this section. A federation may appeal an adverse eligibility decision in accordance with § 950.205.

(g) The Director may waive any eligibility criteria for federation status if it is determined that such a waiver will be in the best interest of the CFC.

(h) Two organizations—American Red Cross and United Service Organization—are exempt from the 15-member requirement of § 950.301(c).

§ 950.302 Responsibilities of national federations.

(a) National federations must ensure that only those member organizations that comply with all eligibility requirements included in these regulations are certified for participation in the CFC.

(b) The Director may elect to review, accept or reject the certifications of the eligibility of the members of the national federations. If the Director requests information supporting a certification of national eligibility, that information shall be furnished promptly. Failure to furnish such information within 10 business days of the receipt of the request constitutes grounds for the denial of national eligibility of that member.

(c) The Director may elect to decertify for up to one campaign year a federation which makes a false certification, subject to the requirement that any federation that the Director proposes to decertify shall be offered the opportunity to have a hearing on the record on the proposed decertification, followed by a written decision stating the grounds for the decertification. False certifications are presumed to be deliberate. This presumption may be overcome by evidence presented at the hearing.

(d) The failure of a national federation to respond in a timely fashion to a request by the Director for required information or cooperation in an investigation or a settlement of disbursements may be grounds for decertification, provided that a decision to decertify is preceded by a hearing on the record and communicated in writing.

(e) Each federation, as fiscal agent for its member organizations, must ensure that Federal employee designations are honored in that each member organization receives its proportionate share of receipts based on the results of each individual campaign.

§ 950.303 Local federations eligibility.

(a) LFCC's must approve local federations that conform to the requirements.

(b) By applying for inclusion in the CFC, federations consent to allow the LFCC and Director complete access to it and its members' CFC books and records and to respond to requests for information by the LFCC and the Director.

(c) An organization may apply to the LFCC for inclusion as a local federation if the applicant has as members of its proposed federation, 15 or more charitable organizations that meet the eligibility criteria of § 950.202, § 950.203, and § 950.204. The initial year an organization applies for federation status, it must submit to the LFCC applications of all its proposed member organizations in addition to the federation application. Federations must re-establish eligibility each year, however, the applications of its member organizations need not accompany the annual federation application once an organization has obtained federation status.

(d) After an organization has been granted federation status, it may certify that its member organizations meet all eligibility criteria of §§ 950.202, 950.203, and 950.204 to be included on the Local List. While deference should be given to federation certifications, the LFCC, during the review process, may request independent evidence of individual member organization's eligibility. Federation status in a prior campaign is not a guarantee of federation status in a subsequent campaign. Failure to meet minimum federation eligibility requirements shall not be deemed to be a decertification subject to a hearing on the record.

(e) An applicant for local federation status must certify and/or demonstrate:

(1) That all member organizations seeking participation in the CFC are qualified for inclusion on the Local List and provide a complete list of those member organizations it certified.

(2) That its financial records, practices and procedures conform to generally accepted accounting principles and is annually audited by an independent certified public accountant in accordance with generally accepted auditing standards. A copy of the annual audit must be included with the application. The audit must verify that the federation is honoring designations made to each member organization. The audit requirement is waived for newly created federations operating for less than a year.

(3) That is does not employ, in its CFC operations, the services of private consultants, consulting firms, advertising agencies or similar business organizations to perform the policy-making or decision-making functions in the CFC. It may, however, contract with entities or individuals such as banks, accountants, lawyers, and other vendors of goods and/or services to assist in accomplishing its administrative tasks.

(f) The LFCC will notify a federation if it is determined that the federation does not meet the eligibility requirements of this section. A federation may appeal an adverse eligibility decision in accordance with § 950.205.

(g) The Director may waive any eligibility criteria for federation status if it is determined that such a waiver will be in the best interest of the CFC.

§ 950.304 Responsibilities of local federations.

(a) Local federations must ensure that only those member organizations that comply with all eligibility requirements included in these regulations are certified for participation in the CFC.

(b) If the LFCC requests information supporting a certification of local eligibility, that information shall be furnished promptly. Failure to furnish such information within 10 business days of the receipt of the request constitutes grounds for the denial of local eligibility.

(c) The Director, upon recommendation by the LFCC, may elect to decertify a federation which makes a false certification for up to one campaign year, subject to the requirement that any federation that the Director proposes to decertify shall be offered the opportunity to have a hearing on the record on the proposed decertification, followed by a written decision stating the grounds for the decertification. False certifications are presumed to be deliberate. The presumption may be overcome by evidence presented at the hearing.

(d) The failure of a local federation to respond in a timely fashion to a request by the Director or the LFCC for required information or cooperation in an investigation may be grounds for decertification, provided that a decision to decertify is preceded by a hearing on the record and communicated in writing.

(e) Each federation, as fiscal agent for its member organizations, must ensure that Federal employee designations are honored in that each member organization receives its proportionate share of receipts based on the results of each individual campaign.

Subpart D—Campaign Materials

§ 950.401 Campaign and publicity materials.

(a) The specific campaign and publicity materials, such as the official brochure, will be developed locally, except as specified in these regulations. All materials must be reviewed by the LFCC for compliance with these regulations and will be printed and supplied by the PCFO. All publicity materials must have the approval of the LFCC before being used. Federations must notify the PCFO in writing of their desire to participate in the development of campaign and publicity materials. The PCFO must respond in a timely manner to a federation's request to participate in the development of campaign and publicity materials. Federations must also respond in a timely fashion in the development of campaign and publicity materials.

(b) During the CFC solicitation period, participating CFC organizations may distribute bona fide educational materials describing its services or programs. The organization must be granted permission by the Federal agency installation head, or designee to distribute the material. CFC Coordinators, Keyworkers or members of the LFCC, are not authorized to grant permission for the distribution of such materials. If one organization is granted permission to distribute educational materials, then the Federal agency installation head must allow any other requesting CFC organization to distribute educational materials.

(c) Organizations and federations are encouraged to publicize their activities outside Federal facilities and to broadcast messages aimed at Federal employees in an attempt to solicit their contributions through the media and other outlets.

(d) Agency Heads are further authorized to permit the distribution by organizations of promotional pamphlets to Federal personnel in public areas of Federal workplaces in connection with the CFC, provided that the manner of distribution accords equal treatment to all charitable organizations furnishing such pamphlet for local use, and further provided that no such distribution shall utilize Federal personnel on official duty or interfere with Federal government activities. LFCC members and other campaign personnel are to be particularly aware of the prohibition of assisting any charitable organization or federated group in distributing any type of literature, especially during the campaign period. Nothing in this section shall be construed to require an LFCC to distribute or arrange for the

distribution of any material other than the Campaign brochure and the pledge card.

(e) The Campaign brochure and pledge card is the official CFC information package and shall be made available to all potential contributors. All CFC brochures must inform employees of their right to make a choice to contribute or not to contribute; to designate or not to designate; and to give a confidential gift in a sealed envelope.

(f) Campaign materials must constitute a simple and attractive package that has fundraising appeal and essential working information. The package should focus on the CFC without undue use of charitable organization symbols and logos or other distractions that compete for the donor's attention. Extraneous instructions concerning the routing of forms, tallying of contributor's receipt, and similar reports, which are primarily for keyworkers must be avoided.

(g) The following applies specifically to the campaign brochure:

(1) OPM will include in the annual distribution of the National List explicit instructions for the printing of the brochure and language to be printed verbatim in the introductory pages. The general information provided will include:

(i) a description of the CFC arrangement and explanation of the payroll deduction privilege.

(ii) a statement that the donor may only designate charitable organizations or federations that are listed in the brochure and that write-ins are prohibited.

(iii) instructions as to how an employee may obtain more specific information about the programs and the finances of the organizations participating in the campaign.

(iv) a description of employees' rights to pursue complaints of undue pressure or coercion in Federal fundraising activities.

(2) Following the introductory pages, the organization list will consist of three parts—the national, the international, and the local. The order of these three parts will be annually rotated in accordance with OPM instructions. In 1996 the Local part will be first followed by the National and finally the International. The national and international lists will consist of faithful reproductions of the lists of national and international organizations, including federations, provided by OPM. The third part, the local list, is determined by the LFCC. The order of listing of the federated and unaffiliated organizations within the three separate parts will be determined by random drawing. The order of organizations within each federation will be determined by the federation. The order within the national and local unaffiliated groups will be alphabetical. Absent specific instructions from OPM to the contrary, each participating organization and federated group listing must include a description, not to exceed 25 words, of their services and programs, plus a telephone number for the Federal donor to request further information about the group's services, benefits, and administrative expenses. Each listing will include a statement of the percentage of the organization's total receipts and revenues that are used for administration and fundraising. Neither the percentage of administrative and fundraising expenses, nor the telephone number count toward the 25-word statement.

(3) Each national federation and charitable organization will be assigned a code number by OPM. Local federations and local charitable organizations will be assigned code numbers by the LFCC. At the beginning of each federated group's listing will be the federation's name, code number, 25-word statement, percentage of administrative and fundraising expenses, and telephone number. The sections of the brochure where the unaffiliated agencies are listed will begin with the titles National Unaffiliated Organizations, International Unaffiliated Organizations and Local Unaffiliated Organizations respectively.

(h) Omission of an eligible charitable organization from the brochure may require that all brochures be reprinted and redistributed. Such omissions must be reported to OPM immediately upon discovery. The Director or LFCC may direct that the cost of such reprinting and redistribution be borne by the PCFO or charged to CFC administrative expenses.

(i) Dual listing. Listing of a national organization, as well as its local affiliate organization, is permitted. However, a national organization may waive its listing in the national section of the brochure in favor of its eligible local affiliate. The local affiliate must include in its application the written waiver from its national organization.

(j) Multiple listing. Each national or local organization must individually meet all of the eligibility criteria and submit independent documentation as required in § 950.202, § 950.203 or § 950.204. Once an organization is deemed eligible, it is entitled to only one listing in the CFC brochure, regardless of the number of federations to which that organization belongs.

(k) The LFCC may omit the 25-word program description from the CFC brochure if, in the immediately preceding campaign year, contributions received in the local CFC totalled less than $100,000.

§ 950.402 Pledge card.

(a) The Director will make available each campaign year at least one model pledge card which shall be reproduced at the local level.

(b) Campaigns may incorporate additional giving levels to the Director's authorized pledge card. Campaigns may also include their award recognition program. No further modifications to the pledge card are permitted unless approved in advance by the Director.

(c) An employee may not make a designation to an organization not listed in the brochure. In addition, an employee may not make a CFC contribution to an organization listed in the brochure of a campaign covering a geographic location different from the campaign where the employee works. Designations made to organizations not listed in the brochure are not invalid, but will be treated as undesignated funds and distributed accordingly.

(d) In the event the PCFO receives a pledge card that has designations that add up to less than the total amount pledged, the PCFO must honor the total amount pledged and treat the excess amount as undesignated funds. In the event that a PCFO receives a pledge card that has a total amount pledged that is less than the sum of the individual designations, the PCFO must honor the designations by assigning a proportionate share of the total gift to each organization designated. For example, if an employee indicates a total gift of $100 in the upper portion of the pledge card, but designates $25 each to five organizations in the lower part of the pledge card, the PCFO must adjust each organization's designation to $20.

§ 950.403 Penalties.

A PCFO's failure to comply with these regulations may result in either disqualification from future service as PCFO, disqualification as a participating federation, or both penalties. These penalties may only be imposed after a hearing on the record and communication of the Director's decision in writing.

Subpart E—Undesignated Funds

§ 950.501 Applicability.

(a) All undesignated funds shall be distributed to all of the organizations in the CFC brochure in the same proportion that they received designations in the campaign.

(b) The distribution of undesignated funds described in § 950.502 applies to all domestic area campaigns. It does not apply to the DOD Overseas Campaign.

(c) The Director may alter the distribution of undesignated funds as local campaign circumstances may require or to enforce the distribution method described herein.

Subpart F—Miscellaneous Provisions

§ 950.601 Release of contributor names.

(a) The pledge card, designed pursuant to § 950.402, must allow an employee to indicate if the employee does not wish his or her name and home address forwarded to the charitable organization or organizations designated. A PCFO's failure to honor an employee's wish may result in the decertification of the PCFO.

(b) The pledge card will direct an employee to provide his or her complete home address on the pledge card should he or she wish his or her name and home address released to organizations receiving their donations.

(c) It is the responsibility of the PCFO to forward the names and addresses of employees who have indicated that they wish their names be forwarded, to the recipient organization directly, if the organization is unaffiliated, and to the organization's federation if the organization is a member of a federation. The PCFO may not make any other use of these employees' names and addresses.

(d) Organizations must cooperate fully with OPM investigations into the care and appropriate use of these lists. Should an organization ignore or fail to respond to OPM's requests for cooperation or hamper an investigation, the Director may propose that the organization be suspended or expelled from the CFC. The Director will consider any response in issuing a decision.

§ 950.602 Solicitation methods.

(a) Employee solicitations shall be conducted during duty hours using methods that permit true voluntary giving and shall reserve to the individual the option of disclosing any gift or keeping it confidential. Campaign kick-offs, victory events, awards, and other non-solicitation events to build support for the CFC are encouraged.

(b) Special CFC fundraising events, such as, raffles, lotteries, auctions, bake sales, carnivals, athletic events, or other activities not specifically provided for in these regulations are permitted during the 6-week campaign period if approved by the appropriate agency head or government official, consistent with agency ethics regulations.

(c) In all approved special fundraising events the donor must have the option of designating to a specific participating organization or federation or be advised that the donation will be counted as an undesignated contribution and distributed according to these regulations.

§ 950.603 Sanctions.

(a) Sanctions not specifically provided for elsewhere in these regulations, may be imposed on an organization, federation or PCFO for violating any provisions, other applicable provisions of law, or any directive or instruction from the Director. The Director will determine the appropriate sanction, up to and including permanent expulsion from the CFC. In determining the appropriate sanction, the Director will consider all elements such as previous violations, harm to Federal employee confidence in the CFC, and any other relevant factors. The Director shall provide written notification to the organization, federation or PCFO regarding the alleged violation and the intent to impose a sanction. Prior to implementation of sanctions under this section, the organization, federation or PCFO shall be provided an opportunity to address in writing why the sanction should not be imposed. This submission must be received within 10 calendar days from the date of receipt of the Director's notification letter.

(b) At the Director's discretion, PCFO's and Federations may be directed to suspend distribution of current and future CFC donations from Federal employees to recipient organizations. Federations and PCFO's shall immediately place suspended contributions in an interest bearing account until directed to do otherwise.

§ 950.604 Records retention.

Federations, PCFO's and other participants in the CFC shall retain documents pertinent to the campaign for at least three campaign years. Documents requested by OPM must be made available within 10 business days of the request.

Subpart G—DoD Overseas Campaign

§ 950.701 DoD overseas campaign.

(a) A Combined Federal Campaign is authorized for all Department of Defense (DoD) activities in the overseas areas during a 6-week period in the fall. Organizations that may participate in the Overseas Campaign will consist of organizations determined nationally eligible by OPM.

(b) The DoD must select an organization or combination of organizations to serve as PCFO as it deems in the best interests of the overseas campaign.

(c) Federal civilian agencies with overseas personnel may elect to have these employees participate in the DoD campaign or in the National Capital Area campaign.

(d) The overseas campaign brochure shall not include the All International Organizations Designation Option-IIII.

(e) Family support and youth activities established in overseas locations may be supported from CFC funds.

(f) Undesignated funds contributed in the Overseas Campaign equal to up to 6 percent of the gross campaign contributions will be allocated to the Overseas family support and youth activities. No other funds may be used for this purpose. If the undesignated funds exceed 6 percent of the gross campaign contributions, this excess shall be distributed to all other organizations in the same proportions as designations.

(g) Overseas family support and youth activities shall not be charged any share of campaign costs. All other organizations participating in the Overseas Area CFC will be charged for campaign costs in the same proportion that they received gross campaign receipts, net of that amount of receipts set aside for family support and youth activities.

(h) The overseas campaign brochure must explain the allocation policy utilized by each of the military services to allocate funds received from the Overseas campaign to their overseas family support and youth activities.

Subpart H—CFC Timetable

§ 950.801 Campaign schedule.

(a) The Combined Federal Campaign will be conducted according to the following timetable.

(1) During one 30-calendar day period between January and March, as determined by the Director, OPM will accept applications from organizations seeking to be listed on the national list.

(2) Within 35 calendar days of the closing of the receipt of applications, the Director will issue notices to each national applicant organization of the results of the Director's review.

(3) Local Federal Coordinating Committees must select a PCFO no later than March 15.

(4) The Director will issue a national eligibility list to all local campaigns by June 30.

(5) Local Federal Coordinating Committees must accept applications

from organizations seeking local eligibility for 30 calendar days as determined by the LFCC, and must issue notice of its eligibility decisions within 15 business days of the closing date for receipt of applications.

(b) The Director will annually issue a timetable for accepting and processing national applications.

Subpart I—Payroll Withholding

§ 950.901 Payroll allotment.

The policies and procedures in this section are authorized for payroll withholding operations in accordance with the Office of Personnel Management Pay Administration regulations in part 550 of this Title.

(a) Applicability. Voluntary payroll allotments will be authorized by all Federal departments and agencies for payment of charitable contributions to local CFC organizations.

(b) Allotters. The allotment privilege will be made available to Federal personnel as follows:

(1) Employees whose net pay regularly is sufficient to cover the allotment are eligible. An employee serving under an appointment limited to 1 year or less may make an allotment to a CFC when an appropriate official of the employing Federal agency determines that the employee will continue employment for a period to justify an allotment. This includes military reservists, National Guard, and other part-time and intermittent employees who are regularly employed.

(2) Members of the Uniformed Services are eligible, excluding those on only short-term assignment (less than 3 months).

(c) Authorization. Allotments will be totally voluntary and will be based upon contributor's individual authorization.

(1) The CFC Pledge Card, in conformance with § 950.402, is the only form for authorization of the CFC payroll allotment and may be printed or purchased from a central source by each PCFO. The pledge cards and official brochure will be distributed to employees when charitable contributions are solicited.

(2) The original copy of each pledge card (payroll allotment authorization) should be transmitted to the contributor's servicing payroll office as promptly as possible, preferably by December 15. However, if pledge cards are received after that date they should be accepted and processed by the payroll office.

(d) Duration. Authorization of allotments will be in the form of a term allotment. Term authorizations will be in effect for 1 full year—26, 24, or 12 pay periods depending on the allotter's pay schedule—starting with the first pay period beginning in January and ending with the last pay period that begins in December. Three months of employment is considered the minimum amount of time that is reasonable for establishing an allotment.

(e) Amount. Allotters will make a single allotment that is apportioned into equal amounts for deductions each pay period during the year.

(1) The minimum amount of the allotment will be determined by the LFCC but will not be less than $1 per payday, with no restriction on the size of the increment above that minimum.

(2) No change of amount will be authorized for term allotments.

(3) No deduction will be made for any period in which the allotter's net pay, after all legal and previously authorized deductions, is insufficient to cover the CFC allotment. No adjustment will be made in subsequent periods to make up for missed deductions.

(f) Remittance. One check will be sent by the payroll office each pay period, in the gross amount of deductions on the basis of current authorizations, to the Central Receipt and Accounting Point (CRP) at each local CFC location for which the payroll office has received allotment authorizations. The Director will provide a list of the authorized CRP's to Federal payroll offices.

(1) The check will be accompanied by a statement identifying the agency, the dates of the pay period, and the total number of employee deductions.

(2) There will be no listing of allotters included or of allotter discontinuances.

(g) Discontinuance. Term allotments will be discontinued automatically on expiration of the 1 year withholding period, or on the death, retirement, or separation of the allotter from the Federal service, whichever is earlier.

(1) An allotter may revoke a term authorization at any time by requesting it in writing from the payroll office. Discontinuance will be effective the first pay period beginning after receipt of the written revocation in the payroll office.

(2) A discontinued allotment will not be reinstated.

(h) Transfer. When an allotter moves to another organizational unit served by a different payroll office in the same CFC location, whether in the same office or a different Department or agency, his or her allotment authorization should be transferred to the new payroll office.

(i) Accounting. Federal payroll offices will oversee the establishment of individual allotment accounts, the deductions each pay period, and the reconciliation of employee accounts in accordance with agency and General Accounting Office requirements. The payroll office will accept responsibility for the accuracy of remittances, as supported by current allotment authorizations, and internal accounting and auditing requirements.

(1) The PCFO shall notify the federated groups, national agencies, and local agencies as soon as practicable after the completion of the campaign, but in no case later than February 15, of the amounts, if any, designated to them and their member agencies and of the amounts of the undesignated funds, if any, allocated to them.

(2) The PCFO is responsible for the accuracy of disbursements it transmits to recipients. It shall transmit at least monthly for campaigns of $500,000 or more or quarterly if less than that amount, minus only the approved proportionate share for administrative cost reimbursement and the PCFO fee set forth in § 950.106(d). It shall remit the contributions to each organization or to the federated group, if any, of which the organization is a member. For campaigns with gross receipts in excess of $500,000, the PCFO will distribute all CFC receipts beginning April 1, and monthly thereafter. For campaigns with gross receipts of $500,000 or less, the PCFO will distribute all CFC receipts beginning June 1, and quarterly thereafter. At the close of each disbursement period, the PCFO's CFC account shall have a balance of zero.

(3) The PCFO may make one-time disbursements to organizations receiving minimal donations from Federal employees. The LFCC must determine and authorize the amount of these one-time disbursements. The PCFO may deduct the proportionate amount of each organization's share of the campaign's administrative costs and the average of the previous 3 years pledge loss from the one-time disbursement. This is the only approved application of adjusting for pledge loss.

(4) Federated and national charitable organizations, or their designated agents, will accept responsibility for:

(i) The accuracy of distribution amount the charitable organizations of remittances from the PCFO; and

(ii) Arrangements for an independent audit conducted by a certified public accountant agreed upon by the participating charitable organizations.

[FR Doc. 95–28715 Filed 11–22–95; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

RIN 0563–AB08

General Administrative Regulations; Reinsurance Agreement—Standards for Approval

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (''FCIC'') hereby amends its General Administrative Regulations, effective for the 1997 and succeeding reinsurance years, by revising the general qualifications for being awarded a Standard Reinsurance Agreement. The intended effect of this rule is to provide additional information and amended procedures so that FCIC can more accurately identify those insurance companies experiencing a significant weakening in financial conditions.

EFFECTIVE DATE: November 24, 1995.

FOR FURTHER INFORMATION CONTACT: Diana Moslak, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250. Telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under United States Department of Agriculture (''USDA'') procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is March 31, 1999.

This rule has been determined to be ''exempt'' for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (''OMB'').

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment. The provisions and procedures contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various level of government.

This regulation will not have a significant impact on a substantial number of small entities. This action does not increase the paperwork burden on the reinsured company because the reinsured company must already provide the additional information required by this regulation to the state in which it is licensed. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in subsections 2(a) and 2(b)(2) of Executive Order 12778. The provisions of this rule are not retroactive and will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions contained in the Standard Reinsurance Agreement must be exhausted before judicial action may be brought.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

On Tuesday, June 14, 1994, FCIC published a proposed rule in the Federal Register at 59 FR 30533 proposing to amend the General Crop Insurance Regulations, subpart L, Reinsurance Agreement; Standards for Approval by revising the general qualification requirements for being awarded a Standard Reinsurance Agreement (Agreement).

Following publication of the proposed rule, the public was afforded 15 days to submit written comments, data, and opinions. The comments received and FCIC responses are as follows:

Comment: Two comments, one from an insurance company and one from a legal firm, stated that the proposed regulations would greatly increase the insurance company's paperwork burden and would have a significant adverse economic effect on a substantial number of small entities and should, therefore, require a Regulatory Flexibility Analysis and be subject to the provisions of the Regulatory Flexibility Act.

Response: The information required by these regulations is currently required by and filed with the state insurance departments where a company is licensed. With the exception of the requirements contained in § 400.171, financial reports not currently prepared by an insurance company will not be requested unless determined to be critical to the qualification process. This action will not have a significant economic impact on small entities and their ability to compete. These regulations are the basis of company financial condition evaluation to ensure that the obligations to both the policyholder and FCIC are met, regardless of the company's size.

Comment: Two comments, one from an insurance company and one from the parent company of an insurance company, objected to the required submission of an annual Generally Accepted Accounting Principles (GAAP) financial statement stating that this would be an additional burden and cost if the insurance company does not prepare financial statements in accordance with GAAP.

Response: FCIC agrees with the comment and has removed § 400.170(e)(5) and (6). As a result of this change, § 400.170(e)(7) is redesignated as § 400.170(e)(6). However, these and other statements may be requested by FCIC under § 400.170(e)(6).

Comment: One comment from a professional association stated that the definition of Annual Statutory Financial Statement in § 400.161(a) should be clarified as it appears that a new audit is required. They also stated that the term ''certified'' in § 400.171 should be replaced by ''audited'' and that ''in accordance with generally accepted auditing standards'' should be included when making reference to a Certified Public Accountant audit.

Response: FCIC has revised the definition of ''Annual Statutory Financial Statement'' and added § 400.170(e)(5) the ''Annual Audited Financial Report'' prepared by an independent Certified Public Accountant and filed with the state insurance department as prescribed in the National Association of Insurance Commissioners Property and Casualty Annual Statement Instructions. The other recommended revisions have also been made.

Comment: One comment from a professional association stated that the requirement proposed in § 400.170(e)(6) for an ''Audited Annual Report to Shareholders'' should be restated as

''Annual Report to Shareholders'' because the report itself is not audited but rather the financial statements included in the report.

Response: FCIC agrees with the comment and the requirement contained in § 400.170(e)(6) has been removed.

Comment: Four comments, two from insurance companies, one from a legal firm and one from the parent company of an insurance company, stated that proposed regulations favor large multiple line companies when there is no valid correlation between a company's size and its financial soundness. The ratio results for a company writing primarily crop insurance business may be adversely impacted due to the unique nature of crop insurance, compared to a company writing standard property and casualty lines for which these ratios were developed.

Response: FCIC disagrees with the comment. The proposed regulations incorporate the use of financial ratios which are calculated from the Annual Statutory Financial Statement. The ratios are a quantitative measure of potential financial weakness regardless of company size. FCIC is aware that the insurance lines of business a company writes may impact the ratio results and gives a company the opportunity to address this impact under § 400.172(a).

Comment: Two comments, one from an insurance company and one from a legal firm stated that the statement in § 400.170(d), ''and comply with § 400.172.'' was illogical.

Response: The proposed language in § 400.170(d) contained a typographical error and has been changed to read ''or comply with § 400.172.''

Comment: Four comments, two from insurance companies, one from a legal firm and one from the parent company of an insurance company, questioned requiring the Gross Premium to Surplus ratio when the reinsured company does not have the option of rejecting MPCI business, and FCIC as a reinsurer is not considered a collection risk.

Response: FCIC agrees with the comment and has defined ''Gross Premium'' in the Gross Premium to Surplus ratio in § 400.162(c) as the company's gross premium adjusted to exclude MPCI premium assumed by FCIC. The reduction in a company's gross premium by the amount assumed by FCIC will give a more accurate measure of a company's reliance on commercial reinsurance.

Comment: Two comments, one from an insurance company and one from a legal firm, objected to requiring the two ratios—Gross Premium to Surplus of less than 900% and Net Premium to Surplus of less than 300%—stating that no single ratio should be weighted more than another.

Response: FCIC disagrees with the comment. The MPUL calculation determines the amount of MPCI premium and associated liability a company may retain based on policyholder surplus. The Gross Premium to Surplus and Net Premium to Surplus ratios measure the adequacy of surplus to absorb above-average losses considering the company's total book of business, exclusive and inclusive of the effects of reinsurance. A company's surplus exposure must be addressed considering its use in ratio and MPUL calculations.

Comment: Two comments, one from an insurance company and one from a legal firm, objected to the requirement that a company satisfy at least 10 of the 15 optional ratios, stating that a company ''should have the opportunity to explain non-compliance and should not be automatically eliminated for failure to meet ten of the ratios.''

Response: FCIC disagrees with the comment. Failure to meet the requirements of § 400.170(d) does not automatically eliminate a company from participating in the MPCI program. Section 400.172 allows a company the opportunity to address the ratios failed in § 400.170(d). If a company meets the requirements of § 400.172, the company may continue to participate in the MPCI program.

Comment: Three comments, one from an insurance company, one from a legal firm and one from the parent company of an insurance company, objected to the Maximum Possible Underwriting Loss (MPUL) calculation provided in § 400.170(c) and its interpretation by FCIC. They stated that using MPUL to determine adequate surplus level was inconsistent with basic insurance underwriting principles, and that revising the MPUL to maximum probable underwriting loss would be more reasonable.

Response: FCIC disagrees with the comment. The proposed MPUL calculation adequately considers MPCI loss potential, over-lapping of reinsurance years, and a company's geographic spread of risk.

Comment: Two comments, one from an insurance company and one from a legal firm, addressed FCIC's statement in the background section of the proposed rule referencing the current surplus requirement that, if a reinsured company underwrites only MPCI and crop hail insurance, both liabilities would be considered in calculating the minimum required surplus. They stated there was no rational basis for including crop hail liabilities in the MPUL calculation when a company writes only crop hail and MPCI business, while using only MPCI liabilities for companies writing multiple lines.

Response: FCIC agrees with the comment and will not consider crop-hail, or any other lines of business in the MPUL calculation. All other lines of business written by a company will be analyzed to determine their impact on the ratio results of § 400.170(d), and the company's overall financial condition.

In addition to the changes indicated in the responses to comments, FCIC has made the following changes:

l. The definition of ''financial statement'' contained in § 400.161 was not removed as proposed but revised to mean ''any documentation submitted by a company as required by this subpart''.

2. A definition for ''Quarterly Statutory Financial Statement'' was added to § 400.161 to facilitate its use in § 400.170(c).

3. The definitions of ''Current Assets'', ''Current Liabilities'', and ''Non-affiliated Company'' were removed from § 400.161 because these terms are no longer used in this subpart.

4. Section 400.163 has been revised to reflect that these regulations are ''effective for the 1997 and subsequent reinsurance years''.

5. In § 400.170(c) ''MPUL for the gross premium'' was replaced with ''MPUL for the company's estimated retained premium'' to be consistent with the MPUL definition.

6. In § 400.170(c) ''all its reinsured gross premium'' was replaced with ''all its reinsured retained premium'' to accurately represent geographic spread of risk.

7. The proposed §§ 400.162(d) and 400.170(d)(xii) were deleted after determining them to be non-essential.

Accordingly, the rule, ''General Crop Insurance Regulations; Reinsurance Agreement—Standards for Approval'' published at 59 FR 30533 as revised and set out below is hereby adopted as final rule.

List of Subjects in 7 CFR Part 400

Crop insurance.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*) the Federal Crop Insurance Corporation hereby amends 7 CFR part 400, subpart L of the General Administrative Regulations, effective for the 1997 and succeeding reinsurance years, as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart L—Reinsurance Agreement—Standards for Approval; Regulations for the 1997 and Subsequent Reinsurance Years

1. The authority citation for 7 CFR part 400, subpart L is revised to read as follows:

Authority: 7 U.S.C. 1506(l).

2. The heading for part 400, subpart L is revised as set forth above.

3. Section 400.161 is amended by removing paragraphs (c), (d) and (j); redesignating paragraphs (a) and (b), (e) through (i), (k) and (l), and (m) through (o), as paragraphs (b) and (c), (d) through (h), (i) and (j), and (l) through (n), respectively; and revising redesignated paragraph (e) and adding new paragraphs (a) and (k) to read as follows:

§ 400.161 Definitions.

* * * * *

(a) *Annual Statutory Financial Statement* means the annual financial statement of an insurer prepared in accordance with Statutory Accounting Principles and submitted to the state insurance department if required by any state in which the insurer is licensed.

* * * * *

(e) *Financial statement* means any documentation submitted by a company as required by this subpart.

* * * * *

(k) *Quarterly Statutory Financial Statement* means the quarterly financial statement of an insurer prepared in accordance with Statutory Accounting Principles and submitted to the state insurance department if required by any state in which the insurer is licensed.

* * * * *

4. Section 400.162 is revised to read as follows:

§ 400.162 Qualification ratios.

The sixteen qualification ratios include:

(a) Eleven National Association of Insurance Commissioner's (NAIC's) Insurance Regulatory Information System (IRIS) ratios found in §§ 400.170(d)(1)(ii) and 400.170(d)(2) (i), (ii), (iii), (vi), (vii), (ix), (xi), (xii), (xiii), and (xiv) and referenced in ''Using the NAIC Insurance Regulatory Information System'' distributed by NAIC, 120 West 12th St., Kansas City, MO 64105–1925;

(b) Three ratios used by A.M. Best Company found in § 400.170(d)(2) (v), (viii), and (x) and referenced in Best's Key Rating Guide, A.M. Best, Ambest Road, Oldwick, N.J. 08858–0700;

(c) One ratio found in § 400.170(d)(1)(i) is calculated the same as the Gross Premium to Surplus IRIS ratio, with Gross Premium adjusted to exclude the MPCI premium assumed by FCIC; and

(d) One ratio found in § 400.170(d)(2)(iv) which is formulated by FCIC and is calculated the same as the One-Year Change to Surplus IRIS ratio but for a two-year period.

5. Section 400.163 is revised to read as follows:

§ 400.163 Applicability.

The standards contained herein shall be applicable to insurers who apply for or enter into a Standard Reinsurance Agreement effective for the 1997 and subsequent reinsurance years or who continue with a prior years Standard Reinsurance Agreement into the 1997 and subsequent reinsurance years.

6. Section 400.170 is revised to read as follows:

§ 400.170 General qualifications.

To qualify initially or thereafter for a Standard Reinsurance Agreement with FCIC, an insurer must:

(a) Be licensed or admitted in any state, territory, or possession of the United States;

(b) Be licensed or admitted, or use as a policy-issuing Company an insurer that is licensed or admitted, in each state from which the insurer will cede policies to FCIC for reinsurance;

(c) Have surplus, as reported in its most recent Annual or Quarterly Statutory Financial Statement, that is at least equal to the MPUL for the company's estimated retained premium proposed to be reinsured, multiplied by the appropriate Minimum Surplus Factor found in the Minimum Surplus Table. For the purposes of the Minimum Surplus Table, an insurer is considered to issue policies in a state if at least two and one-half percent (2.5%) of all its reinsured retained premium is written in that state;

MINIMUM SURPLUS TABLE

Number of states in which a company issues FCIC-reinsured policies	Minimum surplus factor (multiplied by MPUL)
1 through 10	2.5
11 or more	2.0

(d) Have and meet the ratio requirements of the Gross Premium to Surplus and Net Premium to Surplus required ratios and at least ten of the fourteen analytical ratios in this section based on the most recent Annual Statutory Financial Statement, or comply with § 400.172:

Ratio	Ratio requirement
(1) Required:	
(i) Gross Premium to Surplus.	Less than 900%.
(ii) Net Premium to Surplus.	Less than 300%.
(2) Analytical:	
(i) Two-Year Overall Operating Ratio.	Less than 100%.
(ii) Agents' Balances to Surplus.	Less than 40%.
(iii) One-Year Change in Surplus.	Greater than −10% and less than 50%.
(iv) Two-Year Change in Surplus.	Greater than −10%.
(v) Combined Ratio After Policyholder Dividends.	Less than 115%.
(vi) Change in Writing.	Greater than −33% and less than 33%.
(vii) Surplus Aid to Surplus.	Less than 15%.
(viii) Quick Liquidity.	Greater than 20%.
(ix) Liabilities to Liquid Asset.	Less than 105%.
(x) Return on Surplus.	Greater than −5%.
(xi) Investment Yield.	Greater than 4.5% and less than 10%.
(xii) One-Year Reserve Development to Surplus.	Less than 20%.
(xiii) Two-Year Reserve Development to Surplus.	Less than 20%.
(xiv) Estimated Current Reserve Deficiency to Surplus.	Less than 25%.

(e) Submit to FCIC all of the following statements:

(1) Annual and Quarterly Statutory Financial Statements;

(2) Statutory Management Discussion & Analysis;

(3) Most recent State Insurance Department Examination Report;

(4) Actuarial Opinion of Reserves;

(5) Annual Audited Financial Report; and

(6) Any other appropriate financial information or explanation of IRIS ratio discrepancies as determined by the company or as requested by FCIC.

7. Section 400.171 is revised to read as follows:

§ 400.171 Qualifying when a state does not require that an Annual Statutory Financial Statement be filed.

An insurer exempt by the insurance department of the states where they are licensed from filing an Annual Statutory Financial Statement must, in addition to the requirements of § 400.170 (a), (b), (c) and (d), submit an Annual Statutory Financial Statement audited by a Certified Public Accountant in accordance with generally accepted auditing standards, which if not exempted, would have been filed with the insurance department of any state in which it is licensed.

8. Section 400.172 is revised to read as follows:

§ 400.172 Qualifying with less than two of the required ratios or ten of the analytical ratios meeting the specified requirements.

An insurer with less than two of the required ratios or ten of the analytical ratios meeting the specified requirements in § 400.170(d) may qualify if, in addition to the requirements of § 400.170 (a), (b), (c) and (e), the insurer:

(a) Submits a financial management plan acceptable to FCIC to eliminate each deficiency indicated by the ratios, or an acceptable explanation why a failed ratio does not accurately represent the insurer's insurance operations; or

(b) Has a binding agreement with another insurer that qualifies such insurer under this subpart to assume financial responsibility in the event of the reinsured company's failure to meet its obligations on FCIC reinsured policies.

§ 400.173 [Reserved]

9. Section 400.173 is removed and reserved.

§ 400.174 [Amended]

10. In § 400.174, the words ''financial statement'' are revised to the plural form ''financial statements''.

§ 400.175 [Amended]

11. In § 400.175(a), the words ''financial statement'' are revised to the plural form ''financial statements''.

§ 400.177 [Reserved]

12. Section 400.177 is removed and reserved.

Done in Washington, D.C., on November 9, 1995.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 95–28558 Filed 11–22–95; 8:45 am]

BILLING CODE 3410–FA–P

Agricultural Marketing Service

7 CFR Part 945

[FV95–945–2IFR]

Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Modification of the Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule changes pack requirements and establishes marking requirements for Idaho-Eastern Oregon potatoes. These changes are expected to improve the marketing of such potatoes and increase returns to producers. These changes were recommended by the Idaho-Eastern Oregon Potato Committee (Committee), the agency responsible for local administration of the marketing order program. The interim final rule also includes several conforming changes which recognize that the marketing order regulates shipments of potatoes within the production area, as well as shipments outside the production area.

DATES: Effective November 24, 1995. Comments which are received by December 26, 1995 will be considered prior to the issuance of a final rule.

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

FOR FURTHER INFORMATION CONTACT: Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2724 or FAX (503) 326–7440; or Valerie L. Emmer, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: (202) 205–2829, or FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Marketing Order No. 945 (7 CFR part 945), as amended, hereinafter referred to as the ''order,'' regulating the handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

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

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

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

There are approximately 65 handlers of Idaho-Eastern Oregon potatoes that are subject to regulation under the order and approximately 1,600 producers in the production area. Small agricultural service firms, which include handlers of Idaho-Eastern Oregon potatoes, have

been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of potato handlers regulated under the order may be classified as small entities. The majority of producers may also be classified as small entities.

This rule would amend § 945.341 to: (1) Require that all cartons (except when used as a master container) be conspicuously marked as to potato size; (2) require for all varieties that when 50-pound containers of Idaho-Eastern Oregon potatoes are marked with a count, size, or similar designation, the potatoes contained therein must meet the count, average count, and weight ranges established within the handling regulation; and (3) specify that Idaho-Eastern Oregon potatoes packed in cartons (except when used as a master container) shall be U.S. No. 1 grade or better.

These changes were recommended by the Committee at its August 9, 1995, meeting. The Committee's recommended revisions are authorized pursuant to §§ 945.51 and 945.52 of the order. This action is expected to improve the marketing of Idaho-Eastern Oregon potatoes and improve returns to producers.

A recent order amendment (60 FR 29724, June 5, 1995), added authority to § 945.52 to require accurate and uniform marking and labeling of containers in which Idaho-Eastern Oregon potatoes are shipped. With this authority in the order, the Committee recommended requiring that all cartons shall be conspicuously marked as to potato size; i.e., marked so that the potato size is noticeable on the carton. The Committee recommended this requirement to reduce confusion in the marketplace as to the size of the potatoes in cartons. While most cartons already are marked as to size, the Committee reports that there have been many instances when product size in unmarked cartons has been misrepresented through the marketing chain (e.g., 100-count size potatoes in 50-pound cartons being represented as 90-count size). This type of misrepresentation can create market confusion, damage buyer acceptance, and depress prices.

In addition, this action changes the pack requirements in § 945.341(c). For several decades, the handling regulation has specified that when long varieties of potatoes in 50-pound containers are marked with a count, size or similar designation, the potatoes contained therein must meet the count, average count and weight ranges established within the handling regulation. This has been beneficial to buyers and sellers by reducing market confusion and misrepresentation related to the marking of count and weight ranges on 50-pound containers. In recent years, there has been an increase in the number of plantings of round varieties grown in the Idaho-Eastern Oregon production area. Therefore, the Committee recommended that this pack requirement, which the industry has found to be beneficial for long varieties, be extended to all varieties.

The second aspect of the change in pack requirements recommended by the Committee is the establishment of a requirement that all Idaho-Eastern Oregon potatoes packed in cartons of any size (except when used as a master container) shall be U.S. No. 1 grade or better. Currently, the handling regulation requires this of potatoes packed in 50-pound cartons (except when used as a master container). Some buyers have indicated that a smaller carton size is more desirable than the currently used 50-pound carton. These buyers indicate that they need a smaller carton that takes up less storage space and is easier to lift and handle. However, these buyers still want to be provided with the same quality of potatoes; i.e., U.S. No. 1 grade or better. Currently, the grade of potatoes packed in other than 50-pound cartons must be U.S. No. 2 grade or better. This change in the handling regulation reflects the industry's desire of providing a high quality product to users of potatoes, regardless of carton size desired.

Another order amendment revised § 945.9 to broaden the scope of the order to authorize regulating shipments of potatoes within the production area, as well as shipments outside the production area. Conforming changes are made in § 945.341(d)(3) regarding inspection and certification procedures so these procedures cover all shipments of potatoes, not only shipments made outside the area of production.

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

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impractical, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) This action was recommended at a public meeting and all interested persons had an opportunity to express their views and provide input; (2) the 1995–96 shipping season has begun and these changes should apply to as much of that season as possible; and (3) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 945 is amended as follows:

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 945 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 945.341 is amended by:

(1) Removing the words ''On or after August 16, 1982,'' in the introductory text,

(2) Removing in paragraph (d)(3) the words ''outside the area of production'' in the first and second sentences and the words ''outside the production area'' in the last sentence, and

(3) Revising the heading of paragraph (c), the first sentence of the introductory text of paragraph (c)(1), paragraph (c)(2), and adding a new paragraph (c)(3) to read as follows:

§ 945.341 Handling regulation.

* * * * *

(c) *Pack and marking.* (1) When 50-pound containers (except master containers) of potatoes are marked with a count, size or similar designation, they must meet the count, average count and weight ranges for the count designation listed below.

* * * * *

(i) * * *

(ii) * * *

(2) Potatoes packed in cartons (except when used as a master container) shall be U.S. No. 1 grade or better. However, potatoes of U.S. Extra No. 1 Grade shall be no smaller than 110 size nor larger than 60 size.

(3) Size shall be conspicuously marked on all cartons (except when

used as a master container) consistent with § 51.1545 of the United States Standards for Grade of Potatoes (7 CFR 51.1540–51.1566).

* * * * *

Dated: November 20, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–28695 Filed 11–22–95; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 966

[Docket No. FV95–966–2IFR]

Tomatoes Grown in Florida; Exemption of Specialty Packed Red Ripe Tomatoes From Container Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule exempts shipments of specialty packed red ripe tomatoes from the container net weight requirements in the Florida tomato handling regulation. This exemption was unanimously recommended by the Florida Tomato Committee which locally administers the marketing order. This rule will allow handlers to ship specialty packed red ripe tomatoes in containers with different net weights than those currently authorized under the order. This will facilitate the movement of such tomatoes, further the development of this relatively new market, and is expected to improve returns to producers of Florida tomatoes.

DATES: Effective November 24, 1995; comments received by December 26, 1995 will be considered prior to issuance of a final rule.

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

FOR FURTHER INFORMATION CONTACT: Aleck Jonas, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, PO Box 2276, Winter Haven, Florida 33883–2276; telephone: 941–299–4770, or FAX: 941–299–5169; or Mark Kreaggor, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, PO Box 96456, Washington, DC 20090–6456: telephone: (202) 720–2431, or FAX: 202–720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 125 and Order No. 966 (7 CFR part 966), both as amended, regulating the handling of tomatoes grown in Florida, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

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

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

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

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

There are approximately 75 handlers of tomatoes who are subject to regulation under the marketing order and approximately 90 producers of tomatoes in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of handlers and producers of Florida tomatoes may be classified as small entities.

Under the Florida tomato marketing order, tomatoes produced in the production area and shipped to fresh market channels outside of the regulated area are required to meet certain handling requirements specified in § 966.323. Current requirements include a minimum grade of U.S. No. 3 and a minimum size of 2 8/32 inches in diameter. Pack and container specifications are also in effect. In addition, all lots are required to be inspected and certified as meeting these grade, size, pack and container requirements by authorized representatives of the Federal or Federal-State Inspection Service. The regulated area is defined as the portion of the State of Florida which is bounded by the Suwannee River, the Georgia border, the Atlantic Ocean, and the Gulf of Mexico. Basically, it is the entire State of Florida, except the panhandle. The production area is part of the regulated area.

This interim final rule revises paragraph (d) of § 966.323 to allow handlers to ship specialty packed red ripe tomatoes exempt from the container net weight requirements in § 966.323(a)(3)(i) and defines such tomatoes in paragraph (g) of § 966.323. This exemption is the same as the exemption currently provided for yellow meated tomatoes in paragraph (d) of § 966.323. The specialty packed red ripe tomatoes will still be subject to all other provisions of the handling regulation, including established grade, size, container marking, condition and inspection requirements. The Florida Tomato Committee (committee) met September 7, 1995, and unanimously recommended this exemption.

Section 966.52 of the Florida tomato marketing order provides authority for the modification, suspension, and termination of regulations. Section 966.323(a)(3)(i) currently requires certain types of tomatoes packed by registered handlers to be packed in containers of 10, 20, and 25 pounds designated net weights. The net weight of the contents cannot be less than the designated weight and cannot exceed the designated weight by more than two pounds. Section 51.1863 of the U.S.

Standards for Grades of Fresh Tomatoes (7 CFR 51.1855 through 51.1877, hereafter referred to as the ''standards,'') applies.

Specialty packed red ripe tomatoes are a product recently available from Florida. They are shipped in relatively small volume and marketed as a specialty item.

This rule defines specialty packed red ripe tomatoes as tomatoes which, at the time of inspection, are light red (#5 color) or red (#6 color) according to color classification requirements in the standards, have their calyx ends and stems attached, and are cell packed in a single layer container.

Cell packed tomatoes are placed in containers with fiber board on plastic compartments for such tomatoes to provide separation and reduce bruising during transport and handling. This is especially important in shipping tomatoes at an advanced stage of ripeness when tomatoes have their calyx ends and stems attached. The separation provided by the individual compartments permits the tomatoes from moving around inside the shipping container during transport and handling, thus ensuring arrival at destination with tomato calyx ends and stems attached and no tomato stem punctures.

Most tomatoes shipped from Florida are shipped at the mature green stage without calyx ends and stems, and are packed in volume fill containers. When volume fill containers are packed, the tomatoes are placed by hand or machine into the container until the required net weight is reached. Mature green tomatoes are not as susceptible to bruising and other damage during transport as red ripe tomatoes. These specialty tomatoes have to be packaged so that they do not touch each other. If volume fill containers were used by registered handlers in Florida to ship specialty tomatoes, serious product bruising and stem punctures would result, which would detract from the unique appearance and marketability of these tomatoes.

However, the cell pack method of packaging needed to ensure that these specialty tomatoes arrive at markets in good condition does not lend itself well when packing to meet a required net weight. Normally, such packs are used when the product is packed by count per container. The tomatoes have to be properly sized to fit snugly in the container.

During the harvesting season, the weight of equal size tomatoes or the shape of tomatoes of equal weight may vary dramatically. If the red ripe tomatoes are light in weight, handlers cannot add extra tomatoes because all cells are full, or if the tomatoes are heavier than normal, the removal of a tomato by a handler results in an empty cell. Because the buyer expects a full tray, empty cells are viewed suspiciously and a marketing problem results.

To overcome this problem and allow this market to be further developed, the committee unanimously recommended that shipments of specialty packed red ripe tomatoes as defined herein, be exempt from the container net weight requirements of the order. As stated earlier, all other order requirements will apply to such shipments.

This rule reflects the committee's and the Department's appraisal of the need to exempt specialty packed red ripe tomatoes from the net weight requirements for tomatoes grown in Florida. The Department's view is that this action will have a beneficial impact on producers and handlers since it will allow tomato handlers to make additional supplies of tomatoes available to meet consumer needs consistent with crop and market conditions.

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

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) This action provides an exemption to container requirements currently in effect for tomatoes grown in Florida; (2) Florida tomato handlers are aware of this action that was unanimously recommended by the committee at a public meeting, and they will need no additional time to take advantage of the exemption; (3) Florida tomato shipments are currently in progress; and (4) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 915

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR part 966 is amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 966 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 966.323 is amended by revising paragraph (d)(1) and the first sentence in paragraph (g) to read as follows:

§ 966.323 Handling regulation.

* * * * *

(d) *Exemption*—(1) *For types.* The following types of tomatoes are exempt from these regulations: Elongated types commonly referred to as pear shaped or paste tomatoes and including but not limited to San Marzano, Red Top, and Roma varieties; cerasiform type tomatoes commonly referred to as cherry tomatoes; hydroponic tomatoes; and greenhouse tomatoes. Specialty packed red ripe tomatoes and yellow meated tomatoes are exempt from the container net weight requirements specified in paragraph (a)(3)(i) of this section, but must meet the other requirements of this section.

* * * * *

(g) *Definitions. Hydroponic tomatoes* means tomatoes grown in solution without soil; *greenhouse tomatoes* means tomatoes grown indoors; and *specialty packed red ripe tomatoes* means tomatoes which at the time of inspection are #5 or #6 color (according to color classification requirements in the U.S. tomato standards) with their calyx ends and stems attached and cell packed in a single layer container.* * *

Dated: November 20, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–28697 Filed 11–22–95; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 997

[Docket No. FV95–997–1FIR]

Assessment Obligation for 1995–96 Crop Year Peanuts Under 7 CFR Part 997; Peanut Handlers Not Subject to Peanut Marketing Agreement No. 146

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without modification, the provisions of an interim final rule

which imposed administrative assessments on farmers stock peanuts received or acquired by handlers who are not signatory (non-signatory handlers) to Peanut Marketing Agreement No. 146 (Agreement). The assessment rate for 1995–96 crop year peanuts continues at $.70 per net ton. The interim final rule also clarified which categories of farmers stock peanuts are assessable and established that non-signatory handlers shall submit their pro rata assessment to the Secretary of Agriculture. The assessment rate is the same as the administrative assessment established by the Department on handlers who are signers of the Agreement (signatory handlers).

EFFECTIVE DATE: July 1, 1995, through June 30, 1996.

FOR FURTHER INFORMATION CONTACT: Richard Lower, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2020, FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued pursuant to the requirements of the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601–674), and as further amended December 12, 1989; Public Law 101–220, section 4 (1), (2), 103 Stat. 1878, December 12, 1989; and Public Law 103–66, section 8b(b)(1), 107 Stat. 312, August 10, 1993.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. The Department established a 1995–96 crop year assessment rate applicable to non-signatory handlers effective July 1, 1995–June 30, 1996. Farmers stock peanuts received or acquired by non-signatory handlers during that crop year are subject to the assessment. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this interim final rule.

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 45 handlers of peanuts who have not signed the Agreement and, thus, will be subject to the regulations specified herein. There are also approximately 47,000 producers of peanuts, who potentially might do business with these handlers. The Small Business Administration now defines small agricultural service firms (13 CFR 121.601) as those having annual receipts of less than $5,000,000 and small agricultural producers as those whose annual receipts are less than $500,000. A majority of non-signatory handlers and peanut producers may be classified as small entities.

The Agreement was established in 1965 and plays a very important role in maintaining the industry's quality control efforts. The Peanut Administrative Committee (Committee) was established by the Agreement and works with the Department in administering the marketing agreement program. Approximately 95 percent of the domestically produced peanut crop is marketed by handlers who are signatory to the Agreement.

Since aflatoxin was found in peanuts in the mid-1960's, the domestic peanut industry has sought to minimize aflatoxin contamination in peanuts and peanut products. Agreement requirements provide that farmers stock peanuts with visible *Aspergillus flavus* mold (the principal source of aflatoxin) must be diverted to non-edible uses. Each lot of shelled peanuts destined for edible channels must be officially sampled and chemically tested for aflatoxin by Department laboratories or laboratories approved by the Committee.

Public Law 101–220 amended section 608b of the Act to require that all peanuts handled by persons who have not entered into the Agreement (non-signatory handlers) be subject to quality and inspection requirements to the same extent and manner as are required under the Agreement. Approximately 5 percent of the U.S. peanut crop is marketed by non-signatory handlers.

Regulations to implement Pub. L. 101–220 were issued and made effective on December 4, 1990 (55 FR 49980). The regulations, which have been amended several times, are published in 7 CFR part 997—Provisions Regulating the Quality of Domestically Produced Peanuts Handled by Persons Not Subject to the Peanut Marketing Agreement. Under these provisions, no peanuts may be sold or otherwise disposed of for human consumption if the peanuts fail to meet the edible quality requirements of the Agreement. All amendments were made to ensure that the non-signer handling requirements remain the same as, or are equal to, the handling requirements applied to signatory handlers under the Agreement.

Public Law 103–66 (107 Stat. 312) provides for mandatory assessment of farmer's stock peanuts acquired by non-signatory peanut handlers. Under this law, paragraph (b) of section 1001, of the Agricultural Reconciliation Act of 1993, specifies that: (1) Any assessment (except indemnification assessments) imposed under the Agreement on signatory handlers also shall apply to non-signatory handlers, and (2) such assessment shall be paid to the Secretary.

The Committee meets in February or March each year and recommends to the Secretary a per ton, administrative assessment of farmers stock peanuts received or acquired by signatory handlers for the upcoming crop year. The crop year covers the 12-month period from July 1 to June 30.

The Committee met on March 23, 1995, and unanimously recommended a $.70 administrative assessment per ton of 1995–96 crop year farmers stock peanuts received or acquired by signatory handlers. The Department published an interim final rule in the May 17, 1995, issue of the Federal Register (60 FR 26348) which imposed such an administrative assessment on signatory handlers.

Peanuts are assessed based on the rate applicable to the crop year in which the lot is presented for incoming inspection. Therefore, pursuant to Pub. L. 103–66, this final rule provides that, for the 1995–96 crop year, the Department will assess non-signatory handlers a $.70 administrative assessment per net ton of farmers stock peanuts received or acquired by non-signatory handlers.

The interim final rule clarified which categories of farmers stock peanuts are assessed. Segregation 1 peanuts are assessed under the Agreement and under this regulation. Until recently, all Segregation 2 and 3 peanuts were subject to assessment. However, the Committee recommended that signatory handler assessments should not be applied to Segregation 2 and 3 peanuts that are crushed for oil. Crushing represents the minimum market value that handlers can receive for poor quality peanuts. Thus, it is reasonable that Segregation 2 and 3 peanuts acquired by non-signatory handlers and disposed of to crushing shall not be assessed pursuant to § 997.51. Under some surplus market conditions, Segregation 1 peanuts may also be crushed for oil. However, such peanuts are not exempt from assessments.

The assessment will be applied to all such peanuts received or acquired for a handler's account, including the handler's own production. The assessment will continue to be based on: (1) Tonnage reported on incoming inspection certificates of each handler's Segregation 1 farmers stock peanuts received or acquired for the handler's account, and (2) Segregation 2 and 3 tonnage received or acquired for non-edible uses, except Segregation 2 and 3 peanuts sent to crushing.

Segregation 1 peanuts are defined as farmers stock peanuts with not more than 2 percent damaged kernels nor more than 1.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible *Aspergillus flavus.* Segregation 2 peanuts are defined as farmers stock peanuts with more than 2 percent damaged kernels or more than 1.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible *Aspergillus flavus.* Segregation 3 peanuts are defined as farmers stock peanuts with visible *Aspergillus flavus.*

Handling is defined in § 997.14 as engaging in the receiving or acquiring, cleaning and shelling, cleaning inshell, or crushing of peanuts and in the shipment (except as a common or contract carrier of peanuts owned by another) or sale of cleaned inshell or shelled peanuts or other activity causing peanuts to enter the current of commerce. Handling does not include the sale or delivery of peanuts by a producer to a handler or to an intermediary person engaged in delivering peanuts to handlers and the sale or delivery of peanuts by such intermediary to a handler.

Section 997.15 defines a non-signatory handler as ''any person who handles peanuts, in a capacity other than that of a custom cleaner or dryer, an assembler, a warehouseman or other intermediary between the producer and the person handling: *provided,* that this term does not include handlers signatory to the Peanut Marketing Agreement.''

Thus, for the 1995–96 crop year, a handler who receives or acquires 100,000 pounds of Segregation 1 farmers stock peanuts will pay an assessment of $35 (100,000 pounds is 50 tons, times 70 cents per ton, equals $35).

The assessment will continue to be applied, pro rata, on each non-signatory handler who is the first handler to receive or acquire an assessable lot of farmers stock peanuts. Only one assessment is applied to each farmers stock peanut lot. Assessments will not be applied on peanuts received or acquired from other handlers, speculators, buying points, brokers, or other entities who have paid assessments on the peanuts received or acquired.

Assessments will not be applied on peanuts received on behalf of an area association pursuant to a peanut receiving and warehouse contract.

Non-signatory producer/handlers who store peanuts of their own production (''farm-stored'' peanuts) will, at some point prior to further handling, obtain incoming inspection on such peanuts. At the time of incoming inspection, such producer/handlers pay their pro rata administrative assessment on such farm stored peanuts.

Speculators, brokers, or other entities who take possession of farmers stock peanuts, submit such peanuts for incoming inspection, and subsequently enter such peanuts into edible and non-edible channels of commerce will pay assessments on such peanuts unless the peanuts are Segregation 2 or 3 peanuts crushed for oil.

A crop year's original assessment on non-signatory handlers may be increased by the Secretary if a similar increase is applied by the Secretary on signatory handlers. Such an increase will be applied on all assessable peanuts handled by non-signatory handlers during the crop year in which the increased assessment occurred.

Also pursuant to Pub. L. 103–66, this rule continues to require that non-signatory handlers pay their administrative assessment to the Secretary. The Secretary has begun billing non-signatory handlers on a monthly basis. Each non-signatory handler is responsible for remitting payment by the date specified. Payment in the form of a personal check, cashier's check, or money order shall be remitted to the Department. Audits of each handler's account may be conducted by the Department to reconcile farmers stock peanuts received or acquired and assessments paid.

Violation of this assessment regulation may result in a penalty in the form of an assessment by the Secretary equal to 140 percent of the support price of quota peanuts for the crop year during which the violation occurs. The support price for quota peanuts is determined under 7 U.S.C. 1445c–3.

The interim final rule was published in the Federal Register on August 21, 1995 (60 FR 43353). That rule invited interested persons to submit written comments through September 20, 1995. No comments were received and the Department is adopting as a final rule, without change, the provisions of the interim final rule.

This administrative assessment rate imposes some additional costs on non-signatory handlers. However, the costs are in the form of uniform assessments on all handlers who are not signatory to the Agreement as well as all signatory handlers.

In accordance with the Paperwork Reduction Act of 1988 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0163.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities. This rule is required by law. This administrative assessment will be applied uniformly to all non-signatory handlers.

After consideration of all relevant matter presented, it is hereby found that this rule will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553) because the Act requires collection of this assessment. Non-signatory handlers are aware of this requirement which was published in the August 21, 1995, issue of the Federal Register. The assessment applies to all assessable peanuts handled during the 1995–96 crop year, which began on July 1, 1995.

List of Subjects in 7 CFR Part 997

Food grades and standards, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 997 is amended as follows:

PART 997—PROVISIONS REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS HANDLED BY PERSONS NOT SUBJECT TO THE PEANUT MARKETING AGREEMENT

Accordingly, the interim final rule amending 7 CFR part 997 which was published at 60 FR 43353 on August 21, 1995, is adopted as a final rule without change.

Dated: November 20, 1995.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–28694 Filed 11–22–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 999

[FV95–999–1IFR]

Specialty Crops; Import Regulations—Exemption of Brine Dried Prunes From Import Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule exempts brine dried prunes from import requirements by specifying that brine dried prunes do not fall within the definition of prunes in the import regulation. This rule is implemented in accordance with section 8e of the Agricultural Marketing Agreement Act of 1937. Section 8e requires imports of prunes to meet the same or comparable requirements as those implemented under the Federal Marketing Order No. 993, regulating the handling of dried prunes produced in California. The Department has determined that brine dried prunes are different than those normally handled by California prune handlers and that such prunes shall not be subject to section 8e import requirements.

DATES: Effective November 24, 1995. Comments which are received by December 26, 1995 will be considered prior to the issuance of a final rule.

FOR FURTHER INFORMATION CONTACT: Valerie L. Emmer, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: 202–205–2829.

SUPPLEMENTARY INFORMATION: This interim final rule, exempting brine dried prunes from import requirements in § 999.200, is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (Act). Section 8e provides that whenever certain specified commodities, including prunes, are regulated under a Federal marketing order, imports of those commodities must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodities.

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

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

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

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

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

Import regulations issued under section 8e of the Act are based on regulations established under Federal marketing orders for fresh fruits, vegetables, and specialty crops, like prunes. Thus, import regulations also have small entity orientation and impact both small and large business entities in a manner comparable to rules issued under such marketing orders.

There are approximately 10 importers who may be affected by this interim final rule. Small agricultural service firms, which include importers of dried prunes, have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5,000,000. The majority of these importers may be classified as small entities.

Currently, sulfur-bleached prunes, commonly known as silver prunes, and high moisture plums are exempt from import requirements. The Department is issuing this rule to add brine dried prunes as an additional exemption under the import regulation. Brine dried prunes are different in form and character than those prunes handled by California handlers, and were never intended to be subject to section 8e import requirements. Therefore, it is appropriate that they be exempted from the dried prune import regulation specified in § 999.200. Brine dried prunes are imported under International Harmonized Tariff Schedule No. 0813.20.1000. All other prunes handled by California handlers are imported under Harmonized Tariff Schedule No. 0813.20.2000.

To exempt brine dried prunes from import regulation requirements, the definition of ''prunes'' in paragraph (a)(1) of § 999.200, is amended to add brine dried prunes as an exclusion from that definition. Brine dried prunes are defined as prunes that have been impregnated with brine or salt during the dehydration process to the extent that they have lost their form and character as prunes and cannot be reconstituted to permit economic use of the individual fruits as prunes, and are imported under International Harmonized Tariff Schedule No. 0813.20.1000.

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

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

The information collection requirements contained in the referenced section have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB number 0581–0099.

After consideration of all relevant information presented, it is found that the issuance of this rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to implementing this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) This action relaxes requirements on importers of brine dried prunes; (2) the only known importer of brine dried prunes is aware of this action; and (3) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 999

Dates, Filberts, Food grades and standards, Imports, Nuts, Prunes, Raisins, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR part 999 is amended to read as follows:

PART 999—SPECIALTY CROPS; IMPORT REGULATIONS

1. The authority citation for 7 CFR part 999 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 999.200, paragraph (a)(1) is amended by removing the word ''and''

after the words, ''silver prunes;'', removing the period after the words, ''other artificial means of preservation'' and adding in its place the word ''; and'', and adding a new paragraph (a)(1)(iii) to read as follows:

§ 999.200 Regulation governing the importation of prunes.

* * * * *

(i) * * *

(ii) * * *

(iii) brine dried prunes that have been impregnated with brine or salt during the dehydration process to the extent that they have lost their form and character as prunes, and cannot be reconstituted to permit economic use of the individual fruits as prunes, and are imported under International Harmonized Tariff Schedule No. 0813.20.1000.

* * * * *

Dated: November 20, 1995.

Sharon Bomer Lauritsen,

Director, Fruit and Vegetable Division.

[FR Doc. 95–28696 Filed 11–22–95; 8:45 am]

BILLING CODE 3410–02–P

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 95–037N]

Termination of Designation of the State of West Virginia With Respect to the Inspection of Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Direct final rule; affirmation of effective date.

SUMMARY: This document affirms the effective date of the Food Safety and Inspection Service (FSIS) direct final rule, ''Termination of Designation of the State of West Virginia With Respect to the Inspection of Poultry Products'' published on September 26, 1995. This direct final rule notifies the public that West Virginia will be administering a State poultry inspection program with requirements at least ''equal to'' those of the Federal Government under the Poultry Products Inspection Act (PPIA). FSIS is amending the poultry products inspection regulations by removing the State of West Virginia from the list of States designated to receive Federal inspection of poultry products with respect to intrastate operations and transactions. No adverse comments were received in response to the direct final rule.

EFFECTIVE DATE: This rule is effective on November 27, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Connie L. Bacon, Assistant Director, Federal-State Relations, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 720–6313.

SUPPLEMENTARY INFORMATION: This notice affirms the effective date of the direct final rule, ''Termination of Designation of the State of West Virginia With Respect to the Inspection of Poultry Products,'' that was published on September 26, 1995, at 60 FR 49494.

This direct final rule notifies the public that West Virginia has developed and will enforce State poultry inspection program requirements at least ''equal to'' those imposed by the Federal Government under sections 1 through 4, 6 through 10 and 12 through 22 of the PPIA (21 U.S.C. 451 *et seq.*) with respect to intrastate operations and transactions within the State. Therefore, the designation of the State of West Virginia to receive Federal inspection for poultry products intended for intrastate commerce under 9 CFR 381.221 is terminated. We did not receive any written adverse comments or written notice of intent to submit adverse comments in response to this rule. This rule is effective on November 27, 1995.

Done at Washington, DC, on: November 16, 1995.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 95–28556 Filed 11–22–95; 8:45 am]

BILLING CODE 3410–DM–P

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R–0901]

Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation D, Reserve Requirements of Depository Institutions, to decrease the amount of transaction accounts subject to a reserve requirement ratio of three percent, as required by section 19(b)(2)(C) of the Federal Reserve Act, from $54.0 million to $52.0 million of net transaction accounts. This adjustment is known as the low reserve tranche adjustment. The Board has increased from $4.2 million to $4.3 million the amount of reservable liabilities of each depository institution that is subject to a reserve requirement of zero percent. This action is required by section 19(b)(11)(B) of the Federal Reserve Act, and the adjustment is known as the reservable liabilities exemption adjustment. The Board is also increasing the deposit cutoff levels that are used in conjunction with the reservable liabilities exemption to determine the frequency of deposit reporting from $55.4 million to $57.0 million for nonexempt depository institutions and from $45.1 million to $46.4 million for exempt institutions. (Nonexempt institutions are those with total reservable liabilities exceeding the amount exempted from reserve requirements while exempt institutions are those with total reservable liabilities not exceeding the amount exempted from reserve requirements.) Thus nonexempt institutions with total deposits of $57.0 million or more will be required to report weekly while nonexempt institutions with total deposits less than $57.0 million may report quarterly, in both cases on form FR 2900. Similarly, exempt institutions with total deposits of $46.4 million or more will be required to report quarterly on form FR 2910q while exempt institutions with total deposits less than $46.4 million may report annually on form FR 2910a.

DATES: *Effective date.*: December 19, 1995.

Compliance dates. For depository institutions that report weekly, the low reserve tranche adjustment and the reservable liabilities exemption adjustment will apply to the reserve computation period that begins Tuesday, December 19, 1995, and on the corresponding reserve maintenance period that begins Thursday, December 21, 1995. For institutions that report quarterly, the low reserve tranche adjustment and the reservable liabilities exemption adjustment will apply to the reserve computation period that begins Tuesday, December 19, 1995, and on the corresponding reserve maintenance period that begins Thursday, January 18, 1996. For all depository institutions, the deposit cutoff levels will be used to screen institutions in the second quarter of 1996 to determine the reporting frequency for the twelve month period that begins in September 1996.

FOR FURTHER INFORMATION CONTACT: J. Ericson Heyke III, Attorney (202/452–3688), Legal Division, or June O'Brien, Economist (202/452–3790), Division of Monetary Affairs; for users of the Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452–3544); Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 19(b)(2) of the Federal Reserve Act (12 U.S.C. 461(b)(2)) requires each depository institution to maintain reserves against its transaction accounts and nonpersonal time deposits, as prescribed by Board regulations. The initial reserve requirements imposed under section 19(b)(2) were set at three percent for net transaction accounts of $25 million or less and at 12 percent on net transaction accounts above $25 million for each depository institution. Effective April 2, 1992, the Board lowered the required reserve ratio applicable to transaction account balances exceeding the low reserve tranche from 12 percent to 10 percent. Section 19(b)(2) also provides that, before December 31 of each year, the Board shall issue a regulation adjusting for the next calendar year the total dollar amount of the transaction account tranche against which reserves must be maintained at a ratio of three percent. The adjustment in the tranche is to be 80 percent of the percentage increase or decrease in net transaction accounts at all depository institutions over the one-year period that ends on the June 30 prior to the adjustment.

Currently, the low reserve tranche on net transaction accounts is $54.0 million. The decrease in the net transaction accounts of all depository institutions from June 30, 1994, to June 30, 1995, was 4.7 percent (from $828.1 billion to $789.3 billion). In accordance with section 19(b)(2), the Board is amending Regulation D (12 CFR Part 204) to decrease the low reserve tranche for transaction accounts for 1996 by $2.0 million to $52.0 million.

Section 19(b)(11)(A) of the Federal Reserve Act (12 U.S.C. 461 (b)(11)(B)) provides that $2 million of reservable liabilities [1] of each depository institution shall be subject to a zero percent reserve requirement. Each depository institution may, in accordance with the rules and regulations of the Board, designate the reservable liabilities to which this reserve requirement exemption is to apply. However, if net transaction accounts are designated, only those that would otherwise be subject to a three percent reserve requirement (i.e., net transaction accounts within the low reserve requirement tranche) may be so designated.

Section 19(b)(11)(B) of the Federal Reserve Act provides that, before December 31 of each year, the Board shall issue a regulation adjusting for the next calendar year the dollar amount of reservable liabilities exempt from reserve requirements. Unlike the adjustment for the low reserve tranche on net transaction accounts, which adjustment can result in a decrease as well as an increase, the change in the exemption amount is to be made only if the total reservable liabilities held at all depository institutions increases from one year to the next. The percentage increase in the exemption is to be 80 percent of the increase in total reservable liabilities of all depository institutions as of the year ending June 30. Total reservable liabilities of all depository institutions from June 30, 1994, to June 30, 1995, increased by 3.6 percent (from $1,573.9 billion to $1,631.0 billion). Consequently, the reservable liabilities exemption amount for 1996 under section 19(b)(11)(B) will be increased by $0.1 million to $4.3 million.[2]

The effect of the application of section 19(b) of the Federal Reserve Act to the change in the total net transaction accounts and the change in the total reservable liabilities from June 30, 1994, to June 30, 1995, is to decrease the low reserve tranche to $52.0 million, to apply a zero percent reserve requirement on the first $4.3 million of transaction accounts, and to apply a three percent reserve requirement on the remainder of the low reserve tranche.

The tranche adjustment and the reservable liabilities exemption adjustment for weekly reporting institutions will be effective on the reserve computation period beginning Tuesday, December 19, 1995, and on the corresponding reserve maintenance period beginning Thursday, December 21, 1995. For institutions that report quarterly, the tranche adjustment and the reservable liabilities exemption adjustment will be effective on the computation period beginning Tuesday, December 19, 1995, and on the reserve maintenance period beginning Thursday, January 18, 1995. In addition, all institutions currently submitting Form FR 2900 must continue to submit reports to the Federal Reserve under current reporting procedures.

In order to reduce the reporting burden for small institutions, the Board has established deposit reporting cutoff levels to determine deposit reporting frequency. Institutions are screened during the second quarter of each year to determine reporting frequency beginning the following September. In July of 1988 the Board set a single cutoff level for all depository institutions of $40 million plus an amount equal to 80 percent of the annual rate of increase of total deposits.[3] In August of 1994, the Board replaced the single deposit cutoff level that had applied to both nonexempt and exempt institutions with separate cutoff levels. The cutoff level for nonexempt institutions, which determines whether they report (on FR 2900) quarterly or weekly, was raised from the indexed level of $44.8 million to $55.0 million. The deposit cutoff level for exempt institutions, which determines whether they report annually (on FR 2910a) or quarterly (on FR 2910q), remained at the indexed level of $44.8 million.

From June 30, 1994, to June 30, 1995, total deposits increased 3.7 percent, from $3,831.6 billion to $3,973.6 billion. Accordingly, the nonexempt deposit cutoff level will increase by $1.6 million to $57.0 million and the exempt deposit cutoff level will increase by $1.3 million to $46.4 million. Based on the indexation of the reservable liabilities exemption, the cutoff level for total deposits above which reports of deposits must be filed will rise from $4.2 million to $4.3 million. Institutions with total deposits below $4.3 million are excused from reporting if their deposits can be estimated from other data sources. The $57.0 million cutoff level for weekly versus quarterly FR 2900 reporting for nonexempt institutions, the $46.4 million cutoff level for quarterly FR 2910q versus annual FR 2910a reporting for exempt institutions, and the $4.3 million level threshold for reporting will be used in the second quarter 1996 deposits report screening process, and the adjustments will be made when the new deposit reporting panels are implemented in September 1996.

All U.S. branches and agencies of foreign banks and all Edge and agreement corporations, regardless of size, are required to file weekly the Report of Transaction Accounts, Other Deposits and Vault Cash (FR 2900). After the indexations become effective in 1996, all other institutions that have reservable liabilities in excess of the exemption level of $4.3 million prescribed by section 19(b)(11) of the Federal Reserve Act (known as ''nonexempt institutions'') and total deposits at least equal to the nonexempt

[1] Reservable liabilities include transaction accounts, nonpersonal time deposits, and Eurocurrency liabilities as defined in section 19(b)(5) of the Federal Reserve Act. The reserve ratio on nonpersonal time deposits and Eurocurrency liabilities is zero percent.

[2] Consistent with Board practice, the tranche and exemption amounts have been rounded to the nearest $0.1 million.

[3] ''Total deposits'' as used in determining the cutoff level includes not only gross transaction deposits, savings accounts, and time deposits, but also reservable obligations of affiliates, ineligible acceptance liabilities, and net Eurocurrency liabilities.

deposit cutoff level ($57.0 million) will be required to file weekly the Report of Transaction Accounts, Other Deposits and Vault Cash (FR 2900) for the twelve-month period starting September 1996. However, nonexempt institutions with total deposits less than the nonexempt deposit cutoff level ($57.0 million) may file the FR 2900 quarterly. Institutions that obtain funds from non-U.S. sources or that have foreign branches or international banking facilities are required to file the Report of Certain Eurocurrency Transactions (FR 2950/2951) at the same frequency as they file the FR 2900.

Institutions with reservable liabilities at or below the exemption level ($4.3 million) (known as exemptinstitutions) must file the Quarterly Report of Selected Deposits, Vault Cash, and Reservable Liabilities (FR 2910q) if their total deposits equal or exceed the exempt deposit cutoff level ($46.4 million). Exempt institutions with total deposits less than the exempt deposit cutoff level ($46.4 million) but at least equal to the exemption amount ($4.3 million) must file the Annual Report of Total Deposits and Reservable Liabilities (FR 2910a). Institutions that have total deposits less than the exemption amount ($4.3 million) are not required to file deposit reports if their deposits can be estimated from other data sources.

Finally, the Board may require a depository institution to report on a weekly basis, regardless of the cutoff level, if the institution manipulates its total deposits and other reservable liabilities in order to qualify for quarterly reporting. Similarly, any depository institution that reports quarterly may be required to report weekly and to maintain appropriate reserve balances with its Reserve Bank if, during its computation period, it understates its usual reservable liabilities or it overstates the deductions allowed in computing required reserve balances.

Notice and public participation. The provisions of 5 U.S.C. 553(b) relating to notice and public participation have not been followed in connection with the adoption of these amendments because the amendments involve expected, ministerial adjustments prescribed by statute and by an interpretative statement reaffirming the Board's policy concerning reporting practices. Moreover, the low reserve tranche adjustment and the reservable liabilities exemption adjustment are required to be effective for the next calendar year even though the data which they are required to reflect are only available late in the prior year. In addition, the reservable liabilities exemption adjustment and the increases for reporting purposes in the deposit cutoff levels reduce regulatory burdens on depository institutions, and the low reserve tranche adjustment will have a *de minimis* effect on depository institutions with net transaction accounts exceeding $52 million. Accordingly, the Board finds good cause for determining, and so determines, that notice and public participation is unnecessary, impracticable, and contrary to the public interest.

The provisions of 5 U.S.C. 553(d) relating to notice of the effective date of a rule have not been followed in connection with the adoption of these amendments because the low reserve tranche adjustment and the reservable liabilities adjustment are expected, ministerial amendments prescribed by statute. Moreover, they are required to be effective for the next calendar year even though the data which they are required to reflect are only available late in the prior year. In addition, the reservable liabilities adjustment and the increase in deposit cutoff levels for reporting purposes relieve a restriction on depository institutions, and the low reserve tranche will have a *de minimis* effect on depository institutions with net transaction accounts exceeding $52 million. Accordingly, there is good cause to determine, and the Board so determines, that such notice is impracticable or unnecessary.

List of Subjects in 12 CFR Part 204

Banks, banking, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board is amending 12 CFR Part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

1. The authority citation for Part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 3105.

2. In § 204.9 paragraph (a) is revised to read as follows:

§ 204.9 Reserve requirement ratios.

(a)(1) *Reserve percentages.* The following reserve ratios are prescribed for all depository institutions, Edge and Agreement corporations, and United States branches and agencies of foreign banks:

Category	Reserve requirement [1]
Net transaction accounts:	
$0 to $52.0 million	3 percent of amount.
over $52.0 million	$1,560,000 plus 10 percent of amount over $52.0 million.
Nonpersonal time deposits.	0 percent.
Eurocurrency liabilities.	0 percent.

[1] Before deducting the adjustment to be made by the paragraph (a)(2) of this section.

(2) *Exemption from reserve requirements.* Each depository institution, Edge or agreement corporation, and U.S. branch or agency of a foreign bank is subject to a zero percent reserve requirement on an amount of its transaction accounts subject to the low reserve tranche in paragraph (a)(1) of this section not in excess of $4.3 million determined in accordance with § 204.3(a)(3).

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 15, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–28522 Filed 11–22–95; 8:45 am]

BILLING CODE 6210–01–P

FARM CREDIT ADMINISTRATION

12 CFR Ch. VI

RIN 3052–AB53

Statement on Regulatory Burden

AGENCY: Farm Credit Administration.

ACTION: Final Statement on Regulatory Burden.

SUMMARY: This is the second phase of an ongoing effort by the Farm Credit Administration (FCA) to reduce regulatory burdens on the Farm Credit System (FCS or System). Many System institutions responded to the FCA's request for comments by identifying regulations that they consider to be burdensome. The FCA deleted several unnecessary or obsolete regulations in the first phase of this project. This document informs the public of those regulations that the FCA will retain without amendment because they are necessary to: (1) Implement or interpret the Farm Credit Act of 1971, as amended (Act), or (2) protect the safety and soundness of the System. The FCA also identifies pending or future actions that will respond to the remaining regulatory burden issues.

EFFECTIVE DATE: November 24, 1995.

FOR FURTHER INFORMATION CONTACT:

W. Eric Howard, Policy Analyst, Regulation Development, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

Richard A. Katz, Senior Attorney, Regulatory Operations Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Background

On June 10, 1993, the FCA Board approved a Statement on Regulatory Burden (Statement) seeking public comment on the appropriateness of requirements that the FCA regulations impose on the FCS. See 58 FR 34003 (June 23, 1993). More specifically, the FCA asked the public to identify regulations that either duplicate other governmental requirements, are not effective, or impose a burden that is greater than the benefit derived. In response to the notice, System institutions or their trade associations requested that the FCA repeal or amend several regulations.

In the first phase of this project, the FCA reduced unnecessary regulatory burdens on the FCS by repealing several regulations and two Agency prior approval requirements. See 60 FR 20008 (Apr. 24, 1995); 60 FR 27401 (May 24, 1995).

Today, the FCA notifies the FCS and other interested parties of those regulations that it will retain without amendment. Although System institutions sought the repeal or modification of the regulations identified below, the FCA, consistent with its Statement on Regulatory Philosophy,[1] concludes that these regulations are either required by statute or are necessary for safety and soundness. For these reasons, the FCA will not delete or amend the following regulations: §§ 611.1122; 614.4070; 614.4165; 614.4335; 614.4336; 614.4337; and 615.5172. An explanation of the FCA's rationale for these particular regulatory requirements follows.

II. Regulations That Will Be Retained Without Revision

A. Merger Requirements

Two commenters suggested that the FCA revise § 611.1122, which establishes timing and disclosure requirements for the merger of FCS institutions. One of the commenters asserted that the regulation mandates excessive periods for review and consideration of merger applications. As a result, the commenters believe that § 611.1122 unnecessarily postpones the effective date of such mergers. The commenters suggested that the FCA develop new procedures to expedite mergers of FCS banks and associations. In addition, one of the commenters advised the FCA to revise § 611.1122 because it requires too many disclosures to members.

Section 7.11 of the Act requires the FCA to act upon merger applications within 60 days of their receipt. In the event that the FCA fails to act within the 60-day period, the affected institutions are authorized by section 7.11 of the Act to submit their merger or consolidation plan directly to their shareholders. The 60-day period provides the FCA with sufficient time to review: (1) Complex transactions, or (2) multiple mergers or consolidations that are being processed concurrently. Although the Act allows the FCA 60 days to consider a proposed merger between System institutions, the Agency does not always require 60 days to process each merger application. The FCA acts upon the vast majority of corporate restructuring applications within the prescribed time period. However, the FCA requires the flexibility offered by section 7.11 of the Act and § 611.1122 in order to process complex transactions. Although the FCA will not repeal the 60-day timeframe for processing corporate applications, it is considering approaches that could shorten the time for processing noncomplex or noncontroversial corporate applications.

Commenters claim that § 611.1122 requires too many disclosures to institution shareholders about pending consolidations and mergers. These commenters suggest that the FCA amend the regulation so it would require the merging or consolidating institutions to provide their shareholders with a brief summary of the proposed transaction. However, the commenters suggest that the regulation continue to require a complete disclosure to the FCA about such corporate restructurings.

In the FCA's view, a brief summary of the proposed transaction does not adequately protect the right of shareholders to make informed decisions about the future of their institutions. When two or more institutions combine, stockholders exchange their equity interest in the original institution for stock in a larger institution. As owners of each FCS bank or association, the shareholders/borrowers have a right to make informed decisions about the future of their institution. For this reason, the FCA will not amend the disclosure requirements in § 611.1122.

B. Chartered Territories

A Farm Credit Bank (FCB) and its Federal land bank associations (FLBAs) have requested that the FCA repeal § 614.4070 so that System institutions no longer have the authority to make or participate in loans outside their chartered territories. According to sections 1.5(6) and 2.2(13) of the Act, the lending authorities of FCS banks and associations are subject to FCA regulations. Furthermore, section 5.17(a)(9) of the Act authorizes the FCA to prescribe regulations that are necessary or appropriate for carrying out the Act, while section 5.17(a)(5) allows FCA regulations to confer approval upon certain actions of FCS institutions. In the absence of § 614.4070, FCS banks and associations would only be authorized to make or participate in loans inside their chartered territories.

The repeal of § 614.4070 would deprive System institutions of the flexibility, under certain conditions, to finance borrowers who conduct operations outside their chartered territories. The consent and notification requirements in § 614.4070 prevent unrestrained competition between System institutions. At this time, the FCA declines to modify or repeal § 614.4070 because it balances the needs of borrowers and System institutions.

C. Borrower Stock Requirements for Loans Sold Into Secondary Markets

Two commenters requested that the FCA repeal § 614.4335(a), which requires borrowers whose loans are destined for sale in a secondary market to purchase stock in System institutions. These commenters claim that this stock-purchase requirement places System lenders at a disadvantage with their competitors.

The FCA responds that the stock-purchase requirement in § 614.4335 derives from section 4.3A(c) of the Act. Section 4.3A(c) of the Act states that all System institutions must sell stock when they make loans to new borrowers ''notwithstanding any other provision of this Act.'' Furthermore, section 4.3A(g) of the Act states that section 4.3A controls if it is inconsistent with any other provision of the Act except section 4.9A.

Prior to 1987, former sections 1.16(c) and 2.13(f) of the Act expressly waived the requirement that borrowers purchase stock for loans that were destined for sale to, or participation

[1] See 60 FR 26034, May 16, 1995.

with, non-System lenders. However, sections 1.16(c) and 2.13(f) of the Act were repealed by the Agricultural Credit Act of 1987 (1987 Act).[2] Furthermore, section 301 of the 1987 Act consolidated the stock capitalization requirements for all Farm Credit banks and associations into section 4.3A of the amended Act, which indicates that all borrowers are required, without exception, to purchase stock in the System bank or association that makes their loans. The Act, as amended, no longer contains any provision that explicitly exempts borrowers whose loans are originated for sale from complying with the statutory stock-purchase requirement. The committee reports and the congressional debates to the 1987 Act are silent as to reasons why Congress amended the Act so it no longer exempts loans that are destined to secondary markets from the stock-purchase requirement. In fact, there is no indication in the legislation that Congress considered the impact section 4.3A of the Act would have on the: (1) Ability of FCS banks and associations to sell loans to non-System lenders; and (2) development of the Federal Agricultural Mortgage Corporation (Farmer Mac) as a secondary market for agricultural and rural home loans.

The FCA is aware that the stock-purchase requirement for loans destined to secondary markets causes inconvenience to System lenders and their borrowers. Nevertheless, § 614.4335(a) is consistent with the plain language of section 4.3A of the Act. However, the FCA observes that FCS banks and associations have flexibility within the confines of section 4.3A of the Act to devise practical solutions that will minimize the difficulties associated with the borrower stock requirements. For example, a recent FCA Bookletter, OE–403 (Dec. 23, 1994), concluded that FCS banks and associations are not required to sell stock if they ''table fund'' loans for non-System lenders that are certified Farmer Mac poolers.

D. Borrower Rights and Loan Sales

Two commenters requested that the FCA amend § 614.4336 so that borrower rights would not apply to loans that are sold to established secondary markets or non-System lenders. These commenters assert that borrower rights increase the transaction costs associated with the sale of loans to other lenders. More importantly, non-System institutions usually will not purchase loans that are subject to borrower rights requirements.

In order to fully respond to the commenters, the FCA has examined those provisions of the Act that govern borrower rights on FCS loans. According to sections 4.14A(a) (5) and (6) of the Act, borrower rights attach only to loans that System banks (other than banks for cooperatives), associations, and other financing institutions make to farmers, ranchers, and aquatic producers and harvesters. Furthermore, the disclosure requirements in section 4.13 of the Act do not apply to consumer loans that are subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.* Thus, borrower rights requirements do not attach to home loans that System banks and associations make to rural residents who are not agricultural or aquatic producers. For this reason, the borrower rights provisions in title IV of the Act do not impede the sale of non-farm rural home loans to the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, Farmer Mac, or non-System lenders.

According to section 8.9(a) of the Act, borrower rights do not apply to agricultural mortgage loans that collateralize Farmer Mac securities. Furthermore, section 8.9(b) of the Act prescribes specific procedures for detaching borrower rights from agricultural mortgage loans that FCS lenders sell to Farmer Mac poolers. Two regulations, §§ 614.4336(a)(1) and 614.4367(b), implement these statutory authorities.

Some System institutions have expressed strong opposition to § 614.4336(a)(2), which prescribes two alternatives for resolving borrower rights when loans are sold to non-System lenders that are not Farmer Mac poolers. More specifically, § 614.4336(a)(2) requires the FCS lender to either: (1) Incorporate these statutory borrower rights into the loan agreement so that the purchaser assumes these obligations; or (2) obtain the borrower's signed, written consent to the sale, including the relinquishment of borrower rights. As noted earlier, System institutions assert that § 614.4336(a)(2) effectively precludes the sale of most loans to non-System lenders.

Some System lenders have opined that the sale of loans to non-System institutions automatically extinguishes borrower rights. The FCA fully responded to this claim when § 614.4336(a)(2) was adopted as a final regulation in 1992. See 57 FR 38237 (Aug. 24, 1992). From the FCA's perspective, the rationale for § 614.4336(a)(2) remains valid.

As explained in the preamble to § 614.4336(a)(2), the FCA finds no support in either the Act or its legislative history for the claim that the loan sale authorities of FCS institutions supersede the borrower rights provisions in title IV of the Act. In fact, the System's loan sale authorities already existed at the time that the Act was amended to guarantee certain protections to FCS borrowers. In this context, § 614.4336(a)(2) balances the statutory authority of System lenders to sell their loans with the borrower rights provisions of the Act. The FCA observes that § 614.4336(a)(2) prevents potential disputes that could erupt if borrower rights issues are left unresolved when loans are sold to non-System lenders who are not Farmer Mac poolers. Uncertainty over the status of borrower rights may also deter an informed non-System lender from purchasing loans from FCS banks and associations.

The approach advocated by the commenters would allow FCS institutions to unilaterally deprive borrowers of their statutory rights without their consent. Accordingly, the FCA will retain § 614.4336(a) because it implements the Act by equitably balancing borrower rights with the authority of FCS banks and associations to sell loans to non-System lenders.

Recently, the FCA has received inquiries about the application of borrower rights to loans that are guaranteed by other Federal agencies. This issue is currently under consideration at FCA.

E. Disclosures

Under § 614.4337(a), an FCS bank or association that sells a loan to another lender is required to disclose to the borrower specified information about the purchaser, the servicing agent, borrower rights, and changes in the loan terms. Two commenters suggested that the disclosure of loan sales and the corresponding reporting requirements in § 614.4337(a) are unnecessary because they should be handled by the purchaser of the loan, rather than the FCS institution.

The FCA believes that the disclosure requirements in § 614.4337(a) are the responsibility of the seller, not the purchaser, of System loans. As previously discussed, the Act imposes borrower stock and borrower rights requirements on loans that are originated by System banks and associations. These institutions are in the best position to explain the impact of the sale on these matters. Furthermore, disclosures concerning servicing rights were added to this regulation after a General Accounting

[2] Pub. L. 100–233, 101 Stat. 1568, (Jan. 6, 1988).

Office report criticized certain System loan sale practices that created hardships for many borrowers. See 57 FR 38237 (Aug. 24, 1992). As § 614.4337 addresses the obligations of System institutions that originate and subsequently sell the borrowers' loans, the FCA will not repeal this regulation.

F. Investment in Farmers' Notes

Several FCBs and associations requested that the FCA either eliminate or modify the full-recourse requirement in § 615.5172, which authorizes PCAs and ACAs to invest in Farmers' Notes. This regulation authorizes PCAs and ACAs, in accordance with the policies prescribed by the boards of their funding banks, to invest in notes and other obligations evidencing the purchase of farm equipment, machinery, and supplies by farmers and ranchers from private dealers and cooperatives. The regulation requires that the debtors on these Farmers' Notes must be eligible to borrow from PCAs and ACAs. More importantly, § 615.5172(d) states that ''all notes in which the association invests shall be endorsed with full recourse against the cooperative or dealer.''

Commenters claimed that this full-recourse requirement adversely impacts System competitiveness in the short-term credit market and restrains their business opportunities.

The commenters asserted that: (1) The recourse requirement should be a credit decision of the association, and (2) the full-recourse requirement is unrelated to safety and soundness.

Although the FCA realizes that the full-recourse requirement in § 615.5172(d) may deprive PCAs and ACAs of some profitable business opportunities, it implements several provisions of the Act. The Farmers' Notes program derives from section 2.2(10) of the Act, which authorizes associations to invest their funds, as approved by their funding bank, pursuant to FCA regulations. Therefore, the regulation implements the investment authorities, not the lending powers, of PCAs and ACAs. Because the full-recourse requirement precludes PCAs and ACAs from assuming any credit risk on Farmers' Notes, § 615.5172(d) ensures that these instruments are treated as investments rather than loans.

The full-recourse requirement prevents PCAs and ACAs from extending credit to an eligible borrower without complying with provisions of the Act that govern their lending authorities and capitalization requirements. Farm Credit banks and associations lack authority under sections 1.5(16) and 2.2(11) of the Act, respectively, to purchase operating loans from non-System lenders. Furthermore, the commenters' recommendation is incompatible with provisions of the Act that require: (1) System institutions to accord borrower rights on agricultural or aquatic loans, and (2) farmers to purchase voting stock when they obtain credit from a System lender. For these reasons, the FCA cannot delete or modify the full-recourse requirement in § 615.5172(d) without an amendment to the Act to allow System banks and associations to purchase loans from non-FCS lenders.

III. Future Efforts To Reduce Unnecessary Regulatory Burdens on FCS Institutions

All remaining regulatory burden issues that System institutions raised during the comment period are being addressed in separate regulatory projects that have already been assigned to specific FCA task forces. Within the past 2 years, the FCA has responded to some System concerns about regulatory burdens by adopting final investment and related services regulations. This summer, the FCA proposed new eligibility regulations that are designed to relieve unnecessary regulatory burdens on the FCS while simultaneously enforcing statutory requirements and promoting safety and soundness. The FCA work groups are considering possible amendments to existing regulations that govern: (1) General Financing Agreements; (2) Agency prior approvals; (3) quarterly reports to shareholders; (4) letters of credit for international trade; (5) credit underwriting standards and independent credit judgments on loan participation; and (6) the 10-day notification requirement for changes in interest rates. Separately, the FCA will review whether § 611.330 could be amended so that FCS institutions could, under certain conditions, use ballots containing identity codes in non-weighted elections without compromising voter secrecy and the integrity of the electoral process. The Agency also plans to reevaluate the regulatory timeframes associated with the reconsideration of mergers, consolidations, and other corporate restructurings that have been approved by an institution's shareholders under § 611.1122(k).

Sections 4.9 and 5.17(a)(3) of the Act specifically require reports about young, beginning, and small farmer programs at FCS institutions. The FCA has no latitude to grant relief from these statutory reporting requirements. However, the Agency is currently considering whether § 614.4165(d) is still necessary because other methods may be appropriate for ensuring compliance with the statutory reporting requirements for young, beginning, and small farmer programs.

As part of its strategic plan, the FCA is considering comprehensive revisions to the Loan Accounting and Reporting System (LARS) and Call Report requirements. As results are achieved from this strategic goal, unnecessary or duplicative LARS and Call Report requirements on System institutions will be eliminated. However, changes to these reporting requirements and further changes to regulatory requirements must be accomplished without any adverse impact on the ability of the FCA to discharge its safety and soundness responsibilities under the Act.

Except for the specific issues outlined above that may be addressed in ongoing regulation projects, the FCA considers this its final response to comments received pursuant to its regulatory burden request.

Dated: November 17, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 95–28583 Filed 11–22–95; 8:45 am]

BILLING CODE 6705–01–P

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12 CFR Part 615

RIN 3052–AB66

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Global Debt

AGENCY: Farm Credit Administration.

ACTION: Interim rule; request for comment.

SUMMARY: The Farm Credit Administration (FCA) is issuing an interim regulation to clarify the Federal Farm Credit Banks Funding Corporation's (Funding Corporation) statutory authority to use more than one fiscal agent to facilitate the sale of Systemwide debt securities. The regulation permits the Funding Corporation to employ fiscal agents other than Federal Reserve Banks (FRBs) for issuance of dollar denominated Systemwide debt securities in foreign capital markets. Thus, the rule recognizes the authority of the Funding Corporation to issue, sell, and distribute Systemwide debt securities on behalf of the Farm Credit banks (banks) on a global basis. Updating existing FCA regulations allows the banks to engage in debt marketing practices used by other Government-Sponsored Enterprises (GSEs). In addition,

expanding debt marketing internationally may broaden the investor base for Systemwide debt securities and lead to lower funding costs.

DATES: The regulations shall become effective upon the expiration of 30 days after publication during which either or both Houses of Congress are in session. Written comments must be received on or before December 26, 1995. Notice of effective date will be published in the Federal Register.

ADDRESSES: Comments may be mailed or delivered to Patricia W. DiMuzio, Associate Director, Regulation Development, Office of Examination, 1501 Farm Credit Drive, McLean, VA 22102–5090. Copies of all communications received will be available for examination by interested parties in the Office of Examination, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Laurie A. Rea, Policy Analyst, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498;

or

William L. Larsen, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Background

The Farm Credit System (System) funds its lending operations through the sale of debt securities in the domestic capital markets. The banks currently offer Systemwide debt securities, primarily consisting of Consolidated Systemwide bonds, medium-term notes and discount notes.[1] The Funding Corporation, acting on behalf of the banks, issues, markets, and handles the debt obligations of the System. The Funding Corporation also has the responsibility for establishing, subject to FCA approval, the amount, maturities, rates of interest, and terms and conditions of participation by the several banks in each issue of Systemwide debt securities.[2]

The Funding Corporation uses a selling group of investment dealers and dealer banks to market Systemwide debt securities. Systemwide debt securities are generally issued in book-entry form.[3] The FRBs maintain the book-entry securities as agents of the banks.[4] Pursuant to FCA regulations, Systemwide debt securities clear and settle through the Federal Reserve Banks' Book-entry System (Fed book-entry system).[5] Foreign investors can purchase Systemwide debt securities through institutions and depositories that have appropriate accounts with an FRB. Currently, the banks do not issue securities through agents other than the FRBs either domestically or in foreign capital markets.

In contrast, other GSEs[6] have launched global debt issuance programs to expand the sale of their debt securities into foreign capital markets. While most GSEs have issued or sold debt securities denominated in United States dollars (U.S. dollars) outside the United States, three[7] also have issued debt securities denominated in foreign currencies. The global debt programs aim at increasing the depth and breadth of the market for the issuer's debt securities. The GSEs are seeking to diversify and control the cost of borrowing at a time when their overall funding needs are rising sharply. The foreign capital markets could provide the GSEs funding opportunities at rates that are attractive compared to domestic sources. Additionally, international debt sales may enhance the efficiency of GSE debt sales by expanding their sources of funding and reducing the burgeoning supply of GSE debt in the domestic market.

II. System Global Debt Program Proposal

The Funding Corporation proposes to establish a global debt marketing program for issuance of Systemwide debt securities similar to the other GSEs. The Funding Corporation has requested FCA's confirmation that the Farm Credit Act of 1971, as amended[8] (Act), allows the banks to issue Systemwide debt securities in foreign capital markets using fiscal agents other than the FRBs. The proposed System Global Debt Program (Program) contemplates three approaches to enter into foreign capital markets that vary in scope and complexity.

The first approach is designed to increase secondary market sales of Systemwide debt securities outside the United States. To accomplish this, the Funding Corporation would use international depositories and clearing systems for maintaining and servicing book-entry Systemwide debt securities. By expanding secondary market trading and safekeeping to accountholders in clearing systems beyond the Fed book-entry system, the Funding Corporation could increase and support demand by foreign investors. Primary issuances of dollar denominated Systemwide debt securities would continue to be issued through the FRBs in book-entry form.

The Program's second method to heighten the System's presence in foreign capital markets involves both primary issuance and secondary market sales of Systemwide debt securities outside the United States. Dollar denominated Systemwide debt securities would be issued through fiscal agents other than the FRBs, either exclusively outside the United States or simultaneously inside and outside the United States. Secondary market trading and safekeeping of the debt securities would be accomplished through international depositories and clearing systems.

Under the third approach, Systemwide debt securities would be denominated in foreign currencies and issued exclusively outside the United States through fiscal agents other than the FRBs. Secondary market trading and safekeeping would be handled through international clearing systems. Such non-dollar denominated Systemwide debt securities issued in foreign capital markets are the subject of an Advance Notice of Proposed Rulemaking also adopted by the FCA Board on November 16, 1995, and published elsewhere in today's issue of the Federal Register.

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[1] Systemwide debt securities are the joint and several obligations of the banks. *See* 12 U.S.C. 2155(a)(2) and 12 U.S.C 2153(d).

[2] *See* 12 U.S.C. 2160.

[3] Securities issued in book-entry form are assigned to an investor's account upon purchase. The investor receives a custody receipt from his or her bank or non-bank dealer instead of receiving a certificate. Payment of principal and interest on book-entry securities is credited to the investor's account and does not require presentation of a coupon or certificate. Investors may choose, as a custodian, any bank or other financial institution that maintains book-entry accounts with a member of the Federal Reserve System.

[4] *See* 12 CFR part 615, subpart O.

[5] The FRBs operate a book-entry system, which provides book-entry holding and settlement for all U.S. dollar denominated securities issued by the U.S. Government, certain agencies, instrumentalities (including GSEs), and international organizations of which the United States is a member. The Fed book-entry system enables specified depositories and other institutions, with an appropriate account with an FRB or Branch, to hold, make payments, and transfer securities and funds through the FRBs' Fedwire electronic funds transfer system.

[6] The Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), the Student Loan Marketing Association (Sallie Mae) and the Federal Home Loan Banks (FHLBs) have introduced global debt programs.

[7] Fannie Mae, Sallie Mae, and the FHLBs have issued non-dollar denominated debt securities.

[8] 12 U.S.C. 2001–227966–6.

III. Statutory and Regulatory Considerations

A. General

The Act grants broad authority to: (1) The banks to issue debt obligations to fund their operations; and (2) the FCA to approve the issuance of System debt in the capital markets. Under section 4.2, Systemwide debt obligations must be issued solely through the Funding Corporation, while section 4.9(b)(1) of the Act authorizes the Funding Corporation to ''issue, market, and handle the obligations'' of the banks. Under section 4.9(b)(2) of the Act, the Funding Corporation, acting for the banks and subject to FCA approval, ''shall determine the amount, maturities, rates of interest, terms, and conditions of participation by the several banks in each issue of joint, consolidated, or System-wide obligations.'' Sections 4.2 and 5.17(a)(4) of the Act require FCA approval of the issuance of all System debt obligations.

B. Secondary Market Sales Outside the United States

In general, secondary market trading and sales of Systemwide debt securities have been limited to the United States market. However, secondary market sales of dollar denominated Systemwide debt securities outside the United States are compatible with current statutory and regulatory requirements. The initial issuance of such debt securities would be subject to the standard FCA approval process.[9]

C. Issuance of Systemwide Debt Outside the United States

The Act is silent concerning issuance of Systemwide debt outside the United States. No provision of the Act explicitly or implicitly prohibits the banks, acting through the Funding Corporation, from issuing debt obligations outside the United States. Furthermore, there appears to be no other Federal statute or judicial ruling that would prohibit the banks from issuing Systemwide debt securities outside the United States. Nevertheless, the laws of the various host countries may restrict some aspects of System debt issuances within their borders.

D. Use of Issuing and Servicing Agents Other Than the FRBs

Section 4.8(a) of the Act, which governs the issuance and sale of System obligations through fiscal agents, clearly contemplates that the banks can issue their debt obligations through one or more fiscal agents. Section 4.8(a) states:

> Each bank of the System * * * may provide for the sale of obligations issued by it, consolidated obligations, or System-wide obligations, through a *fiscal agent or agents,* by negotiation, offer, bid, syndicate sale, and to deliver such obligations by book entry, wire transfer, or such other means as may be appropriate. (Emphasis added.)

Section 4.8(a) does not, however, identify a fiscal agent or agents that the banks are authorized to use for debt issuances.

The FCA regulations governing the issuance, maintenance, and servicing of Farm Credit securities refer only to the authority of FRBs to act as agents for the banks.[10] The absence of any reference in the regulations to fiscal agents other than the FRBs may appear to restrict the authority of the Funding Corporation to select a fiscal agent other than an FRB. In light of the apparent latitude permitted under section 4.8(a), the FCA believes the authority of the Funding Corporation to employ fiscal agents other than FRBs should be clarified.

IV. Need for Amended Regulations

The FCA regulations governing issuance of Systemwide debt securities were promulgated nearly 20 years ago. The existing regulations reflect a period when the FRBs served as the exclusive fiscal agents for GSE debt issuances in a predominantly domestic market. Since then, global debt markets and international clearing systems have evolved and become more closely integrated with the United States domestic securities market. Due to substantial increases in GSE debt issuances, the domestic GSE debt market has become highly competitive. As a result, the GSEs are seeking to expand their market horizon and lower their cost of funds by using international delivery systems to reach foreign investors.

The FRBs may not act as fiscal agents for GSE debt obligations that are issued outside of the United States. Therefore, GSEs that embark upon global debt programs must employ fiscal agents that have the capability of issuing, maintaining, and servicing international debt offerings. As noted, the Act does not restrict the issuance of Systemwide debt securities to domestic markets or the use of fiscal agents to the FRBs. To clarify this authority, the FCA is adopting a new subpart P in 12 CFR part 615 dealing with issuance of Global Systemwide debt securities. The FCA regulations governing the authority of the FRBs to issue book-entry Farm Credit securities are not affected by the new rules and remain in effect.[11]

The FCA believes the new regulations will preserve the flexibility provided to the banks under the Act by allowing them to pursue the most cost-effective and efficient method of raising funds in the capital markets. The FCA also recognizes the increasingly global nature of capital markets and supports the objectives of the proposed Program. By developing the capability to issue debt internationally, the System may increase its name recognition, broaden its investor base, diversify its sources of funding, and obtain more cost-effective financing.

The new subpart differentiates Systemwide debt securities distributed outside the United States from those issued through the FRBs under existing Funding Corporation programs. The regulation defines a Global agent as any fiscal agent, other than the FRBs, used by the Funding Corporation to facilitate the sale of global debt securities. Global debt securities are defined as obligations issued by the Funding Corporation on behalf of the Farm Credit banks under section 4.2(d) of the Act through a fiscal agent or agent and distributed either exclusively outside the United States or simultaneously inside and outside the United States. Issuances of global debt securities will be subject to the standard FCA approval process.

The FCA believes that it is unlikely that any substantial operational or business risks to the System will be posed by clearance and settlement of transactions in the systems outside the Fed book-entry system. Systemwide debt securities issued internationally would likely be handled through established and interconnected international clearinghouses, all of which have book-entry systems available to distribute and settle primary sales and to transfer beneficial interests in secondary market sales among their respective holding institutions, participants, and accountholders. In general, book-entry systems are considered superior to other means for evidencing ownership and are universally accepted by investors in the global marketplace. All issuers of debt or equity securities must employ an entity to issue, hold, trade, and clear book-entry securities in the name of accountholders, unless the securities are issued in definitive (i.e., tangible) form to facilitate sales. To date, the

[9] *See* 12 U.S.C. 2153, 2252(a)(4).

[10] *See* 12 CFR part 615, subpart O which authorizes each FRB to issue and maintain book-entry Farm Credit securities, service book-entry Farm Credit securities by making payment of interest and payment at maturity or upon call, transfer or pledge Farm Credit securities to any transferee or pledgee eligible to maintain an appropriate book-entry account in its name with an FRB and provide other services as fiscal agent.

[11] *See* 12 CFR part 615, subpart O.

experience of the other GSEs engaged in global debt marketing programs also suggests that using international clearing systems is an acceptable business practice.

Nevertheless, the FCA believes that the operational risk inherent in the development of a global debt program is significant enough to warrant the requirement that the Funding Corporation Board of Directors approve each prospective global agent and clearing system. Additionally, the Funding Corporation must establish appropriate selection criteria for global agents. The FCA expects that selection criteria will be based on factors such as credit ratings, capital, reputation, experience, and management capabilities to ensure that the entity is suitable to assume and carry out the functions of a fiscal agent, including the appointment of subordinate agents if necessary.[12]

Promulgation of new subpart P of 12 CFR part 615 effectively approves the first two aspects of the proposed Program as previously outlined. Thus, the Funding Corporation may engage global agent(s) to issue and service dollar denominated global debt securities and facilitate their secondary market trading in foreign capital markets by using international clearing systems.

The FCA has decided that the third aspect of the proposed Program—issuance of non-dollar denominated Systemwide debt securities—presents issues that need to be addressed through conventional notice-and-comment rulemaking rather than in the present expedited rulemaking. The Act does not restrict the issuance of Systemwide debt securities to dollar denominated securities. However, issuance of non-dollar debt obligations could raise safety and soundness concerns for the banks, including currency and counterparty risks. The FCA, therefore, intends to explore these potential safety and soundness issues through an Advance Notice of Proposed Rulemaking prior to developing regulations.

V. Expedited Rulemaking Procedure

The Act permits the Funding Corporation to market debt securities on a global basis and use global agents to issue and service such securities. Moreover, marketing and issuance of dollar denominated debt by GSEs is an established practice that appears to present minimal safety and soundness risk. Accordingly, the FCA finds that pre-promulgation notice and comment on a new subpart P that merely clarifies existing authority is unnecessary and is not in the public interest.[13] Thus, this regulation shall take effect as a final regulation in accordance with section 5.17(c)(1) of the Act, upon the expiration of 30 days after publication in the Federal Register, during which either or both Houses of Congress are in session. The FCA solicits and will consider comments on whether the requirements of new subpart P need further clarification.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, Banking, Government securities, Investments, Rural areas.

For the reasons stated in the preamble, part 615 of chapter VI, title 12 of the Code of Federal Regulations is amended as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

1. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6, 2279aa, 2279aa–4, 2279aa–6, 2279aa–7, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

2. Subpart P is added to read as follows:

Subpart P—Global Debt Securities

§ 615.5500 Definitions.

In this subpart, unless the context otherwise requires or indicates:

(a) *Global debt securities* means consolidated Systemwide debt securities issued by the Funding Corporation on behalf of the Farm Credit banks under section 4.2(d) of the Act through a fiscal agent or agents and distributed either exclusively outside the United States or simultaneously inside and outside the United States.

(b) *Global agent* means any fiscal agent, other than the Federal Reserve Banks, used by the Funding Corporation to facilitate the sale of global debt securities.

§ 615.5502 Issuance of global debt securities.

(a) The Funding Corporation may provide for the sale of global debt securities on behalf of the Farm Credit banks through a global agent or agents by negotiation, offer, bid, or syndicate sale, and deliver such obligations by book-entry, wire transfer, or such other means as may be appropriate.

(b) The Funding Corporation Board of Directors shall establish appropriate criteria for the selection of global agents and shall approve each global agent.

Dated: November 17, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 95–28584 Filed 11–22–95; 8:45 am]

BILLING CODE 6705–01–P

[12] Depending upon the agreement between the Funding Corporation and the entity acting as global agent, a global agent may only retain primary responsibility over certain fiscal functions and thus may need to appoint other agents, such as paying agent, transfer agent, calculation agent, exchange agent, or register agent to perform other functions necessary for clearance and settlement of transactions.

[13] *See* 5 U.S.C. 553(b)(B).

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12 CFR Parts 615 and 620

RIN 3052–AB60

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Disclosure to Shareholders; Director Elections

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), adopts amendments to the regulations relating to the implementation of cooperative principles to allow greater flexibility in the method by which directors of Farm Credit System (System) associations and banks for cooperatives are elected, consistent with cooperative principles. The amendments permit regional election of directors.

EFFECTIVE DATE: The regulations shall become effective upon the expiration of 30 days after publication during which either or both houses of Congress are in session. Notice of the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: John J. Hays, Policy Analyst, Regulation Development, Office of Examination, (703) 883–4498, TDD (703) 883–4444; or Rebecca S. Orlich, Senior Attorney, Regulatory Enforcement Division, Office of General Counsel, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: On June 9, 1995, the FCA Board published proposed amendments to its regulations governing the election of directors. *See* 60 FR 30470 (June 9, 1995). The FCA received 9 comment letters in response

to this proposal. A description of the existing and proposed regulations, comments on major issues, and the FCA's response follow.

I. Existing Regulation and Proposed Regulation

The existing regulation was promulgated by the FCA in 1988 to implement changes effected by the Agricultural Credit Act of 1987. It provided for the at-large election of directors of associations and banks for cooperatives (BCs) but permitted associations that, in 1988, had bylaws providing for regional elections of directors to continue to do so until January 1, 1993. These associations were districtwide associations that had been formed in the 1980s through mergers of most or all of the associations in a bank's district. In response to the desire for regional representation expressed in the comments to the existing regulations when they were proposed in 1988, the FCA placed no restrictions on the institution's ability to provide for geographic representation on the board by geographic designation of director positions; the Agency also provided for cumulative voting unless shareholders approved bylaws providing otherwise. However, the FCA decided to prohibit regional voting because of Agency concerns regarding director accountability and equitable voting power.

Subsequent to implementation of that regulation, and in response to requests from institutions to permit regional election of directors, the FCA reviewed its position and determined that its concerns could be addressed in a less burdensome way that would permit regional elections, consistent with cooperative principles.

The FCA proposed amendments to § 615.5230(a)(1)(ii) to permit the regional election of directors of associations and BCs subject to the following conditions:

1. To ensure that a director can be held accountable by all shareholders, institutions with bylaws providing for shareholder removal of directors must provide that each director may be removed by a majority vote of all voting shareholders and may not be removed by a vote of only the shareholders in his or her region; and

2. The bylaws provide for the apportionment of the institution's territory into voting regions with approximately equal numbers of voting shareholders and ensure equitable representation from each voting region through an annual evaluation by the institution's board of directors.

The FCA also proposed a conforming amendment to § 620.21(d)(1) of the FCA regulations to require disclosures regarding regional voting in the association's annual information statement.

II. Comments on Major Issues

Comments were received from the Farm Credit Council (FCC), representing the interests of its membership except for one bank; a Farm Credit Bank; five System associations; a law firm representing two pairs of jointly managed System associations (four associations); and one System association board member. The Farm Credit Bank stated its belief that it was not appropriate for a bank to express a position on the regulation of the internal affairs of associations. Two commenters fully supported the proposal, one commenter objected to the proposal, and others expressed varying degrees of support and/or criticism as described below:

1. *Shareholder approval of bylaw establishing regional elections.* An association objected to this requirement as being burdensome and costly, and a responsibility for association boards. The FCC stated that it strongly opposed this provision as being unnecessary, a matter for the association board to decide, prohibitively expensive for some associations, and a barrier to having regional elections before 1997.

2. *''Approximately equal number of voting shareholders'' in each region.* This issue was commented on by the FCC and five others. The FCC asserted that, as a practical matter, this requirement would preclude the drawing of regional boundaries along state, county, or other political or geographic lines. The FCC asserted that it would likely result in the elimination or curtailment of certain ''grass roots'' programs, because regions based on equal numbers of shareholders would mean that some regions will be very large and the large size would make travel to the local meetings difficult, if not impossible. The FCC further stated that the number of shareholders per region should not be the controlling factor, or even necessarily of greater weight than other factors.

One association supported additional flexibility on this issue and asked for ''board variance to the percent of stockholders located in each region in order to achieve clear understanding of each regions' boundaries.'' The law firm recommended that association boards be permitted to draw boundaries along county or territorial lines ''consistent with standards provided in the bylaw to assure 'substantial parity' of voting control among shareholders across regions but without requiring coupling of non-contiguous counties into a single region.'' The comment does not suggest what the standard for ''substantial parity'' would or should be, other than that it must be provided for in the bylaws. Another association stated that ''regions with disproportionate numbers of stockholders can be equitably served by differential numbers of director positions per region, resulting in reasonably balanced representation of stockholders per director.'' An association also suggested that ''approximately equal'' be defined to mean a shareholder variance of 10 percent more or less than other regions. Another association expressly supported the ''approximately equal'' standard.

3. *Annual evaluation to assure that regions remain approximately equal.* The FCC and three associations were critical of the annual evaluation requirement. The FCC pointed out that, since many or most associations elect directors on a staggered-term basis, the voting region electing a particular director could change while he or she is in office; it also said that an annual evaluation could result in frequent changes in regional boundaries. The law firm made a similar comment and stated that, ''[t]o the extent there is now any sense of connection between a stockholder and a director from his or her region, it would certainly be lost in this shuffle.'' One association stated its belief that evaluations should be necessary only every 3 years. Two associations expressly supported the proposed annual evaluation.

III. FCA's Response to Comments

On the issue of shareholder approval to determine the method of electing their directors, the Board strongly believes that the right of shareholders to vote for all of the directors who owe them fiduciary duties should not be limited in any way without their consent. A regional voting bylaw, if adopted with the approval of only directors of the institution, could be viewed as serving primarily the interest of furthering director position and influence and disenfranchising shareholders. Shareholder ratification will serve to negate any such inference and assure concurrence by the owners of the association as to the benefits to be derived from the bylaw provision. The Board recognizes that there are costs associated with any shareholder vote but does not believe that the cost would be prohibitively expensive for any institution, as was asserted by a commenter. Therefore, after weighing

the costs and benefits, the Board adopts the shareholder approval requirement as proposed.

In response to comments regarding the requirement to have an ''approximately equal'' number of voting shareholders per region, the Board has carefully considered the arguments against such standard. The Board has concluded that the equalization of the number of voters per region ensures democratic control of an association. The Board is not persuaded that ''approximately equal'' voting would reduce or curtail grass-roots participation in institution business, particularly since at present the directors are elected on an at-large basis.

However, in response to some of the comments received asserting that precise equalization would be overly burdensome, the Board has made several changes to this provision of the proposed regulations. First, the final regulation retains the ''approximately equal'' standard but specifies that the standard is met if no region contains more than 25 percent more voting shareholders than in any other region. After implementation, the institution must periodically count the number of voting shareholders in each region and, if the ''approximately equal'' standard is no longer being met, must adjust the boundaries or adjust the ratio of borrowers to directors in order to meet the standard. Second, the final regulation provides that the evaluation of the number of voting shareholders and any resulting adjustments must take place at least once every 3 years. This is a relaxation of the proposed regulation's requirement for an evaluation every year.

The Board is aware, as some commenters noted, that revisions of the regional boundaries, in cases where board members serve staggered terms, could be viewed as depriving some shareholders of representation who may, after a boundary change, be in the region of a board member for whom they did not have the opportunity to vote. Such a result would appear to be unacceptable in a situation where a board member is obligated to represent only the interests of shareholders from his or her region. However, that is not the case here. Institution board members have a fiduciary duty to represent the interests of *all* of the shareholders in the institution's territory, even when they are elected on a regional basis.[1] An institution may, of course, choose to elect all of its directors annually, or may decide not to have regional voting.

The Board has also made several clarifications to the proposed regulations. Proposed § 615.5230(a)(3)(ii) stated that, if there is a bylaw providing for shareholder removal of directors, it must give all voting shareholders the right to vote to remove a director and not limit the right to the shareholders in the director's region. In the Board's view, this language implied that the bylaws could deprive shareholders of the right to remove directors. It was not the intention of the Board to imply this, since stockholders have a common law right to remove directors for cause.[2] Therefore, to avoid any confusion on this issue, the Board has revised the proposal to provide, in the final regulations, that bylaws establishing regional voting must give all voting shareholders the right to vote in any shareholder vote to remove a director.

The Board has also added a clarifying amendment to § 620.21(d)(3). The existing regulation requires that, if an association's annual meeting is held in more than one session, the annual meeting information statement must contain a statement that nominations from the floor must be made at the first session. The clarifying amendment adds that, for associations that elect directors by region, there must be a statement that nominations from the floor for a director from a particular region must be made at the first session in that region if stockholders do not vote solely by mail ballot. If stockholders vote solely by mail ballot, the information statement must state that nominations from the floor may be made at any session of the annual meeting held in a region, unless the bylaws provide otherwise.

No specific comments were received on regional elections for BC directors or on the proposed conforming amendment to § 620.21(d)(1), the disclosure regulation. The disclosure provision is adopted as proposed.

List of Subjects

12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

12 CFR Part 620

Accounting, Agriculture, Banks, banking, Reporting and recording requirements, Rural areas.

For the reasons stated in the preamble, parts 615 and 620 of chapter VI, title 12 of the Code of Federal Regulations are amended as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

1. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6, 2279aa, 2279aa–4, 2279aa–6, 2279aa–7, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart I—Issuance of Equities

2. Section 615.5230 is amended by adding a new paragraph (a)(1)(iii) and revising paragraphs (a)(1)(ii) and (a)(3) to read as follows:

§ 615.5230 Implementation of cooperative principles.

(a) * * *

(1) * * *

(i) * * *

(ii) Unless regional election of directors is provided for in the bylaws pursuant to § 615.5230(a)(3), be accorded the right to vote in the election of each director (except for a director that is elected by the other directors);

(iii) Unless regional election of directors is provided for in the bylaws, or unless otherwise provided in the bylaws, be allowed to cumulate such votes and distribute them among the candidates in the shareholder's discretion.

(2) * * *

(3) Regional election of directors is permitted under the following conditions:

(i) A bylaw establishing regional elections is approved by a majority of voting shareholders, voting in person or by proxy, prior to implementation;

(ii) The bylaw provides that all voting shareholders of the institution, whether or not they reside in the director's region, have the right to vote in any shareholder vote to remove each director;

(iii) There are an approximately equal number of voting shareholders in each of the institution's voting regions. The

[1] Moreover, the combination of yearly boundary revisions and directors with staggered terms may not be uncommon among cooperatives. *See, e.g.,* the model bylaw provision set forth in *Legal Phases of Farmer Cooperatives,* Information 100, Farmer Cooperative Service, U.S. Dept. of Agriculture (1976), at 572–73.

[2] *See* Harry G. Henn & John R. Alexander, *Laws of Corporations* § 205 (1983). Common law also provides that the board of directors may not remove a director for cause unless the bylaws so state; it appears that the board of directors cannot remove a director without cause. *Id.*

regions shall be deemed to have an approximately equal number of voting shareholders if no region contains more than 25 percent more voting shareholders than in any other region. At least once every 3 years, the institution shall count the number of voting shareholders in each region and, if the regions do not have an approximately equal number of shareholders, shall adjust the regional boundaries to achieve such result; and

(iv) An institution may provide for more than one director to represent a region. In such case, for purposes of determining whether the regions have an approximately equal number of voting shareholders, the number of voting shareholders in the region with more than one director shall be divided by the number of director positions representing that region, and the resulting quotient shall be the number that is compared to the number of voting shareholders in other regions.

* * * * *

PART 620—DISCLOSURE TO SHAREHOLDERS

3. The authority citation for part 620 continues to read as follows:

Authority: Secs. 5.17, 5.19, 8.11 of the Farm Credit Act (12 U.S.C. 2252, 2254, 2279aa–11); sec. 424 of Pub. L. 100–233, 101 Stat. 1568, 1656.

Subpart D—Association Annual Meeting Information Statement

4. Section 620.21 is amended by adding the words ''or elected'' after the word ''nominated'' in the first sentence of paragraph (d)(1); and by revising paragraph (d)(3) to read as follows:

§ 620.21 Contents of the information statement and other information to be furnished in connection with the annual meeting.

* * * * *

(d) * * *

* * * * *

(3) State that nominations shall be accepted from the floor.

(i) If directors are not elected by region, the following shall apply:

(A) If the annual meeting is to be held in more than one session and mail balloting will be conducted upon the conclusion of all sessions, state that nominations from the floor may be made at any session or, if the association's bylaws so provide, state that nominations from the floor shall be accepted only at the first session.

(B) If shareholders will not vote solely by mail ballot upon conclusion of all sessions, state that nominations from the floor may be made only at the first session.

(ii) If directors are elected by region, the following shall apply:

(A) If more than one session of an annual meeting is held in a region, and if mail balloting will be conducted at the end of all sessions in a region, state that nominations from the floor may be made at any session in the region or, if the association's bylaws so provide, state that nominations from the floor shall be accepted only at the first session held in the region.

(B) If shareholders will not vote solely by mail ballot upon conclusion of all sessions in a region, state that nominations from the floor may be made only at the first session held in the region.

* * * * *

Dated: November 17, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 95–28587 Filed 11–22–95; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 128CE, Special Condition 23–ACE–83]

Special Conditions; Beech Model 58 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Beech Model 58 airplanes modified by ElectroSonics Division of AiRadio Corporation, Columbus, Ohio. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic displays for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

EFFECTIVE DATE: The effective date of these special conditions is on publication in the Federal Register. Comments must be received on or before December 26, 1995.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. 128CE, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 128CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–6941.

SUPPLEMENTARY INFORMATION:

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety, and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on these special conditions.

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the rules docket for examination by interested parties, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments, submitted in response to this request, must include a self-addressed and stamped postcard on which the following statement is made: ''Comments to Docket No. 128CE.'' The postcard will be date stamped and returned to the commenter.

Background

On September 25, 1995, ElectroSonics Division of AiRadio Corporation, P.O. Box 360436, Columbus International Airport, Columbus, Ohio 43236, made an application to the FAA for a supplemental type certificate (STC) for the Beech Model 58 airplanes. The

proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an electronic flight instrument system (EFIS), that is vulnerable to HIRF external to the airplane.

Type Certification Basis

The type certification basis for the Beech Model 58 Airplanes is given in Type Certification Data Sheet No. 3A16 plus the following: § 23.1301 of Amendment 23–20; §§ 23.1309, 23.1311, and 23.1321 of Amendment 23–41; and § 23.1322 of Amendment 23–43; exemptions, if any; and the special conditions adopted by this rulemaking action.

Discussion

The FAA may issue and amend special conditions, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards, designated according to § 21.101(b), do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations. Special conditions are normally issued according to § 11.49, after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become a part of the type certification basis in accordance with § 21.101(b)(2).

ElectroSonics Division of AiRadio Corporation, plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include electronic systems, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems from High Intensity Radiated Fields (HIRF): Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10–100 KHz	50	50
100–500	60	60
500–2000	70	70
2–30 MHz	200	200
30–70	30	30
70–100	30	30
100–200	150	33
200–400	70	70
400–700	4020	935
700–1000	1700	170
1–2 GHz	5000	990
2–4	6680	840
4–6	6850	310
6–8	3600	670
8–12	3500	1270
12–18	3500	360
18–40	2100	750

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, peak electrical field strength, from 10 KHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify electrical and/or electronic systems that perform critical functions. The term ''critical'' means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Conclusion

In view of the design features discussed for the Beech Model 58 Airplanes, the following special conditions are issued. This action is not a rule of general applicability and affects only those applicants who apply to the FAA for approval of these features on these airplanes.

The substance of these special conditions has been subject to the notice and public comment procedure in several prior rulemaking actions. For example, the Dornier 228–200 (53 FR 14782, April 26, 1988), the Cessna Model 525 (56 FR 49396, September 30, 1991), and the Beech Models 200, A200, and B200 airplanes (57 FR 1220, January 13, 1992). It is unlikely that additional public comment would result in any significant change from those special conditions already issued and commented on. For these reasons, and because a delay would significantly affect the applicant's installation of the system and certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions without notice. Therefore, these special conditions are being made effective upon publication in the Federal Register. However, as previously indicated, interested persons are invited to comment on these special conditions if they so desire.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g); 40113, 44701, 44702, and 44704; 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the modified Beech Model 58 Airplanes:

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri, on November 14, 1995.

Dwight Young,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–28737 Filed 11–22–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 11

[Docket No. RM96–2–000; Order No. 584]

Correction of Annual Charges Formula

Issued November 14, 1995.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations governing the assessment of annual charges for the administration of Part I of the Federal Power Act (FPA). The amendment restores the *status quo ante* in the formulae for allocating annual charges among licensees, by correcting an error in a previous final rule.

EFFECTIVE DATE: December 26, 1995.

FOR FURTHER INFORMATION CONTACT: Barry Smoler, Officer of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, (202) 208–1269.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 2A, 888 First Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (800) 856–3920. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400 or 1200bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS in ASCII and WordPerfect 5.1 format. The complete text on diskette in Wordperfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, located in Room 2A, 888 First St. NE., Washington, DC 20426.

I. Introduction and Background

The Federal Energy Regulatory Commission (Commission) is amending its regulations governing the assessment of annual charges for the administration of Part I of the Federal Power Act (FPA).[1] The amendment restores the *status quo ante* in the formulae for allocating annual charges among licenses, by correcting an error in a previous final rule.

On March 15, 1995, the Commission issued Order No. 576, a final rule [2] that amended Part 11 of the Commission's regulations.[3] One provision of Order No. 576 amended § 11.1 of the regulations[4] by substituting (in several subsections) kilowatts for horsepower in stating a project's authorized installed capacity. The Commission explained that the change ''was designed to reflect modern usage in the rating of equipment used in hydropower projects.''[5]

Order No. 576 added a new § 11.1(i) that defined ''authorized installed capacity'' in terms of kilowatts (kW) and related electrical concepts and terminology. The definition included a conversion factor (multiply by 0.75 kW/hp) for converting the capacity of a turbine stated in horsepower (hp).

The formulae for allocating annual charges among non-municipal licensees were set forth in the section of the regulations that Order No. 576 renumbered as § 11.1(c)(3). Order No. 576 deleted all references in that subsection to ''horsepower,'' replacing them with references to ''authorized installed capacity.'' As explained above, ''authorized installed capacity'' was now defined in terms of kilowatts, not horsepower. In making this change, however, the Commission inadvertently neglected to include the horsepower to kilowatt conversion adjustment in that part of the renumbered §§ 11.1(c)(3) (i) and (iii) that referred to generation. The effect of that inadvertent omission was to seriously distort the balance of capacity and generation in determining the allocation of certain annual charges.[6] No such distortion was

[1] 16 U.S.C. 792–823b.

[2] III FERC Stats. & Regs. (Regulations Preambles) ¶ 31,016. Order No. 576 was published in the Federal Register on March 22, 1995, 60 FR 15040.

[3] 18 CFR Part 11.

[4] 18 CFR 11.1.

[5] III FERC Stats. & Regs. (Regulations Preambles) ¶ 31,016 at p. 31,303.

[6] There is no problem in the formula in § 11.1(c)(3)(ii), because that formula is based entirely on capacity. For the same reason, there is no problem in the assessment formula for municipal licensees (see paragraph (d) of that subsection), which is also based solely on capacity.

intended. Indeed, in another part of Order No. 576 the Commission explicitly stated that although it had invited comment on the choice of capacity or generation (or both) in the allocation formulae, it had decided not to make any such changes.[7]

Inasmuch as the distortion in the ratio between generation and capacity is the inadvertent and unintended result of leaving out the horsepower to kilowatt conversion adjustment when substituting kilowatts for horsepower as the measure of capacity in §§ 11.1(c)(3)(i) and (iii), we will correct that omission in this final rule by adding that conversion adjustment to those subsections. That will restore the *status quo ante,* as we intended all along. The conversion factor will be incorporated into the formulae in §§ 11.1(c)(3)(i) and (iii) by substituting ''112.5'' for ''150,'' as the generation multiplier, in each instance, and by substituting ''75'' for ''100'' in subsection (iii).

Finally, we will correct an inadvertent omission of a cross-reference in the definition of ''authorized installed capacity'' in § 11.1(i). At present, that section cross-references only to paragraph (c) of § 11.1. We will add a cross-reference to paragraph (d) as well, as was our original intent.

II. Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980 (RFA)[8] generally requires a description and analysis of proposed regulations that will have a significant economic impact on a substantial number of small entities.[9] Pursuant to section 605(b) of the RFA, the Commission hereby certifies that the final rule adopted herein will not have a significant economic impact on a substantial number of small entities.

III. Environmental Statement

Issuance of this final rule does not constitute a major federal action having a significant adverse impact on the quality of the human environment under the Commission's regulations implementing the National Environmental Policy Act.[10] The final rule adopted herein is procedural in nature and therefore falls within the categorical exemptions provided in the Commission's regulations. Consequently, neither an environmental impact statement nor an environmental assessment is required.[11]

IV. Information Collection Statement

The Office of Management and Budget's (OMB) regulations at 5 CFR Part 1320 require that OMB approve certain information and recordkeeping requirements imposed by an agency. The final rule adopted herein does not modify any collections of information.

Interested persons may obtain information on these reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division (202) 208–1415]. Comments on the requirements of this rule can be sent to the Office of Information and Regulatory Affairs of OMB [Attention: Desk Officer for Federal Energy Regulatory Commission].

V. Effective Date

The Administrative Procedure Act (APA)[12] requires that a notice of proposed rulemaking be published in the Federal Register and that an opportunity for comment be provided when an agency promulgates regulations. The APA sets forth exemptions to the notice and comment requirements if the rule is, *inter alia,* a rule of agency organization, procedure, or practice, or if the Commission for good cause finds that notice and comment procedures thereon are impracticable, unnecessary, or contrary to the public interest.

For the reasons discussed above, this final rule corrects an error of omission in the final rule adopted in Order No. 576. Therefore, for good cause the Commission finds that notice and comment procedures are unnecessary.

This final rule is effective December 26, 1995, and is retroactive to the assessment of the annual charges for fiscal year 1995. This will ensure that no licensee will pay for fiscal year 1995 an assessment of annual charges greater than it would have paid had the formulae been correctly stated in Order No. 576.

List of Subjects in 18 CFR Part 11

Electric power, Reporting and recordkeeping requirements.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

In consideration of the foregoing, the Commission amends Part 11 of Chapter I, Title 18, Code of Federal Regulations, as set forth below.

PART 11—ANNUAL CHARGES UNDER PART I OF THE FEDERAL POWER ACT

1. The authority citation for Part 11 continues to read as follows:

Authority: 16 U.S.C. 791a–825r; 42 U.S.C. 7101–7352.

2. In section 11.1, paragraphs (c)(3) (i) and (iii) and paragraph (i) are revised to read as follows:

§ 11.1 Costs of administration.

* * * * *

(c) * * *

(3) The annual charge factor for each such project shall be found as follows:

(i) For a conventional project the factor is its authorized installed capacity plus 112.5 times its annual energy output in millions of kilowatt-hours.

* * * * *

(iii) For a mixed conventional-pumped storage project the factor is its authorized installed capacity plus 112.5 times its gross annual energy output in millions of kilowatt-hours less 75 times the annual energy used for pumped storage pumping in million of kilowatt-hours.

* * * * *

(i) *Definition.* As used in paragraphs (c) and (d) of this section, *authorized installed capacity* means the lesser of the ratings of the generator or turbine units. The rating of a generator is the product of the continuous-load capacity rating of the generator in kilovolt-amperes (kVA) and the system power factor in kW/kVA. If the licensee or exemptee does not know its power factor, a factor of 1.0 kW/kVA will be used. The rating of a turbine is the product of the turbine's capacity in horsepower (hp) at best gate (maximum efficiency point) opening under the manufacturer's rated head times a conversion factor of 0.75 kW/hp. If the generator or turbine installed has a rating different from that authorized in the license or exemption, or the installed generator is rewound or otherwise modified to change its rating, or the turbine is modified to change its rating, the licensee or exemptee must apply to the Commission to amend its

The distortion occurs only when the formula includes a ratio between factors for generation and capacity.

[7] III FERC Stats. & Regs. (Regulations Preambles) ¶ 31,016 at pp. 31,307–08.

[8] 5 U.S.C. 601–612.

[9] Section 601(c) of the RPA defines a ''small entity'' as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. A ''small business'' is defined by reference to section 3 of the Small Business Act as an enterprise which is ''independently owned and operated and which is not dominant in its field of operation.'' 15 U.S.C. 632(a).

[10] *See* Order No. 486, 52 FR 47897 (Dec. 17, 1967), FERC Stats. & Regs. (Regulations Preambles 1986–1990) ¶ 30,783 (Dec. 10, 1987) (codified at 18 CFR Part 380).

[11] *See* 18 CFR 380.4(a)(1).

[12] 5 U.S.C. 552(a).

authorized installed capacity to reflect the change.

* * * * *

[FR Doc. 95–28559 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 92F–0086]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of ethylene-1,4-cyclohexylene dimethylene terephthalate copolymer containing up to 5 mole percent (7 weight percent) 1,4-cyclohexylene dimethylene terephthalate as a base sheet and base polymer for use in food-contact articles. This action is in response to a petition filed by Eastman Chemical Co.

DATES: Effective November 24, 1995; written objections and requests for a hearing by December 26, 1995.

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

FOR FURTHER INFORMATION CONTACT: Diane E. Robertson, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3089.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of April 13, 1992 (57 FR 12831), FDA announced that a food additive petition (FAP 2B4318) had been filed by Eastman Chemical Co., P.O. Box 511, Kingsport, TN 37662. The petition proposed to amend the food additive regulations to provide for the safe use of copolyesters containing up to 5 mole percent (7 weight percent) 1,4-cyclohexylene dimethylene terephthalate as the base sheet and base polymer for use in food-contact articles.

FDA has evaluated the data and information in the petition and concludes that the proposed use of the additive as a base sheet and base polymer is safe. The agency also concludes that the additive is currently regulated under § 177.1315 *Ethylene-1,4-cyclohexylene dimethylene terephthalate copolymers* (21 CFR 177.1315) and that this new use should be regulated under the same name. Further, the agency concludes that both §§ 177.1315 and 177.1630 *Polyethylene phthalate polymers* (21 CFR 177.1630) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may, at any time on or before December 26, 1995, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 177.1315 is amended in the table in paragraph (b) by adding new entry ''3.'' to read as follows:

§ 177.1315 Ethylene-1,4-cyclohexylene dimethylene terephthalate copolymers.

* * * * *

(b) *Specifications*:

Ethylene 1,4-cyclohexylene dimethylene terephthalate copolymers	Inherent viscosity	Maximum extractable fractions of the copolymer in the finished form at specified temperatures and times (expressed in micrograms of the terephthaloyl moieties/ square centimeter of food-contact surface)	Test for orientability	Conditions of use
* *	*	*	*	* *
3. Ethylene-1,4-cyclohexylene dimethylene terephthalate copolymer is the reaction product of dimethyl terephthalate or terephthalic acid with a mixture containing 99 to 95 mole percent of ethylene glycol and 1 to 5 mole percent of 1,4-cyclohexanedimethanol (70 percent *trans* isomer, 30 percent *cis* isomer).	No test required .	For each corresponding condition of use, must meet specifications described in § 177.1630(f), (g), (h), or (j).	No test required	For each corresponding specification, may be used as a base sheet and base polymer in accordance with conditions of use described in § 177.1630(f), (g), (h), or (j).

* * * * *

3. Section 177.1630 is amended by revising paragraphs (a), (b), and the introductory text of paragraph (j) and by amending paragraph (e)(4)(ii) by alphabetically adding a new substance to the ''List of Substances and Limitations'' to read as follows:

§ 177.1630 Polyethylene phthalate polymers.

* * * * *

(a) Polyethylene phthalate films consist of a base sheet of ethylene terephthalate polymer, ethylene terephthalate-isophthalate copolymer, or ethylene-1,4-cyclohexylene dimethylene terephthalate copolyesters described in § 177.1315(b)(3), to which have been added optional substances, either as constituents of the base sheet or as constituents of coatings applied to the base sheet.

(b) Polyethylene phthalate articles consist of a base polymer of ethylene terephthalate polymer, or ethylene-1,4-cyclohexylene dimethylene terephthalate copolyesters described in § 177.1315(b)(3), to which have been added optional substances, either as constituents of the base polymer or as constituents of coatings applied to the base polymer.

* * * * *

(e) * * *

(4) * * *

(ii) * * *

Ethylene-1,4-cyclohexylene dimethylene terephthalate copolyesters described in § 177.1315(b)(3).

* * * * *

(j) Polyethylene phthalate plastics, composed of ethylene terephthalate-isophthalate containing a minimum of 98 weight percent of polymer units derived from ethylene terephthalate, or ethylene-1,4-cyclohexylene dimethylene terephthalate copolyesters described in § 177.1315(b)(3), conforming with the specifications prescribed in paragraph (j)(1) of this section, are used as provided in paragraph (j)(2) of this section.

Dated: November 10, 1995.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–28545 Filed 11–22–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Parts 310, 355, and 369

[Docket No. 80N–0042]

RIN 0910–AA01

Anticaries Drug Products for Over-The-Counter Human Use; Final Monograph; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the Federal Register of October 6, 1995 (60 FR 52474). The document established conditions under which over-the-counter (OTC) anticaries drug products (products that aid in the prevention of dental cavities) are generally recognized as safe and effective and not misbranded. The document was published with some errors. This document corrects those errors.

EFFECTIVE DATE: October 7, 1996.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2304.

SUPPLEMENTARY INFORMATION: In FR Doc. 95–24693, appearing on page 52474 in the Federal Register of Friday, October 6, 1995, the following corrections are made:

1. On page 52484, in the first column, in the first full paragraph, beginning in the 12th line from the bottom, the phrase ''as the following: 'anticavity fluoride' (select one of the following'' is corrected to read ''as: (select one or both of the following: 'anticavity' or 'fluoride' ''.

2. On page 52504, in the table, in the entry for ''Sodium monofluorophosphate (1,500 ppm):'', the designation ''NM'' is removed. § 355.50 [Corrected]

3. One page 52508, in the third column, in § 355.50 Labeling of anticaries drug products, in paragraph (a), beginning in line 4, the phrase ''as the following: 'anticavity fluoride' (select one of the following'' is corrected to read ''as: (select one or both of the following: 'anticavity' or 'fluoride')''.

Dated: November 16, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–28600 Filed 11–22–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 558

New Animal Drugs For Use In Animal Feeds; Semduramicin; Technical Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations that reflect approval of a new animal drug application (NADA) filed by Pfizer, Inc. The previous amendment, which appeared in the Federal Register of April 13, 1994 (59 FR 17476), provided for making a semduramicin Type A medicated article used to make a Type C medicated broiler chicken feed for the prevention of coccidiosis. The agency has since realized it needs to more accurately reflect both the assay limits for semduramicin Type A articles and the limitation for its use. This action is being taken to ensure the accuracy and consistency of the regulations.

EFFECTIVE DATE: November 24, 1995.

FOR FURTHER INFORMATION CONTACT: Thomas Letonja, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1656.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 13, 1994 (59 FR 17476), FDA published a final rule to announce the approval of Pfizer's new animal drug application (NADA) 140–940. The NADA provides for use of Aviax™ (semduramicin sodium) Type A medicated article to make a semduramicin Type C medicated broiler chicken feed used for the prevention of coccidiosis. That document inadvertently failed to reflect the correct assay limits for Type A medicated articles in 21 CFR 558.4 and the correct limitation for use in 21 CFR 558.555(b)(1)(iii). This document corrects those errors. Due to these amendments, FDA is also providing an amended freedom of information (FOI) summary for public display. The FOI summary has been amended to reflect the correct assay limits and efficacy evaluation. The amended copy of the FOI summary is available at the Dockets Management Branch (HFA–305), 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.4 [Amended]

2. Section 558.4 *Medicated feed applications* is amended in paragraph (d) in the ''Category I'' table in the entry for ''Semduramicin'' under the second column by removing ''94–102'' and adding in its place ''90–110''.

§ 558.555 [Amended]

3. Section 558.555 *Semduramicin* is amended in paragraph (b)(1)(iii) by removing the last sentence.

Dated: November 13, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–28598 Filed 11–22–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lasalocid

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoffmann-La Roche, Inc. The supplemental NADA provides for use of a 20-percent lasalocid Type A medicated article in making a Type C medicated feed for rabbits used as a coccidiostat.

EFFECTIVE DATE: November 24, 1995.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1643.

SUPPLEMENTARY INFORMATION: Hoffmann-La Roche, Inc., 340 Kingsland Rd., Nutley, NJ 07110–1199, is the sponsor of NADA 96–298, which currently provides for the use of a Type A medicated article containing 20 percent (90.7 grams (g) per pound) of lasalocid sodium activity in making a 68- to 113-g per ton (g/t) Type C medicated feed for broiler or fryer chickens and growing turkeys, and a 113-g/t Type C medicated feed for chukar partridges, for prevention of coccidiosis. The firm has filed a supplemental NADA that expands the use of the Type A medicated article for use in making a 113-g/t Type C medicated feed for rabbits for the prevention of coccidiosis caused by *Eimeria stiedae*. Approval is based in part on data and information in Public Master File (PMF) 5042 established under the National Research Support Project (NRSP) 7 (formerly the Interregional Research Project No. 4 (IR–4)), Southern Region, University of Florida, Gainesville, FL 32610.

The supplemental NADA is approved as of October 20, 1995, and the regulations are amended in 21 CFR 558.311 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval does not qualify for marketing exclusivity because no new clinical or field investigations (other than bioequivalence or residue studies) and no new human food safety studies (other than bioequivalence or residue studies) essential to approval of the supplement were conducted or sponsored by the applicant.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.311 is amended by revising paragraph (b)(7) and in the table in paragraph (e)(1) by adding new entry ''(xv)'' to read as follows:

§ 558.311 Lasalocid.

* * * * *

(b) * * *

(7) 20 percent activity to No. 000004 for use as follows:

(i) Chukar partridges as in paragraph (e)(1)(xiii).

(ii) Turkeys as in paragraph (e)(1)(xiv).

(iii) Rabbits as in paragraph (e)(1)(xv).

* * * * *

(e) * * *

(1) * * *

Lasalocid sodium activity in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
*	*	*	*	*
(xv) 113 (0.0125 pct).		Rabbits; for prevention of coccidiosis caused by *Eimeria stiedae*.	Feed continuously as sole ration up to 6 1/2 weeks of age.	000004

* * * * *

Dated: November 13, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–28599 Filed 11–22–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1317

[NHTSA Docket No. 95–82; Notice 1]

RIN 2127–AG08

Highway Safety Innovative Project Grants Program

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

ACTION: Final rule.

SUMMARY: This final rule removes Part 1317 from title 23 of the Code of Federal Regulations (CFR). Part 1317 established criteria and administrative procedures for awards of innovative project grants to States and their political subdivisions, and to non-profit organizations including volunteer groups, in accordance with 23 U.S.C. 407. The regulation is being removed because it is unnecessary and obsolete. Funds for the section 407 program have not been authorized since 1981.

EFFECTIVE DATE: December 26, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Butler, Office of State and Community Services, National Highway Traffic Safety Administration, 400 7th Street, S.W., Washington, D.C. 20590, telephone (202) 366–2121; or Ms. Sharon Y. Vaughn, Office of Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, telephone (202) 366–1834.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton directed all Federal Departments and agencies to take four steps to overhaul the nation's regulatory system. The first step was to conduct a page-by-page review of all agency regulations now in force and eliminate or revise those that are outdated or otherwise in need of reform. The review was to include careful consideration of a number of issues, including whether the regulation is obsolete, whether its intended goal can be achieved in more efficient less intrusive ways, or whether States or local governments can do the job (making Federal regulation unnecessary).

NHTSA conducted a thorough, page-by-page review of all agency regulations, including those that pertain to State and community highway safety programs.

As a result of these efforts, NHTSA has determined that Part 1317 should be removed from title 23 of the Code of Federal Regulations (CFR), because it is unnecessary and obsolete.

Part 1317 established criteria and administrative procedures for awards of innovative project grants to States and their political subdivisions, and to non-profit organizations including volunteer groups, in accordance with 23 U.S.C. 407. It was first published in the Federal Register, as 23 CFR Part 1217, on December 22, 1980 (45 FR 84037). It was redesignated as 23 CFR Part 1317 on March 22, 1984 (49 FR 10664).

Funds for the section 407 program have not been authorized since 1981. Because the regulation implements a program which is no longer active, and currently appears in the CFR among regulations that implement programs that continue to be active, its removal will avoid confusion for potential grant applicants.

Rulemaking Analyses and Notices

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

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

(b) Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the agency has evaluated the effects of this rule on small entities. Based on the evaluation, the agency hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. Accordingly, the preparation of a Regulatory Flexibility Analysis is unnecessary.

(c) Executive Order 12612 (Federalism Assessment)

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

(d) Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

(e) National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

(f) Executive Order 12778 (Civil Justice Reform)

This amendment to the regulation does not have any preemptive or retroactive effect. It imposes no requirements on the States, but rather simply removes from the regulation outdated and obsolete provisions that no longer apply. The enabling legislation does not establish a procedure for judicial review of final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or other administrative proceedings before they may file suit in court.

Notice and Comment

Because the amendments relate to a grant program and are therefore not covered by the Administrative Procedure Act, and since they merely contain technical changes that remove outdated and obsolete provisions from the regulation and do not impose any additional requirements, the amendments are being made without prior notice and opportunity to comment.

List of Subjects in 23 CFR Part 1317

Grant programs, Highway safety.

Under the authority of 49 CFR Part 1.50, the Administrator of the National Highway Traffic Safety Administration amends Title 23 of the Code of Federal Regulations by removing Part 1317.

Issued on: November 20, 1995.

Ricardo Martinez,

Administrator, National Highway Traffic Safety Administration.

[FR Doc. 95–28684 Filed 11–22–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 70

[OJP No. 1004; AG Order No. 1998–95]

RIN 1121–AA18

Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations; Correction

AGENCY: Department of Justice, Office of Justice Programs.

ACTION: Correction to final rule.

SUMMARY: This document contains corrections to the final rule, 28 CFR part 70, which was published in the Federal Register on Wednesday, July 26, 1995, (60 FR 38241). This regulatory clarification and correction document provides clarification on the Department of Justice implementation of the revised Office of Management and Budget Circular A–110 concerning ''Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations'' and corrects a number of typographical errors and section references in the text of the rule.

EFFECTIVE DATE: This correction document is effective November 24, 1995.

FOR FURTHER INFORMATION CONTACT: Cynthia J. Schwimer, Director, Financial Management Division, Office of the Comptroller, Office of Justice Programs at 202–307–3186.

SUPPLEMENTARY INFORMATION: This document serves to clarify and correct the Department of Justice (hereinafter ''Department'') Rule, 28 CFR part 70, which implements Office of Management and Budget (hereinafter ''OMB'') Circular A–110, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations'' (hereinafter ''A–110'' or ''Circular''). The final rule was published in the Federal Register on Wednesday, July 26, 1995 at 60 FR 38241.

The Department implemented OMB's Circular A–110 by promulgating 28 CFR part 70 and in doing so incorporated most of its provisions. As appropriate, however, the Department has elaborated on, streamlined, or left out provisions of the Circular to make the rule pertain more directly to the Department's customers and their activities. For example, directives to the federal agencies and organizations not currently receiving funding from the Department were left out of the final rule so as not to include information that would make the rule confusing or cumbersome. For instance, A–110 ____.22 directed that no more than an original and two copies of any forms authorized for use under § 70.22 could be required of grantees. The Department abides by this, and other such requirements, but did not include these Agency-directed instructions in this rule. The Department will include the requisite instructions as part of any administrative guidance it provides. Requirements in addition to, or inconsistent with, those in A–110, will not be imposed on grantees unless specifically authorized by law, as directed in A–110 ____.1 and ____.25.

Specifically, regulatory language with respect to research and hospitals in A–110 ____.24 and ____.25 was not included in the Department's rule. The Department does not currently make awards for the type of research activities that A–110 was intended to cover. In addition, it does not make awards to hospitals, as defined in the Circular. If, in the future, however, the Department does make such awards, the Department's rule will be amended to incorporate all the provisions of A–110 that would apply. All organizations that currently have awards with the Department must comply with the provisions of this rule, as it is codified and modified by this correction notice.

The rule, as published in the Federal Register, included several typographical errors and incorrect section references. In some places reference was made to ''DOS'' instead of the ''Department.'' Two incorrect section references in § 70.25 have been corrected to reflect the proper sections. Section 70.25(j) is also corrected by adding after ''thirty'' the words ''calendar days from the date of receipt'' which were left out of the original publication.

The fixed sum amount is being changed by this correction in the definition of ''small awards'' in § 70.2(ff) to reflect the ''small purchase threshold'' (renamed ''simplified acquisition threshold'') definition in 41 U.S.C. 403(11), which was recently increased from $25,000 to $100,000. A clause, inadvertently left out of section 70.33 on ''exempt property'', is being added for clarification. By adding the clause ''[w]hen statutory authority exists'' at the beginning of paragraph (b) in section 70.33, and changing ''will'' to ''may'' in that paragraph, the Department hopes to clarify that title to ''exempt property'' may only vest with the recipient when the requisite statutory authority exists.

Section 70.44 is corrected by replacing the first ''must'' that appears in paragraph (c) with a ''may'' to indicate that the type of procuring instrument used *may* be determined by the recipient, although such a determination is not required. Further, in section 70.52, the deadline for submission of the financial status reports should be 45 days rather than the 40 days that appeared in the final rule. The 45-day time period includes the 30 days provided for in A–110, with the addition of a 15 day grace period that the Department customarily provides its recipients for submission of these reports. The Department provides this 15 day grace period because of its strict policy to withhold funding to an organization when it becomes delinquent in its submission of these reports.

Need for Correction

As published in the Federal Register on July 26, 1995, (60 FR 38241), the final rule left out an important clause and contained typographical errors and incorrect section references that are misleading or incorrect. These errors are in need of correction.

Correction of Publication

Accordingly, the final rule, as published in the Federal Register on July 26, 1995, which was the subject of FR Doc. 95–18157, is corrected as follows:

§ 70.2 [Corrected]

Paragraph 1. On page 38244, in the first column, § 70.2, paragraph (ff) is corrected by amending ''small purchase threshold'' to read ''simplified acquisition threshold'' and amending the parenthetical statement ''(currently $25,000)'' at the end of the paragraph to read ''(currently $100,000)''.

§ 70.22 [Corrected]

Paragraph 2. On page 38246, in the third column, § 70.22, paragraph (h)(2), the reference ''DOS'' is corrected to read ''the Department''.

§ 70.25 [Corrected]

Paragraph 3. On page 38248, in the third column, § 70.25, paragraph (e) contains a reference paragraph ''(h)''. The reference to paragraph ''(h)'' is corrected to ''(g)''.

Paragraph 4. On page 38248, in the third column, § 70.25 paragraph (f) the reference to paragraph ''(e)'' is corrected to read ''(f)''.

Paragraph 5. On page 38248, in the third column, § 70.25, paragraph (j) is corrected in the first sentence by adding ''calendar days from the date of receipt'' after ''thirty'' in the first sentence.

§ 70.33 [Corrected]

Paragraph 6. On page 38250, in column one, § 70.33 paragraph (b) is corrected to read as follows:

* * * * *

(b) *Exempt property.* When statutory authority exists, the Department may vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government when such property is ''exempt property.''

* * * * *

§ 70.36 [Corrected]

Paragraph 7. On page 38251, in the second column, § 70.36 paragraph (c) is corrected by adding ''in'' before ''paragraphs''.

§ 70.44 [Corrected]

Paragraph 8. On page 38252, in the second column, § 70.44 in paragraph (c) the first sentence is corrected by changing ''must be determined'' to ''may be determined''.

§ 70.51 [Corrected]

Paragraph 9. On page 38253, in column two, in § 70.51, paragraph (e) the reference to ''DOS'' is corrected to read ''the department''.

§ 70.52 [Corrected]

Paragraph 10. On page 38253, in column three, in § 70.52, paragraph (a)(1)(iii), the first sentence is corrected by inserting the word ''five'' after ''forty''.

§ 70.59 [Corrected]

Paragraph 11. On page 38254, in the first column, in § 70.53, paragraph (b)(3) is corrected by changing the reference to ''DOS'' to ''the Department''.

§ 70.62 [Corrected]

Paragraph 12. On page 38255, in column one, in § 70.62, paragraph (d), ''DOS'' is corrected to read ''the Department''.

Appendix A to Part 70, Section 6 [Corrected]

Paragraph 13. on page 38256, in column one, in § 6 of Appendix A to Part 70, the reference in the second sentence to ''DOS'' is corrected to read ''Department''.

Dated: November 9, 1995.

Janet Reno,

Attorney General.

[FR Doc. 95–28361 Filed 11–22–95; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS BENFOLD (DDG 65) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: August 3, 1995.

FOR FURTHER INFORMATION CONTACT: Commander K.P. McMahon, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS BENFOLD (DDG 65) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights; Annex I, paragraph 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions; Annex I, paragraph 3(c) pertaining to placement of task lights not less than 2 meters from the fore and aft centerline of the ship in the athwartship direction. The Deputy Assistant Judge Advocate General (Admiralty) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Four of § 706.2 is amended by:

a. Adding the following entry to Paragraph 15:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	No.	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
USS BENFOLD	DDG 65	1.90 meters.

b. Adding the following entry to Paragraph 16:

Vessel	No.	Obstruction angle relative ship's headings
USS BENFOLD	DDG 65	101.86 thru 112.50°.

§ 706.2 [Amended]

3. Table Five of § 706.2 is amended by adding the following entry:

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
USS BENFOLD	DDG 65	X	X	X	20.4

Dated: August 3, 1995.

Approved:

K.P. McMahon,

CDR, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty).

[FR Doc. 95–28685 Filed 11–22–95; 8:45 am]

BILLING CODE 3810–FF–P

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS GONZALEZ (DDG 66) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: October 26, 1995.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Pixa, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS GONZALEZ (DDG 66) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions; Annex I, paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights; and, Annex I, paragraph 3(c) pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction. The Deputy Assistant Judge Advocate General (Admiralty) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Four of § 706.2 is amended by:

a. Adding the following entry to Paragraph 15: § 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	No.	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
USS GONZALEZ.	DDG 66	1.90 meters.

b. Adding the following entry to Paragraph 16:

Vessel	No.	Obstruction angle relative ship's headings
USS GONZALEZ.	DDG 66	101.69 thru 112.50°.

§ 706.2 [Amended]

3. Table Five of § 706.2 is amended by adding the following entry:

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
USS GONZALEZ	DDG 66	X	X	X	20.4

Dated: October 26, 1995.

Approved:

R.R. Pixa,

Capt., JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty).

[FR Doc. 95–28686 Filed 11–22–95; 8:45 am]

BILLING CODE 3810–FF–P

Department of the Air Force

32 CFR Part 818a

Personal Commercial Affairs

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule; withdrawal.

SUMMARY: The Department of the Air Force is amending Title 32, Chapter VII of the CFR by removing Part 818a, Personal Commercial Affairs. This rule is removed because the source document, AFR 211–16, was cancelled. This information is contained in DoD Directive 1344.7, published in the Code of Federal Regulations as 32 CFR Part 43.

EFFECTIVE DATE: November 24, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Patsy J. Conner, Air Force Federal Register Liaison Officer, SAF/AAIQ, 1610 Air Force Pentagon, Washington DC 20330–1610, telephone (703) 614–3488.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 818a

Federal buildings and facilities, Life insurance, Military personnel.

Authority: 10 U.S.C. 8013.

PART 818a—[REMOVED]

Accordingly, 32 CFR, Chapter VII, is amended by removing Part 818a.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–28663 Filed 11–22–95; 8:45 am]

BILLING CODE 3910–01–P

32 CFR Part 892

Part-Time Career Employment Program

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule; withdrawal.

SUMMARY: The Department of the Air Force is amending Title 32, Chapter VII of the CFR by removing Part 892, Part-Time Career Employment Program. This rule is removed since the source document, AFR 40–340 was rescinded.

EFFECTIVE DATE: November 24, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Patsy J. Conner, Air Force Federal Register Liaison Officer, SAF/AAIQ, 1610 Air Force Pentagon, Washington DC 20330–1610, telephone (703) 614–3488.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 892

Government employees.

Authority: 10 U.S.C. 8013.

PART 892—[REMOVED]

Accordingly, 32 CFR, Chapter VII, is amended by removing Part 892.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–28662 Filed 11–22–95; 8:45 am]

BILLING CODE 3910–01–P

Corps of Engineers, Department of the Army

33 CFR Part 334

Sinclair Inlet, Puget Sound, Bremerton, Washington, Naval Restricted Areas; Correction

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Correction to interim final rule.

SUMMARY: This document contains a correction to the interim final rule which was published Monday, August 21, 1995 (60 FR 43378–43379). The effective date was August 21, 1995, with the comment period expiring on October 20, 1995. These rules establish two restricted areas in the waters of Sinclair Inlet adjacent to the Puget Sound Naval Shipyard, Bremerton, Washington, to safeguard U.S. Navy vessels and Government facilities from sabotage and other subversive acts, accidents, or other incidents of a similar nature and to protect vessels and individuals from the dangers associated with the industrial waterfront facilities at the shipyard. Entry into this zone is prohibited unless otherwise authorized by these regulations or the Commander, Naval Base Seattle, Washington, or whomever he/she designates.

DATES: Effective November 24, 1995.

ADDRESSES: HQUSACE, CECW–OR, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Freedom, Regulatory Branch, Seattle District at (206) 764–3495, or Mr. Ralph Eppard, Regulatory Branch, CECW–OR at (202) 761–1783.

SUPPLEMENTARY INFORMATION: As a result of a court decision affecting the regulations in 33 CFR 334.1240, the Commanding Officer, Puget Sound Naval Shipyard reviewed the physical security and safety conditions around the shipyard active piers and drydocks. Based on this review, the Commanding Officer requested that the restricted area regulations be amended to prohibit the trespassing of persons into the restricted areas at Sinclair Inlet; add a coordinate to a accommodate the extension of the south end of ''mooring A'' maintaining a buffer 100 yards south of the end of this mooring, and to change the geographic coordinates for the restricted area to conform to the 1983 re-establishment of the National Geodetic Vertical Datum. These revisions were published by the Corps as interim final rules on August 21, 1995. All comments received in response to the interim final rule and the public notice issued by the Seattle District Engineer are being reviewed.

Need for Correction

As published, the interim final rules in Sec. 334.1240(a)(3)(ii) omitted the words ''Area No. 2.'' at the beginning of the subparagraph. This correction clarifies that Area number two is for the exclusive use of the U.S. Navy.

Correction of Publication

Accordingly, the publication on August 21, 1995 of the interim final rule, which was the subject of 60 FR 43378–43379, is corrected as follows:

§ 334.1240 [Corrected]

On page 43379, in § 334.1240(a)(3)(ii) in the third column, in the first line following paragraph designation (ii), insert ''Area No. 2.''.

Dated: November 13, 1995.

Stanley G. Genega,

Major General, USA, Director of Civil Works.

[FR Doc. 95–28713 Filed 11–22–95; 8:45 am]

BILLING CODE 3710–92–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 93–3A]

Cable and Satellite Carrier Royalty Refunds

AGENCY: Copyright Office; Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office is adopting final rules with respect to certain royalty refund procedures for the cable and satellite carrier compulsory licenses. The Office is also implementing a ''close-out'' procedure for royalty accounts that will permit the Register of Copyrights to close-out the royalty payments account for a calendar year four years after the close of that year, and treat any funds remaining in such account and any subsequent deposits that would otherwise be attributable to that calendar year as attributable to the succeeding calendar year.

EFFECTIVE DATE: December 26, 1995.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Acting General Counsel, or William Roberts, Senior Attorney for Compulsory Licenses, Copyright Arbitration Royalty Panel (CARP), PO Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: On June 28, 1993, the Copyright Office published a Notice of Proposed Rulemaking (NPRM) regarding certain refund procedures for the cable and satellite carrier compulsory licenses, 17 U.S.C. 111 and 119, respectively. 58 FR 34544 (June 28, 1993). Specifically, the Office's proposed rules involved three issues: (1) The appropriate date to begin the time period for requesting refunds; (2) the proper basis upon which a refund request may be made; and (3) the close-out of accounting period royalty pools after a specific time period.

Existing Copyright Office regulations specify the time periods within which parties seeking refunds of compulsory license royalties must submit their requests. In the case of the cable compulsory license, a cable operator has 60 days from the last day of the filing period for the Statement of Account in which to request a refund. 37 CFR 201.17 (j)(3). Under the satellite carrier compulsory license, the operator has 30 days from the last day of the filing period for the Statement of Account to request a refund. 37 CFR 201.11 (g)(3). These rules were based on refund requests being made after timely filing. In order to provide a refund request period for late and amended filings, the Office proposed in its NPRM that the 60 and 30 day periods be amended to run either from the applicable filing period or from the date of receipt at the Copyright Office of the royalty payment that is the subject of the request. 58 FR 34545. Copyright Office regulations require that a request for a refund must be ''in writing, must clearly identify its purpose,'' and must be received within the prescribed time period. 37 CFR 201.17(j)(3) and 201.11(g)(3). In practice, the Office has long interpreted its refund regulation to deny a request for a refund where there has been no clear overpayment of the statutory royalty. In order to confirm this practice, the NPRM proposes to amend the satellite carrier and cable regulations to require that refund requests must provide a ''clear basis'' upon which a request can be granted. 58 FR 34546.

Finally, the NPRM proposed a change to the Office's longstanding policy of making refunds only from the calendar year account in which the overpayment was made. The regulation would adopt language included in the Audio Home Recording Act of 1992 that allows the Register of Copyrights, in his or her discretion, to close out the royalty payments account for a calendar year four years after the close of that year, and to ''treat any funds remaining in such account and any subsequent deposits that would otherwise be attributable to that calendar year as attributable to the succeeding calendar year.'' *Id.*

Comments of the Parties

Four parties submitted comments on the NPRM: National Cable Television Association (NCTA); Providence Journal Company; Office of the Commissioner of Baseball (''Baseball'');[1] and Copyright Owners (consisting of Program Suppliers, National Basketball Association, National Hockey League, the Music Claimants, the Devotional Claimants and National Public Radio).

Initiation of Time Period

As to when the time period to request refunds should begin, both Providence Journal and the NCTA support the proposed rule change. NCTA comments at 2; Providence Journal comments at 4. Copyright Owners, however, support the rule only for amended filings. ''Copyright Owners suggest that the proposed language apply only to amended filings. This would provide predictability with respect to refund requests sought for original filings, while offering greater flexibility for refunds related to amended applications.'' Copyright Owners comments at 2. Copyright Owners additionally suggest that no refunds be permitted from a royalty year which has been closed out. *Id.* at 2–3. The effect of the Copyright Owners' proposal would be to deny a refund request period for any filings that are later than the sixty day period in the existing rule and only allow refunds for amended filings in accounting years which have not been closed out.

Clear Basis for Refund

Copyright Owners are supportive of the proposed rule requiring that refund requests provide a ''clear basis'' for granting the refund, but desire a voice in any refund request that raises a policy issue. They urge the Office to establish procedures that would permit interested parties to participate in formulating the policy. They further state that such policy should govern both ''the specific refund request and any future requests asking for the same or similar relief.'' *Id.* at 4. Copyright Owners do not provide any description of the mechanics of the notice and comment procedure which they propose, beyond mentioning in a footnote that ''The Office need not institute a rulemaking proceeding to answer such ad hoc questions. Copyright Owners envision a more

[1] Baseball's comments were submitted after the July 28, 1993, closing date of the comment period, but the Copyright Office has nonetheless included them in this proceeding.

informal and limited procedure to deal with these individual questions.'' *Id.* at 4 n.3.

NCTA opposes the requirement of a ''clear basis'' for refund, noting that ''the statute and Copyright Office policy are not clear in their application to numerous fact situations faced by cable operators'' and that cable operators ''generally may not be aware'' of existing Copyright Office policy. NCTA comments at 2. NCTA therefore proposes the opposite of the NPRM; a refund should be allowed unless there is a ''clear basis'' to deny it.

> [W]here there is ambiguity as to what the law requires or allows, operators should be entitled to a refund provided only that they make clear the interpretation of the law upon which they rely. So long as this interpretation is not clearly at odds with the law, the refund request should be granted. *Id.* at 3.

Close-Out of Accounting Period

Only the Copyright Owners and Baseball offered an opinion as to the third issue addressed in the NPRM: creation of a close-out procedure for accounting periods. While Copyright Owners agreed that close-out was preferable to the current policy of keeping open all previous year royalty funds, they offered several changes to the proposed rule. First, they suggested that the close-out period be changed from four years to seven years:

> Past experience suggests that a four-year closeout period may be too short in cases where large amounts of late payments are received. For example, many Gross Receipts Adjustment Schedule (''GRAS'') payments related to 1986 and 1987–1 were not received until 1989 and 1990, which was three or four years after the original deadlines. Had the 1986 and/or 1987 royalty funds been closed out after four years, those GRAS payments might have been transferred to a different year's fund. That would have resulted in the distribution of those royalties to a different group of individual copyright owners from the copyright owners who received distribution of the timely 1986 and 1987 royalty payments.

Copyright Owners Comments at 5.

Second, Copyright Owners propose that the decision to close-out an accounting period not be left to the discretion of the Register of Copyrights, but that it be done as a matter of course unless ''the Register, in his or her discretion, decid[es] that a closeout is inappropriate.'' *Id.* at 6. Copyright Owners believe this change will add certainty to the close-out process. *Id.*

Baseball proposes that the close-out of an accounting period be tied to the date of final distribution of a calendar year's royalties. ''This would eliminate the administrative costs associated with multiple distributions which frequently contain (particularly for the non-MPAA copyright owners) relatively small amounts.'' Baseball comments at 1. Baseball does support the NPRM's proposal to give the Register discretion to close an accounting year. *Id.* at 2.

Decision of the Copyright Office

The Copyright Office has closely examined and reviewed the comments submitted in this proceeding and, pursuant to its rulemaking authority, formally adopts the regulations described in the NPRM without change. For the reasons described below, the Copyright Office concludes that the proposed rule changes are reasonable and administratively efficient.

1. Refund Requests

The Office is, therefore, amending 37 CFR 201.17(j)(3)(i), applicable to the cable license, and 37 CFR 201.11(g)(3)(i), applicable to the satellite carrier license, to begin the 60 and 30 day time periods, respectively, within which to request a refund from the ''date of receipt at the Copyright Office of the royalty payment that is the subject of the request.'' This rule change maintains the same time period (30 and 60 days) within which to request a refund, which the Office has found to be appropriate and reasonable, see *NPRM* at 58 FR 34544, but allows cable and satellite operators who submit both late and amended payments to request a refund in accordance with the same time period which applies to the initial statement of account filings. As Providence Journal noted, errors are just as likely to occur in amended and late filings as they are with initial filings. Consequently, denying a refund period for amended and late filings would result in an unwarranted hardship to operators. Providence Journal comments at 3.

Copyright Owners suggested that the proposed refund request rule not apply to any late filings and payments, and that no refunds at all, either requested or made as a result of Office examination, be permitted from an accounting year fund which had been closed-out by the Register of Copyrights. Copyright Owners comments at 2. The Copyright Office is not adopting either suggestion. With respect to an effective denial of refund requests for most late filings and payments, the Office finds that such a rule would be unnecessarily punitive. The interest regulations applicable to both cable operators and satellite carriers already compensate copyright owners for the lost time value of royalties submitted after the close of a royalty filing deadline. 37 CFR 201.11(h) and 201.17(i)(2). Copyright Owners fail to present any arguments or evidence as to why further compensation is justified by denying refund requests for late filings and payments.

Nor do they offer any valid reason for denying refunds from closed-out accounting periods. Refunds can still be made from the succeeding accounting years which remain open. Where the potential for large refund requests remains high, as in 1987 and 1988 when satellite carriers submitted royalties under the cable compulsory license, the Register may keep those years open.

2. Clear Basis for Refunds

Both §§ 201.17(j)(3) and 201.11(g)(3) of the Copyright Office regulations establish the technical requirements for a refund request for the cable and satellite carrier compulsory licenses. The adopted amendments require cable and satellite carrier operators to provide a ''clear basis'' upon which a refund request can be granted. As the Office stated in the NPRM, these amendments confirm the longstanding administrative practice of denying a refund request where there has been no clear overpayment of the statutory royalty. 58 FR 34545.

NCTA objected to the ''clear basis'' requirement on the grounds that ''Copyright Office policy on certain issues has developed on an informal basis, through correspondence or development of informal policies, and cable operators may not be aware of these interpretations.'' The Office finds this objection to be unpersuasive. The applicable law and policy which govern a refund request is freely and readily available from the Copyright Office. Statutory interpretation developed through rulemakings involving sections 111 and 119 of the Copyright Act are published in the Federal Register; policy decisions and interpretations made in response to specific refund requests are available to the public through the letter rulings of the General Counsel on file in the public reading room of the Licensing Division of the Copyright Office. Furthermore, access to the information contained in those letters may be obtained by contacting the Licensing Division, and inquiries may be made concerning Office administrative practice and policy by contacting directly either the Licensing Division or the General Counsel's Office. The information necessary for a cable or satellite operator to provide a ''clear basis'' for its refund request is therefore readily available, and lack of knowledge cannot therefore be a valid objection to the rule amendments.

The Copyright Office is not adopting the Copyright Owners' suggestion of permitting interested parties to play an active role in deciding refund requests. Congress specifically entrusted the Copyright Office, through its rulemaking authority, to interpret and apply the provisions of the compulsory license.[2] Additionally, the practical and legal implications of the Copyright Owner's proposed participation are in doubt. The Office processes an average of over 300 refunds a year, and the speed and efficiency of responding to these requests would be substantially impaired if the Office were required to solicit comment on each request. Furthermore, should a refund request involve sufficient policy issues to trigger a notice and comment procedure, it is seriously questionable whether the ''informal and limited procedure'' proposed by the Copyright Owners would satisfy the Administrative Procedure Act. The Copyright Owners did not provide any supporting evidence or precedent for their recommendation. If a procedure involves a significant policy shift or interpretation, the Office already provides an opportunity for notice and comment as it did in the instant case.

3. Close-Out of Royalty Funds

The Copyright Office is adopting the close-out of royalty funds regulation for the satellite carrier and cable compulsory licenses. The regulation is based on the statutory language of section 1005 of the Audio Home Recording Act of 1992, Public Law No. 102–563, that permits the Register to close-out the royalty payments account for a calendar year four years after the close of that year, and to apply remaining funds and subsequent deposits from that year to the succeeding calendar year.

Copyright Owners proposed a longer period of seven years to close-out so as to account for circumstances, such as the 1986–87 GRAS payments, *supra,* where large amounts of royalties may be submitted to the Office more than four years from their original due date. Copyright Owners comments at 5. Baseball proposed that close-out be tied to the date of final distribution of a calendar year's royalties. Baseball comments at 1. The Copyright Office does not believe a longer close-out period of seven years is necessary, since the Register has discretion in deciding whether to close a particular calendar year, and concludes that a tie-in to distribution is too unpredictable, since distributions do not occur at regular intervals.

In the situation of the GRAS payments described by Copyright Owners, the Register would not have closed the 1986–87 calendar years because of the obvious uncertainties surrounding the royalty fund for those years. While the Register will not be able to predict all possible effects on a royalty fund with absolute certainty, four years is adequate time to identify when a difficulty may exist. It is, therefore, unlikely that large sums of royalties will be submitted to the Copyright Office after the Register has closed-out an accounting period. The opposite is true of the approach advocated by Baseball. The time period necessary to reach a final distribution for a given royalty calendar year is highly unpredictable. Full settlement may result in quick distribution; however, it is impossible to predict a certain date for a final determination of distribution when there is a controversy. In the years where a full settlement is reached, a final distribution may occur so quickly as to limit the Register's ability to make a well-informed decision as to whether the royalty calendar year should be closed-out. The four year period proposed in the NPRM provides the uniformity, predictability and administrative efficiency not present in Baseball's proposal.

The Office is also not adopting Copyright Owner's suggestion that calendar years be closed-out automatically after four years unless the Register exercises discretion to keep them open. The presumption that an accounting year remains open incorporates current policy, which leaves all years open, and allows the Register to close-out only those years where changes to the royalty pool remain unlikely. Copyright owners would not be harmed if only some accounting years were closed-out, and would gain the benefit of distribution of remaining funds from those years. The Register's flexibility and ability to deal with situations like the 1986–87 GRAS payments is also better served by requiring an affirmative act to close an accounting year, rather than an affirmative act to keep it open.

List of Subjects in 37 CFR Part 201

Cable systems; Cable compulsory license; Satellite carrier statutory license; Satellite carriers.

Amended Regulations

In consideration of the foregoing, part 201 of 37 CFR ch. II is amended to read as follows.

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 is revised to read as follows:

Authority: 17 U.S.C. 702, 201.6 is also issued under 17 U.S.C. 408, 409 and 410; § 201.11 is also issued under 17 U.S.C. 119; § 201.16 is also issued under 17 U.S.C. 116; § 201.17 is also issued under 17 U.S.C. 111; § 201.19 is also issued under 17 U.S.C. 115; and § 201.24 is also issued under Pub. L. 101–650; 104 Stat. 5089, 5134;

2. In § 201.11, paragraph (c)(4) is added and the first sentence of paragraph (g)(3)(i) and the introductory text of paragraph (g)(3)(iii) are revised to read as follows:

§ 201.11 Satellite carrier statement of account covering statutory license for secondary transmissions for private home viewing.

* * * * *

(c) * * *

(4) In the Register's discretion, four years after the close of any calendar year, the Register may close out the royalty payments account for that calendar year, and may treat any funds remaining in such account and any subsequent deposits that would otherwise be attributable to that calendar year as attributable to the succeeding calendar year.

* * * * *

(g) * * *

(3) * * *

(i) The request must be in writing, must clearly identify its purpose, and, in the case of a request for a refund, must be received in the Copyright Office before the expiration of 30 days from the last day of the applicable Statement of Account filing period, or before the expiration of 30 days from the date of receipt at the Copyright Office of the royalty payment that is the subject of the request, whichever time period is longer. * * *

* * * * *

(iii) The request must contain a clear statement of the facts on which it is based and provide a clear basis on which a refund may be granted, in accordance with the following procedures:

* * * * *

3. In § 201.17, paragraph (c)(4) is added and the first sentence of paragraph (j)(3)(i) and the introductory text of paragraph (j)(3)(iii) are revised to read as follows:

[2] *See* 17 U.S.C. 702; *see also Cablevision Systems Development Corp.* v. *Motion Picture Association of America, Inc.,* 836 F.2d 599, 610 (D.C. Cir.), *cert. denied,* 487 U.S. 1235 (1988)(''We think Congress saw a need for continuing interpretation of section 111 and thereby gave the Copyright Office statutory authority to fill that role.'').

§ 201.17 Statements of account covering compulsory licenses for secondary transmissions by cable systems.

* * * * *

(c) * * *

(4) In the Register's discretion, four years after the close of any calendar year, the Register may, close out the royalty payments account for that calendar year, and may treat any funds remaining in such account and any subsequent deposits that would otherwise be attributable to that calendar year as attributable to the succeeding calendar year.

* * * * *

(j) * * *

(3) * * *

(i) The request must be in writing, must clearly identify its purpose, and, in the case of a request for a refund, must be received in the Copyright Office before the expiration of 60 days from the last day of the applicable Statement of Account filing period, or before the expiration of 60 days from the date of receipt at the Copyright Office of the royalty payment that is the subject of the request, whichever time period is longer. * * *

* * * * *

(iii) The request must contain a clear statement of the facts on which it is based and provide a clear basis on which a refund may be granted, in accordance with the following procedures:

* * * * *

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 95–28321 Filed 11–22–95; 8:45 am]

BILLING CODE 1410–31–P

POSTAL SERVICE

39 CFR Part 955

Rules of Practice Before the Board of Contract Appeals

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: On September 13, 1995, the Postal Service published in the Federal Register (60 FR 47514–47515) for public comment a proposed rule to revise the rules of practice of the Postal Service Board of Contract Appeals (Board). The Postal Service is now issuing a final rule that revises certain rules of practice of the Postal Service Board. These revisions implement provisions of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) (FASA), which amended sections 8(f) and 9(a) of the Contract Disputes Act of 1978 (41 U.S.C. 601–613), under which the Board adjudicates contract disputes. These revisions increase the maximum amount that may be in dispute for appeals to qualify for consideration under the small claims (expedited) and accelerated procedures of boards of contract appeals. Minor editorial revisions and corrections of typographical errors are also included in this final rule.

EFFECTIVE DATE: October 1, 1995.

Applicability: Pursuant to sections 10001 and 10002 of the FASA, the Board made the revised rules, as well as sections 2351(c–d) of the FASA, applicable to all pending appeals and to those appeals filed on or after October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Dennis E. Wiessner, Jr., Staff Counsel, Judicial Officer Department, 202–268–5438.

SUPPLEMENTARY INFORMATION: On September 13, 1995, the Postal Service published in the Federal Register (60 FR 47514–47515) for public comment a proposed rule to revise the rules of practice of the Postal Service Board of Contract Appeals (Board). The revisions implement certain provisions of the Federal Acquisition Streamlining Act of 1994 under which the Board adjudicates contract disputes. These revisions increase the maximum amount that may be in dispute for appeals to qualify for consideration under the small claims (expedited) and accelerated procedures of the boards of contract appeals.

The proposed rule prescribed a 60-day comment period ending November 13, 1995, and invited comments from all interested parties. No comments were received during that period. Therefore, no changes, other than minor editorial revisions and correction of typographical errors, have been made in the final rule. The Postal Service is now publishing, as a final rule, the Rules of Practice before the Board of Contract Appeals, to be codified at part 955 of title 39 of the Code of Federal Regulations.

List of Subjects in 39 CFR Part 955

Administrative practice and procedure, Postal Service.

For the reasons set forth in the preamble, the Postal Service amends and revises part 955 as follows:

PART 955—[AMENDED]

1. The authority citation for 39 CFR part 955 is revised to read as follows:

Authority: 39 U.S.C. 204, 401; 41 U.S.C. 607, 608.

§ 955.1 [Amended]

2. Section 955.1 is amended by revising the first sentence of paragraph (a), paragraph (b)(1), the first sentence of paragraph (b)(2), and paragraph (d)(5) to read as follows:

(a) *Jurisdiction for considering appeals.* The U.S. Postal Service Board of Contract Appeals (Board) shall consider and determine appeals from decisions of contracting officers arising under contracts which contain provisions requiring the determination of appeals by the Postmaster General or his duly authorized representative or board. * * *

(b) *Organization and location of the Board.* (1) The Board is located in Washington, DC, and its mailing address is 475 L'Enfant Plaza, SW., Washington, DC 20260–6100.

(2) The Board consists of the Judicial Officer as Chairman, the Associate Judicial Officer as Vice Chairman, and the Administrative Judges of the Postal Service. * * *

* * * * *

(d) * * *

(5) *Place of filings.* Unless the Board otherwise directs, all notices of appeal, pleadings and other communications shall be filed with the Recorder of the Board at its offices in the United States Postal Service Headquarters Building, 475 L'Enfant Plaza, SW., Washington, DC 20260–6100.

* * * * *

3. Section 955.9 is amended by revising the second sentence to read as follows:

§ 955.9 Hearing election.

* * * In appropriate cases, the appellant shall also elect whether he desires the optional small claims (expedited) procedure or accelerated procedure prescribed in § 955.13.

§ 955.13 [Removed]

4. Section 955.13 is removed.

5. Section 955.18 is amended by revising the first sentence to read as follows:

§ 955.18 Where and when held.

Hearings will ordinarily be held in the Washington, DC, area, except that upon request seasonably made and upon good cause shown, the Board may set the hearing at another location. * * *

§ 955.35 [Removed]

6. Section 955.35 is removed.

§ 955.36 [Redesignated as § 955.13 and Amended]

7. Section 955.36 is redesignated as § 955.13 and amended by revising the first sentence of paragraphs (b)(1) and (b)(2); by revising paragraph (c)(1) and the first sentence of paragraph (c)(2)(ii) and the fourth sentence of paragraph (c)(4); by revising paragraph (d)(1) and the third sentence of paragraph (d)(3); by revising paragraph (e); and by adding paragraph (f), as follows:

§ 955.13 Optional small claims (expedited) and accelerated procedures.

* * * * *

(b) * * *

(1) In appeals where the amount in dispute is $50,000 or less, the appellant may elect to have the appeal processed under a small claims (expedited) procedure requiring decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election to utilize this procedure.* * *

(2) In appeals where the amount in dispute is $100,000 or less, the appellant may elect to have the appeal processed under an accelerated procedure requiring the decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election to utilize this procedure. * * *

* * * * *

(c) * * *

(1) This procedure shall apply only to appeals where the amount in dispute is $50,000 or less as to which the appellant has elected the small claims (expedited) procedure.

(2) * * * (ii) within 5 days after the Board has acknowledged receipt of the notice of election, either party desiring an oral hearing shall so inform the Board. * * *

* * * * *

(4) * * * Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for the record and payment purposes and for the establishment of the commencement date of the period for filing a motion for reconsideration under § 955.30.

* * * * *

(d) * * *

(1) This procedure shall apply only to appeals where the amount in dispute is $100,000 or less as to which the appellant has made the requisite election.

* * * * *

(3) * * * Alternatively, in cases where the amount in dispute is $50,000 or less as to which the accelerated procedure has been elected and in which there has been a hearing, the single Administrative Judge presiding at the hearing may, with the concurrence of both parties, at the conclusion of the hearing and after entertaining such oral arguments as he deems appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. * * *

(e) Motions for Reconsideration in Cases Arising Under § 955.13. Motions for Reconsideration of cases decided under either the small claims (expedited) procedure or the accelerated procedure need not be decided within the time periods prescribed by this § 955.13 for the initial decision of the appeal, but all such motions shall be processed and decided rapidly so as to fulfill the intent of this section.

(f) Except as herein modified, the rules of this part 955 otherwise apply in all aspects.

§ 955.37 [Redesignated as § 955.35]

8. Section 955.37 is redesignated as § 955.35.

9. Redesignated § 955.35 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 955.35 Subpoenas.

(a) *General.* Upon written request of either party filed with the Recorder or on his own initiative, the Administrative Judge to whom a case is assigned or who is otherwise designated by the Chairman may issue a subpoena requiring: * * *

* * * * *

§ 955.36 [Added]

10. New § 955.36 is added to read as follows:

§ 955.36 Effective Dates and Applicability.

The provisions of §§ 955.9 and 955.13 took effect on October 1, 1995. Pursuant to the Contract Disputes Acts of 1978 (41 U.S.C. 601–613), §§ 955.13 and 955.35 apply to appeals relating to contracts entered into on or after March 1, 1979. All other provisions of this part 955 took effect February 18, 1976. Except as otherwise directed by the Board, these rules shall not apply to appeals docketed prior to their effective dates.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–28365 Filed 11–22–95; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF DEFENSE

Department of the Air Force

41 CFR Chapter 132

Utilization and Disposal of Real Property

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Interim rule; withdrawal.

SUMMARY: On April 1, 1991, the Department of the Air Force amended Title 41 of the Code of Federal Regulations by establishing Chapter 132 and Part 132–47, Utilization and Disposal of Real Property, as an interim rule with request for comments (56 FR 13286).

On April 6, 1994, the Department of Defense published 32 CFR Part 90, Revitalizing Base Closure Communities—Base Closure Community Assistance. Upon publication of 32 CFR Parts 90 and 91, it was decided not to finalize the interim rule 41 CFR Part 132–47. Therefore, 41 CFR Chapter 132 consisting of Part 132–47 is withdrawn.

EFFECTIVE DATE: November 24, 1995.

FOR FURTHER INFORMATION CONTACT: Gilbert Sailer, AFBCA/RP, 1700 N. Moore Street, Suite 2300, Arlington VA 22209–2803, telephone (703) 696–5566.

SUPPLEMENTARY INFORMATION:

List of Subjects in 41 CFR Chapter 132

Real property utilization and disposal.

Authority: 10 U.S.C. 8013.

41 CFR CHAPTER 132—[REMOVED]

Accordingly, 41 CFR Chapter 132 consisting of Part 132–47 is removed.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–28661 Filed 11–22–95; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7173

[ID–943–1430–01; IDI–04790 02]

Partial Revocation of Public Land Order No. 1703; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Public Land Order (PLO) insofar as it affects 34.98 acres of public land withdrawn by the Corps of Engineers' Albeni Falls

Project. The land is no longer needed for this purpose, and the revocation is needed to permit disposal of the land through exchange. This action will open the land to surface entry and mining. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: December 26, 1995.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706–2500, 208–384–3166.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 1703, which withdrew public land for the Corps of Engineers' Albeni Falls Project, is hereby revoked insofar as it affects the following described land:

Boise Meridian

T. 56 N., R. 2 E.,
Sec. 29, lot 13.

The area described contains 34.98 acres in Bonner County.

2. At 9 a.m. on December 26, 1995, the land described above will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on December 26, 1995, shall be considered as simultaneously filed at that time.

3. At 9 a.m. on December 26, 1995, the land will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

4. The revocation of the withdrawal is made subject to the following flowage easement estate reserved to the Corps of Engineers:

Flowage Easement Estate

Reserve to the Government, a perpetual right, power, privilege and easement in, upon, and across the tract described as Tract R1903E–1 for the following purposes, to-wit:

a. Intermittently to overflow, flood and submerge with water of Lake Pend Oreille, the Pend Oreille River, and the tributaries of both, those portions of the said land lying above elevation 2062.5 feet above mean sea level, United States Coast and Geodetic Survey Datum and for any length of time to impound upon, overflow, flood and submerge with the said waters those portions of the said land lying below elevation 2062.5 above mean sea level, all in the construction, operation and maintenance of the Albeni Falls Dam Project, its appurtenances, reservoir and overflow areas.

b. To enter upon said land as may be necessary from time to time to inspect and improve water flow conditions; to remove natural or artificial obstructions, including underbrush and debris which, in the opinion of the representative of the United States in charge, may be detrimental to the operation of the project, to clear, improve, and maintain existing water courses, lake, streams and drainage channels; and to exercise any other rights and privileges incident to the easement hereby taken.

c. As to the described land in which an easement is taken, all rights and privileges therein and thereto that may be used and enjoyed without interfering with or abridging the easements and rights hereby taken, are specifically reserved to the respective owners; provided that no dwelling or other structure maintained for human habitation on the said land shall have a first floor elevation of less than 2067.5 feet above mean sea level.

Subject to existing easements for public roads and highways, public utilities, railroads and pipelines.

The Grantee, for good and valuable consideration, does hereby release the United States of America, and its assigns, from all claims for damages that have accrued or may hereafter accrue to any or all of the above described land, by reason of the overflow of water occasioned by the construction and operation of the Albeni Falls Project on the Pend Oreille River, Idaho, or by the exercise of any or all of the rights, powers, privileges, and easements hereinabove granted.

Dated: November 8, 1995.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 95–28655 Filed 11–22–95; 8:45 am]

BILLING CODE 4310–GG–P

FEDERAL MARITIME COMMISSION

46 CFR Part 501

General Consolidation of Bureaus of Investigations and Hearing Counsel

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission is consolidating the Bureau of Investigations (''BOI'') and Bureau of Hearing Counsel (''BHC'') and related delegated authorities into one bureau: the Bureau of Enforcement (''BOE'').

EFFECTIVE DATE: November 24, 1995.

FOR FURTHER INFORMATION CONTACT: Vern W. Hill, Director, Bureau of Enforcement, Federal Maritime Commission, 800 North Capitol St., NW, Washington, DC 20573, (202) 523–5783.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission is amending part 501 of title 46 of the Code of Federal Regulations to reflect the consolidation of BOI and BHC into one bureau: BOE. Notice and public procedure are not necessary prior to the issuance of this rule because it deals solely with matters of agency organization. Neither is a delayed effective date required. This action does not affect the substantive duties and functions of the bureaus formerly known as BOI and BHC.

List of Subjects in 46 CFR Part 501

Administrative practice and procedure; Authority delegations; Organization and functions; Seals and insignia.

For the reasons set out in the preamble, title 46, Code of Federal Regulations, part 501 is amended as set forth below.

PART 501—THE FEDERAL MARITIME COMMISSION—GENERAL

1. The authority citation for part 501 continues to read as follows:

Authority: 5 U.S.C. 551–557, 701–706, 2903 and 6304; 31 U.S.C. 3721; 41 U.S.C. 414 and 418; 44 U.S.C. 501–520 and 3501–3520; 46 U.S.C. app. 801–848, 876, 1111, and 1701–1720; Reorganization Plan No. 7 of 1961, 26 FR 7315, August 12, 1961; Pub.L. 89–56, 79 Stat. 195; 5 CFR Part 2638.

Subpart A—Organization and Functions

2. Section 501.3 is amended by removing and reserving paragraph (k) and revising paragraph (l) to read as follows:

§ 501.3 Organizational components of the Federal Maritime Commission.

* * * * *

(k) [Reserved]

(l) Bureau of Enforcement; District Offices.

(1) New York District

(2) Miami District

(3) Los Angeles District

* * * * *

3. Section 501.4 is amended by revising the first sentence of paragraph (b) and revising paragraph (c) to read as follows:

§ 501.4 Lines of responsibility.

* * * * *

(b) *Office of the Managing Director.* The Bureau of Economics and Agreement Analysis; Bureau of Tariffs, Certification and Licensing; Bureau of Enforcement; and Bureau of Administration report to the Office of the Managing Director. * * *

(c) *Bureau of Enforcement and District Offices.* The District Offices report to the Director, Bureau of Enforcement.

4. Section 501.5 is amended by revising paragraphs (f)(1)(i), (i) introductory text, (i)(3), and (i)(4); the heading of paragraph (j) is removed and reserved, paragraph (j)(1) is redesignated as paragraph (i)(5) and revised; paragraph (j)(2) is redesignated as paragraph (i)(6) and the introductory text thereof is revised; the first sentence of paragraph (l)(2) is revised. The revised text reads as follows:

§ 501.5 Functions of the organizational components of the Federal Maritime Commission.

* * * * *

(f) The *Office of the Managing Director.*

(1) * * *

(i) As senior staff official, is responsible to the Chairman for the management and coordination of Commission programs managed by the operating Bureaus of Enforcement; Administration; Economics and Agreement Analysis; and Tariffs, Certification and Licensing, as more fully described in paragraphs (g) through (k) of this section, and thereby implements the regulatory policies of the Commission and the administrative policies and directives of the Chairman;

* * * * *

(i) *Bureau of Enforcement; District Offices.* Under the direction and management of the Bureau Director, the Bureau of Enforcement:

* * * * *

(3) Acts as staff counsel to the Managing Director and other bureaus and offices;

(4) Coordinates with other bureaus and offices to provide legal advice, attorney liaison, and prosecution, as warranted, in connection with enforcement matters; and

(5) Conducts investigations leading to enforcement action, advises the Federal Maritime Commission of evolving competitive practices in international and domestic offshore commerce, assesses the practical repercussions of Commission regulations, educates the industry regarding policy and statutory requirements, assists in the resolution of disputes within the industry, and provides liaison, cooperation, and other coordination between the Commission and the maritime industry, shippers, and other government agencies.

(6) The activities performed by the Bureau and its District Offices, the latter under the direction and management of their respective District Directors, include the following:

* * * * *

(j) [Reserved]

* * * * *

(l) *Boards and Committees.* * * *

(2) The Committee on Automated Data Processing is chaired by a Commissioner designated by the Chairman, and is comprised of the Directors of the Bureaus of Economics and Agreement Analysis; Tariffs, Certification and Licensing; Administration; and Enforcement; the General Counsel; the Secretary; the Inspector General; the Director, Office of Equal Employment Opportunity; the Chief Administrative Law Judge; a representative of the Chairman's office; the Deputy Managing Director in charge of the Commission's Automated Tariff Filing and Information System; and the Director, Office of Information Resources Management, who serves as Committee Coordinator for the Committee Chairperson. * * *

* * * * *

Subpart C—Delegation and Redelegation of Authorities

5. Section 501.28 is revised to read as follows:

§ 501.28 Delegation to the Director, Bureau of Enforcement.

The authorities listed in this section are delegated to the Director, Bureau of Enforcement. Notwithstanding the provisions of § 501.21, the Director may delegate or redelegate, in writing, specific authority to individuals within the Bureau of Enforcement other than the Deputy Director.

(a) Authority to compromise civil penalty claims has been delegated to the Director, Bureau of Enforcement, by § 502.604(g) of this chapter. This delegation shall include the authority to compromise issues relating to the retention, suspension or revocation of ocean freight forwarder licenses. See also §§ 501.5(i) and 501.21.

(b) Authority to approve administrative leave for employees in District Offices.

§ 501.31 [Removed]

6. Section 501.31 is removed.

Subpart D—Public Requests for Information

7. In § 501.41, paragraph (c) introductory text is republished, paragraph (c)(6) is revised to read as set forth below, paragraph (c)(9) is removed and reserved, and paragraph (d) is revised to read as follows:

§ 501.41 Public requests for information and decisions.

* * * * *

(c) The Directors of the following bureaus and offices will provide information and decisions, and will accept and respond to requests, relating to the specific functions or program activities of their respective bureaus and offices as set forth in this chapter; but only if the dissemination of such information or decisions is not prohibited by statute or the Commission's Rules of Practice and Procedure:

* * * * *

(6) Bureau of Enforcement.

* * * * *

(9) [Reserved].

* * * * *

(d) The Directors of the New York, Los Angeles and Miami District Offices will provide information and decisions to the public within their geographic areas, or will expedite the obtaining of information and decisions from headquarters, relating to the program activities of the District Offices as set forth in this part. The addresses of these offices are as follows:

New York District—Director, New York District, Federal Maritime Commission, 6 World Trade Center, suite 614, New York, New York 10048–0949.

Miami District—Director, Miami District, Federal Maritime Commission, 18441 N.W. 2nd Avenue, suite 302, Miami, Florida 33169.

Los Angeles District—Director, Los Angeles District, Federal Maritime Commission, 501 West Ocean Boulevard, Long Beach, California 90802.

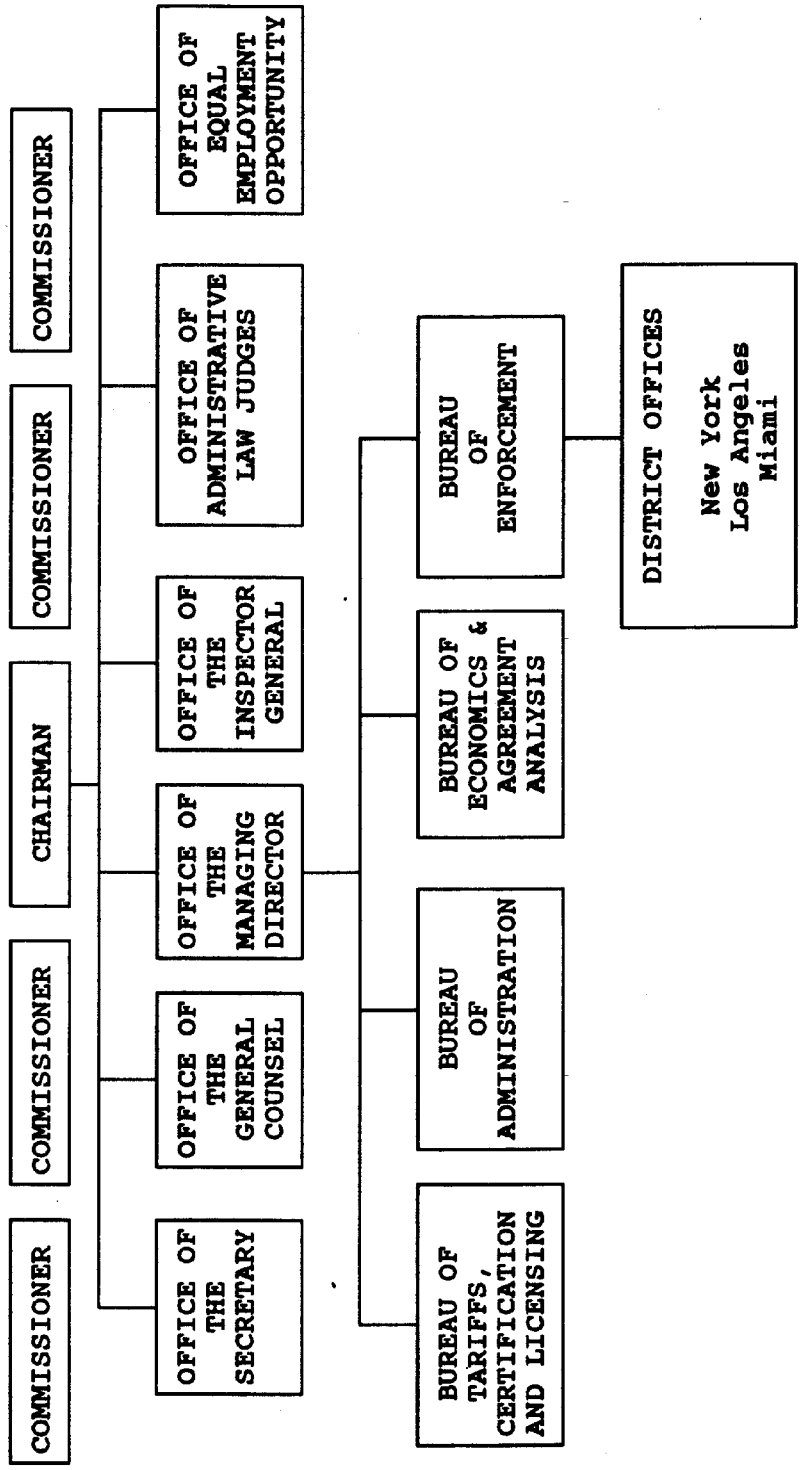
* * * * *

8. Appendix A to Part 501 is revised as follows:

BILLING CODE 6730–01–P

APPENDIX A

FEDERAL MARITIME COMMISSION
ORGANIZATION CHART



BILLING CODE 6730–01–C

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–28440 Filed 11–22–95; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 93–02; Notice 12]

RIN 2127–AF14

Federal Motor Vehicle Safety Standards; Fuel System Integrity of Compressed Natural Gas Vehicles; Compressed Natural Gas Fuel Container Integrity

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

ACTION: Final rule.

SUMMARY: This document amends Standard No. 303, *Fuel System Integrity of Compressed Natural Gas Vehicles*, and Standard No. 304, *Compressed Natural Gas Fuel Container Integrity*. It allows any appropriate fuel to be used for the bonfire test for compressed natural gas (CNG) containers and adds new labeling requirements for CNG vehicles and containers. This document also announces and explains the agency's decision to terminate rulemaking about additional performance requirements for CNG containers that the agency had proposed. Rulemaking may be resumed once revisions to the current voluntary industry standard for CNG containers are completed.

DATES: Effective date: The amendments in this document become effective September 1, 1996.

Petitions for reconsideration: Any petition for reconsideration of this rule must be received by NHTSA no later than December 26, 1995.

ADDRESSES: Petitions for reconsideration of this rule should refer to the above mentioned docket number and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: *For non legal issues*: Mr. Gary R. Woodford, NRM–01.01, Special Projects Staff, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (Telephone 202–366–4931 or FAX # 202–366–4329).

For legal issues: Mr. Marvin L. Shaw, NCC–20, Rulemaking Division, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202–366–2992).

SUPPLEMENTARY INFORMATION:

I. Previous Agency Rulemakings
II. Comments to SNPRM
III. Agency Decision to Adopt Additional Labeling Requirements
A. Overview of Labeling Amendments
B. Vehicle Labeling
C. Container Labeling
1. Labeling Information
2. Labeling Character Size
3. Labeling Location
4. Other Container Label Issues
IV. Agency Decision to Amend the Bonfire Test
V. Agency Decision to Terminate Rulemaking to Adopt Additional Performance Requirements
VI. Other Container Issues
A. Reports by Manufacturers
B. Aluminum Containers
VII. Rulemaking Analysis and Notices

I. Previous Agency Rulemakings

NHTSA has recently established two Federal motor vehicle safety standards (FMVSSs) that affect motor vehicles fueled by compressed natural gas (CNG). On April 25, 1994, the agency published a final rule establishing Standard No. 303, *Fuel System Integrity of Compressed Natural Gas Vehicles*, which specifies tests and performance requirements for the fuel system of vehicles fueled by CNG. (59 FR 19648) On September 26, 1994, the agency published a final rule establishing Standard No. 304, *Compressed Natural Gas Fuel Container Integrity*, which specifies tests and performance requirements applicable to a CNG fuel container's durability, strength, and pressure relief. (59 FR 49010) The September 1994 final rule also specifies labeling requirements for CNG fuel containers. The CNG container requirements are based on specifications in ANSI/NGV2, a voluntary industry standard addressing CNG fuel containers which was adopted by the American National Standards Institute (ANSI). [1]

ANSI/NGV2 specifies four types of container designs. A Type 1 container is a metallic noncomposite container. A Type 2 container is a metallic liner over which an overwrap such as carbon fiber or fiberglass is applied in a hoop wrapped pattern over the liner's cylinder wall. A Type 3 container is a metallic liner over which an overwrap, such as carbon fiber or fiberglass, is applied in a full wrapped pattern over the entire liner, including the domes. A Type 4 container is a non-metallic liner over which an overwrap, such as carbon fiber or fiberglass, is applied in a full wrapped pattern over the entire liner, including the domes.

On December 19, 1994, NHTSA published a supplemental notice of proposed rulemaking (SNPRM) to propose new labeling requirements applicable to CNG vehicles and additional ones for CNG containers. (59 FR 65299) Along with a proposal to modify the bonfire test which evaluates pressure relief, the agency also proposed additional performance requirements and tests to evaluate a CNG container's structural integrity. Among the proposed tests were environmental cycling tests, a low temperature impact test, a gunfire test, a flaw tolerance test, a pendulum impact test, and a drop test. Each of the proposed performance requirements and test procedures were modeled after provisions in ANSI/NGV2 or are similar to those requirements. The agency tentatively concluded that modeling the Federal standard after ANSI/NGV2 would be the best available way to regulate how a CNG container reacts to such conditions as corrosive substances, temperature extremes, external damage, and high energy impact.

II. Comments on the SNPRM

Fourteen commenters responded to the December 1994 SNPRM. The commenters included vehicle manufacturers (Ford and Navistar); CNG container manufacturers (EDO, Brunswick, Structural Composites Industries (SCI) and NGV Systems); trade associations interested in alternative fueled vehicles (the American Automobile Manufacturers Association (AAMA), the American Gas Association/Natural Gas Vehicle Coalition (AGA/NGVC) and the Compressed Gas Association (CGA)); and other organizations including Washington Gas, Taylor-Wharton Gas Equipment Division (Taylor-Wharton), Minnegasco, Toho Carbon Fibers, Inc. (Toho) and Futuretech Consultants (Futuretech).

The commenters generally had reservations about adopting the performance requirements since the CNG industry is currently revising ANSI/NGV2. They urged that the agency wait until the industry completes its revision. In addition, the commenters generally supported the specific labeling requirements but had reservations about various aspects of the proposed performance requirements.

[1] NGV2 was developed by an industry working group that included container manufacturers, CNG users, and utilities.

III. Agency Decision To Adopt Additional Labeling Requirements

A. Overview of Labeling Requirements

NHTSA has decided to amend FMVSS No. 303 and FMVSS No. 304 with respect to labeling CNG vehicles and containers. With respect to CNG vehicles, the agency has decided to require such vehicles to be labeled with information about the CNG container's service pressure and a statement about container inspection and service life. With respect to CNG containers, the agency has decided to require such containers to be labeled with the container type (e.g., Type 2), the statement ''CNG only,'' information about container inspection, and container service life.

B. Vehicle Labeling

The April 1994 CNG vehicle final rule did not specify requirements for the labeling of CNG fueled vehicles. In the SNPRM, the agency proposed to amend FMVSS No. 303 to include two items of information:

S5.3.1 The statement: ''Maximum service pressure _____ kPa (_____ psig).''

S5.3.2 The statement ''See instructions on fuel container for inspection and service life.''

The agency believed that the first item of information would help assure that CNG containers are not overfilled during refueling. The second item's purpose is to assure that vehicle owners and operators are informed about container inspection. In addition, the agency proposed that, for vehicles manufactured or converted prior to the first sale to the consumer, the manufacturer provide this information in writing to the consumer, either in the owner's manual or in a one page statement. The agency requested comments about the need for vehicle labeling and written information bearing this and other information.

AAMA, AGA/NGVC, SCI, Ford, and Minnegasco addressed the issue of vehicle labeling. AAMA, AGA/NGVC and SCI supported the proposed requirements. Ford's comments are somewhat contradictory in that it supports and participated in the preparation of AAMA's comments, but stated that it believes rulemaking on FMVSS No. 303 and FMVSS No. 304 is premature at this time since NGV2 is currently being upgraded.

NHTSA has decided to amend FMVSS No. 303 to include the vehicle labeling requirements that were proposed in the SNPRM for the reasons set forth in that document. The only exception is that instead of specifying ''maximum service pressure'' on the label, ''service pressure'' will be specified. This is consistent with the CNG container label. The rationale for this is discussed in section III.C.4 of this notice. With respect to Ford's comment, the agency notes that it is delaying rulemaking on the proposed amendments that address CNG containers. Since AGA/NGVC is revising NGV2 with respect to CNG containers and not vehicles, the agency believes that it is appropriate to adopt the amendments about the labeling of CNG vehicles.

C. CNG Containers

1. Labeling Information

In the September 1994 final rule, NHTSA decided to require that a CNG container manufacturer certify that each of its containers complies with the equipment requirements by permanently labeling the container with the following information: (1) The statement that ''If there is a question about the proper use, installation, or maintenance of this container, contact [*CNG fuel container manufacturer's name, address, and telephone number*]''; (2) the month and year that the container was manufactured; (3) the maximum service pressure; and (4) the symbol ''DOT'' which certifies that the container complies with all the standard's requirements. The agency stated that labeling the container would provide vehicle manufacturers and consumers with assurance that they are purchasing containers that comply with the Federal safety standards. In addition, the agency believed that the requirement facilitates the agency's enforcement efforts by providing a ready means of identifying the container and its manufacturer. NHTSA further stated that it planned to propose additional labeling requirements patterned after ANSI/NGV2. The agency explained that it could not require these additional items of information at that time, since such information had not been proposed.

In the SNPRM, NHTSA proposed to amend S7.4 to require CNG containers to be labeled with the following additional information:

(1) The container designation (Type 1, 2, 3, or 4),

(2) The statement ''CNG ONLY,''

(3) The statement: ''This container should be visually inspected after a motor vehicle accident or fire and at least every 36 months for damage and deterioration in accordance with the Compressed Gas Association (CGA) guidelines C–6 and C–6.1 for Type 1 containers and C–6.2 for Types 2, 3, and 4 containers.''

(4) The statement: ''Do Not Use After _____,'' inserting the year that is the 15th year beginning after the year in which the container is manufactured.

NHTSA stated that it would be in the interest of motor vehicle safety to add this information to the CNG container label. The agency requested comments about the need for each of these proposed items of information and alternative ways to specify this information.

NHTSA stated in the SNPRM that adding information about container type, e.g., Type 1, 2, 3 or 4, would be consistent with the agency's decision to adopt NGV2's manufacturing and material specifications in the CNG final rule. For instance, such information would facilitate oversight of compliance tests, since each type of container is required to undergo a hydrostatic burst test at a safety factor that varies according to container type.

NHTSA has decided to require that CNG containers be labeled with this information, for the reasons set forth in the SNPRM. The agency received no comments addressing whether CNG containers should be labeled with information about the container type.

NHTSA stated in the SNPRM that adding the phrase ''CNG ONLY'' would assure that CNG containers are used only for CNG and are not used for other fuels for which the containers were not designed, such as liquefied petroleum gas (LPG).

NHTSA has decided to require that CNG containers be labeled with this information, for the reasons set forth in the SNPRM. The agency received no comments addressing whether CNG containers should be labeled with the phrase ''CNG Only.''

NHTSA stated in the SNPRM that adding information about conducting periodic inspections in accordance with CGA pamphlets would help assure the safe use of CNG containers. The agency noted that the proposed requirement is consistent with ANSI/NGV2's guidelines for visual inspection of CNG containers after an accident or every 36 months. NHTSA sought comments about what the most appropriate interval would be and whether both a time interval and a mileage inspection interval should be specified.

CGA, SCI, and Brunswick addressed the specific pamphlets referenced in the proposed labeling requirement. CGA and SCI stated that CGA pamphlet C–6.2 does not address Type 4 containers. CGA and SCI also stated that the agency should refer to pamphlet C–6.4, which

is being developed by the industry and is expected to address Type 2, 3, and 4 containers. Brunswick indicated that the agency should reevaluate the referenced CGA pamphlets, since they relate to CNG containers used in transport rather than CNG containers used to fuel motor vehicles.

NHTSA has decided to adopt a reference to the CGA C–6, C–6.1, and C–6.2 cylinder publications. The agency believes that the final rule must reference inspection information about the in-use safety of CNG containers. The agency believes that the current CGA pamphlets provide valuable inspection information to help assure fuel container safety for Type 1, 2, and 3 containers.[2] However, since the current CGA pamphlets do not apply to Type 4 containers, the agency believes that the label should not reference Type 4 containers. A representative of CGA has informed the agency that pamphlet C–6.4 should be completed this year. When that pamphlet is completed, the agency plans to propose modifying the standard to reference it.

Ford and Navistar addressed the issue of inspection interval. Ford recommended that the inspection statement include both time and mileage intervals, but did not specify the intervals. Navistar supported a regular container inspection interval of one year for exterior damage as well as inspection after an accident. In addition to visual inspection, Navistar recommended that each container undergo acoustic emission inspection and that containers not be removed from the vehicle or be over-pressurized, since these are actions that can reduce a container's life. Navistar did not state whether labeling should be required to indicate that an acoustic emission inspection should be done. Navistar also suggested that the Federal Highway Administration (FHWA) require periodic inspection of CNG fuel containers used for commercial vehicles.

NHTSA agrees with Navistar's recommendation to specify a one year inspection interval. A one year time interval reduces the possibility that damage caused by external factors would go undetected, a situation that could lead to container failure. This time interval is also consistent with the Natural Gas Vehicle Coalition's document titled ''Natural Gas Vehicle Inspection Program,'' (1994), which recommended a visual container inspection interval of one year. NHTSA also agrees with Ford's recommendation that the inspection interval include both a time and a mileage component because apart from time, mileage exposure could be a factor in leading to premature container failure due to exterior damage. A 12 month or 12,000 mile interval is consistent with the recommended interval for many motor vehicle warranties and routine maintenance items. Based on the above considerations, the agency has decided to require that the container label specify inspection intervals of 12 months or 12,000 miles.

NHTSA believes that it would be inappropriate now to require the label to address acoustic emission testing. Such testing is still in its development phase. In response to Navistar's suggestion to have the FHWA inspect CNG containers on commercial vehicles, NHTSA has forwarded these comments to FHWA which will evaluate the merits of this recommendation.

Minnegasco stated that while providing information about the appropriate time interval for inspection is necessary, ''properly using this information is non-enforceable or impractical'' for several reasons. It stated that preventive maintenance is not performed on most public vehicles. It also stated that this requirement assumes that the tanks are installed so that everyone has access to copies of and understands the visual inspection criteria in the referenced CGA documents and that the failure modes can be visually detected before failure.

NHTSA agrees with Minnegasco that a time interval for inspection is necessary, since it informs vehicle owners and operators about important safety information on container inspection. While Minnegasco's concerns may be justified in the case of some vehicle owners, many others will benefit from this information. Accordingly, the agency has decided to require the label to contain information about inspections.

NHTSA proposed requiring information about the container's service life in the belief that the vehicle owner should remove a CNG container from service after its design service life expires. As commenters on the NPRM stated, this is especially important since there is a finite period during which CNG containers can be used safely. The agency proposed 15 years because CNG containers built to follow ANSI/NGV2 have a design service life of 15 years. Nevertheless, the agency stated that it would allow a manufacturer to specify the service life length appropriate to its particular containers, since containers may be built for a service life other than 15 years.

SCI, Brunswick, and AAMA commented about labeling a container with information about its service life. SCI and Brunswick recommended that the expiration month as well as the year be included in this statement. Brunswick stated that the revised ANSI/NGV2 document is proposing that containers be designed for a 20 year life. AAMA suggested that additional enforcement steps may be needed for users least likely to heed inspection and service life requirements, such as making vehicle registration contingent upon container inspection.

NHTSA has decided that the CNG container label should include the following statements about service life:

S7.4(h) The statement: ''Do Not Use After _____/_____,'' inserting the month and year to reflect the end of the manufacturer's recommended service life for the container.

This requirement is consistent with the request by SCI and Brunswick to include the expiration month and year on the label. This will enhance vehicle safety by further increasing the likelihood that containers do not remain in service beyond their useful life. NHTSA has decided not to adopt the SNPRM's proposal to specify a service life of 15 years. Instead, the length of a container's recommended service life will be left to the container manufacturer's discretion.

As for AAMA's comment on vehicle registration, NHTSA does not have jurisdiction over this matter, which is a State function. If the AAMA wishes to pursue this matter, it should contact appropriate State authorities.

2. Label Character Size

The SNPRM proposed that the characters on the container label be at least 12.7 mm (½ inch) in height. This is the same as the lettering height that had been specified in the final rule establishing FMVSS No. 304 container label requirements.

AAMA, Ford, CGA, SCI, and Brunswick commented that the proposed lettering height is too large and recommended a smaller size. They were concerned that the ½ inch minimum character height requirement would result in unreasonably large labels that may wrap around small diameter containers. Commenters recommended lettering heights of 3⁄16 inch, ¼ inch, and 3 to 6 mm. Brunswick recommended that the label statements ''CNG Only'' and ''Do Not Use After _____'' should be in ½ inch

[2] With respect to Brunswick's comment, NHTSA acknowledges that there is a difference between CNG containers used in transport and those used to fuel motor vehicles. Nevertheless, the agency believes that there are enough important similarities between the types of containers to warrant providing this safety information.

characters but the other label statements should be smaller.

NHTSA recently addressed the issue of letter height in its notice responding to petitions for reconsideration of the label statement requirements in the final rule establishing FMVSS No. 304. (60 FR 37836; July 24, 1995) Several petitioners had requested that the label letter height of 12.7 mm (½ inch) be reduced. In the July 1995 notice, the agency decided to reduce the lettering height to 6.35 mm (¼ inch), which is more consistent with the label letter height recommended by commenters to the SNPRM. Since the agency continues to believe that this lettering size is appropriate, the agency has decided not to change the decision announced in the July 1995 notice which will help prevent oversized labels. The agency sees no reason to follow Brunswick's recommendation to highlight certain lettering with letters of larger size. Brunswick provided no rationale. The agency believes that none of the label information is of significantly greater importance than the other information.

3. Label Location

In the SNPRM, NHTSA proposed that the container label be located within 30.5 cm (12 inches) of the end of the container containing the fuel outlet valve.

SCI recommended that the location of the label on the container be left up to the container and vehicle manufacturer's discretion, or if this is not acceptable, that the label be centered on the longitudinal axis of the container where it would be least likely to be obscured by container mounting hardware. SCI stated that a label that is mounted within 12 inches of the outlet valve will most likely be obscured by container mounting hardware, or be on the curved section of long containers where mounting could be difficult. SCI also recommended that a duplicate label be located 180 degrees around the container to ensure one of the labels would be visible regardless of container orientation.

NHTSA has decided not to adopt the requirement in the SNPRM regarding container label location so as to allow container manufacturers to mount the labels in the location where they will be most likely to be visible. The agency believes that in most cases, container manufacturers will be familiar with the configurations in which their containers are installed and will therefore be able to best determine the location on their containers that will provide the best visibility when mounted on vehicles. In addition, manufacturers have the option to follow SCI's suggestion of placing a duplicate label on the opposite side of the container to improve its visibility. Allowing the manufacturer to choose the mounting location should avoid compelling the mounting of labels on a section of the container where permanent mounting of the label could be difficult because the container's radius is changing along the longitudinal axis. NHTSA encourages CNG vehicle manufacturers and fuel system installers to mount CNG containers in such a manner that the label is plainly visible without having to remove it from the vehicle.

4. Other Container Label Issues

The SNPRM stated that each CNG fuel container would be required to be ''permanently'' labeled. Also, the label would be required to include the ''DOT'' symbol, which would constitute a certification by the container manufacturer that the container complies with all requirements of this standard.

SCI requested that the term ''permanent,'' as associated with fuel container labeling, be defined. SCI further stated that the ''DOT'' symbol without additional information is not meaningful, and suggested that the symbol be expanded to include the Standard number and the month and year of the Standard's effective date.

SCI, Ford, and Brunswick also commented that the word ''maximum'' in the FMVSS 304 label requirement for ''maximum service pressure'' could be confusing to vehicle operators since it is not commonly used in the industry, and urged that it be eliminated. The ANSI/NGV2 standard requires that the label include ''service pressure'' without the word ''maximum.''

NHTSA notes that each of these issues were also raised in the petitions for reconsideration to the final rule establishing FMVSS No. 304 and were addressed in the agency's recently published notice responding to the petitions. With respect to permanency, NHTSA explained in the notice that this term is intended to mean that ''the label should remain in place and be legible for the manufacturer's recommended life of the container.'' With respect to references to ''maximum service pressure,'' the agency decided to specify ''service pressure'' on the container label to reduce confusion. With respect to the ''DOT'' symbol, the agency decided not to expand the symbol. This decision is consistent with the symbol's use in other Federal motor vehicle safety standards for items of motor vehicle equipment. The reader should refer to that notice for a complete discussion of these issues.

In commenting on ''maximum service pressure,'' Brunswick stated that the industry standard for units of pressure measurement is ''bar'' rather than ''kPa'' with ''psig'' as the alternate. FMVSS 304 currently specifies service pressure in units of kPa (psig).

NHTSA notes that ''kPa'' rather than ''bar'' is specified in FMVSS No. 304 because the agency has decided to use kPa for the metric fluid pressure measurement unit in all its safety regulations. Manufacturers are free to add the term ''bar'' if they so desire.

IV. Agency Decision To Amend the Bonfire Test

In the September 1994 final rule, NHTSA decided to specify that No. 2 diesel fuel be used to generate the fire in the bonfire test. As an interim measure, the agency specified No. 2 diesel fuel, despite knowledge that there are environmental problems associated with this type of fuel. The agency stated that it would study whether other fuels could be used for the bonfire test.

In the SNPRM, NHTSA decided to propose amending the bonfire test conditions to allow alternative types of fuel. Specifically, the agency proposed that the bonfire test could be conducted with any fuel that generates a flame temperature equivalent to that of No. 2 diesel fuel (i.e., any fuel that generates a flame temperature of 850 to 900 degrees C). NHTSA requested comments about the appropriateness of using flame temperature to define equivalence among fuel types.

Commenters addressing the issue of bonfire fuel generally supported the proposal. EDO and Brunswick favored allowing any fuel as long as the specified temperature is maintained. Ford commented that the proposal was appropriate, provided that the flame characteristics of different fuels are similar. AGA/NGVC also supported the proposal.

NHTSA has decided to amend section S8.3.6 to allow the bonfire test to be generated by any fuel that generates a flame temperature between 850 and 900 degrees C for the duration of the test. As discussed in the SNPRM, this modification will provide greater flexibility to those conducting the bonfire test. Moreover, it will eliminate the provision requiring the use of a fuel that poses significant environmental problems.

V. Agency's Decision To Terminate Rulemaking To Adopt Additional Performance Requirements

Most commenters requested that the agency delay adopting additional performance requirements for CNG

containers until the industry completes revisions to its current voluntary standard for CNG containers, i.e., ANSI/NGV2, August 1992. The industry is revising and upgrading this standard in an effort to make it more performance based and to harmonize it with the Canadian Standards Association (CSA) standard for CNG fuel containers, B51—Part 2. The revisions are also intended to address additional safety concerns, particularly the failure of two CNG containers on General Motors pickup trucks which occurred in 1994. The commenters stated that these revisions, which will result in significant changes to the current industry standard, are expected to be completed this year.

Similarly, NHTSA received eleven petitions for reconsideration to the September 1994 final rule requesting that the agency delay further rulemaking until the industry completes its current revisions to ANSI/NGV2. The petitioners were Brooklyn Union Gas Company, CGA, Dual Fuel, Inc., Econogas Fleet Systems, Hercules Aerospace Company, AGA/NGVC, Public Service Electric and Gas Company, Natural Gas Pipeline Company of America, Southwest Research Institute, Washington Gas, and The Car Doctor, Inc.

NHTSA has decided to terminate further rulemaking on CNG container performance requirements since the agency anticipates that the new ANSI/NGV2 will be more performance oriented than the existing one on which the SNPRM was based. In addition, waiting until the industry completes its revisions will be consistent with international harmonization since the revisions are expected to make the standard more consistent with the Canadian standard on CNG containers. Waiting until the industry completes its revisions is also consistent with the President's directive on regulatory reform and the agency's efforts to implement that directive.

Once the industry's revisions are completed, the agency will evaluate the revisions and then propose their adoption, as appropriate. The agency believes that in the interim, the safety of CNG containers will not be significantly compromised by not adopting the additional performance requirements. Information gathered by the agency during the development of FMVSS No. 304 indicates that all container manufacturers that commented on the NPRM were either certifying or building their containers to meet the provisions of ANSI/NGV2, including those on which the supplemental performance requirements were based. Further, in its comments to this SNPRM, AAMA stated that available CNG containers already meet the ANSI/NGV2 requirements.

VI. Other Container Issues

A. Reports by Manufacturers

SCI requested that the agency add a requirement to FMVSS No. 304 mandating that container manufacturers report to NHTSA accidents involving their products. SCI stated that this would be similar to the requirement included in DOT exemptions issued by RSPA. SCI also requested that the agency explain its enforcement authority.

NHTSA has no authority to require manufacturers to report accidents involving its products. The agency, through its defect authority, can investigate such accidents to the fullest detail. In addition, NHTSA makes available to manufacturers its enforcement procedures for FMVSSs.

B. Aluminum Containers

FMVSS No. 304 requires that CNG containers be manufactured from materials specified in the standard. Two aluminum alloys are specified in the standard for fuel containers: 6010 and 6061. The Northwest Aluminum Company and Luxfer have petitioned the agency to amend the standard by adding two more aluminums. Northwest requested that alloy 6069 be added to the standard, and Luxfer requested an unspecified aluminum alloy from the 7000 series be included.

NHTSA has decided to delay rulemaking activities on these petitions until it can review the soon-to-be completed new version of the industry standard, ANSI/NGV2. As Luxfer noted in its petition, the new ANSI/NGV2 requirements for CNG fuel containers will be more performance oriented than the current version of the standard. It is possible that the new industry standard will not specify CNG container materials, thereby allowing manufacturers considerably more flexibility to improve container designs with respect to cost and performance. The agency notes that adopting some of the requirements of the new ANSI/NGV2 standard may eliminate the need to add the two new aluminum alloys to the current version of FMVSS No. 304.

VII. Rulemaking Analyses and Notices

A. Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' Further, this action has been determined to be ''nonsignificant'' under the Department of Transportation's regulatory policies and procedures. The agency has decided not to prepare a Final Regulatory Evaluation (FRE) because the impacts of these amendments are so minimal as not to warrant preparation of a full regulatory evaluation. The amendments made in today's final rule are requirements related to the labeling of CNG vehicles and containers, and as such do not result in significant increases in cost. In the FRE for FMVSS No. 304, the agency stated ''The consumer cost for a label on each CNG fuel container certifying that the container meets the proposed equipment requirements is estimated to be in the range of $0.06 to $0.11 per label. This includes the cost of the label plus labor costs for attachment.'' This continues to be the case.

B. Regulatory Flexibility Act

NHTSA has also considered the effects of this rulemaking action under the Regulatory Flexibility Act. Based upon the agency's evaluation, I certify that this rule will not have a significant economic impact on a substantial number of small entities. The amendments will result in only a nominal cost increase resulting from costs associated with requiring some additional labeling information. Information available to the agency indicates that businesses manufacturing CNG fuel containers are not small businesses.

C. Executive Order 12612 (Federalism)

NHTSA has analyzed this rulemaking action in accordance with the principles and criteria contained in Executive Order 12612. NHTSA has determined that the rule will not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

D. National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, NHTSA has considered the environmental impacts of this rule. The agency has determined that this rule will have no adverse impact on the quality of the human environment. Allowing optional fuels in the bonfire test provides testing facilities with the ability to use less environmentally hazardous fuels.

E. Civil Justice Reform

This rulemaking does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor

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

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency is amending Standard No. 303; *Fuel System Integrity of Compressed Natural Gas Vehicles* and Standard No. 304; *Compressed Natural Gas Fuel Container Integrity*, Part 571 at Title 49 of the Code of Federal Regulations as follows:

PART 571—[AMENDED]

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

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

2. Section 571.303 is amended by adding S5.3, S5.3.1 and S5.3.2 and S5.4, to read as follows:

§ 571.303 Standard No. 303, Fuel System Integrity of Compressed Natural Gas Vehicles.

* * * * *

S5.3 Each CNG vehicle shall be permanently labeled, near the vehicle refueling connection, with the information specified in S5.3.1 and S5.3.2 of this section. The information shall be visible to a person standing next to the vehicle during refueling, in English, and in letters and numbers that are not less than 4.76 mm (3/16 inch) high.

S5.3.1 The statement: ''Service pressure _____ kPa (_____ psig).''

S5.3.2 The statement ''See instructions on fuel container for inspection and service life.''

S5.4 When a motor vehicle is delivered to the first purchaser for purposes other than resale, the manufacturer shall provide the purchaser with a written statement of the information in S5.3.1 and S5.3.2 in the owner's manual, or, if there is no owner's manual, on a one-page document. The information shall be in English and in not less than 10 point type.

* * * * *

3. Section 571.304, is amended by revising S7.4, S8.3.2, S8.3.3, S8.3.4, S8.3.6, and S8.3.7 to read as follows:

§ 571.304 Standard No. 304, Compressed Natural Gas Fuel Container Integrity.

* * * * *

S7.4. *Labeling.* Each CNG fuel container shall be permanently labeled with the information specified in paragraphs (a) through (h) of this section. Any label affixed to the container in compliance with this section shall remain in place and be legible for the manufacturer's recommended service life of the container. The information shall be in English and in letters and numbers that are at least 6.35 mm (¼ inch) high.

(a) The statement: ''If there is a question about the proper use, installation, or maintenance of this container, contact_____,'' inserting the *CNG fuel container manufacturer's name, address, and telephone number.*

(b) The statement: ''Manufactured in _____,'' inserting the month and year of manufacture of the CNG fuel container.

(c) The statement: ''Service pressure _____ kPa, (_____psig).''

(d) The symbol DOT, constituting a certification by the CNG container manufacturer that the container complies with all requirements of this standard.

(e) The container designation (e.g., Type 1, 2, 3, 4).

(f) The statement: ''CNG Only.''

(g) The statement: ''This container should be visually inspected after a motor vehicle accident or fire and at least every 12 months or 12,000 miles, whichever comes first, for damage and deterioration in accordance with the Compressed Gas Association (CGA), Arlington VA, Guidelines C–6 and C–6.1 for Type 1 containers and C–6.2 for Types 2 and 3 containers.''

(h) The statement: ''Do Not Use After _____'' inserting the month and year that mark the end of the manufacturer's recommended service life for the container.

* * * * *

S8.3.2 The CNG fuel container is positioned so that its longitudinal axis is horizontal. Attach three thermocouples to measure temperature on the container's bottom side along a line parallel to the container longitudinal centerline. Attach one at the midpoint of the container, and one at each end at the point where the dome end intersects the container sidewall. Subject the entire length to flame impingement, except that the flame shall not be allowed to impinge directly on any pressure relief device. Shield the pressure relief device with a metal plate.

S8.3.3 If the test container is 165 cm (65 inches) in length or less, place it in the upright position. Attach three thermocouples to measure temperature on the container's bottom side along a line which intersects the container longitudinal centerline. Attach one at the midpoint of the bottom of the container, and one each at the point where the dome end intersects the container sidewall. Subject the container to total fire engulfment in the vertical. The flame shall not be allowed to impinge directly on any pressure relief device. For containers equipped with a pressure relief device on one end, the container is positioned with the relief device on top. For containers equipped with pressure relief devices on both ends, the bottom pressure relief device shall be shielded with a metal plate.

S8.3.4 The lowest part of the container is suspended at a distance above the fire such that the container bottom surface temperatures specified in S8.3.6 are achieved.

* * * * *

S8.3.6 The fire is generated by any fuel that maintains a flame temperature between 850 and 900 C for the duration of the test, as verified by each of the three thermocouples in S8.3.2 or S8.3.3.

* * * * *

S8.3.7 The fuel specified in S8.3.6 is such that there is sufficient fuel to burn for at least 20 minutes. To ensure that the sides of the fuel container are exposed to the flame, the surface area of the fire on a horizontal plane is such that it exceeds the fuel container projection on a horizontal plane by at least 20 cm (8 inches) but not more than 50 cm (20 inches).

* * * * *

Issued on: November 16, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–28626 Filed 11–22–95; 8:45 am]

BILLING CODE 4910–59–P

49 CFR Part 571

[Docket No. 93–57; Notice 3]

RIN 2127–AF00

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

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

ACTION: Final rule.

SUMMARY: This document amends Standard No. 108, the Federal motor vehicle safety standard on lighting, to permit replaceable lenses on integral beam and replaceable bulb headlamps that incorporate on-board headlamp aimers, provided that such headlamps meet more rigorous environmental tests. The benefit of headlamps with replaceable lenses is that the lens or reflector could be replaced in the event of breakage of either without the present necessity to replace both components if only one is damaged.

DATES: The amendments are effective December 26, 1995.

FOR FURTHER INFORMATION CONTACT: Patrick Boyd, Office of Rulemaking, NHTSA (202–366–6346).

SUPPLEMENTARY INFORMATION: On August 12, 1993, NHTSA published a Notice of Request for Comments seeking views relevant to a decision on whether to proceed with rulemaking to amend Standard No. 108 to allow the lens to be replaceable on a replaceable bulb headlamp equipped with an on-vehicle aiming device (58 FR 42924). On the basis of comments received, NHTSA published a Notice of Proposed Rulemaking (NPRM) on November 21, 1994, to amend Standard No. 108 in the manner discussed in the Request for Comments, for both integral beam and replaceable bulb headlamps with the on-board aiming feature, provided that such headlamps meet more rigorous environmental tests (59 FR 59975). The reader is referred to those notices (Docket No. 93–57; Notices 1 and 2) for further information on the background of this rulemaking action.

Proposed Amendments

In Notice 2, NHTSA proposed redefinitions of ''integral beam headlamp'' and ''replaceable bulb headlamp'' to clarify that some types of these headlamps need not have a bonded lens reflector assembly, i.e., those with a vehicle headlamp aiming device (VHAD) conforming to Standard No. 108. Under the proposal, each replacement lens would also have to be accompanied by an appropriate replacement seal, and instructions to the user on how to remove and replace the lens, clean the reflector, and seal the lens to the lamp. Manufacturers of replacement lenses would mark them with a DOT symbol which would be the manufacturer's certification that installation of the lens on the headlamp for which it is intended would not create a noncompliance with Standard No. 108. A new section was proposed, S8.10, that would add chemical and corrosion resistance tests for reflectors of replaceable lens headlamps. NHTSA also asked specific questions related to these proposals.

Comments were received from Advocates for Highway and Auto Safety (''Advocates''), American Automobile Manufacturers Association (''AAMA''), Chrysler Corporation (''Chrysler''), Ford Motor Company (''Ford''), General Motors Corporation (''GM''), Koito Manufacturing, Inc. (''Koito''), Mercedes-Benz of North America (''Mercedes''), and Volvo of North America (''Volvo'').

AAMA, Chrysler, Ford, GM, Volvo and Koito supported the proposal in its entirety. Because Mercedes offered a helpful suggestion (discussed below), NHTSA interprets its comment as one of support. Hella, Bosch and VW favored replaceable lenses but opposed requirements for improved reflector durability. Advocates opposed the proposal.

General Comments

In paragraph S8.10.1, NHTSA proposed a chemical resistance test for reflectors which would include lacquer thinner as one of the test fluids. Mercedes suggested that mineral spirits be substituted because lacquer thinner is becoming less common in shops, causes a fire hazard, and may damage plastic reflectors and other parts. NHTSA believes that lacquer thinner is still common in body shops which may be expected to perform lens replacements. However, it is not appropriate to expose the surface of the reflector to a substance likely to attack the plastic base material of the reflector and other lamp components. Therefore, in the final rule, NHTSA is substituting mineral spirits for lacquer thinner. However, it would be appropriate for a manufacturer's lens replacement instructions to warn against the use of cleaning agents that would harm lamp components.

Having conducted the proposed type of corrosion test on a production headlamp, Mercedes also asked that lamps be permitted to be used with replaceable lenses if the lamps either show no visible corrosion damage or continue to meet photometric requirements despite visible corrosion damage. This comment appears based upon the presumption that a one-day salt spray test is equivalent to a reasonable worst case of reflector exposure over the life of a vehicle. However, the agency has no evidence that reflectors which are subject to corrosion will not degrade in service to a greater degree or in more critical locations than do a limited number of samples which have undergone a one-day severe exposure test. If a reflector cannot meet the test criterion of no corrosion visible without magnification, in NHTSA's view there can be no assurance that such a reflector is essentially corrosion-proof for indeterminant exposures before lens replacement after the lens is broken.

Hella, Bosch, and VW opposed requirements for improved reflector durability. These commenters did not dispute the agency's assumption that the reflectors of present replaceable bulb headlamps may degrade when lens integrity is lost. However, they believe that new lenses will not be installed on lamps with degraded reflectors, because either the dealer will refuse to do so or the owner, guided by the operator's manual, will not seek it. For much the same reasons, VW doubts that an aftermarket demand for headlamp lenses will develop. NHTSA disagrees with these comments. The rationale behind this rulemaking is to afford a less expensive way of repairing headlamp damage, by replacement of the lens alone rather than the entire lens reflector assembly. The potential savings create an incentive on the part of the vehicle owner to minimize replacement costs, and on the part of dealers or repair shops to meet the vehicle owner's demands.

Advocates opposed the proposal. In its opinion, NHTSA's amendments of Standard No. 108 since 1983 have reduced headlamp safety and thus is reluctant to see another final rule which continues the trend. It states that ''the agency has nothing in the record of this rulemaking assessing the safety consequences of its proposed amendment to permit replaceable lenses.'' Terming NHTSA's intended rulemaking effect as ''safety-neutral'', Advocates comments that the agency's arguments are speculative and that NHTSA assumes that ''its additional testing requirements coupled with good-faith installation design innovations and directions to consumers will somehow offset any increase in detrimental safety consequences.'' Advocates argues that these assumptions are ''devoid of support in the record and, therefore, would be considered by the courts to be

conclusory.'' In Advocates' view, ''where a pending decision arguably has direct implications for vehicle and traffic safety, the agency must evaluate the issue with sufficient empirical evidence in the record to support its decision.'' In support of this argument, it cites *Advocates for Highway and Auto Safety* v. *Federal Highway Administration,* 28 F.3d 1288 (D.C. Cir. 1994) at 1294, quoting *Competitive Enterprise Institute* v. *Nat'l Highway Traffic Safety Admin.,* 956 F.2d 321 (D.C. Cir. 1992): ''The (agency), however, cannot 'ma[ke] conclusory assertions that its decision have no safety impact at all'.''

In responding to Advocates, NHTSA first observes that neither of the cases cited above construed the National Traffic and Motor Vehicle Safety Act, whose successor, 49 U.S.C. Chapter 301, is the authority for the present rulemaking. The former case involves actions of the Federal Highway Administration; the latter, actions under this agency's statutory provisions relating to fuel economy standards.

Under Chapter 301, NHTSA's Federal motor vehicle safety standards are ''minimum standards for motor vehicle or motor vehicle equipment performance'', and must ''meet the need for motor vehicle safety.'' Federal Motor Vehicle Safety Standard No. 108 requires motor vehicles to have headlighting systems meeting specified safety performance levels. A headlamp system may consist of sealed beam headlamps (a manufacturer may choose between seven different systems), replaceable bulb headlamps (at least six different types at present), combination headlamp systems (a mixture of sealed beam and replaceable bulb headlamps), and integral beam headlamps (headlamps other than sealed beam or replaceable bulb types). The Standard formerly contained design specifications which restricted headlamps to two sizes of sealed beam headlamps. NHTSA has only permitted an additional type of headlamp system after first satisfying itself that the new system would provide at least the same minimum level of safety performance required of those existing systems that are certified as meeting Standard No. 108. In this sense, NHTSA's headlamp rulemakings have indeed been ''safety neutral.''

The present rulemaking carves out a very narrow exception to the existing requirement that replaceable bulb headlamps and integral beam headlamps have lenses bonded to the reflector assembly. To ensure that the amended standard continues to ''meet the need for motor vehicle safety,'' NHTSA has imposed requirements to counter any potential negative effects upon safety. First, to ensure the ability of a headlamp to be aimed properly after lens replacement, the amendment is restricted to headlamps with on-board aiming devices. Second, to ensure the ability to install properly a replacement lens, the lens manufacturer is required to provide instructions for the removal and replacement of the lens, the cleaning of the reflector, and the sealing of the replacement lens to the reflector assembly. Finally, to ensure the integrity of the reflector after exposure in an unsealed environment, new durability tests are prescribed for the reflector.

NHTSA agrees that it does not have empirical evidence indicating how headlamps designed to conform to Standard No. 108 would perform with replaceable lenses. Such evidence is not available because headlamps with replaceable lenses have not been permitted in the United States. The agency believes that the requirements for on-board aiming devices, instructions, and durability testing contained in the final rule will result in an overall level of safety that is not less than the level of safety provided by headlamps with non-replaceable lenses. NHTSA believes that the discussions and analysis in this rulemaking action provide adequate support for the amendment.

The following discussion centers around four questions NHTSA asked in the proposal and the responses received. The discussion also indicates the points at which the final rule responds to these comments.

1. Whether the moisture of the ASTM B 117–73 salt spray test, when conducted for 24 hours, is sufficient to test the moisture resistance of headlamp reflectors. If not, what test would be sufficient?

Because a cracked lens frequently causes a lamp to partially fill with water, NHTSA proposed a salt spray test to be conducted on a headlamp with its lens removed. In its response to the previous request for comments (58 FR 42924), Ford cited separately the need to test for corrosion resistance and for moisture resistance. Since the corrosion test proposed by the agency features considerable moisture, NHTSA asked if that test would also satisfy the need for testing moisture resistance for aspects other than corrosion. Ford commented that the moisture content and duration of the proposed corrosion test was indeed sufficient to test for moisture resistance.

2. Whether the proposed corrosion test is also acceptable to demonstrate the abrasion resistance of headlamp reflectors.

The dust test that applies to replaceable bulb headlamps utilizes Portland cement as the agent. But it is conducted on the outside of lamps with the lens and bulbs in place. The abrasion of principal concern in this instance would occur when the reflector was being cleaned in the process of replacing the lens. In the belief that the proposed corrosion test would coat the reflector with salt deposits, and that the subsequent cleaning would provide the appropriate abrasion test, NHTSA asked whether, in fact, a 24-hour salt spray test would deposit enough salt for this purpose, and whether a particular method of salt removal should be specified or left to the manufacturer's instructions included with a replacement lens. The agency also asked whether both a Portland cement dust test and corrosion test should be conducted. It also asked whether a direct abrasion test would be more appropriate (contrasted with the indirect one of cleaning an agent from the reflector), and, if so, what procedure would be appropriate.

Ford concurred in the agency's belief that the salt spray test alone would be adequate to demonstrate abrasion resistance. It also commented that the salt should be removed according to the manufacturer's instructions to consumers for cleaning reflectors. Koito commented that the corrosion and chemical resistance tests could substitute for a dust test. Mercedes also concurred, with the comment that it found the deposited salts difficult to remove (and NHTSA found evidence of scratches on the reflector that Mercedes had cleaned). This comment confirms NHTSA's belief that the proposed test is adequate to demonstrate abrasion resistance of the reflector, and is amending the standard as proposed.

Although the standard is being amended to specify salt removal according to the manufacturer's instructions, the agency will reconsider the point if the instructions impose unrealistic burdens upon consumers or serve to defeat the intent of the test. Examples of such instructions are ones that would call for the removal of the headlamp from the vehicle for cleaning the reflector or for the use of methods, such as ultrasonic cleaning, which are unrealistically gentle.

3. Whether the duration of the proposed test is sufficient to test reflectors and the metal light shields sometime used; appropriate criteria for testing light shields; stains from corroded light shields.

Ford commented that it had no specific test data using the proposed corrosion test procedure for headlamp reflectors, but that it believed such a test would be sufficient to provide adequate assurance that the reflective surface is robust enough to withstand exposure to environmental conditions due to a cracked or otherwise damaged lens. The sufficiency of the proposed test appears borne out by the fact that the Mercedes lamp did not meet the test criterion after being subjected to the 24-hour salt spray and 48-hour drying time.

Ford commented that rusty water stains would most likely affect the bottom of the reflector which has little influence on the beam. However, NHTSA's random observation of headlamps on vehicles in use show clear examples in which a corroded light shield has deposited extensive rust stains over the active part of the reflector as well as at the bottom. Even a small puncture of the lens can result in sufficient water entering the headlamp to splash over and stain much of the reflector if rust is present. Thus, NHTSA is adopting its proposed prohibition on metal light shield corrosion.

Koito remarked that the beam is mostly insensitive to light shield corrosion and that corrosion within ⅛ inch of sharp edges should be discounted. Koito also asked that NHTSA define the optical surface of the reflector to exclude parts that do not contribute to the headlamp beam and parts which affect other lighting functions.

The agency agrees with Koito that the NPRM was not specific enough about the area of the reflector to be inspected for corrosion. Certainly the back of the reflector and parts covered by the lamp body have no optical role even though they may have a shiny plating. But it would be unwise to define the important parts of the reflector too narrowly. Parts that are blacked out, for example, would cause glare if their finish were lost to corrosion. A reasonable specification of the part of the reflector to be inspected includes all areas of the reflector exposed to light from the headlamp light source. Thus, with respect to integral beam headlighting systems, NHTSA is amending S7.4(g)(3) as proposed, but adding the requirement that after corrosion tests conducted in accordance with S8.10.2, ''there shall be no evidence of corrosion or rust visible without magnification on any part of the headlamp reflector that receives light from a headlamp light source, on any metal light or heat shield assembly, or on a metal reflector of any other lamp not sealed from the headlamp reflector.'' The prohibitions against metal corrosion are intended to prevent the staining of otherwise satisfactory reflectors.

4. Whether the present salt spray test of replaceable bulb headlamps with lenses attached is sufficient to qualify reflectors for use with replaceable lenses without further environmental testing.

Ford commented that the present test is likely to be insufficient to replicate the possible exposure of lamps with damaged lenses prior to repair since it is conducted with the lens attached, thus sparing the reflector direct exposure to the elements. NHTSA agrees, and finds this a further reason in support of the corrosion and abrasion resistance tests adopted in the final rule.

Hella, Bosch, and VW commented that improved reflectors are not necessary because warnings placed in the owners manual and the actions of dealers are sufficient to prevent the releasing of degraded lamps. NHTSA disagrees with these comments; as was noted above, a vehicle owner is more likely to replace a lens than a lens reflector assembly because of cost savings. Therefore, an improved reflector is required to assure its ability to resist exposure to the environment during the period of lost lens integrity.

Advocates had criticized the minimum ''above-horizontal'' illumination requirements established by the agency for 1994 and newer model vehicle headlamps as providing poorer performance than that of sealed beam headlamps. It opposed lens replacement on the basis of a potential for a further reduction in ''above-horizontal'' illumination which it believed would result from deviations in lens alignment during replacement. Bosch submitted data demonstrating that repeated lens changes did not change the photometrics of the lamp; this should allay Advocates' concern, as should a comment by Osram Sylvania that headlamp photometry is not sensitive to the slight misalignments possible during lens replacement. Although Osram Sylvania had other criticisms of replaceable lenses, it reported that common design practices for replaceable bulb headlamps limit the sensitivity of photometric performance to lens misalignment and that replacement lenses need not be identical to original lenses to maintain equivalent photometric performance.

Effective Date

The effective date of the final rule is December 26, 1995. Because the final rule permits an option to an existing requirement, and an early effective date will permit the benefits of the final rule to be immediately available, it is hereby found for good cause shown that an effective date for the amendments to Standard No. 108 that is earlier than 180 days after their issuance is in the public interest.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This action has not been reviewed under Executive Order 12866. It has been determined that the rulemaking action is not significant under Department of Transportation regulatory policies and procedures. The purpose of the rulemaking action is to afford a further optional means of compliance with the headlamp requirements of Standard No. 108. While the final rule may result in higher prices attributable to an improved reflector, NHTSA believes that this will not add more than a few dollars to the retail price of the type of headlamp which presently costs $250 to $600. This initial cost increase could be more than offset by reduced repair costs during the life of the vehicle or the headlamp. These cost impacts are so minimal that the preparation of a full regulatory evaluation is not warranted.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. It is not anticipated that the final rule based will have a significant effect upon the environment. The design and composition of headlamps which take advantage of this option may change from those presently in production but it is anticipated that the kind of materials used will be the same.

Regulatory Flexibility Act

The agency has also considered the impacts of this rulemaking action in relation to the Regulatory Flexibility Act. I certify that this rulemaking action will not have a significant economic impact upon a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles and headlamps, those affected by the rulemaking action, are generally not small businesses within the meaning of the Regulatory Flexibility Act. While the price of new vehicle equipment might be somewhat higher if the optional headlamp is used, the cost of repair of such equipment will be significantly lessened.

Executive Order 12612 (Federalism)

This rulemaking action has also been analyzed in accordance with the principles and criteria contained in

Executive Order 12612, and NHTSA has determined that this rulemaking action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice

This final rule has no retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 30163 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

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

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

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

§ 571.108 [Amended]

2. Section 571.108 is amended as follows:

a. The definitions of ''Integral Beam Headlamp'' and ''Replaceable Bulb Headlamp'' in Paragraph S4 are revised as set forth below.

b. Paragraphs S5.8.11, S7.2(e), S8.10.1 and S8.10.2 are added to read as set forth below.

c. Paragraphs S7.4(g), S7.4(h)(2), S7.4(h)(3), S7.5(h), and S8.1 are revised to read as set forth below.

§ 571.108 Standard No. 108 Lamps, reflective devices, and associated equipment.

* * * * *

S4. *Definitions.*

* * * * *

Integral Beam Headlamp means a headlamp (other than a standardized sealed beam headlamp designed to conform to paragraph S7.3 or a replaceable bulb headlamp designed to conform to paragraph S7.5) comprising an integral and indivisible optical assembly including lens, reflector, and light source, except that a headlamp incorporating a vehicle headlamp aiming device conforming to S7.8.5.2 may have a lens designed to be replaceable. An ''integral beam headlamp'' may incorporate light sources that are replaceable that are used for purposes other than headlighting.

* * * * *

Replaceable bulb headlamp means a headlamp comprising a bonded lens reflector assembly and one or two replaceable headlamp light sources, except that a headlamp incorporating a vehicle headlamp aiming device conforming to S7.8.5.2 may have a lens designed to be replaceable. A ''replaceable bulb headlamp'' may incorporate light sources that are replaceable that are used for purposes other than headlighting.

* * * * *

S5.8 *Replacement equipment.*

* * * * *

S5.8.11 A replacement lens for a replaceable bulb headlamp or an integral beam headlamp that is not required to have a bonded lens shall be provided with a replacement seal in a package that includes instructions for the removal and replacement of the lens, the cleaning of the reflector, and the sealing of the replacement lens to the reflector assembly.

S7 *Headlighting requirements.*

* * * * *

S7.2(a) * * *

* * * * *

(e) Each replacement headlamp lens with seal, provided in accordance with S5.8.11, when installed according to the lens manufacturer's instructions on an integral beam or replaceable bulb headlamp, shall not cause the headlamp to fail to comply with any of the requirements of this standard. Each replacement headlamp lens shall be marked with the symbol ''DOT'', either horizontally or vertically, to constitute certification. Each replacement headlamp lens shall also be marked with the manufacturer and the part or trade number of the headlamp for which it is intended, and with the name and/or trademark of the lens manufacturer or importer that is registered with the U.S. Patent and Trademark Office. Nothing in this paragraph shall be construed to authorize the marking of any such name and/or trademark by one who is not the owner, unless the owner has consented to it.

* * * * *

S7.4 *Integral Beam Headlighting System.* * * *

* * * * *

(g) A headlamp with a glass lens need not meet the abrasion resistance test (S8.2). A headlamp with a nonreplaceable glass lens need not meet the chemical resistance test (S8.3). A headlamp with a glass lens and a non-plastic reflector need not meet the internal heat test of paragraph S8.6.2. A headlamp of sealed design as verified in paragraph S8.9 (sealing) need not meet the corrosion (S8.4), dust (S8.5), or humidity (S8.7) tests; however, the headlamp shall meet the requirements of paragraphs 4.l, 4.l.2, 4.4 and 5.l.4 for corrosion and connector of SAE Standard J580 DEC86 *Sealed Beam Headlamp Assembly.* An integral beam headlamp may incorporate light sources that are replaceable and are used for purposes other than headlighting.

(h) * * *

* * * * *

(2) After the chemical resistance tests of paragraphs S8.3 and S8.10.1, the headlamp shall have no surface deterioration, coating delamination, fractures, deterioration of bonding or sealing materials, color bleeding or color pickup visible without magnification, and the headlamp shall meet the photometric requirements applicable to the headlamp system under test.

(3) After a corrosion test conducted in accordance with paragraph S8.4, there shall be no evidence of external or internal corrosion or rust visible without magnification. After a corrosion test conducted in accordance with paragraph S8.10.2, there shall be no evidence of corrosion or rust visible without magnification on any part of the headlamp reflector that receives light from a headlamp light source, on any metal light or heat shield assembly, or on a metal reflector of any other lamp not sealed from the headlamp reflector. Loss of adhesion of any applied coating shall not occur more than 0.l25 in. (3.2 mm) from any sharp edge on the inside or outside. Corrosion may occur on terminals only if the current produced during the test of paragraph S8.4(c) is not less than 9.7 amperes.

* * * * *

S7.5 *Replaceable Bulb Headlamp System.* * * *

* * * * *

(h) The system shall be aimable in accordance with paragraph S7.8.

* * * * *

S8 *Tests and Procedures for Integral Beam and Replaceable Bulb Headlighting Systems.* * * *

S8.1 *Photometry.* Each headlamp to which paragraph S8 applies shall be tested according to paragraphs 4.1 and 4.1.4 of SAE Standard J1383 APR85 for meeting the applicable photometric requirements, after each test specified in paragraphs S8.2, S8.3, S8.5, S8.6.1, S8.6.2, S8.7, and S8.10.1 and S8.10.2, if

applicable. A ¼ degree reaim is permitted in any direction at any test point.

* * * * *

S8.10 *Chemical and corrosion resistance of reflectors of replaceable lens headlamps.*

S8.10.1 *Chemical resistance.* (a) With the headlamp in the headlamp test fixture and the lens removed, the entire surface of the reflector that receives light from a headlamp light source shall be wiped once to the left and once to the right with a 6-inch square soft cotton cloth (with pressure equally applied) which has been saturated once in a container with 2 ounces of one of the test fluids listed in paragraph (b). The lamp shall be wiped within 5 seconds after removal of the cloth from the test fluid.

(b) The test fluids are:

(1) Tar remover (consisting by volume of 45% xylene and 55% petroleum base mineral spirits);

(2) Mineral spirits; or

(3) Fluids other than water contained in the manufacturer's instructions for cleaning the reflector.

(c) After the headlamp has been wiped with the test fluid, it shall be stored in its designed operating attitude for 48 hours at a temperature of 73°F ± 7° (23°C ± 4°) and a relative humidity of 30 ± 10 percent. At the end of the 48-hour period, the headlamp shall be wiped clean with a soft dry cotton cloth and visually inspected.

S8.10.2 *Corrosion.* (a) The headlamp with the lens removed, unfixtured and in its designed operating attitude with all drain holes, breathing devices or other designed openings in their normal operating positions, shall be subjected to a salt spray (fog) test in accordance with ASTM B117–73, *Method of Salt Spray (Fog) Testing,* for 24 hours, while mounted in the middle of the chamber.

(b) Afterwards, the headlamp shall be stored in its designed operating attitude for 48 hours at a temperature of 73°F ± 7° (23°C ± 4°) and a relative humidity of 30 ± 10 percent and allowed to dry by natural convection only. At the end of the 48-hour period, the reflector shall be cleaned according to the instructions supplied with the headlamp manufacturer's replacement lens, and inspected. The lens and seal shall then be attached according to these instructions and the headlamp tested for photometric performance.

* * * * *

Issued on: November 16, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–28625 Filed 11–22–95; 8:45 am]

BILLING CODE 4910–59–P

49 CFR Part 591

[Docket No. 89–5; Notice 16]

RIN 2127–AG13

Importation of Vehicles and Equipment Subject to Federal Safety, Bumper and Theft Prevention Standards

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

ACTION: Final rule; response to petition for reconsideration.

SUMMARY: This notice responds to a petition for reconsideration of a final rule which amended Part 591 to adopt a continuous entry bond as an alternative to the single entry bond that is otherwise required to accompany the permanent importation of nonconforming motor vehicles to ensure their eventual compliance with the Federal motor vehicle safety standards. The provisions regarding the new bond are amended in minor respects to reflect the bond's true nature as a bond covering more than one vehicle under a single entry.

DATES: The final rule is effective December 26, 1995.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA (202–366–5263).

SUPPLEMENTARY INFORMATION: On October 14, 1994, NHTSA adopted a final rule on amendments to the entry bonds required by 49 CFR Part 591 to accompany the permanent importation of nonconforming motor vehicles to ensure their eventual compliance with the Federal motor vehicle safety standards (Docket No. 89–5; Notice 15, 59 FR 52095). That notice responded to a request for comments on an interim final rule published on June 20, 1994 (Docket No. 89–5; Notice 13, 59 FR 31558). The reader is referred to those notices for further information.

These rulemaking actions amended 49 CFR Part 591 to adopt a continuous entry bond with a value of up to $1,000,000 (Appendix B, 49 CFR Part 591) as an alternative to single entry bonds (Appendix A). Heretofore, each motor vehicle that was imported into the United States and that did not conform to all applicable Federal motor vehicle safety standards was admitted pursuant to a separate bond. To simplify importation procedures and the cost of doing business, Registered Importers asked NHTSA to allow entry of vehicles pursuant to a continuous entry bond. This would allow importation of an indeterminate number of vehicles under a single bond, thereby avoiding the necessity of having to obtain a separate bond for each vehicle. NHTSA agreed, and amended Part 591 in what it believed to be a manner responsive to the concerns expressed.

The Surety Association of America (''Surety''), which describes itself as ''a service organization supported by more than 650 member companies which collectively write the majority of all surety bonds written in the United States'', submitted a letter asking for clarification of Notice 15. In its view, the bond that NHTSA adopted was simply a ''schedule'' type bond, one that accommodates more than one vehicle on the same entry, rather than an ''umbrella'' type of bond covering multiple vehicles and multiple entries. Since the request was received during the period in which petitions for reconsideration could be submitted, and since the request asks for relief in the manner of a petition, the agency has treated the request as a petition for reconsideration.

Surety offered to assist NHTSA in developing a true blanket or continuous entry bond. At the agency's request, it presented one. The principal drawback to this type of bond, from NHTSA's viewpoint, is that it falls upon the Obligee (NHTSA) to monitor the bond to ensure that the aggregate sum, or ceiling, is not exceeded by the number of vehicles under its coverage at any single point in time. After review, NHTSA decided that this would increase the burden upon NHTSA's import compliance staff at a time when it is attempting to streamline the importation process and provide a more responsive service to importers, registered and otherwise. Neither Surety nor NHTSA are aware of any complaints from registered importers that the Appendix B bond is unsuitable for them in the form adopted. While a true continuous entry bond covers importations through any port of entry, the ''schedule'' bond relates to a single entry of a multiple number of vehicles through a single port. This appears to be the way that registered importers are doing business—importing vehicles through one port of entry. On balance, then, there appears to be no reason to adopt a true continuous entry bond when there is no demonstrated need for it and its adoption would impair the ability of NHTSA to process new entries in a timely manner.

Surety pointed out that the utility of the Appendix B Bond as a ''schedule'' or multiple vehicle type bond could be enhanced by a clearer indication on the bond form where the information identifying the vehicles should be inserted. It also called the agency's attention to a typographical error in

paragraph 3 of the ''Now Therefore'' clause, that the principal shall not release a vehicle before the 30th calendar day, if the principal has received written notice from the Administrator that ''no'' inspection is required. The correct word is ''an''. Appendix B is modified to reflect these two comments. Conforming amendments are also made to 49 CFR 591.6(c).

As written, both Appendix A and Appendix B permit a Registered Importer to import a single vehicle under their respective bond provisions (Appendix A also specifies the bond for individuals importing a single vehicle pursuant to a contract with a Registered Importer). Because this is redundant, and because the terms and obligations affecting the importation of a single vehicle by a Registered Importer are identical under both forms of bonds, NHTSA is also amending Appendix B to remove references to the importation of a single vehicle.

Effective Date

NHTSA has received no bonds in the form of Appendix B adopted in October 1994 and is therefore making this amendment effective 30 days after publication. Because of the need to ensure an uninterrupted flow of commerce, and because the rule imposes no additional burden upon any party, it is hereby found that an effective date earlier than 180 days after issuance is in the public interest, and the final rule is effective 30 days after publication in the Federal Register.

Rulemaking Analyses

A. Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

This notice has not been reviewed under E.O. 12866. After considering the impacts of this rulemaking action, NHTSA has determined that the action is not significant within the meaning of the Department of Transportation regulatory policies and procedures. The only substantive change that this final rule makes is to remove a redundancy in bond availability to registered importers. The impacts are so minimal as not to warrant the preparation of a full regulatory evaluation.

B. Regulatory Flexibility Act

The agency has also considered the effects of this action in relation to the Regulatory Flexibility Act. The RIs are small businesses within the meaning of the Regulatory Flexibility Act. However, for the reasons discussed above under E.O. 12866 and the DOT Policies and Procedures, I certify that this action would not have a significant economic impact upon ''a substantial number of small entities.'' The removal of an option has no substantive effect since the obligation is identical whether or not the option exists. Governmental jurisdictions will not be affected at all since they are generally neither importers nor purchasers of nonconforming imported motor vehicles.

C. Executive Order 12612 (Federalism)

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

D. National Environmental Policy Act

NHTSA has analyzed this action for purposes of the National Environmental Policy Act. The action will not have a significant effect upon the environment because it is anticipated that the annual volume of motor vehicles imported will not vary significantly from that existing before promulgation of the rule.

E. Civil Justice Reform

This final rule will not have any retroactive effect. Under 49 U.S.C. 30103), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. A procedure is set forth in 49 U.S.C. 30161 for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 591

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR part 591 is amended as follows:

PART 591—IMPORTATION OF VEHICLES AND EQUIPMENT SUBJECT TO FEDERAL SAFETY, BUMPER, AND THEFT PREVENTION STANDARDS

1. The authority citation for part 591 is revised to read as follows:

Authority: Pub. L. 100–562, 49 U.S.C. 322(a), 30117; delegation of authority at 49 CFR 1.50.

2. Section 591.4 is amended by revising the introductory text to read as follows:

§ 591.4 Definitions.

All terms used in this part that are defined in 49 U.S.C. 30102, 32101, 32301, 32502, and 33101 are used as defined in those sections except that the term ''model year'' is used as defined in part 593 of this chapter.

* * * * *

3. Section 591.6 is amended by revising paragraph (c) to read as set forth below:

§ 591.6 Documents accompanying declarations.

* * * * *

(c) A declaration made pursuant to paragraph § 591.5(f), and under a bond for the entry of a single vehicle, shall be accompanied by a bond in the form shown in Appendix A, in an amount equal to 150% of the dutiable value of the vehicle, or, if under bond for the entry of more than one vehicle, shall be accompanied by a bond in the form shown in Appendix B and by Customs Form CF 7501, for the conformance of the vehicle(s) with all applicable Federal motor vehicle safety and bumper standards, or, if conformance is not achieved, for the delivery of such vehicle to the Secretary of the Treasury for export at no cost to the United States, or for its abandonment.

* * * * *

Appendix A—Section 591.5(f) Single Entry Bond

5. The title of Appendix A is revised to read as follows:

Appendix A—Section 591.5(f) Bond for the Entry of a Single Vehicle

6. Appendix B is revised to read as follows:

Appendix B—Section 591.5(f) Bond for the Entry of More Than a Single Vehicle

Department of Transportation—National Highway Traffic Safety Administration—Bond To Ensure Conformance With U.S. Federal Motor Vehicle Safety and Bumper Standards

(To redeliver vehicles, to produce documents, to perform conditions of release, such as to bring vehicles into conformance with all applicable U.S. Federal motor vehicle safety and bumper standards)

Know All People by These Presents That [principal's name, mailing address which includes city, state, ZIP code, and state of incorporation if a corporation], as principal, and [surety's name, mailing address which includes city, state, ZIP code and state of incorporation] are held and firmly bound unto the UNITED STATES OF AMERICA in the sum of [bond amount in words] dollars (§ [bond amount in numbers]) which represents 150% of the entered value of the following described motor vehicle(s) as determined by the U.S. Customs Service:

[model year, make, series, engine and chassis number of each vehicle]

for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns (jointly and severally), firmly by these presents

WITNESS our hands and seals this _____ day of _____, 199____

WHEREAS, motor vehicles may be entered under the provisions of 49 U.S.C. 30112 and 49 U.S.C. 32506; and

WHEREAS, pursuant to 49 CFR part 591, a regulation promulgated under the provisions of 49 U.S.C. 30112, the above-bounden principal desires to import permanently the motor vehicles described above, which are motor vehicles that were not originally manufactured to conform with the Federal motor vehicle safety and bumper standards; and

WHEREAS, pursuant to 49 CFR part 592, a regulation promulgated under the provisions of 49 U.S.C. 30112, the above bounden principal has been granted the status of Registered Importer of motor vehicles not originally manufactured to conform with the Federal motor vehicle safety standards; and

WHEREAS, pursuant to 49 CFR part 593, a regulation promulgated under the provisions of 49 U.S.C. 30112, the Administrator of the National Highway Traffic Safety Administration has determined that each of the motor vehicles described above is eligible for importation into the United States; and

WHEREAS, the motor vehicles described above have been imported at the port of [name of port of entry], and entered at said port for consumption on entry No. _____ dated _____, 199____,

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT—

(1) The above-bounden principal (''the principal''), in consideration of the permanent admission into the United States of the motor vehicles described above, voluntarily undertakes and agrees to have such vehicles brought into conformity with all applicable Federal motor vehicle safety and bumper standards within a reasonable time after such importation, as specified by the Administrator of the National Highway Traffic Safety Administration (the ''Administrator'');

(2) For each vehicle described above (''such vehicle''), the principal shall then file, with the Administrator, a certificate that such vehicle complies with each Federal motor vehicle safety standard in the year that such vehicle was manufactured and which applies in such year to such vehicle, and that such vehicle complies with the Federal bumper standard (if applicable);

(3) The principal shall not release custody of any vehicle to any person, or license or register the vehicle, from the date of entry until 30 calendar days after it has certified compliance of such vehicle to the Administrator, unless the Administrator notifies the principal before 30 days that (s)he has accepted such certification and such vehicle and all liability under this bond for such vehicle may be released, except that no such release shall be permitted, before or after the 30th calendar day, if the principal has received written notice from the Administrator that an inspection of such vehicle will be required, or that there is reason to believe that such certification is false or contains a misrepresentation.

(4) And if the principal has received written notice from the Administrator that an inspection of such vehicle is required, the principal shall cause such vehicle to be available for inspection, and such vehicle and all liability under this bond for such vehicle shall be promptly released after completion of an inspection showing no failure to comply. However, if the inspection shows a failure to comply, such vehicle and all liability under this bond for such vehicle shall not be released until such time as the failure to comply ceases to exist;

(5) And if the principal has received written notice from the Administrator that there is reason to believe that such certificate is false or contains a misrepresentation, such vehicle and all liability under this bond for such vehicle shall not be released until the Administrator is satisfied with such certification and any modification thereof;

(6) And if the principal has received written notice from the Administrator that such vehicle has been found not to comply with all applicable Federal motor vehicle safety and bumper standards, and written demand that such vehicle be abandoned to the United States, or delivered to the Secretary of the Treasury for export (at no cost to the United States), the principal shall abandon such vehicle to the United States, or shall deliver such vehicle, or cause such vehicle to be delivered to, the custody of the District Director of Customs of the port of entry listed above, or any other port of entry, and shall execute all documents necessary for exportation of such vehicle from the United States, at no cost to the United States; or in default of abandonment or redelivery after proper notice by the Administrator for the principal, the principal shall pay to the Administrator an amount equal to 150% of the entered value of such vehicle as determined by the U.S. Customs Service;

Then this obligation shall be void; otherwise it shall remain in full force and effect. [At this point the terms agreed upon between the principal and surety for termination of the obligation may be entered]

Signed, sealed and delivered in the presence of

_____

PRINCIPAL: (name and address)

_____

(Signature) (SEAL)

_____

(Printed name and title)

_____

SURETY: (name and address)

_____

(Signature)

_____

(Printed name and title)

Issued on: November 16, 1995.

Ricardo Martinez,

Administrator.

[FR Doc. 95–28539 Filed 11–22–95; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 95–0822210–5265–02; I.D. 081195A]

RIN 0648–AH94

Summer Flounder Fishery; Amendment 7

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 7 to the Fishery Management Plan for the Summer Flounder Fishery. This amendment revises the fishing mortality rate reduction schedule for summer flounder, by extending for 2 years the time at which the final fishing mortality rate goal is reached. The rule continues the rebuilding of summer flounder stock abundance under a schedule that reduces short-term economic losses for participants in the fishery.

EFFECTIVE DATE: December 22, 1995.

ADDRESSES: Copies of Amendment 7, the environmental assessment, the regulatory impact review (RIR), and final regulatory flexibility analysis (FRFA) are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 S. New Street, Dover, DE 19901-6790.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, 508–281–9221.

SUPPLEMENTARY INFORMATION:

Background

Amendment 7 was prepared by the Mid-Atlantic Fishery Management Council (Council) in consultation with the Atlantic States Marine Fisheries Commission (ASMFC) and the New England and South Atlantic Fishery Management Councils. A proposed rule to implement the amendment was published in the Federal Register on September 5, 1995 (60 FR 46105). The amendment revises management of the summer flounder (*Paralichthys dentatus*) fishery pursuant to the Magnuson Fishery Conservation and Management Act, as amended (Magnuson Act).

Background concerning the development of the management measures contained in Amendment 7 and the reasons they were adopted by

the Council were provided in the preamble of the proposed rule and are not repeated here.

NMFS approved Amendment 7, which revises the target fishing mortality rate (F) reduction schedule to allow for more stable landings from 1 year to the next. The amendment will reduce short-term economic burdens on the industry, yet slow the rate of stock rebuilding only slightly. The revised schedule for the fishing mortality rate reductions requires a reduction from the 1995 target (F = 0.53) to 0.41 in 1996, 0.3 in 1997, and F_{max} (0.23) in 1998 and beyond. In addition, this rule specifies that the quota for 1996 and 1997 may not exceed 18.51 million lb (8,396 mt). This cap on the quota could result in an F in 1996 and 1997 that is lower than 0.41 and 0.3, respectively, but could not exceed these values. A quota level above the cap could be set in 1996 or 1997, but only if the resulting quota had an associated F of 0.23.

Data from the updated stock assessment for summer flounder for 1995 from the 20th Stock Assessment Workshop (SAW) indicate that the stock is in better condition than it appeared in 1994. A strong year class in 1994 will allow a more rapid rebuilding of the spawning stock biomass while allowing moderate amounts of catch. As a result, the revised rebuilding strategy will provide some short-term relief to the industry without seriously compromising conservation.

Comments and Responses

Six comments were received from industry associations, state agencies, conservationist organizations, and various individuals in favor of the amendment. Five of those commenters opposed the 18.51 million lb (8,396 mt) quota cap. The Center for Marine Conservation (CMC) commented that they oppose the amendment.

Comment: The State of North Carolina supports the amendment because it strikes a balance between achieving the necessary fishing mortality reduction, alleviating economic hardship on the fishing industry, and lending stability to the fishery.

Response: NMFS agrees with this assessment.

Comment: The East Coast Fisheries Federation, the United National Fishermen's Association, the Seafarers International Union (SIU), Jones Inlet Packing Co., and the North Carolina Fisheries Association all support the amendment's reevaluation of the fishing mortality reduction schedule, but do not support the 18.51 million lb (8,396 mt) cap on the quota in 1996–97. Several commenters question the selection of 18.51 million lb (8,396 mt) as the cap value, and SIU notes that the cap value would be higher if new stock assessment information were used. One commenter added that 18.51 million lb (8,396 mt) should be set as the minimum quota level, rather than the maximum.

Response: The Council established the cap as a mechanism to provide the industry with stable and predictable landings over time, while still ensuring attainment of the target fishing mortality rate in 1998. The cap may be exceeded if the quota specified has an associated F of 0.23, that is, attains F_{max} prior to 1998.

The Council and ASMFC are aware that if the summer flounder stock size is larger than projected by the assessment, a cap of 18.51 million lb (8,396 mt) could result in an associated F that is lower than the targets established for 1996 and 1997. If good recruitment occurs in 1994, 1995, and 1996, and if the target F is reached in 1995 (0.53), the cap could result in a F of 0.23 as early as 1997. The Council established the cap with the intent that under these circumstances, quotas constrained by the cap will accelerate recovery of the summer flounder stock. This ''banking'' of fish will ensure that stock sizes will be large enough the following years to support stable quota levels even in the event of lower than expected recruitment.

The 18.51 million lb (8,396 mt) value was calculated during the development of Amendment 7 when the Council examined an alternative that called for a constant quota for the years 1996 through 1998 that will result in F_{max} (0.23) in 1998. This projection of 18.51 million lb (8,396 mt) was based on the best scientific information available at the time, the results of the 1994 summer flounder stock assessment. The Council realized that spawning stock biomass for summer flounder might increase after adoption of the cap, and the value chosen reflects its intention to better ensure that its final fishing mortality rate goal is reached by 1998, rather than sometime thereafter. According to guidelines of the national standards (50 CFR part 602), the Council is entitled to bring the development of an amendment to closure for submission purposes, even though new information will become available in the future.

The establishment of 18.51 million lb (8,396 mt) as a minimum quota level would be inconsistent with the use of target fishing mortality rates to achieve stock rebuilding. By setting a minimum quota level, the Council, in its recommendations, would be unable to address such circumstances as poor recruitment.

Comment: The SIU comments that there should be no cap on quota in 1996 or 1997 because the fishery is an alternative source of income for Georges Bank groundfish vessels, which face impending new restrictions.

Response: The quotas proposed through this amendment are designed to continue rebuilding the stock of summer flounder while moderating negative impacts on the industry. The Council has presented a plan to balance the biological and economic impacts of summer flounder management measures. While it is apparent that the Northeast multispecies fishery faces additional future restrictions, those vessels that qualified for the summer flounder moratorium permit will have to continue to share the burdens of the rebuilding plan for summer flounder. They will also share the future benefits of increased harvests from a recovered stock.

Comment: The East Coast Fisheries Federation comments that a higher quota would result in fewer discards rather than an increased mortality rate. They argue that many fish are discarded, not because they are undersized, but due to state quota management measures such as trip limits.

Response: NMFS agrees that state quota management measures may result in discard of fish larger than the minimum size. However, it does not follow that a higher quota would result in no increase in the overall mortality rate. Commercial landings represent the largest component of summer flounder mortality. The advisory report issued by the 20th Stock Assessment Workshop includes mean estimates of the components of the total catch (landings and discards) for the period 1982–94. Commercial discards represent 8 percent of the total while commercial landings represent 59 percent of the total (the remainder is recreational catch and discard). As the stock rebuilds, the number of larger, older fish in the population will increase and the fishery will become less dependent on younger, smaller fish. At that point, the contribution of discards to overall mortality would decrease.

Comment: The CMC opposes the amendment, stating that the relaxation of the mortality rate reduction schedule would serve to prolong overfishing, and risk undoing the stock benefits achieved by the existing management regime. CMC feels that, instead, improvements should be made in compliance, enforcement and data collection, as well

as in the reduction of bycatch and mortality on small fish.

Response: While a relaxation of the mortality rate reduction schedule will slow the rate of stock rebuilding, projections indicate that the slowdown will be slight. In general, the total landing for all years (1996–2000) is nearly identical for all the alternatives. The difference between the options contained in the amendment is in how the landings are allocated over the 5 year time period. A postponement in the reduction to F_{max} (i.e., F greater than 0.23 in 1996 and 1997) will result in an increase in near term landings at the expense of future landings. The adopted option contained in this amendment (Option 5B) produces the most stable landings pattern with landings ranging from 18.5 to 26.7 million lb over the period. An alterative considered but not adopted (Option 1) would have resulted in the largest variability in landings from 1 year to the next with a 50 percent decline from 1995 to 1996 followed by a 50 percent increase from 1996 to 1997.

While the rate of spawning stock biomass (SSB) increase is slowed under Amendment 7, the rate of growth differs only slightly during any 1 year, and is ultimately statistically insignificant. The stock assessment indicates that as SSB rises, so does recruitment. Good levels of recruitment are associated with SSB levels in excess of 33 million lb (14,968 mt). The analysis associated with this amendment indicates an estimated SSB above 45 million lb (20,412 mt) in 1996, indicating that the risk of recruitment failure is minimal. As the stock rebuilds and the age structure becomes more evenly distributed, the fishery will become less dependent on new recruits and the likelihood of poor recruitment and stock collapse will become increasingly remote.

Classification

The Director, Northeast Region, NMFS, determined that Amendment 7 is necessary for the conservation and management of the summer flounder fishery and that it is consistent with the Magnuson Act and other applicable laws.

This final rule has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared an FRFA as part of the RIR. A copy of this analysis is available from the Council (see **ADDRESSES**).

List of Subjects in 50 CFR Part 625

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 14, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 625 is amended as follows:

PART 625—SUMMER FLOUNDER FISHERY

1. The authority citation for part 625 continues to read as follows:

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

2. In § 625.20, paragraph (a) introductory text is revised to read as follows:

§ 625.20 Catch quotas and other restrictions.

(a) *Annual review*. The Summer Flounder Monitoring Committee will review the following data on or before August 15 of each year to determine the allowable levels of fishing and other restrictions necessary to achieve a fishing mortality rate (F) of 0.53 in 1993 through 1995, 0.41 in 1996, 0.30 in 1997, and 0.23 in 1998 and thereafter, provided the allowable levels of fishing in 1996 and 1997 may not exceed 18.51 million lb (8,396 mt), unless such fishing levels have an associated F of 0.23:

* * * * *

[FR Doc. 95–28535 Filed 11–22–95; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 60, No. 226
Friday, November 24, 1995

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

[FV–91–329]

United States Standards for Grades of Frozen Cauliflower

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the current voluntary U.S. Standards for Grades of Frozen Cauliflower. Its effect would be to improve the standards by: Bringing the standards in line with current marketing practices and innovations in processing techniques; providing for the ''individual attributes'' procedure for product grading with sample sizes, acceptable quality levels (AQL's), tolerances and acceptance numbers (number of allowable defects) being published in the standards; replacing dual grade nomenclature with single letter grade designations, such as ''U.S. Grade A'' or ''U.S. Fancy,'' with ''U.S. Grade A;'' and providing a uniform format consistent with other recently revised U.S. grade standards by adopting definitions for terms and replacing textual descriptions with easy-to-read tables. This rule also includes conforming and editorial changes.

DATES: Comments must be received on or before January 23, 1996.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Office of the Branch Chief, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, PO Box 96456, Room 0709, South Building, Washington, DC 20090–6456. Comments should make reference to the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Branch Chief during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Rodeheaver, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, PO Box 96456, Room 0709, South Building, Washington, DC 20090–6456, Telephone: (202) 720–4693.

SUPPLEMENTARY INFORMATION: The Department is issuing this rule in conformance with Executive Order 12866.

Pursuant to the requirements set forth in the Regulatory Flexibility Act, Pub.L. 96–354 (5 U.S.C. 601 *et seq.*), the Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in cost or prices for consumers; individual industries, Federal, State, or local government agencies; or geographic regions. It will not result in significant effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, under the Agricultural Marketing Act of 1946, the use of these standards is voluntary. A small entity may avoid incurring any additional economic impact by not employing the standards.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Agencies periodically review existing regulations. An objective of the regulatory review is to ensure that the grade standards are serving their intended purpose, the language is clear, and the standards are consistent with AMS policy and authority.

The Western Technical Advisory Committee of the American Frozen Food Institute (AFFI) and the USDA Grade Standards Review Subcommittee of the National Food Processors Association (NFPA), requested that the USDA prepare a draft revision of the U.S. grade standards for frozen cauliflower in 1992. It was requested that the draft would allow for the use of mechanical trimming devices in cauliflower processing by de-emphasizing the importance of uniform shape and symmetry of cauliflower clusters in the standards because mechanical trimmers now perform processing operations previously done by hand. The mechanical trimming devices produce clusters which are less uniform in size, shape, and symmetry and remove, partially or completely, the bud portion of the unit. The absence of a uniform shape does not significantly affect the eating quality or nutritional value of frozen cauliflower.

It was also requested that the revised standards assign individual tolerances to each individual quality factor. The system of grading, referred to as ''individual attributes,'' would provide statistically derived acceptable quality levels (AQL's) based on the tolerances in the current grade standards.

The discussion draft incorporated the changes recommended by AFFI and NFPA. The proposal reflected USDA's policy of replacing dual grade nomenclature with single letter grade designations.

In the revision, ''U.S. Grade A'' (or ''U.S. Fancy'') and ''U.S. Grade B'' (or ''U.S. Extra Standard'') would have simply become ''U.S. Grade A,'' and ''U.S. Grade B.''

The USDA prepared a discussion draft, incorporating the requested and editorial changes, and submitted it to AFFI and NFPA for comment. Minor changes were recommended for the draft revision.

In addition to these changes, the revision would have modified the standards to present them in a simplified easy-to-use format. Consistent with recent revisions of other U.S. grade standards, definitions of terms and easy-to-read tables would have replaced the textual descriptions. These changes were intended to facilitate better understanding and more uniform application of the grade standards.

Proposed Rule

A proposal to revise the U.S. Standards for Grades of Frozen Cauliflower was published in the

Federal Register on January 11, 1993 (58 FR 3816). A reopening and extension of the comment period to December 31, 1993, for the proposal was published in the Federal Register on May 25, 1993 (58 FR 29985). There were no public comments received during the comment period. However, USDA received comments from Patterson Frozen Foods, Inc. and the American Frozen Food Institute (AFFI) regarding the proposal, after the comment period closed. This action is a reproposal of the January 11, 1993, rule.

The following suggestions were offered for consideration in this revision. The two commenters suggested that the style name ''Nuggets or Small Clusters'' should be used instead of ''Clusters for Limited Use'' due to the terms familiarity in the industry and the marketplace. USDA agrees with the comment to change in style names to incorporate familiar names.

Both commenting parties requested a change in the proposed method of determining style in frozen cauliflower and the requirements. Both agreed that the method for determining style should be based on ''weight'' instead of ''count'' and Patterson Frozen Foods also suggested that the six millimeter minimum requirement for ''Nuggets or Small Clusters'' style be removed since there is no maximum size requirement for ''Clusters'' style.

Both parties suggested that determining ''style'' by ''weight'' instead of by ''count'' would make the standards more compatible with the industry's practice of using mechanical trimming devices which produce clusters that are less uniform in size, shape, and symmetry.

USDA conducted a study using imported and domestic samples in 10, 16, 20, 32 and 35 ounce package sizes to determine the average counts and weights of cauliflower clusters. Based on the information collected, USDA agrees with the suggested change to determine style ''by weight'' instead of ''by count'' for ''Clusters Style'' and with the recommended tolerance of 10 percent by weight.

The Department disagrees with the elimination of the minimum size requirement in ''Nuggets or Small Clusters'' style. The prerequisite of ''appearance'' was incorporated into this proposal to maintain present tolerances for small pieces of cauliflower (chaff) that affect the appearance and edibility of ''Nuggets or Small Clusters'' and ''Clusters'' style cauliflower. A definition for ''chaff'' was also incorporated into this proposal.

The study conducted by USDA showed that the average unit weight of ''Nuggets or Small Clusters'' was closer to two grams per unit than to three grams per unit as published in the proposal. The AQL's and acceptance numbers in Table II were adjusted to reflect this finding.

AFFI and Patterson Frozen Foods asked that the definitions for ''ricey'' and ''fuzzy'' character in the current standards be retained in the proposal. USDA agrees that maintaining the same definitions for ''ricey'' and ''fuzzy'' would reduce confusion within the industry. It was also requested that the term ''mushy'' character should be deleted and that its definition be incorporated into the definition for ''soft'' character. The industry believed this change would be less confusing and more accurate. The Department agrees and made these changes to clarify the standards based on industry practices.

A change in the definition of ''color defect'' was recommended by the commenters.

It was suggested that a definition differentiating ''minor'' and ''major'' color defects based on existing USDA inspection criteria should be incorporated into the ''color defect'' definition of the proposal. USDA agrees with this change and has incorporated it into the proposal. The incorporated changes from the inspection criteria would more accurately reflect the method used in the food industry to evaluate color defects.

Minor changes were suggested for the definitions of the terms ''blemished, fragments, and mechanical damage'' to help clarify their meaning. Both parties suggested the term ''discoloration'' should be removed from the definition of ''blemished,'' and the phrase, ''in the aggregate,'' should be added to the ''minor blemished and major blemished'' definition.

AFFI and Patterson Frozen Foods also suggested that the words ''tough or fibrous'' should be added to the definition of ''fragments'' and the words ''seriously'' and ''excessive or'' should be deleted from the definition of ''mechanical damage.''

The Department agrees with these changes and has incorporated them into this proposal.

It was requested that the classified quality factor, ''mushy character,'' should be deleted from the standards since its definition has been incorporated into the definition of ''soft character.'' The USDA has deleted the classified quality factor for ''mushy character'' and adjusted the tolerance for the quality factor, ''soft character'' to reflect the change.

Changes in the tolerances of several ''classified quality factors'' were suggested. For the quality factor of ''ricey character,'' tolerances of 15 percent for ''Grade A'' and 30 percent for ''Grade B'' were preferred by AFFI and Patterson Frozen Foods because this defect is more common and less objectionable.

For ''soft character'', a tolerance of 5 percent rather than 10 percent was preferred because it is more preventable and more objectionable. The Department has adjusted the tolerances for ''soft character'' and ''ricey character'' and incorporated them into this proposal.

It was suggested that the quality factor of ''color defect'' be divided into ''major color defects'' and ''total color defects.'' The comments suggested tolerances for the new factors should reflect this change with 3 percent for ''major'' and 8 percent for ''total.'' We agree with the changes in the quality factor for color defects and with the 8 percent tolerance for ''total color defects.'' We do not agree, however, with the change in the tolerance for ''major color defects.'' Such a change would represent a significant deviation from the tolerance in the existing U.S. Standards for Grades of Frozen Cauliflower without valid justification as to why it should be changed.

It was also suggested that the tolerance for mechanical damage, in Nuggets style, should be increased to 10 percent for ''Grade A'' and 20 percent for ''Grade B'' to better reflect the use of mechanical trimming devices.

The Department agrees with this change and has incorporated it in this revision.

A copy of the initial proposed rule was provided to the Agricultural Research Service (ARS) for help in identifying studies, data collection or other information relevant to the possible effect of the proposed revision on pesticide use. ARS reported that they were unable to find much information on the subject. The information that was found by ARS proved not to be relevant.

The changes and issues raised by the comments regarding the first proposed rule supports publishing another Notice of Proposed Rulemaking to modify the standards. Based on all the information received, this proposed revision would modify the standards to present them in a simplified easy-to-use format. Consistent with recent revisions of other U.S. grade standards, definitions of terms and easy-to-read tables would replace the textual descriptions. This proposed rule is intended to facilitate better understanding and more uniform application of the grade standards.

List of Subjects in 7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and record keeping requirements, Vegetables.

For the reasons set forth in the preamble, the U.S. Department of Agriculture proposes to revise 7 CFR part 52 to read as follows:

PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

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

Authority: 7 U.S.C. 1622, 1624.

2. In part 52, Subpart—United States Standards for Grades of Frozen Cauliflower is revised to read as follows:

Subpart—United States Standards for Grades of Frozen Cauliflower

Sec.

52.721 Product description.
52.722 Styles.
52.723 Requirements for style.
52.724 Definitions of terms.
52.725 Grades.
52.726 Factors of quality.
52.727 Requirements for quality factors.
52.728 Sample size.
52.729 Acceptance criteria.

Subpart—United States Standards for Grades of Frozen Cauliflower

§ 52.721 Product description.

Frozen cauliflower is prepared from fresh flower heads of the cauliflower plant (*Brassica oleracea botrytis*) by trimming, washing, and blanching and is frozen and maintained at temperatures necessary for preservation of the product.

§ 52.722 Styles.

(a) *Clusters* mean individual segments of trimmed and cored cauliflower heads, which measure not less than 20 mm (0.75 in) in the greatest dimension across the top of the unit.

(b) *Nuggets or Small Clusters* mean individual segments of trimmed and cored cauliflower heads, which measure from 6 mm (0.25 in) to less than 20 mm (0.75 in) in the greatest dimension across the top of the unit.

§ 52.723 Requirements for style.

(a) *Clusters style.* A maximum of 10%, by weight, of clusters less than 20 mm (0.75 in) in the greatest dimension across the top of the unit are allowed.

(b) *Nuggets style.* A maximum of 20%, by weight, of clusters, 20 mm (0.75 in) or greater, and a maximum of 10%, by weight, of clusters less than 6 mm (0.25 in) in the greatest dimension across the top of the unit are allowed.

§ 52.724 Definitions of terms.

(a) *Acceptable quality level* (AQL) means the maximum percent of defective units or the maximum number of defects per hundred units of product that, for the purpose of acceptance sampling, can be considered satisfactory as a process average.

(b) *Appearance. Good appearance* means that the overall appearance or edibility of the cauliflower is not materially affected and; for clusters style, a maximum of 5%, by weight, of chaff is allowed for the sample unit. For nuggets style, a maximum of 10%, by weight, of chaff is allowed for the sample unit.

(c) *Blemished* means the cluster is affected or damaged by pathological injury, insect injury, or any other injury, which singly or in combination, affects the appearance or eating quality of the unit.

(1) *Minor blemished* means a unit with a dark blemish(s), which in the aggregate, exceeds the area of a circle 4 mm (0.16 in) in diameter but not 6 mm (0.25 in) or a light blemish(s), which in the aggregate, exceeds the area of a circle 6 mm (0.25 in) in diameter.

(2) *Major blemished* means a unit with a dark blemish(s), which in the aggregate, exceeds the area of a circle 6 mm (0.25 in) in diameter.

(d) *Chaff* mean individual segments of trimmed and cored cauliflower material, with and without head material, which measure less than 6 mm (0.25 in) in its greatest dimension.

(e) *Character* means the extent of firmness and compactness of the cluster and its degree of freedom from fuzzy, ricey and soft units.

(1) *Fuzzy character* means a cluster with sections of head that have elongated individual flowers (or pedicels) that result in a very fuzzy appearance.

(2) *Ricey character* means a cluster with sections of head on which the ultimate branches have become elongated, causing the flower clusters to separate and present a loose or open and sometimes granular appearance.

(3) *Soft character* means a cluster that is limp and flabby and the flesh yields readily when handled.

(f) *Color defect.*

(1) *Minor* means that after cooking, the cluster possesses a color that is more than slightly darker than light cream to dark cream.

(2) *Major* means that after cooking, the cluster possesses a color that is seriously darkened or discolored.

(g) *Core material* means the loose or attached center portion of the cauliflower head which is tough or fibrous.

(h) *Defect* means any nonconformance of a unit(s) of product from a specified requirement of a single quality characteristic.

(i) *Fragment* means a stem or other cauliflower material without head material that is 6 mm (0.25 in) or greater in the greatest dimension (excluding tough or fibrous core material, loose leaves, and chaff).

(j) *Loose leaves* mean leaf material, exclusive of small tender leaves, that are detached from the stem.

(k) *Mechanical damage* means that the appearance of the unit is affected by trimming, or the unit is crushed or broken to the extent that the appearance is materially affected.

(l) *Normal flavor and odor* means that the cauliflower, before and after cooking, has a flavor and odor that is normal and is free from objectionable flavors and odors.

(m) *Sample unit* means the amount of product specified to be used for grading. For varietal characteristics, flavor and odor and appearance, a sample unit is the entire container. For blemishes, character, color, core material, fragments, mechanical damage and loose leaves, a sample unit is 100 grams for Nuggets Style and 50 units for Clusters Style. It may be:

(1) The entire contents of a container;

(2) A portion of the contents of a container; or

(3) A combination of the contents of two or more containers.

(n) *Tolerance* (TOL.) means the percentage of defective units allowed for each quality factor for a specific sample size.

(o) *Unit* means one cluster or piece of cauliflower.

§ 52.725 Grades.

(a) *U.S. Grade A* is the quality of frozen cauliflower that meets the following prerequisites in which the cauliflower:

(1) Has similar varietal characteristics,

(2) Has a normal flavor and odor, and

(3) Has a good appearance.

(4) Is within the limits for defects as specified in Tables I and II, of this subpart, as applicable for the style in § 52.727.

(b) *U.S. Grade B* is the quality of frozen cauliflower that meets the following prerequisites in which the cauliflower:

(1) Has similar varietal characteristics,

(2) Has a normal flavor and odor, and

(3) Has a good appearance.

(4) Is within the limits for defects as specified in Tables I and II, of this subpart as applicable for the style in § 52.727.

(c) *Substandard* is the quality of frozen cauliflower that fails to meet the requirements of U.S. Grade B.

§ 52.726 Factors of quality.

The grade of frozen cauliflower is based on meeting the requirements for the following factors.

(a) Prerequisites:

(1) Varietal characteristics,

(2) Flavor and odor, and

(3) Appearance.

(b) Classified Quality Factors:

(1) Major blemished,

(2) Total blemished (Major and Minor),

(3) Fuzzy character,

(4) Ricey character,

(5) Soft character,

(6) Major color defects,

(7) Total color defects (Major and Minor),

(8) Core material,

(9) Fragments,

(10) Loose leaves, and

(11) Mechanical damage.

§ 52.727 Requirements for classified quality factors.

TABLE I.—AQL'S AND TOLERANCES (TOL.) FOR DEFECTS IN CLUSTERS STYLE BASED ON 50 UNITS OF PRODUCT FOR 13 SAMPLE UNITS, 50×13=650 UNITS

Sample units × Sample unit size			1×50	3×50	6×50	13×50	21×50	29×50
Units of product			50	150	300	650	1050	1450
Defects	AQL	TOL						
	Grade A		Acceptance numbers					
Major Blemished	3.8	5.0	4	9	17	33	50	67
Total Blemished (Major & Minor)	8.2	10.0	7	18	33	65	101	137
Fuzzy Character	1.3	2.0	2	4	7	13	20	26
Ricey Character	8.2	10.0	7	18	33	65	101	137
Soft Character	0.612	1.0	1	2	4	7	10	14
Major Color Defect	0.612	1.0	1	2	4	7	10	14
Total Color Defect (Major & Minor)	6.4	8.0	6	15	26	52	80	108
Core Material	2.17	3.0	3	6	11	20	31	41
Fragments	3.8	5.0	4	9	17	33	50	67
Mechanical Damage	8.2	10.0	7	18	33	65	101	137
Loose Leaves (each piece)	2.17	3.0	3	6	11	20	31	41
	Grade B		Acceptance numbers					
Major Blemished	8.2	10.0	7	18	33	65	101	137
Total Blemished (Major & Minor)	13.0	15.0	10	26	48	98	154	209
Fuzzy Character	6.4	8.0	6	15	26	52	80	108
Ricey Character	13.0	15.0	10	26	48	98	154	209
Soft Character	2.9	4.0	3	8	13	26	39	53
Major Color Defect	3.8	5.0	4	9	17	33	50	67
Total Color Defect (Major & Minor)	13.8	16.0	11	27	51	104	163	221
Core Material	3.8	5.0	4	9	17	33	50	67
Fragments	8.2	10.0	7	18	33	65	101	137
Mechanical Damage	17.6	20.0	13	34	63	130	205	279
Loose Leaves (each piece)	6.4	8.0	6	15	26	52	80	108

TABLE II.—AQL'S AND TOLERANCES (TOL.) FOR DEFECTS IN NUGGETS OR SMALL CLUSTERS STYLE BASED ON 100 GRAMS OF PRODUCT FOR 13 SAMPLE UNITS, 100×13=1300 UNITS

Sample units × Sample unit size			1×100	3×100	6×100	13×100	21×100	29×100
Grams of product			100	300	600	1300	2100	2900
Defects	AQL	TOL						
	Grade A		Acceptance numbers (Grams)					
Major Blemished	3.8	5.0	7	17	31	61	94	127
Total Blemished (Major & Minor)	8.2	10.0	13	33	61	123	194	263
Fuzzy Character	1.3	2.0	3	7	12	23	36	48
Ricey Character	8.2	10.0	13	33	61	123	194	263
Soft Character	0.612	1.0	2	4	7	12	19	24
Major Color Defect	2.17	3.0	4	11	19	37	56	76
Total Color Defect (Major & Minor)	8.2	10.0	13	33	61	123	194	263
Core Material	2.17	3.0	4	11	19	37	56	76
Fragments	3.8	5.0	7	17	31	61	94	127
Mechanical Damage	8.2	10.0	13	33	61	123	194	263
Loose Leaves (each piece)	3.8	5.0	7	17	31	61	94	127
	Grade B		Acceptance numbers (Grams)					
Major Blemished	8.2	10.0	13	33	61	123	194	263

TABLE II.—AQL'S AND TOLERANCES (TOL.) FOR DEFECTS IN NUGGETS OR SMALL CLUSTERS STYLE BASED ON 100 GRAMS OF PRODUCT FOR 13 SAMPLE UNITS, 100×13=1300 UNITS—Continued

Total Blemished (Major & Minor)	13.0	15.0	18	48	91	189	298	407
Fuzzy Character	6.4	8.0	10	26	48	98	153	208
Ricey Character	13.0	15.0	18	48	91	189	298	407
Soft Character	2.9	4.0	6	13	24	48	74	99
Major Color Defect	6.4	8.0	10	26	48	98	153	208
Total Color Defect (Major & Minor)	13.8	16.0	19	51	96	200	316	430
Core Material	2.17	3.0	4	11	19	37	56	76
Fragments	3.8	5.0	7	17	31	61	94	127
Mechanical Damage	17.6	20.0	24	63	121	251	398	544
Loose Leaves (each piece)	6.4	8.0	10	26	48	98	153	208

§ 52.728 Sample size.

The sample size used to determine whether the requirements of these standards are met shall be as specified in the sampling plans and procedures in the ''Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Products'' (7 CFR 52.1 through 52.83).

§ 52.729 Acceptance criteria.

(a) *Style.* A lot of frozen cauliflower, is considered as meeting the requirements for style if the requirements in § 52.723, as applicable, are not exceeded.

(b) *Quality Factors.* A lot of frozen cauliflower is considered as meeting the requirements for quality if:

(1) The prerequisites specified in § 52.726 are met; and

(2) The Acceptance Numbers in Table I or II in § 52.727, as applicable, are not exceeded.

(c) *Single Sample Unit.* Each unofficial sample unit submitted for quality evaluation will be treated individually and is considered as meeting requirements for quality and style if:

(1) The prerequisites specified in § 52.726 are met; and

(2) The Acceptable Quality Levels (AQL's) in Tables I & II in § 52.723 and § 52.727, as applicable, are not exceeded.

Dated: November 20, 1995.

Lon Hatamiya,

Administrator.

[FR Doc. 95–28632 Filed 11–22–95; 8:45 am]

BILLING CODE 3410–02–P

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052–AB52

Loan Policies and Operations

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), proposes to amend the regulations governing disclosure of loan information. The FCA proposes to remove the requirement that Farm Credit institutions give borrowers 10 days prior notification of a change in the interest rate on their variable rate loans and replace it with a 10-day post notification. This action would reduce the burden on institutions of a delay in interest rate changes while still providing borrowers with timely notice of a change. The proposed regulation would also make a technical amendment regarding eligible borrower stock.

DATES: Comments should be received on or before December 26, 1995.

ADDRESSES: Comments may be mailed or delivered to Patricia W. DiMuzio, Associate Director, Regulation Development, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090. Copies of all communications received will be available for examination by interested parties in the Office of Examination, Farm Credit Administration, McLean, Virginia.

FOR FURTHER INFORMATION CONTACT:

Robert Child, Policy Analyst, Regulation Development, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

Joy E. Strickland, Senior Attorney, Regulatory Operations Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4019, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: Section 614.4367(c)(3)requires qualified lenders [1] to provide written notification to borrowers of a change in the interest rates on their adjustable rate loans. For decreases in rates, the notification must be provided not later than the effective date of the decrease. For increases in rates, the notice must be provided not later than 10 days before the effective date of the increase in the rate.

On June 23, 1993, the FCA Board published a ''Statement on Regulatory Burden'' (58 FR 34003) that requested comments regarding how the FCA could lessen the regulatory burden on Farm Credit institutions. In response, three institutions commented that the 10-day prior notification requirement was a burden that should be addressed by the Agency. One institution commented that the prior notification was a burden for variable rate loans that are tied to an external index, such as the prime rate, because borrowers have ready access to timely information about changes in such indexes. The other two commenters objected to the requirement for advance notification of borrowers for all variable rate loans, including those not tied to an external index.

The FCA is cognizant that delaying an adjustment in a variable interest rate can result in losses to an institution in situations in which an index increases or funding costs increase, but the institution is prohibited from increasing the interest rate charged to borrowers until a waiting period expires. In addition, the FCA recognizes that there are costs associated with mailing written notification of changes in interest rates. There may also be an unnecessary burden associated with the prior notice requirement where increases and decreases in loan rates are tied to indexes that are readily available in financial publications. The FCA considered these factors in attempting to balance the need of borrowers for timely information and the burden on Farm Credit institutions.

[1] A qualified lender is: (1) A Farm Credit institution that makes loans as defined by § 614.4366(e), except a bank for cooperatives; and (2) each other entity described in section 1.7(b)(1)(B) of the Farm Credit Act of 1971, as amended (Pub. L. 92–171), but only with respect to loans discounted or pledged under section 1.7(b)(1) of the Act. See, Act, § 614.4366(g).

In consideration of the competing aims of reducing burden and providing timely information to borrowers, the FCA proposes to modify the notification requirements in § 614.4367. The proposed amendment would require written notification to be provided to borrowers with adjustable rate loans not later than 10 days *after* a change in the interest rate on the loans. Thus, for decreases in rates, the proposal would change the notification from not later than the effective date of the change, to not later than 10 days after the decrease. More significantly, the proposal would change the notification requirements for increases in interest rates from 10 days advance notification to 10 days after the change in rates. The FCA is proposing to change the time period applicable to both notices of increases and decreases in order to have a single notification, and thus simplify the requirement for all changes in adjustable interest rates.

The FCA believes that a 10-day post notification will provide borrowers with timely information on rate changes and will significantly reduce the burden on institutions, including the costs associated with delaying interest rate changes. Savings to lenders ultimately may be passed on to borrowers in the form of lower interest rates; however, the absence of a prior notice is a disadvantage to individual borrowers because they will not be in a position to react as quickly to refinancing opportunities. The disadvantage should be minimal, however, because borrowers have ready access to changes in financial markets and trends in interest rates through the news media and other sources. Administered rate loans have historically followed changes in the prime rate because the costs of funds to the associations generally follow shifts in market rates. Borrowers who follow the interest rate market would seldom be surprised by a change in interest rates charged by associations.

Although the FCA believes that the proposal is an appropriate balance between the needs of the institutions and borrowers, the FCA seeks comment on several issues. First, the FCA seeks comment on whether notices of rate changes tied to publicly available external indexes should be required within 30 days, rather than 10 days as proposed. Specifically, would permitting a longer time for such notices accrue additional cost-savings to System lenders that would exceed the potential cost to borrowers of added delay in receiving notice of the rate increase? Such cost savings may occur, for example, if lenders regularly send monthly statements to a significant number of borrowers having variable rate loans tied to an external index. In these situations, the notification of rate increase could be incorporated in the monthly statement, thereby eliminating the need for a separate notice. Second, is a notice necessary for decreases in interest rates, and if so, is 10 days or 30 days a more appropriate time limit?

The FCA is also proposing a technical amendment to § 614.4367(a)(4) which addresses disclosures to purchasers of protected eligible borrower stock. Because only stock in existence at the time of enactment of the Agricultural Credit Act of 1987 (Pub. L. 100–233, Jan. 6, 1988) or stock issued within 9 months of enactment meets the definition of eligible borrower stock in section 4.9A of the Act, no further eligible borrower stock may be issued. Thus, all stock issued by Farm Credit institutions since 1988 is at risk. The proposal would delete the reference to eligible borrower stock in § 614.4367(a)(4) as unnecessary.

List of Subjects in 12 CFR Part 614

Agriculture, Banks, banking, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, part 614 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4014a, 4104b, 4106, and 4128; Secs. 1.3, 1.5, 1.6, 1.7, 1.9., 1.10, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2123, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279b–1, 2279b–2, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart K—Disclosure of Loan Information

§ 614.4367 [Amended]

2. Section 614.4367 is amended by removing the words ''Except with respect to eligible borrower stock under section 4.9A of the Act,'' and capitalizing the word ''a'' in paragraph (a)(4); and by removing the words ''the effective date of a decrease in the interest rate and not later than 10 days before the effective date of an increase'' and adding in its place the words ''10 days after the effective date of a change'' in the second sentence of paragraph (c)(3).

Dated: November 17, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 95–28586 Filed 11–22–95; 8:45 am]

BILLING CODE 6705–01–P

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12 CFR Part 615

RIN 3052–AB68

Funding and Fiscal Affairs, Loan Policies and Operations, Funding Operations; Foreign Denominated Debt

AGENCY: Farm Credit Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Farm Credit Administration (FCA) requests public comment through an Advance Notice of Proposed Rulemaking (ANPRM) regarding the issuance of debt securities of the Farm Credit System (System) denominated in foreign currencies. The Federal Farm Credit Banks Funding Corporation (Funding Corporation), on behalf of the Farm Credit banks (banks), is considering offering Federal Farm Credit Banks Consolidated Systemwide debt securities (Systemwide debt securities) outside of the United States under a proposed Global Debt Program (Program). Under the Program, Systemwide debt issuances could be denominated in foreign currencies. The FCA specifically requests public comment regarding any safety and soundness risks that may be posed by the issuance of foreign denominated Systemwide debt securities.

DATES: Written comments must be received on or before January 31, 1996.

ADDRESSES: Comments may be mailed or delivered to Patricia W. DiMuzio, Associate Director, Regulation Development, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090. Copies of all communications received will be available for examination by interested parties in the Office of Examination, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Michael J. LaVerghetta, Senior Financial Analyst, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498,

or

William L. Larsen, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Background

In a separate action published elsewhere in today's issue of the Federal Register, the FCA issued an interim regulation to clarify the Funding Corporation's statutory authority to use more than one fiscal agent to facilitate the sale of Systemwide debt securities. The interim regulation permits the Funding Corporation to employ fiscal agents that are not Federal Reserve Banks for issuance of dollar denominated Systemwide debt securities in foreign capital markets. The interim regulation provides guidance on two components of the Funding Corporation's proposed three-part Global Debt Program.[1] This ANPRM requests comments regarding the final part of the Program, pursuant to which the banks could issue foreign denominated Systemwide debt securities. Under the Program, non-dollar denominated Systemwide debt would be issued exclusively outside the United States using fiscal agents other than the Federal Reserve Banks.[2] Secondary market trading and safekeeping would be handled through international clearing systems. Other GSEs have developed similar global debt programs, and have issued non-dollar denominated global debt, including the Federal National Mortgage Association (FNMA), the Federal Home Loan Banks (FHLBs), and the Student Loan Marketing Association (Sallie Mae).[3]

II. Authority for Issuance of Foreign Currency Debt

As noted in the preamble discussion of the FCA's companion interim rule on Global Debt issuance, the Farm Credit Act of 1971, as amended, (Act)[4] provides no specific guidance on the issuance of Systemwide debt securities outside the United States, but grants the banks broad authority to issue Systemwide debt securities to fund their operations.[5] While no provision of the Act requires Systemwide debt securities to be denominated in U.S. dollars, an FCA rule specifies that Systemwide debt securities shall be issued in denominations of $1000 and $5000 or multiples thereof. *See* 12 CFR 615.5450. The specification of dollar denominations in this regulation can be interpreted to preclude the Funding Corporation from issuing foreign denominated Systemwide debt securities.

III. Assessment of Regulatory Needs

As demonstrated by its separate approval of global offerings of dollar denominated Systemwide debt securities, the FCA believes that the Act permits the agency latitude to recognize the increasing globalization of the capital markets and the needs of the System to adapt its funding techniques to changing markets. Moreover, absent overriding safety and soundness considerations, the FCA is disinclined to adopt a technical interpretation of its regulations that would prevent the banks from pursuing cost-effective and efficient methods of raising funds in the capital markets. This ANPRM is intended to assist the FCA in identifying potential safety and soundness risks in the issuance of foreign denominated Systemwide debt and in determining the need for regulatory guidance regarding this aspect of the Program.

IV. Potential Safety and Soundness Issues

The principal form of risk to an issuer of foreign denominated debt is foreign exchange risk. Before System banks and associations can loan the proceeds of sale of foreign denominated Systemwide debt securities to American farmers, ranchers, aquatic producers, rural homeowners, cooperatives, and rural utilities, the proceeds must be converted into U.S. dollars. Moreover, while the foreign denominated Systemwide debt securities are outstanding, the banks periodically must make payments in foreign currency of principal and interest to securityholders. In these instances when currency exchange transactions are necessary, fluctuations in currency exchange rates pose foreign exchange risks for the banks.

The banks may use various techniques to hedge against this foreign exchange risk. One commonly used technique is to execute a currency swap agreement under which another party agrees to supply the amount of foreign currency necessary to make future payments of principal and interest on debt obligations. While a currency swap agreement may provide an effective hedge against foreign exchange risk, the success of the currency swap depends on whether the counterparty will fulfill its obligations under the agreement. Thus, where foreign currency swap agreements are used to hedge against foreign exchange risk, ''counterparty risk'' becomes the most significant type of risk. Other techniques for hedging against foreign exchange risk, such as options and futures contracts, may present other risks that need to be identified.

In light of the potential exchange, counterparty, and other risks that may be involved in the issuance of foreign denominated Systemwide debt securities, the FCA is requesting additional information from the Funding Corporation, Farm Credit institutions, and other interested parties regarding the existence and containment of such risks. In particular, the FCA requests that comments address the following questions:

A. General

1. Under what economic and market scenarios will the banks consider it advantageous to assume the additional risks of issuing foreign denominated Systemwide debt securities instead of raising loan funds through the sale of dollar denominated debt?

2. How should the FCA adapt its current debt approval procedures to encompass foreign currency debt offerings?[6]

B. Currency Selection and Risk

1. What criteria should be used to determine suitability of particular foreign currencies for Systemwide debt issuances?

2. What internal procedures and approvals should the System use to apply such criteria?

3. Should there be limits on total System and individual bank exposure to each foreign currency?

4. How could total System and individual bank exposure to foreign currencies be monitored and who should have the responsibility within the System to do so?[7]

5. Describe any other controls that can be employed to minimize or manage foreign currency exposure?

C. Counterparty Risk

1. What standards should be used to establish, evaluate, and manage counterparty risk in currency swaps undertaken to offset foreign currency exposure?

2. What role should the Funding Corporation play in monitoring total System risk exposure to counterparties

[1] The proposed Global Debt Program is described in greater detail in connection with the interim regulation published separately in today's issue of the Federal Register.

[2] The Federal Reserve Banks may not act as fiscal agent for Government Sponsored Enterprise (GSE) debt obligations that are issued exclusively outside the United States.

[3] During the past year, FNMA and the FHLBs sold foreign debt securities in Deutche marks. Sallie Mae sold Japanese yen-denominated bonds.

[4] 12 U.S.C. 2001–2279bb–6.

[5] *See* sections 1.5(10), 3.1(10), and 4.2 of the Act.

[6] *See* 12 CFR 615.5101(d).

[7] The banks currently maintain, on a voluntary basis, a listing of investment credit exposures to financial and corporate institutions. This listing is prepared and published by the Funding Corporation.

in currency swap transactions and otherwise?

3. What procedures should be established to demonstrate that the banks have adequate management expertise and internal controls to effectively evaluate counterparty risk prior to engaging in foreign currency deals?

D. Lead Managers and Performance Risk

After a foreign currency debt offering has been initiated and the securities have been allocated to the global dealers, performance risk becomes largely the responsibility of the ''lead manager(s)'' or lead global dealer(s). Lead managers can take back securities for their own account or reallocate them to other global dealers for sale.

Are there any risks unique to the selection of lead managers for non-dollar denominated debt offerings? If so, how should lead managers be selected for such offerings?

E. Other Risks of Non-dollar Denominated Offerings

There may be other risks of non-dollar denominated offerings, such as daylight overdrafts, market exposure, and performance of other agents (*e.g.*, paying, settlement, transfer, exchange, calculation agents).

1. How should such risks be managed and quantified?

2. What factors should be considered in developing criteria for selection and performance of other agents and who should approve their activities?

F. Other Comments and Information

The FCA invites any other pertinent comments and information that may assist it in developing appropriate guidance in the area of foreign denominated Systemwide debt security offerings.

Dated: November 17, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration.

[FR Doc. 95–28585 Filed 11–22–95; 8:45 am]

BILLING CODE 6705–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 101, 133, and 135

Administration, Index to Approved SBA Reporting and Recordkeeping Requirements, and Intergovernmental Review of Small Business Administration Programs and Activities

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: In response to President Clinton's government-wide regulatory reform directive, the Small Business Administration has completed a page-by-page and line-by-line review of all of its existing regulations. As a result, SBA is proposing to clarify and streamline its regulations, revising or eliminating any duplicative, outdated, inconsistent or confusing provisions. This proposed rule would reorganize all of present Parts 101, 133, and 135 and consolidate them into one new rule. As part of this streamlining process large portions of present Part 101 will be removed from the regulations and published in the U.S. Government Manual. Present Parts 133 and 135 will be revised, updated and consolidated with Part 101. Finally, the remaining sections have been rewritten into a straightforward ''plain English'' style of writing.

DATES: Comments must be submitted on or before December 26, 1995.

ADDRESSES: Written comments should be addressed to David R. Kohler, Regulatory Reform Team Leader (101), U.S. Small Business Administration, 409 3rd Street, SW., Suite 13, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Cheri C. Wolff, Chief Counsel for General Litigation; Office of General Counsel, at (202) 205–6643.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a Memorandum to Federal agencies directing them to simplify their regulations and eliminate those that are unnecessary. In response to this directive SBA completed a page-by-page, line-by-line review of all of its existing regulations to determine which should be revised or eliminated.

The proposed rule would revise, amend, reorganize, and consolidate all of present 13 CFR Parts 101, 133, and 135. This proposed new consolidated rule would reorganize Part 101 into four subparts and renumber all remaining sections to reflect this new configuration. Subpart ''A'' would cover the Agency's purpose, management, field office functions, use of its seal, the application of Federal law to SBA programs and activities, and what forms are authorized for public use. SBA proposes to update, streamline and revise these provisions. SBA proposes to eliminate the listing of specific program functions, field office locations and all internal delegations of authority from Part 101 as inappropriate for inclusion in regulatory form. The U.S. Government Manual (a special edition of the Federal Register) contains a listing of program functions. As required by the Freedom of Information Act, SBA proposes to periodically publish field office locations and all internal delegations of authority as a notice in the Federal Register. Consistent with this change SBA proposes to include in the list of internal delegations of authority its designation of a debarring/suspending official for contractors doing business directly with SBA. In addition, and pursuant to new OMB regulations (see the Federal Register, Vol. 60, No. 110, pp. 30438–30456) SBA proposes to eliminate the list of specific SBA reporting and recordkeeping requirements approved by the Office of Management and Budget (OMB) contained in present Part 133. In lieu of this Part, SBA proposes to periodically publish an amended list of OMB approved reporting and recordkeeping requirements utilized by SBA as a notice in the Federal Register.

SBA proposes to eliminate present § 101.6, ''Litigation'', as unnecessary and to amend present § 101.9, which waives or limits the use of certain existing exemptions to the public participation requirements of the Administrative Procedure Act (APA), has also been amended. SBA proposes to eliminate the waiver of the ''agency management and personnel'' exemption and the limitations placed on the use of the ''good cause'' exemption as unnecessary and overbroad. Congress has determined that agency management and personnel matters have no significant substantive impact on the public and has accordingly exempted them from the APA. By eliminating the agency management and personnel exemption, SBA proposes to act consistently with the Congressional determination. SBA will continue to have the right to use the public participation procedures of APA for management and personnel matters if the SBA deems it necessary or desirable. The limitations presently placed on the use of the ''good cause'' exemption are unnecessary since SBA does not promulgate the type of regulations that require the use of this exemption. However, SBA proposes to maintain the exemption for matters relating to ''public property, loans, grants, benefits, or contracts'' as necessary and appropriate.

Subpart ''B'' would cover and update the provisions concerning the employment of fee counsel by SBA. Subpart ''C'' would provide an overview of the authority of the SBA Inspector General under the Inspector General Act of 1978 and eliminate references to the investigatory powers of the Administrator under the Small Business Act. Congress transferred those powers

to the Inspector General's Office in 1978. Subpart ''C'' would also provide guidance on the service of Inspector General subpoenas consistent with current policy. SBA proposes to eliminate present sections 101.8–4 ''Non-Public formal investigation proceedings,'' 101.8–5 ''Right to copy of data or transcript of testimony,'' and 101.8–8 ''Information obtained in investigations,'' as unnecessary and redundant. Regulations promulgated under the Privacy Act, the Freedom of Information Act, the Inspector General Act, and the Trade Secrets Act, as well as the Federal Rules of Civil and Criminal Procedure, already provide regulatory guidance on these matters. SBA proposes to eliminate present sections 101.8–6, 101.8–7, and 101.8–10 relating to counsel for witnesses and witness fees as outdated and obsolete.

Subpart ''D'' would cover intergovernmental partnership procedures under the Intergovernmental Cooperation Act. These provisions are currently contained in present Part 135. This proposed subpart would streamline present Part 135 and consolidated it into Part 101, but without changing existing procedures. SBA proposes to eliminate present section 135.2, the definition section, as repetitive and unnecessary with the exception of the definition of the word ''state''. SBA added that definition in proposed section 101.402. SBA proposes to eliminate present sections 135.4 and 135.5, relating to the responsibilities of the Administrator, were eliminated since they are internal to SBA (and are more appropriate for Agency Standard Operating Procedures) and simply repeat the provisions of Executive Order No. 12372, as amended. SBA also proposes to eliminate ''reserved'' sections.

SBA proposes to assign to change the numbers assigned to all sections in the new rule to conform to the other parts of Title 13, to rewrite the new rule in the more straightforward and customer-oriented ''plain English'' style of writing in order to assist the public in reading and better understanding SBA's regulations. Finally, the proposed rule establishes consistency in the use of certain titles. For example, SBA proposes to change references to ''the Agency,'' ''the Small Business Administration,'' and ''the Administration,'' in present Part 101 to ''SBA,'' and references to ''Central Office,'' to ''Headquarters.'' SBA has also established uniformity in punctuation and capitalization.

Section by Section Analysis

The following is an analysis of the new provisions of SBA's regulations and a discussion of the substantive effect of these changes, if any—

Proposed Section 101.100: SBA has expanded this provision from the present paragraph 101.1(a) to include a reference to SBA's role in providing financial, contractual, and business development assistance to small business concerns. The U.S. Government manual already publishes a detailed description of SBA's program functions and, therefore, the same information needs not be included in SBA's regulations.

Proposed Section 101.101: This provision would combine the description of management contained in present paragraph 101.1(c) with the list of the Administrator's responsibilities contained in present section 101.2. SBA proposes to rewrite the provision in plain English. SBA proposes to place the reference to the Deputy Administrator into a separate paragraph and to note that the Deputy is now appointed by the President.

Proposed Section 101.102: This section would set forth the current address of SBA's Headquarters in Washington, DC, which is presently in § 101.1(c).

Proposed Section 101.103: SBA proposes to abolish present section 101.3–1, which contains the list of SBA field offices, their addresses, phone numbers, and areas served. Instead, SBA will periodically publish this information as a notice in the Federal Register. The proposed provision refers the reader to the Federal Register and lists SBA's 800 number so customers can quickly and easily obtain the address and phone number of the SBA field office near them.

Proposed Section 101.104: This provision would be substantially the same as present section 101.3. However, SBA proposes to amend the text to reflect the regional offices' new limited role, the elimination of post-of-duty offices, and the existence of disaster area offices. SBA has rewritten proposed section in plain English.

Proposed Section 101.105: This provision is substantially the same as present section 101.5. However, SBA has added the Disaster Area Directors to the list of SBA officials with the authority to use SBA's official seal and rewritten the section in plain English.

Proposed Section 101.106: SBA has rewritten this provision, which is currently in § 101.1, in plain English and has made minor substantive changes to reflect recent case law concerning attempts to use state or local law to defeat liability incurred in obtaining or assuring SBA benefits or assistance. SBA has added contracts or agreements to which SBA is a party, unless explicitly provided otherwise (see proposed § 101.106(b)(4)) to the list of documents or transactions that are construed and enforced in accordance with Federal law.

Proposed Section 101.107: SBA has consolidated present section 101.4 with present 13 CFR Part 133 in this provision and has rewritten it in plain English. SBA proposes to eliminate present § 133.1(a), a statement of intent. Moreover, pursuant to new OMB regulations, SBA proposes to eliminate the list of specific SBA reporting and recordkeeping requirements approved by OMB (present § 133.1(c)). Instead, SBA will periodically publish an amended list as a notice in the Federal Register.

Proposed Section 101.108: This provision is an amended version of present § 101.9. Presently, through § 101.9, SBA has waived the exemptions to the public participation requirements of the Administrative Procedure Act (5 U.S.C. 553) contained in subparagraph (a)(2), for matters ''relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.'' Consistent with other Federal departments and agencies that have voluntarily waived exemptions to the Act, SBA has determined that the only exemption that should exclude substantive rule-making from the public participation procedures of the APA is the exemption relating to ''agency management or personnel.'' Consequently, the proposed provision would maintain the waiver for matters relating to public property, loans, grants, benefits, or contracts, while eliminating the rest of present § 101.9.

Proposed Section 101.109: With the adoption of the plain English ''question and answer'' format for many SBA regulations, it was necessary to make it clear that each section heading is to be interpreted as a part of the regulation. This section would state so explicitly.

Proposed Section 101.200: SBA has substantially reduced this provision in size and scope from present § 101.7 (a) & (b), and rewritten it in plain English. SBA eliminated the references to the employment of full time SBA attorneys and the private representation of applicants and borrowers as unnecessary and inconsistent with the purpose of the section.

Proposed Section 101.201: SBA has rewritten this provision, which replaces present § 101.7 (c) & (d), in plain English. However, SBA has not changed the substance of the duties and compensation provisions of the present paragraphs.

Proposed Section 101.300: This provision replaces present section 101.8–1 which fails to mention the investigatory authority granted to the Inspector General of SBA under the Inspector General Act of 1978. This provision states that the Inspector General has full authority to provide policy direction for, and to conduct audits, investigations, and inspections concerning the administration of SBA programs and operations.

Proposed Section 101.301: This provision states that all information or allegations of waste, fraud, or abuse in regard to SBA programs and operations should be directed to the Office of Inspector General.

Proposed Section 101.302: This provision recites the scope of authority, or specific powers, the Inspector General possesses under the Inspector General Act and has been written in plain English.

Proposed Section 101.303: SBA has rewritten this provision in plain English and amended it to reflect current policy relating to the service of Inspector General subpoenas, but it is otherwise the same as present § 101.8–9.

Proposed Section 101.400: This provision is an amended version of present section 135.1, and states the purpose of the regulations contained in proposed Subpart D. SBA has rewritten it in plain English.

Proposed Section 101.401: This provision is the same as present section 135.3 with only minor changes.

Proposed Section 101.402: This provision is the same as present section 135.6 except that SBA has rewritten it in plain English and has defined ''state'' at the end of the section.

Proposed Section 101.403: This provision combines present sections 135.7 and 135.8 into one new section concerning the notice and comment procedures established by SBA under the Intergovernmental Cooperation Act. SBA has rewritten the proposed section in plain English.

Proposed Section 101.404: This provision is the same as present section 135.9 except that SBA has rewritten it in plain English.

Proposed Section 101.405: This provision is the same as present section 135.10 except that it has been rewritten in plain English.

Proposed Section 101.406: This provision is the same as present section 135.11 except that it has been rewritten in plain English.

Proposed Section 101.407: This provision is the same as present section 135.13 except that it has been rewritten in plain English.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. 35)

SBA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of Executive Order #12866 or the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This rule will consolidate three Parts of SBA's current regulations, move substantial amounts of general organizational information from SBA's regulations to the U.S. Government Manual, and rewrite the remaining provisions into plain English. Contracting opportunities and financial assistance for small business would not be affected by this proposed rule. Therefore, it is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. § 35, SBA certifies that this proposed rule, if adopted in final form, would contain no new reporting or record keeping requirements. For purposes of Executive Order #12612, SBA certifies that this rule would not have any federalism implications warranting the preparation of a Federalism Assessment. For purposes of Executive Order #12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects

13 CFR Part 101

Administrative practice and procedure; Authority delegations (Government agencies); Investigations; Organization and functions (Government agencies); Reporting and recordkeeping requirements.

13 CFR Part 133

Reporting and recordkeeping requirements.

13 CFR Part 135

Intergovernmental relations.

For the reasons set forth above, SBA hereby proposes to amend 13 CFR Chapter I as follows:

1. Part 101 would be revised to read as follows:

PART 101—ADMINISTRATION

Subpart A—Overview

Sec.
101.100 What is the purpose of SBA?
101.101 Who manages SBA?
101.102 Where is SBA's Headquarters located?
101.103 Where are SBA's field offices located?
101.104 What are the functions of SBA's field offices?
101.105 Who may use SBA's official seal and for what purposes?
101.106 Does Federal law apply to SBA programs and activities?
101.107 What SBA forms are authorized for public use?
101.108 Has SBA waived any of the public participation exemptions of the Administrative Procedure Act?
101.109 Do SBA regulations include the section headings?

Subpart B—Employment of Fee Counsel

Sec.
101.200 When does SBA hire fee counsel?
101.201 What are the minimum terms of fee counsel's employment?

Subpart C—Inspector General

Sec.
101.300 What is the Inspector General's authority to conduct audits, investigations, and inspections?
101.301 Who should receive information or allegations of waste, fraud, and abuse?
101.302 What is the scope of the Inspector General's authority?
101.303 How are Inspector General subpoenas served?

Subpart D—Intergovernmental Partnership

Sec.
101.400 What is the purpose of this subpart?
101.401 What programs and activities of SBA are subject to this subpart?
101.402 What procedures apply to the selection of SBA programs and activities?
101.403 What are the notice and comment procedures?
101.404 How does the Administrator receive comments?
101.405 How does the Administrator respond to comments?
101.406 What are the Administrator's responsibilities in interstate situations?
101.407 May the Administrator waive these regulations?

Authority: Secs. 4 and 5, Pub. L. 85–536, 72 Stat. 384 and 385 (15 U.S.C. 633 and 634, as amended); sec. 308, Pub. L. 85–699, 72 Stat. 694 (15 U.S.C. 687, as amended); sec. 5(b)(11), Pub. L. 93–386; sec. 306, Pub. L. 98–270, 98 Stat. 161; Pub. L. 96–511, sec. 5, 94 Stat. 2826 (44 U.S.C. 3512, as amended); 5 U.S.C. 552 as amended; sec. 3(1), Pub. L. 93–386, 88 Stat. 742 (15 U.S.C. 634(b)(11), as amended); Pub. L. 95–452, 92 Stat. 1101 (5 U.S.C. App. 3 secs. 2, 4(a), 6(a), and 9(a)(1)(T), as amended); Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); sec.

401, Pub. L. 90–577, 82 Stat. 1103 (31 U.S.C. 6506, as amended); unless otherwise noted.

PART 101—ADMINISTRATION

Subpart A—Overview

§ 101.100 What is the purpose of SBA?

The U.S. Small Business Administration (SBA) aids, counsels, assists, and protects the interests of small business concerns, and advocates on their behalf within the Government. It also helps victims of disasters. It provides financial assistance, contractual assistance, and business development assistance. For a more detailed description of the functions of SBA see The United States Government Manual, a special publication of the Federal Register; which is available from Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

§ 101.101 Who manages SBA?

(a) An Administrator, appointed by the President with the advice and consent of the Senate, manages SBA. The Administrator—

(1) Is responsible to the President and Congress for exercising direction, authority, and control over SBA.

(2) Determines and approves all policies covering SBA's programs to aid, counsel, assist, and protect the interests of the nation's small businesses.

(3) Employs or appoints employees necessary to implement the Small Business Act, as amended, the Small Business Investment Act, as amended, and other laws and directives.

(4) Delegates certain activities, by issuing regulations or otherwise, to Headquarters and field positions (see The United States Government Manual, a special publication of the Federal Register, which is available from Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

(b) A Deputy Administrator, appointed by the President with the advice and consent of the Senate, serves as Acting Administrator during the absence or disability of the Administrator or in the event of a vacancy in the Office of the Administrator.

§ 101.102 Where is SBA's Headquarters located?

The Headquarters of SBA is at 409 3rd Street, SW., Washington, DC 20416.

§ 101.103 Where are SBA field offices located?

A list of SBA's field offices with addresses, phone numbers and jurisdictions served is periodically published in the Federal Register. You can also obtain the address and phone number of an SBA office to serve you by calling 1–800–8–ASK–SBA or 1–800–827–5722.

§ 101.104 What are the functions of SBA field offices?

(a) *Regional offices.* Regional offices are managed by a Regional Administrator who is responsible to Headquarters. They are located in major cities and have geographical boundaries which cover multi-state areas. Regional offices exercise limited authority over field activities within their region.

(b) *District offices.* District offices are managed by a District Director and are located in cities within a region. District offices are responsible to Headquarters and to a regional office. Within their delegated authority, district offices have authority for—

(1) Conducting all program delivery activities within the district boundaries;

(2) Supervising all branch offices located within the district boundaries; and

(3) Providing subordinate branch offices with the technical capability necessary to execute assigned programs.

(c) *Branch offices.* Branch offices are managed by a Branch Manager and are located in cities within a district. Branch offices are responsible to the district office within whose boundaries it is located. Branch offices execute one or more elements of the business or disaster loan programs and have limited authority for program execution.

(d) *Disaster area offices.* Disaster area offices are managed by an Area Director and are located in cities within defined geographical areas. Disaster area offices are responsible to Headquarters and provide loan services to victims of declared disasters. Temporary disaster offices are often established in areas where disasters have occurred.

(e) *Responsibilities.* Each field office has responsibilities within a defined geographical area as periodically set forth in the Federal Register.

§ 101.105 Who may use SBA's official seal and for what purposes?

(a) The SBA's seal shall be in a manner and form set forth as follows:

Note: The seal is not published in this proposed rule, but will appear in the final rule.

(b) The Administrator, Deputy Administrator, General Counsel, Assistant Administrator for Administration, Assistant Administrator for Hearings and Appeals, Associate Administrator for Minority Enterprise Development, Regional Administrators, District Directors, Branch Managers, the Inspector General, and Disaster Area Directors are authorized to—

(1) Certify and authenticate originals and copies of any books, records, papers, or other documents on file within SBA, or extracts taken from them.

(2) Certify the nonexistence of records.

(3) Affix the Seal of SBA to all such certifications, including the purposes authorized by 28 U.S.C. 1733.

§ 101.106 Does Federal law apply to SBA programs and activities?

(a) SBA makes loans and provides other services that are authorized and executed under Federal programs adopted by Congress to achieve national purposes.

(b) The following are construed and enforced in accordance with Federal law—

(1) Instruments evidencing a loan;

(2) Security interests in real or personal property payable to or held by SBA or the Administrator such as promissory notes, bonds, guarantee agreements, mortgages, and deeds of trust;

(3) Other evidences of debt or security;

(4) Contracts or agreements to which SBA is a party, unless expressly provided otherwise.

(c) To the extent feasible, SBA uses local or state procedures, especially for recordation and notification purposes, in implementing and facilitating SBA's loan programs. This use of local or state procedures is not a waiver by SBA of any Federal immunity from any local or state control, penalty, tax, or liability.

(d) No person, corporation, or organization that applies for and receives any benefit or assistance from SBA, or that offers any assurance or security upon which SBA relies for the granting of such benefit or assistance, is entitled to claim or assert any local or state law to defeat the obligation incurred in obtaining or assuring such Federal benefit or assistance.

§ 101.107 What SBA forms are approved for public use?

(a) SBA utilizes forms approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), as amended. You may obtain approved forms for use by the public when applying for or obtaining SBA assistance, or when providing services for SBA, from any field office (*see* § 101.103). You may also use forms which you have prepared yourself, or have obtained from another source, if those forms are identical in every

respect to the form approved by OMB for the same purpose.

(b) Any member of the public who has reason to believe any SBA office or agent is in violation of the Public Protection Clause of the Paperwork Reduction Act (44 U.S.C. 3512 and *see* 5 CFR 1320.6) should notify SBA. Direct such comments to the Assistant Administrator for Administration at 409 3rd Street, SW., Washington, DC 20416.

§ 101.108 Has SBA waived any of the public participation exemptions of the Administrative Procedure Act?

Yes. The public participation requirements prescribed by the Administrative Procedure Act, 5 U.S.C. 553, will be followed by SBA in rulemakings relating to public property, loans, grants, benefits, or contracts.

§ 101.109 Do SBA regulations include the section headings?

Yes. All SBA regulations must be interpreted as including the section headings.

Subpart B—Employment of Fee Counsel

§ 101.200 When does SBA hire fee counsel?

(a) *Business Loans.* SBA may hire fee counsel to represent it in regard to business loans when the volume of activity in an area is not sufficient to require a full-time SBA employee, or the area is too remote for economical use of a full-time SBA employee.

(b) *Disaster Loans.* SBA may hire fee counsel in regard to disaster loans when the disaster presents an emergency and a volume of activity that cannot be promptly and economically serviced by available SBA employees.

§ 101.201 What are the minimum terms of fee counsel's employment?

(a) Fee counsel must perform all requested work in compliance with SBA's regulations, policies, and instructions, and take such action as is legally required under the Small Business Act, the Small Business Investment Act, and other laws applicable to SBA.

(b) Fee counsel must adhere to the highest standards of professional conduct and maintain appropriate confidentiality proper to the attorney-client relationship.

(c) Fee counsel acts under the supervision of the SBA General Counsel (and designees.)

(d) Fee counsel usually is compensated at an hourly rate as approved by SBA. Contingency fee agreements may occasionally be used if approved by the General Counsel.

(e) Either party may terminate the employment upon written notice.

Subpart C—Inspector General

§ 101.300 What is the Inspector General's authority to conduct audits, investigations, and inspections?

The Inspector General Act of 1978, as amended (5 U.S.C. App. 3) authorizes SBA's Inspector General to provide policy direction for, and to conduct, supervise, and coordinate such audits, investigations, and inspections relating to the programs and operations of SBA as appears necessary or desirable.

§ 101.301 Who should receive information or allegations of waste, fraud and abuse?

The Office of Inspector General should receive all information or allegations of waste, fraud, or abuse regarding SBA programs and operations.

§ 101.302 What is the scope of the Inspector General's authority?

To obtain the necessary information and evidence, the Inspector General (and designees) have the right to:

(a) Have access to all records, reports, audits, reviews, documents, papers, recommendations, and other materials available to SBA and relating to SBA's programs and operations;

(b) Require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence;

(c) Administer oaths and affirmations or take affidavits; and

(d) Request information or assistance from any Federal, state, or local government agency or unit.

§ 101.303 How are Inspector General subpoenas served?

(a) Service of subpoenas may be effected by any of the following means—

(1) If by mail, a copy of the subpoena must be addressed to the person, partnership, corporation, or unincorporated association to be served at a residence or usual dwelling place, or a principal office or place of business, and mailed first class by registered or certified mail, (postage prepaid, return receipt requested), or by a commercial or U.S. Postal Service overnight or express delivery service.

(2) If by personal delivery, a copy of the subpoena must be delivered to the person to be served, or to a member of the partnership to be served, or to an executive officer or a director of the corporation or unincorporated association to be served, or to a person authorized by appointment or by law to receive process for the person or entity named in the subpoena.

(3) If by delivery to an address, a copy of the subpoena must be left at the principal office or place of business of the person, partnership, corporation, or unincorporated association to be served, or at the residence or usual dwelling place of the person, member of the partnership, or officer or director of the corporation or unincorporated association to be served, with someone of suitable age and discretion.

(b) Proof of service—

(1) When service is by registered, certified, overnight, or express mail, it is complete upon delivery of the document by the Postal Service or commercial service.

(2) The return Postal Service receipt for a document that was registered or certified and mailed, the signed receipt for a document delivered by an overnight or express delivery service, or the Return of Service completed by the individual serving the subpoena by personal delivery shall be proof of service.

Subpart D—Intergovernmental Partnership

§ 101.400 What is the purpose of this subpart?

(a) This subpart implements section 401 of the Intergovernmental Cooperation Act. Section 401 creates intergovernmental partnership and strengthens Federalism by relying on state processes and state, area-wide, regional, and local coordination for the review of proposed Federal financial assistance and direct Federal development.

(b) While guiding SBA's management, this subpart does not create any right or benefit enforceable at law against SBA or its officers or employees.

§ 101.401 What programs and activities of SBA are subject to this subpart?

The Administrator publishes in the Federal Register a list of SBA's programs and activities that are subject to this subpart.

§ 101.402 What procedures apply to the selection of SBA programs and activities?

(a) A state may—

(1) Select any program or activity published in the Federal Register under § 101.401 for inter-governmental review (each state, before selecting programs and activities, should consult with local elected officials. A state adopting a process must notify the Administrator of the SBA programs and activities selected); and

(2) Notify the Administrator of changes in its selections at any time. For each change, the state submits to the Administrator an assurance that it

consulted with local elected officials regarding the change.

(b) SBA may establish deadlines by which states must inform the Administrator of changes in their program selections.

(c) After receiving notice of a state's selections, the Administrator uses a state's process as soon as feasible depending on individual programs and activities.

(d) ''State'' means any of the 50 States, District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 101.403 What are the notice and comment procedures?

(a) The Administrator provides notice to directly affected state, area-wide, regional, and local entities in a state of proposed SBA financial assistance or direct SBA development if—

(1) The state has not adopted a process under Executive Order No. 12372; or

(2) The assistance or development involves a program or activity not selected for the state process.

(b) Notice may be made by publication in the Federal Register or other means as SBA deems appropriate.

(c) Except in unusual circumstances the Administrator gives state processes or directly affected state, area-wide, regional, and local officials and entities at least 60 days to comment on proposed SBA financial assistance or direct SBA development.

(d) In cases where SBA delegates the review, coordination, and communication authority under this subpart, this section also applies.

§ 101.404 How does the Administrator receive comments?

(a) The Administrator follows the procedures of § 101.405 if—

(1) A state office or official is designated to act as a single point of contact between a state process and all Federal agencies; and

(2) That office or official transmits a state process recommendation for a program selected under § 101.402(a).

(b)(1) The single point of contact is not obligated to transmit comments from state, area-wide, regional, or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, area-wide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, state, area-wide, regional, and local officials and entities may submit comments to SBA.

(d) If a program or activity is not selected for a state process, state, area-wide, regional, and local officials and entities may submit comments to SBA. In addition, if a state process recommendation for a non-selected program or activity is transmitted to SBA by the single point of contact, the Administrator follows the procedures of § 101.405.

(e) The Administrator considers comments which do not constitute a state process recommendation submitted under this subpart and for which the Administrator is not required to apply the procedures of § 101.405 when such comments are provided by a single point of contact directly to SBA by a commenting party.

§ 101.405 How does the Administrator respond to comments?

(a) If a state process provides a recommendation to SBA through its single point of contact, the Administrator

(1) Accepts the recommendation; or

(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with a written explanation of the decision in a form the Administrator deems appropriate. The Administrator may also supplement the written explanation by telephone or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Administrator informs the single point of contact that—

(1) SBA will not implement its decision for at least 10 days after the single point of contact receives the explanation; or

(2) Because of unusual circumstances the waiting period of at least 10 days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing.

§ 101.406 What are the Administrator's responsibilities in interstate situations?

The Administrator is responsible for—

(a) Identifying proposed SBA financial assistance and direct SBA development that have an impact on interstate areas;

(b) Notifying appropriate officials and entities in states which have adopted a process and selected an SBA program or activity;

(c) Making efforts to identify and notify the affected state, area-wide, regional, and local officials and entities in states that have not adopted a process or selected an SBA program or activity;

(d) Using the procedures of § 101.405 if a recommendation of a designated area-wide agency is transmitted by a single point of contact in cases in which the review, coordination, and communication with SBA has been delegated; and

(e) Using the procedures of § 101.405 if a state process provides a state recommendation to SBA through a single point of contact.

§ 101.407 May the Administrator waive these regulations?

The Administrator may waive any provision of §§ 101.400 through and including 101.406 in an emergency.

PARTS 133 AND 135—[REMOVED]

2. Parts 133 and 135 are removed.

Dated: November 11, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–28445 Filed 11–22–95; 8:45 am]

BILLING CODE 8025–01–P

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13 CFR Parts 102 and 137

Freedom of Information and Privacy Act of 1974

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: In response to President Clinton's government-wide regulatory reform initiative, the Small Business Administration (SBA) has completed a page-by-page, line-by-line review of all of its existing regulations to determine which might be revised or eliminated. This proposed rule would delete duplicative statutory and unnecessary language and rewrite the remainder in plain English. There are some substantive changes, as follows:

The proposed rule revises the Agency's regulations implementing Executive Order 12600 and would require SBA to give submitters of information the opportunity, at the time they submit the information, to identify information the disclosure of which would cause them substantial competitive harm.

The rule would establish a procedure for appealing FOIA fee determinations which parallels the procedure for appealing a decision to withhold information.

The rule would remove the Program Official from the Privacy Act management function and vest all responsibilities in Systems Managers and the Privacy Act Officer.

Part 137 deals with the treatment of classified information. Since SBA generates no such documents, SBA regulations need deal only with classified information which SBA acquires from other Agencies. The rule would place the needed portion of Part 137 in Part 102 and eliminate the remainder.

There are other, minor changes detailed below.

DATES: Comments must be submitted on or before December 26, 1995.

ADDRESSES: Written comments should be addressed to David R. Kohler, Regulatory Reform Team Leader, (102), Small Business Administration, 409 3rd Street SW., Suite 13, Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Timothy C. Treanor, Attorney Advisor, Office of General Counsel, at (202) 205–6885.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a Memorandum to all federal agencies, directing them to simplify their regulations. In response to this directive, SBA has completed a page-by-page, line-by-line review of all of its existing regulations to determine which might be revised or eliminated.

SBA reorganized and simplified Part 102. A conversion table of distribution follows:

Present part 102	Proposed part 102
§ 102.1(a)	§ 102.1
§ 102.1(b)	deleted
§ 102.2	deleted
§ 102.3(a)	deleted
§ 102.3(b)	deleted
§ 102.3(c)	deleted
§ 102.3(d)	deleted
§ 102.3(e)	deleted
§ 102.3(f)	deleted
§ 102.3(g)	deleted
§ 102.3(h)	deleted
§ 102.3(i)	deleted
§ 102.3(j)	deleted
§ 102.3(k)	deleted
§ 102.3(l)	§ 102.10
§ 102.4(a)	deleted
§ 102.4(b)	§ 102.2(a)
§ 102.4(c)	§ 102.2(b)
§ 102.4(d)	deleted
§ 102.4(e)(1)	§ 102.3(a)
	§ 102.3(c)
§ 102.4(e)(2)	§ 102.4(b)
§ 102.4(e)(3)	§ 102.5
§ 102.5(a)	deleted
§ 102.5(b)(1)	§ 102.6(a)
§ 102.5(b)(2)	deleted
§ 102.5(b)(3)	§ 102.6(b)
§ 102.5(c)	deleted
§ 102.5(d)	§ 102.6(a)
	§ 102.6(d)(1)(i)
	§ 102.6(d)(2)(i)
§ 102.5(e)	§ 102.7
§ 102.5(f)	§ 102.6(d)(1)(ii)
	§ 102.6(d)(2)(ii)
§ 102.5(g)	§ 102.6(d)(4)
§ 102.5(h)	§ 102.6(f)
§ 102.5(i)(1)	§ 102.6(d)(1)(i)
	§ 102.6(d)(2)(i)
§ 102.5(i)(2)	§ 102.6(c)
§ 102.5(i)(3)	deleted
§ 102.5(i)(4)	deleted
§ 102.6(a)	deleted
§ 102.6(b)	§ 102.9(b)
§ 102.6(c)	§ 102.9(c)(1)
§ 102.6(d)	§ 102.9(a)
§ 102.6(e)(1)	§ 102.9(d)
§ 102.6(e)(2)	§ 102.9(f)(1)
§ 102.6(e)(3)	§ 102.9(e)
§ 102.7(a)(1)	deleted
§ 102.7(a)(2)	deleted
§ 102.7(a)(3)	deleted
§ 102.7(a)(4)	deleted
§ 102.7(a)(5)	§ 102.8(d)
§ 102.7(a)(6)	§ 102.8(b)(1)
§ 102.7(a)(7)	§ 102.8(b)(2)
§ 102.7(a)(8)	§ 102.8(b)(4)
§ 102.7(b)(1)	§ 102.8(a)(1)
§ 102.7(b)(2)	§ 102.8(a)(2)
§ 102.7(b)(3)	§ 102.8(a)(3)
§ 102.7(b)(4)	§ 102.8(a)(4)
§ 102.7(b)(5)(i)	§ 102.8(a)(5)
§ 102.7(b)(5)(ii)	§ 102.8(a)(6)
§ 102.7(b)(6)	§ 102.8(b)(uosp)
	§ 102.8(c)
	§ 102.8(e)
	§ 102.8(h)
§ 102.7(b)(7)	§ 102.8(g)
§ 102.7(c)(1)	§ 102.8(d)
§ 102.7(c)(2)	§ 102.8(b)(uosp)
	§ 102.8(b) (1–3)
§ 102.7(c)(3)	§ 102.8(b)(uosp)
	§ 102.8(b)(4)
§ 102.7(c)(4)	§ 102.8(c)
§ 102.7(d)(1)	§ 102.8(l)(1)
§ 102.7(d)(2)	§ 102.8(m)
§ 102.7(d)(3)	§ 102.8(n)
§ 102.7(d)(4)(i)	§ 102.8(i)
§ 102.7(d)(4)(ii)	§ 102.8(i)
§ 102.7(d)(4)(iii)	§ 102.3(c)
§ 102.7(d)(5)	deleted
§ 102.7(e)	§ 102.8(o)
§ 102.8	§ 102.13
§ 102.20(a)	§ 102.20(a)(1)
§ 102.20(b)	§ 102.20(a)(2)
§ 102.20(c)	§ 102.20(a)(3)
§ 102.20(d)	§ 102.20(b)
§ 102.20(e)	§ 102.20(c)
§ 102.21(a)	deleted
§ 102.21(b)	deleted
§ 102.21(c)	§ 102.26
§ 102.21(d)	deleted
§ 102.21(e)	§ 102.24
§ 102.21(f)	§ 102.25
§ 102.21(g)	deleted
§ 102.21(h)	deleted
§ 102.22(a)(1)	§ 102.32(b)
§ 102.22(a)(2)	§ 102.32(c)
§ 102.22(a)(3)	§ 102.32(d)
§ 102.22(a)(4)	§ 102.32(e)
§ 102.22(a)(5)	deleted
§ 102.22(a)(6)	deleted
§ 102.22(a)(7)	deleted
§ 102.22(b)(1)	§ 102.32(a)
§ 102.22(b)(2)	deleted
§ 102.22(b)(3)	deleted
§ 102.22(b)(4)	deleted
§ 102.22(b)(5)	deleted
§ 102.22(c)	deleted
§ 102.22(d)	§ 102.29
§ 102.23UOP	§ 102.22(a)
§ 102.23(a)	§ 102.22(b)
§ 102.23(b)	§ 102.22(c)
§ 102.23(c)	§ 102.22(d)
§ 102.23(d)	§ 102.22(e)
§ 102.23(e)	§ 102.22(f)
§ 102.23(f)	§ 102.22(g)
§ 102.23(g)	§ 102.22(h)
§ 102.23(h)	§ 102.22(i)
§ 102.23(i)	§ 102.22(j)
§ 102.23(j)	§ 102.22(k)
§ 102.23(k)	§ 102.22(l)
§ 102.24	§ 102.28
§ 102.25	deleted
§ 102.26(a)	deleted
§ 102.26(b)(UOP)	deleted
§ 102.26(b)(1)	deleted
§ 102.26(b)(2)	deleted
§ 102.26(b)(3)	§ 102.60
§ 102.26(b)(4)	§ 102.47(a)
	§ 102.47(b)
§ 102.26(c)	deleted
§ 102.27(a)	§ 102.61(a)
§ 102.27(b)(UOP)	§ 102.61(b)
§ 102.27(b)(1)	§ 102.61(a)
§ 102.27(b)(2)	§ 102.61(a)
§ 102.27(b)(3)	§ 102.61(a)
§ 102.27(c)	§ 102.61(a)
§ 102.27(d)	§ 102.61(a)
§ 102.27(e)	§ 102.61(a)
§ 102.27(f)	§ 102.61(a)
§ 102.27(g)	§ 102.61(a)
§ 102.28(a)	§ 102.34(a)
	§ 102.58
§ 102.28(b)	§ 102.34(b)
§ 102.28(c)	§ 102.34(c)
§ 102.28(d)	§ 102.36(b)
§ 102.28(e)	§ 102.35
	§ 102.36
§ 102.29(a)	§ 102.38(c)
§ 102.29(a)	§ 102.39
§ 102.29(b)	§ 102.41
§ 102.29(c)	§ 102.40
§ 102.29(d)	deleted
§ 102.30(a)	§ 102.42
§ 102.30(b)	§ 102.43
	§ 102.46
§ 102.30(b)	§ 102.47
§ 102.30(c)	deleted
§ 102.30(d)	§ 102.47(a)
	§ 102.47(b)
§ 102.31(a)	§ 102.48
	§ 102.49(c)
	§ 102.50
§ 102.31(b)	§ 102.51
§ 102.31(c)	§ 102.52
§ 102.31(d)	§ 102.52
§ 102.31(e)	§ 102.53(b)(1)
	§ 102.53(c)(2)
§ 102.31(f)	§ 102.58(b)(3)
	§ 102.58(c)(2)
§ 102.32(a)(1)	§ 102.21(a)
§ 102.32(a)(2)	§ 102.21(b)
§ 102.32(a)(3)	§ 102.55
§ 102.32(a)(4)	deleted
§ 102.32(b)	deleted
§ 102.32(c)	§ 102.32(f)

Present part 102	Proposed part 102
§ 102.33(a)	§ 102.23(a)
§ 102.33(b)	deleted
§ 102.33(c)	§ 102.56
§ 102.33(d)	deleted
§ 102.33(e)	§ 102.57
§ 102.33(f)	§ 102.58
§ 102.33(g)	§ 102.58(d) § 102.58(e)
§ 102.33(h)	deleted
§ 102.34	§ 102.59
§ 102.35(a)	§ 102.27(d)(uosp)
§ 102.35(b)	§ 102.27(d) (1–3)
§ 102.35(c)	§ 102.27(e)
§ 102.36(a)	§ 102.27(a)
§ 102.36(b)	§ 102.27(b)
§ 102.36(c)	§ 102.27(c)
§ 102.37	§ 102.54

The principal substantive changes are as follows: (1) *Changes in Implementation of Executive Order 12600.* Under the present regulations, when someone requests business information even arguably exempt under 5 U.S.C. § 552(b)(4), SBA notifies the submitter and allows five working days to identify information the disclosure of which would cause substantial competitive harm. If SBA decides that it must disclose such information anyway, SBA must give the submitter an additional five working days to respond. The operation of this regulation makes it difficult for SBA to respond to FOIA requests within the statutory ten working day limit. To facilitate FOIA's ten working day requirement, SBA proposes to ask the submitter to identify this confidential information at the time of submission, and that the Agency thereafter would notify the submitter only if it intended to disclose information previously identified as confidential, or other information the release of which the Agency believed would cause substantial competitive harm. This proposed regulation would also provide that where SBA decided to release information the disclosure of which the submitter sought to prevent, SBA would give the submitter the ''maximum notice possible before disclosure without violating the time constraints imposed by the Freedom of Information Act'' rather than five working days. SBA proposes this change so that the Agency can assure that its responses to FOIA requests remain within the ten working day time limits imposed by the Freedom of Information Act itself.

(2) *Adoption of an Appeals Process for Fee Determinations.* This rule would establish a quick and simple appeal procedure for requesters who are dissatisfied with the fee SBA has charged for their FOIA requests. The procedure parallels the process by which requesters may appeal SBA decisions to withhold information. Interest would begin to accrue 31 days after SBA's response to the request, regardless of a fee appeal.

(3) *Elimination of Program Official from Privacy Act Regulations.* Under current Privacy Act regulations, Systems Managers function as the primary liaison with Privacy Act requesters, conveying requests to Program Officials and responses to the requesters. SBA has decided to streamline by empowering Systems Managers to assume the Program Official's responsibilities directly. Under the new rule, requesters will direct their requests to Systems Managers, who will make initial decisions as to access and amendment.

(4) *Elimination of Part 137.* SBA enacted Part 137 in 1984 in response to Executive Order 12356, which required Agencies to have regulations dealing with their handling of classified material. Since SBA has no classification authority, SBA has decided to repeal that portion of the existing regulation, maintaining only a provision (§ 102.12) which refers requests for any classified material in SBA's possession back to their originating agencies.

SBA also proposes some minor changes proposed to its fee structure. SBA currently waives fees less than $15; the proposed regulations would waive fees less than $25. SBA currently charges $18 an hour for professional record searches and $9 for clerical searches. Since SBA generally does not use clerical personnel to perform manual searches, and computer searches are billed separately, at cost, the proposed regulations eliminate the reference to clerical searches and bill all searches at $18 an hour.

Section By Section Analysis

Proposed § 102.1 describes the purpose of Subpart A: to describe SBA's compliance with the Freedom of Information Act.

Proposed § 102.2 describes what documents requesters can obtain by going to offices and what documents requesters must obtain through writing. Proposed § 102.2 directs the requester to the nearest District Office or to the Agency's FOIA office; either will forward the request to the proper office.

Proposed § 102.3 describes how long SBA may take to respond to a FOIA request. Paragraphs (a) and (c) set forth the statutory requirements and (with respect to the fee portion) OMB requirements for all Agencies (*See* 52 FR 10012). Paragraph (b), which provides that the clock does not begin to run until the proper office receives the request, replicates the present regulation.

Proposed § 102.4 describes possible responses to a FOIA request, including notices of appeal rights. Proposed § 102.5 makes it clear that SBA will supply only that information that is in the office as of the close of the day upon which the office receives the request. None of these proposed sections vary from the current regulations.

Proposed §§ 102.6 and 102.8 describe SBA's compliance with Executive Order 12600. Businesses submitting information after January 1, 1996 can designate items whose disclosure would cause them substantial competitive harm. If SBA proposes to release information so designated, or other information which SBA believes could cause such harm, SBA will give notice to the submitter and allow five business days to submit reasons why SBA should not release the information. If SBA decides to release the information over the submitter's objections, SBA then will give the submitter as much additional notice as feasible consistent with SBA's responsibilities under the Freedom of Information Act. With respect to information submitted prior to January 1, 1996, SBA's procedure will remain the same as it is now, except that the notice SBA gives in the event that it intends to release information over the submitter's objection will now be the maximum notice consistent with the Agency's obligations under FOIA, rather than five working days.

Proposed § 102.8 sets forth a fee schedule which, with two minor exceptions, remains the same: (1) A waiver of fees under $25, instead of the present regulation's $15; (2) A charge of $18 per hour for manual searches rather than $9 per hour for clerical searches and $18 per hour for professional searches. At SBA, professionals typically conduct manual searches. Computer searches are billed at SBA's actual cost and handled separately in the regulations. By setting all search fees at $18 per hour, SBA can simplify recordkeeping. The new regulation also codifies the present practice of charging the actual cost of certifying records and sending records (at the request of the FOIA requester) by other than first class mail. The remainder of the proposed regulation simply restates the current regulation.

Proposed § 102.9 sets forth a proposed appeal system for both denial of records and for fees which parallels the current system for appealing SBA decisions to withhold information.

Proposed § 102.10 matches the present regulations concerning the Public Index.

Proposed § 102.11 notes that if the requester asks for a document generated by another Agency, SBA will forward it to the Agency which generated the document. This process implements policy guidance which the Department of Justice has given Agencies on this issue.

Proposed § 102.12 deals with a particular sort of document generated from another Agency: classified documents. This section is all that remains of present Part 137. SBA had previously issued that Part to establish the system by which SBA would manage classified documents, as required by Executive Order 12356. However, SBA does not generate classified documents and has neither classification nor declassification authority. Accordingly, any classified documents in SBA's possession were generated by another Agency. SBA will refer any request for such a document to the generating Agency, just as it does with all documents generated by another Agency.

Proposed § 102.13 matches the present regulations concerning compulsory process against SBA, except that the Associate General Counsel for Litigation may under the proposed regulation delegate authority to resist a subpoena to field counsel.

SBA has substantially reorganized Subpart B, but without significant substantive changes. Proposed § 102.20 describes the purpose of the Privacy Act subpart. Proposed § 102.21 sets forth the basic principles of privacy maintenance. Proposed § 102.22 describes the circumstances, unchanged from the present, under which SBA will disclose records. In proposed § 102.23, SBA notes that personnel files are not governed by Part 102 but rather by 5 CFR Parts 293 and 297. It also notes that EEO Complaint files are governed by 29 CFR Part 1611. This is the state of the law; the proposed regulation corrects anachronistic references in present Part 102. Proposed §§ 102.24, 102.25, and 102.26 provide definitions for terms used in the regulations. Proposed § 102.27 describes records which are exempt from the Privacy Act under certain circumstances, or which are exempt on a regular basis from certain provisions of the Privacy Act for all purposes. This section replicates present §§ 102.35 and 102.36, with the single exception that the new regulation does not exempt EEO Complaint files, Litigation and Claims files, Standards of Conduct files, and Civil Rights Compliance files from the full range of Privacy Act provisions since they are not records maintained by the Inspector General. Proposed § 102.28 makes it clear that the Privacy Act does not give individuals access to records compiled for civil litigation.

Proposed §§ 102.29 through 102.33 establish the responsibilities of SBA employees who administer the Privacy Act. With one important exception, these responsibilities remain the same. The present regulations divide Privacy Act responsibilities among the Privacy Act Officer, the Program Official for each program or office, and the Systems Manager for each program or office. The new regulations eliminate Program Officials from Privacy Act responsibilities and allocate most of their responsibilities to the Systems Managers. This will free Program Officials to discharge their other substantive SBA duties.

Proposed §§ 102.34–102.41 provide instructions for a person who has records in an SBA system of records and who wants to look at those records. Proposed §§ 102.42–102.53 provide instructions for a person who wishes to have his SBA record amended. Proposed § 102.54 governs judicial review. None of these sections reflect any substantive changes from the present regulations.

Proposed §§ 102.55 through 102.60 group together miscellaneous commonly-asked Privacy Act questions which the regulations currently treat in disparate sections of Part 102. These proposed regulations do not enact any substantive changes in the answers to those questions, except that (1) SBA will no longer provide a first copy of files requested under the Privacy Act for free, (2) SBA will waive fees under $25 (instead of the current $15) for Privacy Act requests and, (3) noncustodial parents will not be allowed to obtain their children's records under the Privacy Act.

SBA's current regulations regarding the Computer Matching and Privacy Protection Act of 1988 are moved to § 102.61. Under the proposed regulation, the statutory provisions are incorporated by reference rather than separately set out.

The proposed regulations eliminate references to various recordkeeping and reporting requirements which have been mandated by statute; since the statute imposes those requirements on SBA it would be superfluous to restate them in regulations.

These proposed regulations eliminate many existing provisions of Part 102 either because they are duplicative or because they set forth in regulation provisions which are better governed by internal Agency guidance. For example, the proposed regulations do not detail the recordkeeping obligations of the Privacy Act Officer. This does not mean, of course, that SBA will not comply with the recordkeeping requirements of the Privacy Act. It simply indicates that it will be an Agency decision, not subject to the provisions of the Administrative Procedures Act, as to which of its employees discharges which of the recordkeeping responsibilities.

The elimination of an existing provision is not—except as noted above—meant to change substantive procedures. For example, the proposed regulations would eliminate those provisions of present § 102.3 which set forth what documents the SBA would routinely make available and what documents the SBA routinely withholds. This does not signal a change in SBA policy on withholding. SBA will continue to provide all required documents, along with such additional documents as it considers appropriate, but SBA sees no reason to give this unexceptional policy the weight of regulation.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of Executive Order 12866 or the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This proposed regulation would merely make the Agency's FOIA and PA procedures clearer. It will institute governmental efficiencies at no cost to small businesses. Therefore, it is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this proposed rule, if adopted in final form, would contain no new reporting or record keeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule would not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects

13 CFR Part 102

Freedom of information, Privacy.

13 CFR Part 137

Classified information.

For the reasons set forth above, SBA hereby proposes to amend Title 13 of the Code of Federal Regulations, as follows:

1. Part 102 would be revised to read as follows:

PART 102—RECORD DISCLOSURE AND PRIVACY

Subpart A—Disclosure of Information

Sec.

102.1 Purpose.
102.2 How can I get records from SBA?
102.3 How long will it take for SBA to respond to my request for records?
102.4 How will SBA respond to my request?
102.5 If SBA grants my request, which records will be supplied?
102.6 How will SBA respond to requests for business information?
102.7 Procedures for submitters of business information to SBA after January 1, 1996.
102.8 What fees will SBA charge?
102.9 How may I appeal a denial of my request for information or a fee determination?
102.10 How can I get the Public Index of SBA materials?
102.11 What happens if I ask SBA for a record that another Federal Agency generated?
102.12 What happens if I ask for classified records?
102.13 What happens if I subpoena records or testimony of employees in connection with a civil lawsuit, criminal proceeding, or administrative proceeding?

Subpart B—The Privacy Act

102.20 What privacy rights does this subpart regulate?
102.21 How will SBA maintain records?
102.22 When will SBA disclose records?
102.23 Special rules about personnel and equal employment opportunity files.
102.24 What is a record?
102.25 What is a system of records?
102.26 What does this subpart mean by ''person to whom a record pertains'' or ''you''?
102.27 What records are partially exempt from the provisions of the Privacy Act?
102.28 Information compiled for civil action.
102.29 Who administers SBA's responsibilities under the Privacy Act?
102.30 How can I write to the Privacy Act Officer?
102.31 Who appoints Systems Managers?
102.32 What do Systems Managers do?
102.33 How can I write to a Systems Manager?
102.34 How can I see records kept on me?
102.35 How long will it take SBA to respond to my request?
102.36 How will SBA respond to my request?
102.37 How may I appeal a decision to deny me access to my records?
102.38 To whom should my appeal be addressed?
102.39 When must I appeal to the Privacy Act Officer?
102.40 When will SBA respond to my appeal?
102.41 How will SBA respond to my appeal?
102.42 How can I get SBA to amend a record kept on me?
102.43 What should my petition say?
102.44 For what reasons will SBA amend my record?
102.45 Will SBA ask me for more information after I make my request?
102.46 When will SBA respond to my request?
102.47 How will SBA respond to my request?
102.48 How do I appeal a refusal to amend a record kept on me?
102.49 To whom should I address my appeal?
102.50 By when must I submit my appeal?
102.51 By what standards will the Privacy Officer review my appeal?
102.52 When will SBA respond to my appeal?
102.53 How will SBA respond to my appeal?
102.54 How can I obtain judicial review about an SBA Privacy Act decision?
102.55 What must SBA tell the individuals from whom it collects information?
102.56 Will SBA sell my name or address?
102.57 Do I have to give SBA my Social Security Number?
102.58 When will SBA show personnel records to my representative?
102.59 What fees will SBA charge me for my records?
102.60 May I be informed of disclosures made of my record?
102.61 Matching Program procedures.

Authority: 5 U.S.C. 552; 44 U.S.C. *et seq.*; 5 U.S.C. 552a; 18 U.S.C. 4203 (a)(1); 31 U.S.C. 1 *et seq.*; 31 U.S.C. 67 *et seq.*; E.O. 12600, 3 CFR 1987 Comp. p. 235.

PART 102—RECORD DISCLOSURE AND PRIVACY

Subpart A—Disclosure of Information

§ 102.1 Purpose.

This subpart describes the procedures by which the Small Business Administration makes documents available under the Freedom of Information Act (5 U.S.C. 552).

§ 102.2 How can I get records from SBA?

(a) You can go to the SBA office at which the records are kept, and photocopy any final SBA decision, policy statement, or standard operating procedure.

(b) For copies of all other records, you must send a letter request to the SBA office at which the records are kept. The letter must describe specific records you want. If you don't know which SBA office keeps the records, you may send your letter to the nearest SBA District Office. You may also send your letter to the Chief, Freedom of Information Act and Privacy Act, 409 Third Street SW., Suite 5900, Washington D.C. 20416. The office receiving your letter will forward it to the correct office.

§ 102.3 How long will it take for SBA to respond to my request for records?

(a) If you have met the fee requirements of § 102.8, SBA will respond within ten working days after the correct office receives your request, except under unusual circumstances. Unusual circumstances include especially large numbers of records requested, records not located in the office handling the request, or the need to consult with more than one interested government office. If you make your request on behalf of another person, SBA will respond within ten working days after you present a document signed by that person authorizing you to request information on his behalf. If you make your request on behalf of another person without including such signed authorization, SBA will inform you of the requirements of this paragraph.

(b) If you send your request to the wrong office, that office will send it to the correct office within ten working days and will send you an acknowledgement letter.

(c) If SBA determines that it will be unusually difficult to comply with your request within ten working days, SBA will respond within twenty working days of the date upon which the correct office receives your request, and will notify you that the extra time is required.

§ 102.4 How will SBA respond to my request?

Within the time limit described in § 102.3, SBA will either:

(a) Give you the records you requested,

(b) Give you some or none of the records you requested, explain why SBA has decided not to comply fully with your request, citing specific exemptions where applicable, and explain how to appeal that decision, or

(c) Tell you that you will not receive a response until you have either paid your fee or committed to the amount of fee you will pay, as applicable.

§ 102.5 If SBA grants my request, which records will be supplied?

SBA will give you copies of all records or portions of records requested which are in the processing office as of the close of the day upon which that office received your request.

§ 102.6 How will SBA respond to requests for business information?

(a) *What is business information*? Business information is a trade secret, or commercial or financial information, contained in records provided to the SBA by any person and which may be protected from disclosure under Exemption Four of the Freedom of Information Act (5 U.S.C. 552(b)(4)).

(b) *Who is the submitter of business information*? The submitter is the business entity to which the business information pertains and which submitted the information to SBA, either directly or through an intermediary such as a bank, SBIC licensee, or representative.

(c) *What if the business information has previously been released to the general public*? SBA will disclose such business information upon request and payment of any required fees.

(d) *What if the business information has not previously been released to the general public*? Except as provided in paragraph (e) of this section:

(1) *For all business information submitted prior to January 1, 1996*:

(i) Unless SBA intends to deny the request to disclose business information entirely, SBA will notify the submitter of the request upon receipt, and will describe or provide the submitter with a copy of the records it intends to disclose.

(ii) SBA will ask the submitter to identify business information which would likely cause substantial competitive harm if disclosed and why the harm would occur. The submitter will have 5 working days to provide its response.

(2) *For all business information submitted after January 1, 1996*:

(i) Upon receipt of the request, SBA will notify the submitter when it intends to release business information which previously has been identified by the submitter as confidential and likely to cause substantial competitive harm if disclosed. If other business information is requested which SBA believes may cause substantial competitive harm if disclosed, SBA will notify the submitter of that request as well.

(ii) SBA will ask the submitter to explain why the identified information would be likely to cause substantial competitive harm if disclosed. The submitter will have 5 working days to provide its response.

(3) SBA will carefully consider the submitter's objections to disclosure, if any, but will not be bound by it. If a submitter objects to the disclosure of information which SBA believes it must disclose, SBA will disclose that information.

(4) If SBA decides to disclose information which the submitter requested be withheld, SBA will give the submitter the maximum notice possible before disclosure without violating the time constraints imposed by the Freedom of Information Act. In this notice, SBA will tell the submitter what it intends to disclose, and when it intends to make disclosure.

(e) If SBA does not intend to release any business information it will not notify the submitter of the request.

(f) SBA will promptly notify the submitter of any suit filed against SBA to compel disclosure.

§ 102.7 Procedures for submitters of business information to SBA after January 1, 1996.

(a) Submitters may mark or identify business information at the time of submission which would likely cause them substantial competitive harm if disclosed.

(b) After ten years from submission SBA will regard the previous assertion as no longer in effect unless the submitter has renewed its assertion in writing that disclosure would likely cause substantial competitive harm.

§ 102.8 What fees will SBA charge?

(a) *Basic fees.* (1) *For manual record search.* SBA will charge $18 per hour.

(2) *For computer record searches.* SBA will charge the actual costs.

(3) *For review and disclosure determinations.* SBA will charge $18 per hour.

(4) *Duplication.* SBA will charge ten cents per page for photocopy duplication, and the actual cost of reproduction for other methods.

(5) *Certifying records.* SBA will charge actual costs.

(6) *For requested special types of delivery other than first-class mail.* SBA may charge the actual cost.

(b) *If you are a representative of an educational institution, a non-commercial scientific institution, or a member of the news media.* SBA will charge you only for the cost of duplication after the first 100 pages.

(1) *What is an educational institution?* A state-certified preschool, elementary or secondary school, an accredited college or university, an accredited institution of professional education, or any accredited or state-certified institute of vocational education which operates a program or programs of scholarly research.

(2) *What is a non-commercial scientific institution?* An organization which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(3) *What is a representative of an educational or non-commercial scientific institution?* A requester seeking records on behalf of that institution who is authorized by that institution to do so, and who is seeking those records for scholarly or scientific reasons, as long as there is no commercial purpose to the request for records.

(4) *What is a representative of the news media*? An individual who is actively gathering news for an entity that is organized and operated to disseminate information to the general public. To be considered ''news media'', this organization may provide information by subscription and may target its dissemination to a narrow section of the general public as long as any member of the general public may purchase information from it. If you are not employed by the news media, but have a reasonable expectation that you will sell the information you obtain to the news media, SBA may conclude that you are a representative of the news media. SBA will not consider you to be a representative of the news media if your request has a commercial purpose, beyond the commercial purpose of selling information to the general public.

(c) *Member of the general public.* If you are a member of the general public, SBA will not charge you for the first two hours of search time, the first hundred pages of photocopy duplication, or for review and disclosure determinations. The general public is anyone who is not a representative of an educational institution, a representative of the news media, or a commercial requester.

(d) *Commercial requester.* If you are a commercial requester you must pay all the basic fees set forth in paragraph (a) *of this section. A commercial requester is anyone seeking information for commercial, trade, or profit interests of the requester or someone he or she is trying to help.*

(e) *How does SBA determine what category of requester I am?* The SBA office processing your request will determine the appropriate category. If you are not a commercial requester, you must show us what category of requester you are.

(f) *Tell us how much you are willing to pay.* To get the quickest possible response, you must tell SBA how much money you are willing to pay in fees when you make your request for records.

(g) If you don't tell us how much you are willing to pay and SBA estimates that the fee will exceed $25.00, SBA

will estimate the fee and will not process your request until you tell SBA that you are willing to pay the estimated amount, or until you narrow the request so that the fee is less than $25.

(h) SBA will waive fees less than $25.

(i) *If the fee is more than $250, or if you have a history of failing to pay FOIA fees in a timely manner,* SBA will ask you to remit the estimated amount and any past due charges before sending you the records.

(j) *Who determines the fee?* The SBA office which processes your request.

(k) *When do you pay the fee?* You will be billed when SBA responds to your request and you must pay within thirty-one calendar days.

(l) *Failure to pay fees.* (1) After the thirty-first day following the date upon which you were billed, SBA will charge interest at the maximum rate allowed under Title 31 of the United States Code, section 3717.

(2) If you owe fees for previous FOIA responses, SBA will not respond to further requests unless you satisfy the amount due.

(3) If you do not pay the amount due within ninety calendar days of the date you must pay, SBA may notify consumer credit reporting agents of your delinquency.

(m) *Unsuccessful searches.* If SBA's search for records is unsuccessful, it will still bill you for the search.

(n) *Multiple requests.* If you make multiple requests at the same time, or at roughly the same time, SBA will aggregate your requests for records. In no case will SBA give you more than the first two hours of search time, or more than the first one hundred pages of duplication without charge.

(o) *Reduction of fees in the public interest.* If SBA determines that disclosure of the information you seek is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and that you are not seeking the information in your own commercial interests, SBA may waive or reduce the fee.

§ 102.9 How may I appeal a denial of my request for information or a fee determination?

(a) You must write to the Chief, Freedom of Information Act and Privacy Act Office at 409 Third Street SW., Suite 5900, Washington, D.C. 20416.

(b) The Chief must receive your written appeal within 45 calendar days of the date of the SBA fee determination from which you are appealing.

(c)(1) If you are appealing a denial of your request for information, the appeal must contain the following information:

(i) What records were denied.

(ii) The name and title of the individual responsible for denying the request and the address of his or her office.

(iii) Any other information you deem appropriate.

(2) If you are appealing a fee determination, the appeal must contain the following information:

(i) The address of the office which made the fee determination from which you are appealing.

(ii) The fee that office charged.

(iii) The fee, if any, you believe should have been charged.

(iv) The reasons you believe that your fee should be lower than the fee which the Agency charged.

(v) Any other information you deem appropriate.

(d) If anybody other than the Chief was the person who originally made the determination you are appealing, the Chief will decide your appeal. If the Chief was the person who originally made the determination you are appealing, SBA's Assistant Administrator for Hearings and Appeals will decide your appeal.

(e) SBA will take no more than twenty working days from the date upon which it receives your appeal to decide it, unless unusual circumstances require a thirty working days response time.

(f)(1) If you are appealing a decision to deny your request for records, SBA will in response either:

(i) Give you the records you requested, or

(ii) Decline to give you the records you requested, tell you why SBA has concluded that the records were exempt from disclosure under the Freedom of Information Act, and tell you how to obtain judicial review of SBA's decision.

(2) If you are appealing a fee determination, SBA will in response either charge the fee you request or charge another fee and explain why SBA has concluded that the fee it has decided to charge is appropriate.

§ 102.10 How can I get the Public Index of SBA materials?

(a) The Public Index is a document which provides identifying information about official documents which SBA has issued.

(b) SBA has administratively determined, as permitted by the Freedom of Information Act, that periodic publication and distribution is unnecessary and impracticable.

(c) The Public Index is set forth in Appendix 3 of SBA Standard Operating Procedure 40 03. You can review and photocopy the Public Index, along with Standard Operating Procedure 40 03, at any SBA office.

§ 102.11 What happens if I ask SBA for a record that another Federal Agency generated?

Such a request is a request directed to the wrong office, as that term is used in § 102.3(b). SBA will forward your request to the generating Agency.

§ 102.12 What happens if I ask for classified records?

SBA does not have original classification authority. Therefore, any national security information or materials (as defined by Executive Order 12356) in SBA's possession must have been classified by another agency. If you ask for such material, SBA will forward that request to the agency which originally classified those materials, with its recommendations, if any.

§ 102.13 What happens if I subpoena records or testimony of employees in connection with a civil lawsuit, criminal proceeding or administrative proceeding?

(a) If your subpoena requires either the testimony of an SBA employee or records within SBA's possession, the records themselves, or both, the person to whom the subpoena is directed must consult with SBA counsel in the relevant SBA office, who will in turn obtain approval from the Associate General Counsel for Litigation. The Associate General Counsel may delegate the authorization for production of documents or testimony as appropriate to local SBA counsel.

(b) If SBA counsel approves of compliance with the subpoena, SBA will comply.

(c) If SBA counsel disapproves of compliance with the subpoena, SBA will not comply, and will base such noncompliance on an appropriate legal basis such as privilege or a statute.

(d) A copy of a subpoena relating to a criminal matter should be provided by SBA counsel to SBA's Inspector General.

Subpart B—The Privacy Act

§ 102.20 What privacy rights does this subpart regulate?

This subpart establishes SBA's policy and procedures safeguarding an individual against an invasion of personal privacy.

(a) Except as otherwise provided by law or regulation, SBA will permit you to do the following:

(1) Determine what records pertaining to you are collected, maintained, used, or disseminated by the SBA;

(2) Object when records pertaining to you are obtained by SBA for a particular

purpose and are proposed to be used or made available for another purpose without your consent; and

(3) Gain access to information pertaining to you in records, have a copy made of all or any portion of those records, and correct or amend such records as appropriate;

(b) SBA will collect, maintain, use, or disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that the information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information.

(c) SBA will permit exemptions from the requirements of 5 U.S.C. 552a (Privacy Act of 1974) only where an important public policy need for such exemption has been determined by specific statutory authority.

§ 102.21 How will SBA maintain records?

SBA records will:

(a) Contain only such information about an individual as is relevant and necessary to accomplish a purpose of the Agency required to be accomplished by statute, regulation, or by Executive Order of the President.

(b) Be comprised, to the maximum practical extent, of an individual's own statements when the information may result in an adverse determination about an individual's rights, benefits, or privileges under a Federal program.

§ 102.22 When will SBA disclose records?

SBA will not disclose to anyone any record which is contained in a system of records, except that it will disclose a record:

(a) To the person about whom the record is maintained, or to that person's agent, within the limits discussed in this subpart.

(b) To those employees of the Agency who have a need for the record to perform their duties;

(c) When required under 5 U.S.C. 552 (Freedom of Information Act);

(d) For a routine use of the record compatible with the purpose for which it was collected;

(e) To the Bureau of the Census for purposes of planning or carrying out a census, survey, or related activity pursuant to Title 13, United States Code;

(f) To a recipient who has provided the Agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, where the record is transferred in a form that is not individually identifiable;

(g) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for evaluation by the Administrator of General Services or his or her designee to determine whether the record has such value;

(h) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if:

(1) The activity is authorized by law, and

(2) The head of the agency or instrumentality has made a written request to the Privacy Act Officer specifying the particular portion desired and the law enforcement activity for which the record is sought;

(i) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual. Upon disclosure notification will be transmitted to the last known address of such individual;

(j) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, or any joint committee of Congress or subcommittee of any such joint committee;

(k) To the Comptroller General, or any of his or her authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(l) Pursuant to the order of a court of competent jurisdiction; or

(m) To a consumer reporting agency in accordance with section 3711(f) of title 31.

§ 102.23 Special rules about personnel and equal employment opportunity files.

(a) All SBA files which the Office of Personnel Management determines are personnel files will be governed by the provisions of parts 293 and 297 of Title 5 of the Code of Federal Regulations.

(b) All Equal Employment Opportunity complaint files will be governed by the provisions of part 1611 of Title 29 of the Code of Federal Regulations.

§ 102.24 What is a record?

A record is information which SBA maintains on an individual and which includes either his name or some other symbol (such as a fingerprint, a social security number, or a photograph) by which he or she can be identified.

§ 102.25 What is a system of records?

A system of records is one or more records which SBA routinely keeps for official purposes, and from which SBA can retrieve records by using a name or personal identifier.

§ 102.26 What does this subpart mean by ''person to whom a record pertains'' or ''you''?

When this subpart refers to the ''person to whom a record pertains'' or uses the pronoun ''you'', it refers to a United States citizen or a lawfully admitted alien. It does not refer to a corporation, partnership, or sole proprietorship.

§ 102.27 What records are partially exempt from the provisions of the Privacy Act?

(a) The following systems of records are exempt from certain provisions of the Privacy Act: Audit Reports (system of records #SBA 015), Litigation and Claims Files (#SBA 070), Personnel Security Files (#SBA 100), Security and Investigations Files (#SBA 120), Office of Inspector General Referrals (#SBA 125), Investigations Division Management Information System (#SBA 130), and Standards of Conduct Files (#SBA 140).

(b) The provisions of the Privacy Act from which these systems of records are exempt are subsections (c)(3)(Accounting of Certain Disclosures), (d)(Access to Records), (e)(1), 4G, H, and I (Agency Requirements), and (f)(Agency Rules) of the Privacy Act.

(c) The systems of records described in paragraph (a) are exempt from the provisions of the Privacy Act described in paragraph (b) in order to:

(1) Prevent the subject of investigations from frustrating the investigatory process;

(2) Protect investigatory material compiled for law enforcement purposes;

(3) Fulfill commitments made to protect the confidentiality of sources and to maintain access to necessary sources of information; or

(4) Prevent interference with law enforcement proceedings.

(d) In addition to the foregoing exemptions, the systems of records described in paragraph (a) of this section which are numbered as numbers SBA 015, 100, 120, 125 and 130 are fully exempt from the Privacy Act to the extent that they contain:

(1) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, confinement, release, and parole and probation status;

(2) Information compiled for the purpose of criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or

(3) Reports associated with an identifiable individual compiled at any stage of the process of enforcement of

the criminal laws from arrest or indictment through release from supervision.

(e) The systems of records described in paragraph (d) are fully exempt from the Privacy Act to the extent described in that paragraph because they are records maintained by the Investigations Division of the Inspector General, which is a component of SBA which performs as its principal function activities pertaining to the enforcement of criminal laws within the meaning of 5 U.S.C. 552a(j)(2). They are exempt in order to:

(1) Prevent the subjects of OIG investigations from using the Privacy Act to frustrate the investigative process;

(2) Protect the identity of Federal employees who furnish a complaint or information to the OIG, consistent with section 7(b) of the Inspector General Act of 1978, 5 U.S.C. App. I;

(3) Protect the confidentiality of other sources of information;

(4) Avoid endangering confidential sources and law enforcement personnel;

(5) Prevent interference with law enforcement proceedings;

(6) Assure access to sources of confidential information, including that contained in Federal, State, and local criminal law enforcement information systems;

(7) Prevent the disclosure of investigative techniques; or

(8) Prevent the disclosure of classified information.

§ 102.28 Information compiled for civil action.

Nothing in the regulations in the subpart allows an individual access to any information compiled by the Agency in reasonable anticipation of a civil action or proceeding. In the event that there should be a question as to whether information should be disclosed pursuant to this section, the Systems Manager for the System of Records involved will obtain an opinion from Agency counsel, and will also consult with the Privacy Act Officer.

§ 102.29 Who administers SBA's responsibilities under the Privacy Act?

The Privacy Act Officer has overall responsibility for administering the Privacy Act for SBA, and the Systems Manager is responsible for administering the Privacy Act as to systems of records within an SBA Office.

§ 102.30 How can I write to the Privacy Act Officer?

You can write to the Privacy Act Officer at 409 Third Street S.W., Suite 5900, Washington, D.C. 20416.

§ 102.31 Who appoints Systems Managers?

The Senior official in each field office and each Headquarters program area designates himself or herself or appoints another as the Systems Manager for that office.

§ 102.32 What do Systems Managers do?

Systems Managers have the following responsibilities, among others, for the offices for which they are appointed:

(a) Acting as the initial contact person to individuals seeking access or amendment of their records.

(b) Responding to requests for information.

(c) Discussing the availability of records with individuals.

(d) Amending records in cases where amended information is not controversial and does not involve policy decision making.

(e) Informing individuals of any reproduction fees to be charged.

(f) Assuring that their systems of records contains no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained, or unless pertinent to and within the scope of an authorized law enforcement activity. First Amendment rights include, but are not limited to, freedom to follow religious and political beliefs, freedom of speech and of the press, and freedom of assembly and the right to petition government.

§ 102.33 How can I write to a Systems Manager?

You can write to a Systems Manager by writing to the SBA Office which maintains the record you are seeking. If you do not know which office that is, or you do not know the address of that office, you can write to the Privacy Act Officer at 409 3rd Street S.W., Suite 5900, Washington, D.C. 20416, who will forward your request to the proper Systems Manager.

§ 102.34 How can I see records kept on me?

(a) You may look at any information pertaining to yourself if it is contained in any SBA system of records, unless some law or regulation prohibits it.

(b) In order to see this information, you must ask for it in writing and the writing must identify what records you want. The writing should be addressed to the Systems Manager overseeing the system of records.

(c) The Systems Manager (or, when appropriate, the Privacy Act Officer) may ask for more specific information about the system of records in which the document you are seeking is kept, and may ask you for identification. The Systems Manager may ask you for your social security number but you are not obliged to present it and your request will not be denied simply because you do not provide it. The Systems Manager may, however, deny your request if he or she cannot determine that you are the person about whom the information pertains.

§ 102.35 How long will it take SBA to respond to my request?

The Systems Manager will respond within ten working days.

§ 102.36 How will SBA respond to my request?

The Systems Manager will inform you that:

(a) Your request is denied, in which case he or she will set forth the reasons for denial and your rights to appeal; or

(b) Your request is granted and you may view your record, in which case he or she will set forth the time and date for you to review your record in the presence of an SBA employee; or

(c) Your request is granted and, unless you object, SBA will mail you a copy of your record. SBA will mail you your record only if it determines that there are no other reasonable means for you to obtain access to your record.

§ 102.37 How may I appeal a decision to deny me access to my records?

Your appeal should be in writing and should set forth any information you think would show that you should have access to your records.

§ 102.38 To whom should my appeal be addressed?

(a) *Denial of a personnel file.* Address an appeal of a denial of a request for a personnel file to the Office of Personnel Management, 1900 E Street N.W., Washington, D.C. 20006.

(b) *Denial of an Equal Employment Opportunity Complaint File.* Address an appeal of a denial of an Equal Employment Opportunity Complaint File to the Equal Employment Opportunity Commission, 1801 L Street N.W., Washington, D.C. 20036.

(c) *All other appeals.* You may appeal to the Privacy Act Officer a decision to deny you access to any other record. *See* § 102.30, above.

§ 102.39 When must I appeal to the Privacy Act Officer?

Your appeal must reach the Privacy Act Officer on or before 30 calendar days after the date the denial was issued. If your appeal is based on the failure of the Systems Manager to

answer your request, your appeal must reach the Privacy Act Officer on or before 90 calendar days after the date by which the Systems Manager should have responded under section 102.35.

§ 102.40 When will SBA respond to my appeal?

The Privacy Act Officer will respond to you within 30 working days of the date when your appeal was received.

§ 102.41 How will SBA respond to my appeal?

The Privacy Act Officer will inform you that:

(a) Your request is denied, in which case the reasons for denial will be set forth along with your rights to judicial review of SBA's decision; or

(b) Your request is granted and you may view your record, in which case the time and date for you to review your records in the presence of an SBA employee will be set forth; or

(c) Your request is granted and, unless you object, SBA will mail you a copy of your record. SBA will mail you your record only if it determines that there are no other reasonable means for you to obtain access to your record.

§ 102.42 How can I get SBA to amend a record kept on me?

You can petition to have records kept on you amended by writing to the Systems Manager who oversees the system of records in which the record you wish amended is kept. If you are unable to determine who that Systems Manager is, you may send your petition to the Privacy Act Officer, who will forward it to the right Systems Manager. *See* § 102.30.

§ 102.43 What should my petition say?

Your petition should include the following:

(a) In what system of records the record you want amended is kept.

(b) What record you want amended.

(c) What specific information in that record you want amended.

(d) Why you want the record amended.

(e) Any information you have, including copies of evidence, which you think will persuade the Systems Manager to amend the record.

(f) What the record should say.

§ 102.44 For what reasons will SBA amend my record?

SBA will maintain only accurate, complete, and up-to-date records which are relevant to accomplish some purpose of the Agency required by law, regulation, or Executive Order of the President. There are four grounds for amending a record. They are:

(a) The record is not accurate.

(b) The record is not relevant to any legitimate SBA concern.

(c) The record is out-of-date. For example, there may have been events since the date of the record which have affected some of the information contained in the record.

(d) The record is incomplete. There may be relevant information about the material contained in the record which was not included in the record.

§ 102.45 Will SBA ask me for more information after I make my request?

The Systems Manager (or, when appropriate, the Privacy Act Officer) may ask for more specific information about the system of records in which the document you are seeking is kept, and may ask you for identification. The Systems Manager may ask you for your social security number, but you are not obliged to present it and your request will not be denied simply because you do not provide it. The Systems Manager may, however, deny your request if he or she cannot determine that you are the person about whom the information pertains.

§ 102.46 When will SBA respond to my request?

The Systems Manager will acknowledge receipt of your request within 10 working days and issue a written response within 30 working days.

§ 102.47 How will SBA respond to my request?

The Systems Manager will:

(a) Make the amendment you request, in which case he or she will send all individuals who had previously received a copy of that record a copy of the amended record; or

(b) Amend the record, but not in complete accordance with your request, in which case he or she will send all individuals who had previously received a copy of that record a copy of the amended record and will, in addition, tell you why your request was not granted in full and tell you of your appeal rights; or

(c) Decline to amend the record, in which case he or she will tell you why your request was not granted and tell you of your appeal rights.

§ 102.48 How do I appeal a refusal to amend a record kept on me?

Your appeal should be in writing and include the following:

(a) All of the information contained in your original request to amend the record.

(b) The response of the Systems Manager, if any, including the reasons for denying your request, if any.

(c) Any information you wish to submit in response to the Systems Manager's findings.

§ 102.49 To whom should I address my appeal?

(a) *Personnel file.* Address your appeal to the Office of Personnel Management, 1900 E Street NW., Washington, DC 20006.

(b) *Equal Employment Opportunity Complaint File.* Address your appeal to the Equal Employment Opportunity Commission, 1801 L Street NW., Washington, DC 20036.

(c) *All other appeals.* Address your appeal to the Privacy Act Officer. *See* § 102.30.

§ 102.50 By when must I submit my appeal?

Your appeal must be received by the Privacy Act Officer within 30 calendar days of the date upon which the Systems Manager declined to amend your records, or within 90 calendar days of the date upon which the Systems Manager should have responded to your request under § 102.46 if the Systems Manager did not so respond.

§ 102.51 By what standards will the Privacy Officer review my appeal?

The Privacy Act Officer will decide your appeal using the criteria of accuracy, relevance, timeliness, and completeness described in § 102.44. The Privacy Act Officer will review all relevant information and may seek the views of other SBA personnel. The Privacy Act Officer may review information not available to or not used by the Systems Manager.

§ 102.52 When will SBA respond to my appeal?

The Privacy Act Officer will respond to your appeal within 30 working days of the date upon which it is received, unless the Administrator determines that unusual circumstances exist, in which case the Privacy Act Officer will notify you of the presence of these unusual circumstances within 30 working days of the date upon which he or she received your appeal, and will respond to your appeal within 60 working days of the date of receipt.

§ 102.53 How will SBA respond to my appeal?

The Privacy Act Officer will:

(a) Make the amendment you request, in which case he or she will send all individuals who had previously received a copy of that record a copy of the amended record; or

(b) Amend the record, but not in complete accordance with your request, in which case he or she will

(1) Send all individuals who had previously received a copy of that record a copy of the amended record, and

(2) Tell you why your request was not granted in full and tell you of your rights to judicial review, and

(3) Mark the areas of dispute, include your statement of disagreement in the file, and, if appropriate, include a concise statement of why the Agency refused to amend the record in accordance with your request, and send this material to all individuals who had previously received a copy of that record; or

(c) Decline to amend the record in any respect, in which case he or she will

(1) Tell you why your request was not granted and tell you of your rights to judicial review, and

(2) Mark the areas of dispute, include your statement of disagreement in the file, and, if appropriate, include a concise statement of why the Agency refused to amend the record in accordance with your request, and send this material to all individuals who had previously received a copy of that record.

§ 102.54 How can I obtain judicial review about an SBA Privacy Act decision?

You may bring a civil action against SBA in a district court of the United States whenever the SBA:

(a) Makes a final determination not to provide you with access to or to amend your record in accordance with your request;

(b) Fails to maintain your records with such accuracy, relevance, timeliness and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to you that may be made on the basis of such record, and consequently a determination is made which harms you, or

(c) Fails to comply with any other provisions of the Privacy Act (5 U.S.C. 552a) or the implementing regulations in this subpart, in such a way as to cause harm to you.

§ 102.55 What must SBA tell the individuals from whom it collects information?

When SBA collects information from an individual, it must, either on the form which collects the information or on a separate form which the individual may keep, state:

(a) Whether disclosure of the information is voluntary or mandatory;

(b) By what authority SBA is collecting the information;

(c) For what principal purpose or purposes SBA is collecting the information;

(d) What routine uses might be made of that information; and

(e) What will happen if the information isn't supplied.

§ 102.56 Will SBA sell my name or address?

SBA will not sell your name or address to anyone. Someone might acquire it, though, under the Freedom of Information Act (5 U.S.C. 552).

§ 102.57 Do I have to give SBA my Social Security Number?

(a) *No.* You need not give SBA your Social Security Number, even if SBA asks for it.

(b) If SBA asks you for your Social Security Number, it must also tell you under what authority it is seeking to know your Social Security Number, and for what purpose.

(c) SBA cannot withhold a benefit solely because you refuse to tell it your Social Security Number.

§ 102.58 When will SBA show personnel records to a representative?

(a) If you go to where the records are kept, SBA will permit one person of your choosing to inspect the records with you.

(b) If you want your representative to inspect the records without you, you must give SBA a written authorization.

(c) SBA will mail a copy of the record to your representative if you direct SBA to do so in writing.

(d) You may inspect the records of a minor if you present evidence that you are the custodial parent (including joint custodial parent) or legal guardian of that minor. An affidavit or declaration, signed by you under penalty of perjury, is normally sufficient evidence unless SBA has information to the contrary.

(e) You may inspect the records of an adult incompetent if you present evidence that you are the legal guardian of that person. A guardianship order is sufficient evidence of your guardianship. Other evidence may be considered.

§ 102.59 What fees will SBA charge me for my records?

SBA will charge you only for photocopying at the rate of ten cents per page. SBA will not charge you for finding or reviewing your records. Fees less than $25 will be waived.

§ 102.60 May I be informed of disclosures made of my records?

SBA will tell you what disclosures it made of your records if you ask us, except that SBA will not tell you about disclosures it made to another federal agency or government entity for law enforcement purposes.

§ 102.61 Matching Program procedures.

(a) SBA will comply with the Computer Matching and Privacy Protection Act of 1988. (Public Law 100–503, as amended). This Act establishes procedures federal agencies must use if they want to match their computer lists.

(b) If SBA adopts any procedures to supplement its compliance with the Computer Matching and Privacy Protection Act of 1988 which are not mandated in that Act, SBA will publish those procedures in Standard Operating Procedure (SOP) 40 04. You can get a copy of SOP 40 04 at any SBA Office.

(c) If SBA enters into an agreement with any Federal agency, contractor of any Federal Agency, State or Local Government, or agency of any State or Local Government to disclose records for purposes of a computer matching program, SBA will make a copy of that agreement available to the general public. You can get a copy of all such agreements by writing to the Privacy Act Officer.

PART 137—[REMOVED]

2. Part 137 is removed.

Dated: November 13, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–28446 Filed 11–22–95; 8:45 am]

BILLING CODE 8025–01–P

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13 CFR Part 103

Policies of General Application

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: In response to President Clinton's regulatory review directive, the Small Business Administration has completed a page-by-page and line-by-line review of its regulations. As a result, SBA is proposing to streamline its regulations by eliminating many rules and simplifying and improving those that remain. This proposed rule would reorganize and streamline the entire Part 103, which covers the standards one must meet to conduct business with SBA. It makes the standards clearer and more understandable to those who are regulated, and easier for SBA to enforce.

DATES: Written comments must be submitted on or before December 26, 1995.

ADDRESSES: Written comments may be sent to David Kohler, Regulatory Reform Team Leader (103), Small Business Administration, 409 3rd Street SW., Suite 13, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Michael Dowd, Director, Office of Loan Programs, at (202) 205–6490.

SUPPLEMENTARY INFORMATION: 13 CFR Part 103 contains SBA's policies governing the standards for suspending or revoking the privileges of persons who conduct business with SBA on behalf of applicants or lenders. This proposed rule reorganizes and streamlines Part 103, making it easier to understand and enforce. It changes the title of the Part to ''Standards for Conducting Business with SBA'' to describe more clearly the scope of the regulations. The sections stating the statutory provisions underlying the Part and its purpose—103.13 and 103.13–1—are eliminated as unnecessary. The proposed rule renumbers the sections that remain: present §§ 103.13–2 through 103.13–6 would become §§ 103.1–103.5. The proposed rule clarifies the existing definitions of agents who appear before SBA on behalf of applicants for assistance, adds definitions for ''packagers'' and ''lender service providers,'' and provides that these two categories of agents are specifically covered by SBA's requirements governing conduct of business. It also amends, in certain respects, and adds greater specificity to the definition of ''good cause'' for which the Administrator may revoke or suspend the privilege for conducting business with SBA. It adds provisions prescribing the use and form of lender service provider agreements which must contain certain provisions regarding services to be provided and compensation, including a prohibition on secondary market premium sharing. In addition to these substantive changes, the proposed rule is written in clearer, more straightforward language than the present Part.

It is SBA's intention to require all packagers, lender service providers, and agents to register with SBA for purposes of keeping track of who is performing such activities on behalf of applicants for assistance or lenders. SBA also intends to develop a code of ethical and professional responsibility based upon the substance of the proposed regulations which it will enforce with respect to all agents. Finally, SBA will provide training for anyone or any entity that wishes to represent applicants for SBA assistance or provide services to lenders. The development of these initiatives will take place over the next fiscal year, in consultation with representatives of the affected industries. To the extent that they require modifications of these proposed regulations, such modifications will ensue in later rulemakings.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. § 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this proposed rule involves internal administrative procedures and would not be considered a significant rule within the meaning of Executive Order 12866 and would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. § 601, *et seq.* It is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this proposed rule, if adopted in final form, would contain no new reporting or record keeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule would not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects in 13 CFR Part 103

Standards for conducting business with SBA, procedures for suspension or revocation of privileges, compensation allowed to agents.

Accordingly, pursuant to the authority set forth in sections 5 and 13 of the Small Business Act, 15 U.S.C. §§ 634 and 642, SBA hereby proposes to revise part 103 of Title 13, Code of Federal Regulations (CFR), as follows:

Part 103 would be revised to read as follows:

PART 103—STANDARDS FOR CONDUCTING BUSINESS WITH SBA

103.1 Key Definitions.
103.2 Who may conduct business with SBA?
103.3 May SBA suspend or revoke an agent's privilege?
103.4 What is ''good cause'' for suspension or revocation?
103.5 How does SBA regulate an agent's fees and provision of service?

Authority: Secs. 5, 13, 72 Stat. 385, 394 (15 U.S.C. 634, 642).

§ 103.1 Key Definitions.

(a) *Agent* means an authorized representative, including an attorney, accountant, consultant, manufacturer's representative, packager, lender service provider or any other person representing an applicant or participant.

(b) The term *conduct business with SBA* means:

(1) preparing or submitting on behalf of an applicant an application for financial assistance of any kind, assistance from the Investment Division of SBA, or assistance in procurement and technical matters;

(2) preparing or processing on behalf of a lender or a participant in any of SBA's programs an application for federal financial assistance;

(3) participating with or communicating in any way with officers or employees of SBA on an applicant's, participant's, or lender's behalf; and

(4) such other activity as SBA reasonably shall determine.

(c) *Applicant* means any person, firm, concern, corporation, partnership, cooperative or other business enterprise applying for any type of assistance from SBA.

(d) *Lender Service Provider* means an agent who carries out lender functions in originating, disbursing, servicing, or liquidating a specific SBA business loan or loan portfolio for compensation from the lender. SBA determines whether or not one is a ''lender service provider'' on a loan-by-loan basis.

(e) *Packager* means an agent who is employed and compensated by an applicant or lender to prepare the applicant's application for financial assistance from SBA. SBA determines whether or not one is a ''packager'' on a loan-by-loan basis.

(f) *Participant* means an entity that is participating in any of the financial, investment, or business development programs authorized by the Small Business Act or Small Business Investment Act of 1958.

§ 103.2 Who may conduct business with SBA?

(a) If you are an applicant, a participant, a partner of an applicant or participant partnership, or serve as an officer of an applicant, participant corporation, or limited liability company, you may conduct business with SBA without a representative.

(b) If you are an agent, you may conduct business with SBA on behalf of an applicant, participant or lender, unless representation is otherwise prohibited by law or the regulations in

this or any other part of Title 13. For example, persons debarred under the SBA or Government-wide debarment regulations may not conduct business with SBA. SBA may request that any agent supply written evidence of his or her authority to act on behalf of an applicant, participant, or lender as a condition of revealing any information about the applicant's, participant's, or lender's current or prior dealings with SBA.

§ 103.3 May SBA suspend or revoke an agent's privilege?

The Administrator of SBA or designee may, for good cause, suspend or revoke the privilege of any agent to conduct business with SBA. Part 134 of this chapter states the procedures for appealing the decision to suspend or revoke the privilege. The suspension or revocation remains in effect during the pendency of any administrative proceedings under Part 134 of this chapter.

§ 103.4 What is ''good cause'' for suspension or revocation?

Any unlawful or unethical activity is good cause for suspension or revocation of the privilege to conduct business. This includes:

(a) Attempting to influence any employee of SBA or a lender, by gifts, bribes or other unlawful or unethical activity, with respect to any matter involving SBA assistance.

(b) Soliciting for the provision of services to an applicant by another entity when there is an undisclosed business relationship between the two parties.

(c) Violating ethical guidelines which govern the profession or business of the agent or which are published at any time by SBA.

(d) Implying or stating that the work to be performed for an applicant will include use of political or other special influence with SBA. Examples include indicating that the entity is affiliated with or paid, endorsed or employed by SBA, and advertising using the words *Small Business Administration* or *SBA* or its seal or symbol, and giving a ''guaranty'' to an applicant that the application will be approved.

(e) Charging or proposing to charge any fee that does not bear a necessary and reasonable relationship to the services actually rendered or expenses actually incurred in connection with a matter before SBA or which is materially inconsistent with the provisions of an applicable compensation agreement or lender service provider agreement. A fee based solely on a percentage of a loan or guarantee amount can be reasonable, depending on the circumstances of a case and the services actually rendered.

(f) Engaging in any conduct indicating a lack of business integrity or business honesty, including debarment, criminal conviction, or civil judgment within the last seven years for fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, false statements, receiving stolen property, false claims, or obstruction of justice.

(g) Acting as both a lender service provider and a packager for an applicant on the same SBA business loan. A limited exception to this ''two master'' prohibition exists in the following circumstances:

(1) The lender service provider: is asked by the lender to perform packaging services on a loan, will be compensated solely by the lender, and provides a written disclosure to the applicant; or

(2) The packager: is first asked to package the loan by the lender, and is first asked to package the loan only after the lender has decided to make the loan and the terms of the loan have been established.

(h) Violating materially the terms of any compensation agreement or lender service provider agreement provided for in section 103.5.

(i) Violating or assisting in the violation of any SBA regulations, policies, or procedures of which the applicant has been made aware.

§ 103.5 How does SBA regulate an agent's fees and provision of service?

(a) Any applicant, agent, packager, or lender service provider must execute and provide to SBA a compensation agreement or lender service provider agreement governing the compensation charged for services rendered or to be rendered to the applicant or lender in any matter involving SBA assistance. SBA provides the form of compensation agreement and a suggested form of lender service provider agreement to be used by agents.

(b) Compensation agreements must provide that in cases where SBA deems the compensation unreasonable, the agent, packager or lender service provider must: reduce the charge to an amount SBA deems reasonable, refund any sum in excess of the amount SBA deems reasonable to the applicant, and refrain from charging or collecting, directly or indirectly, from the applicant an amount in excess of the amount SBA deems reasonable.

(c) Each lender service provider must enter into a written agreement with each lender for whom it acts in that capacity. SBA will review all such agreements. Such agreements need not contain each and every provision found in the SBA's suggested form of agreement. However, each agreement must indicate that both parties agree not to engage in any sharing of secondary market premiums, that the services to be provided are accurately described, and that the agreement is otherwise consistent with SBA requirements. Subject to the prohibition on splitting premiums, lenders have reasonable discretion in setting compensation for lender service providers. Such compensation will generally be considered reasonable unless:

(1) The compensation is clearly excessive in light of industry standards and the services to be performed; and

(2) The excess compensation is adversely affecting the loan terms provided to applicants.

Dated: November 13, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–28447 Filed 11–22–95; 8:45 am]

BILLING CODE 8025–01–P

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13 CFR Part 121

Small Business Size Regulations

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: In response to President Clinton's government-wide regulatory reform initiative, the Small Business Administration (SBA) has completed a page-by-page, line-by-line review of all of its existing regulations to determine which might be revised or eliminated. This proposed rule would improve the Agency's size program by simplifying and clarifying language in the existing rules, conforming these rules to present SBA policies and practices, and providing some substantive modifications to streamline the delivery of services to the public. The revised regulations would be more understandable and much easier to use. The proposed rule would reduce the number of sections. It would make the definition of ''affiliation'' more concise. While no longer recognizing an absolute right to appeal size determinations, it would give the Office of Hearings and Appeals (OHA) discretionary authority to accept size appeals. The proposed rule would improve language, but would not change the existing size standards which apply to particular industries.

DATES: Comments must be submitted on or before December 26, 1995.

ADDRESSES: Written comments should be addressed to David R. Kohler, Regulatory Reform Initiative Team Leader, Attention: Part 121, Office of General Counsel, Small Business Administration, 409 3rd Street, S.W., Suite 13, Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: John W. Klein, Chief Counsel for Special Programs, Office of General Counsel, at (202) 205–6645.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a Memorandum to federal agencies, directing them to simplify their regulations. In response to this directive, SBA has completed a page-by-page, line-by-line review of all of its existing regulations to determine which might be revised or eliminated. This proposed rule would amend SBA's regulations governing its size program which was authorized to be established by sections 3(a) and 5(b)(6) of the Small Business Act, 15 U.S.C. 632(a), 634(b)(6). It is designed to streamline the size standards operation by simplifying and clarifying existing regulatory language and by eliminating unnecessary, irrelevant, or obsolete provisions. SBA examined the purpose of each section of the existing regulation in developing this proposal. Where appropriate, it eliminated, consolidated, or rewrote sections for ease of use and clarity. The proposed unnumbered substantive category headings would be: Provisions of General Applicability, Size Standards Used to Define Small Business Concerns, Size Eligibility Requirements for SBA Financial Assistance, Size Eligibility Requirements for Government Procurement, Size Eligibility Requirements for Sales or Lease of Government Property, Size Eligibility for the Minority Enterprise Development (MED) Program, Size Eligibility Requirements for the Small Business Innovation and Research (SBIR) Program, Size Eligibility Requirements for Paying Reduced Patent Fees, Size Eligibility Requirements for Compliance with Programs of Other Agencies, Procedures for Size Protests and Requests for Formal Size Determinations, Appeals of Size Determinations and SIC Code Designations, Eligibility of Organizations for the Handicapped for Small Business Set-asides, and Waivers of the Nonmanufacturer Rule. The proposed rule would amend office titles to reflect a previous reorganization of functions within the structure of SBA.

SBA has attempted to rewrite Part 121 in plain English in order to make the regulations more readable and less confusing. SBA has identified the following eight significant changes proposed by this rule.

Refine the definition of ''affiliation.'' The proposed rule at § 121.103(a) would make the definition of ''affiliation'' more concise. The intent in revising the provisions pertaining to affiliation is to make the definition easier to understand.

Additional exclusions from ''affiliation'' coverage. Four additional exclusions from ''affiliation'' coverage are proposed in § 121.103(a)(2): (1) small businesses that are members of approved pools for a joint program of research and development, (2) concerns that lease employees from a concern whose principal business is leasing employees to other businesses, (3) mentor/protege firms participating in Federal Mentor-Protege programs, and (4) for purposes of eligibility for the Small Business Investment (SBIC) program only, certain investors in SBIC portfolio concerns, provided the investors do not control the concern other than to the extent that would be permitted for SBICs under the SBIC regulations (currently, § 107.801 of this title; in the revised SBIC regulations at § 107.865).

Revision of ''annual receipts'' definition. This definition would be simplified by incorporating figures already contained on a concern's Federal Income Tax return for purposes of calculating a concern's average annual receipts. In addition, amounts collected for another by a conference management services provider or an advertising agent would be excluded from a concern's annual receipts, similar to that of a travel agent.

Grant OHA discretionary authority to hear size determination appeals. Contracting officers for procuring agencies have cited unwelcome delays in the procurement process when small business size determinations are appealed to the Office of Hearings and Appeals (OHA). Under existing SBA regulatory guidelines, a party which is adversely affected by a size determination has the right to appeal the determination to OHA. However, Federal Acquisition Regulations (48 C.F.R. 19.302) provide that a contracting officer is not required to suspend award after a size determination is made even if the determination is appealed to OHA, and further provide that the OHA decision applies to a pending acquisition only if the decision is received before award. Therefore, if the OHA decision is to have relevance, it must be rendered prior to award. In an effort to streamline consideration of size determinations and bring more speed to the decision-making process, proposed § 121.1101 would eliminate appeals to OHA as a matter of right and instead give OHA discretion to review such appeals. A size determination rendered by an authorized Agency official would be considered final unless OHA agreed to review the determination. This would give OHA the latitude to consider those cases which have precedential value or which might involve clear error of fact or law. Procedures for requesting discretionary review of size determinations would be set forth in part 134.

Change the time when size is determined for MED application purposes. Under the present regulations, an applicant to SBA's MED program is small if, at the time of its application, it is small under the size standard for its primary industry. The proposed regulation would change the time for determining the applicant's size to the time when SBA issues its eligibility determination. Thus, under the proposed regulation, a concern which was small when it applied but which became large during SBA's consideration of its application would not be permitted to enter the program. SBA does not believe that it should admit a concern to the MED program knowing that it is no longer small in its primary business. The concern could no longer obtain 8(a) or small business set-aside contracts in its primary industry, and the concern could be perceived to be other than disadvantaged because of that success. In addition, if that were the only business that the concern was in, SBA would be put in the awkward position of admitting the concern to the program one day, but initiating termination proceedings from the program the next.

Use of size standards for programs of other agencies. This proposed rule sets forth the limited circumstances under which the Secretary of a department or the head of a Federal agency may prescribe, for the use of such department or agency, a size standard other than one which has been established by SBA.

Individual waivers of the ''Nonmanufacturer Rule.'' The proposed rule establishes procedures for granting waivers of the Nonmanufacturer Rule for individual products on specific solicitations. Procedures for granting individual waivers would be combined with provisions pertaining to class waivers.

Other changes to Part 121. This proposed rule would also make changes in the size eligibility requirements which are identified below in the section-by-section analysis. Several

typographical errors or inadvertent omissions would be corrected, and several obsolete or irrelevant references would be eliminated. The proposed rule would not make any changes in actual size standards applicable to specific industries.

Section-by-Section Analysis

The following is a section by section analysis of each provision of SBA's regulations that would be affected by this proposed rule:

The current § 121.101 is a policy statement reciting Congressional intent as set forth in the Small Business Act. SBA proposes to revise § 121.101 to state succinctly the purpose of small business size standards.

Section 121.102 would be deleted and the substance of the provision moved to the revised § 121.101.

Present § 121.201 would be deleted and the substance of subsection (a) consolidated with proposed § 121.101. Present subsection (b) is a philosophical statement relating to Federal assistance in general and would be eliminated as unnecessary. The general outline of SBA's size program, contained in § 121.202, would be deleted as unnecessary since revised § 121.101 would provide general guidance as to the purpose of size standards and how SBA establishes them. Revised § 121.201 would detail specific size standards, and revised §§ 121.301 through 121.903 would describe the relationship of size standards for specific types of Federal assistance. Procedures for size protests and requests for size determinations would be found in proposed § 121.1001. Appeals of size determinations and SIC code designations would be covered in proposed § 121.1100.

Section 121.102 would be amended to explain, in summary fashion, how SBA develops or revises an industry size standard. Two criteria for size standards have gained general acceptance since SBA's inception and are the most widely used definitions of small business. The first is the 500 employee size standard, which is the most common size standard among the manufacturing and mining industries. Instituted by the Smaller War Plants Administration and adopted with the formation of SBA, it applies to a majority of these industries. The second is the average annual receipts standard, which applies to most retail and service industries and also dates back to the inception of SBA. In 1953, a limit of $1.0 million in average annual receipts was applied to many of these industries. Over time, inflation and industry changes have increased that original level to $5 million. Size standards for particular industries deviate from these ''anchor standards'' depending on the structural characteristics of the industry and other factors described in SBA's rulemaking actions as important influences on an industry's structure. Proposed § 121.102 would identify the factors SBA considers in setting any size standard, including degree of competition in an industry, average firm size in the industry, start-up costs and entry barriers in the industry, and distribution of firms by size in the industry.

Section 121.203 would be deleted and the substance of the provision would be contained in revised § 121.1006(h)(3).

Section 121.204 would be deleted. The substance of the provision would be incorporated in revised §§ 121.1006(h)(3) and 121.1007.

Section 121.205 would be eliminated as unnecessary.

The subject of §§ 121.301(a) and 121.301(b) would be transferred to § 121.102(b), with the provision amended for relevance. Section 121.301(c) would be deleted as unnecessary since proposed § 121.201 would contain a statement that the general size standard for all industries not listed in the table in § 121.201 would be $5 million.

Sections 121.302 and 121.304 would be eliminated as unnecessary. The roles of the Office of General Counsel and OHA are described in Part 101 of SBA's regulations. Section 121.303 would be deleted, but the address of the Size Policy Board would be contained in the revised § 121.102(c).

Section 121.305 would be eliminated. SBA has materially changed the role of its regional offices, transferring to other SBA offices many of the functions formerly performed by regional offices. The descriptions of responsibilities with respect to size determinations and SIC code designations would be transferred to revised §§ 121.402 and 121.1002.

Definitions of terms, presently found in §§ 121.401 through 407, would be transferred to a new § 121.103. Changes in some definitions are proposed.

The definition of affiliation in current § 121.401 would be transferred to § 121.103(a) and revised for clarity. Subsection (a)(1) would be redesignated as § 121.103(a)(1)(iii). Subsections 121.401(a)(2)(i) and (ii) would be redesignated as subsection 121.103(a)(1)(i)(A) and (B). Provisions addressing ''identity of interest'' now found in §§ 401(a)(2)(iii) and 401(d) would be transferred to the policy statement contained in proposed § 121.103(a)(1)(i)(C). The term is a legitimate concept in characterizing affiliation among parties, but it is dependent on specific facts in its application and is subject to a high degree of subjectivity in much of its implementation. While simpler, the designation of a list of family relationships that would always cause an ''identity of interest'' would penalize a number of legitimate small concerns. Close familial relationships are at times offset by estrangement of the parties. Under the circumstances, SBA has determined that a flexible approach should be retained in the size regulations.

Section 121.401(b), pertaining to exclusions from the definition of affiliation, would be transferred to a new § 121.103(a)(2) which would list and describe seven exclusions.

In addition to the exclusion from affiliation for SBICs or Development Companies, the proposed rule would add a second exclusion, for purposes of SBIC assistance, for concerns owned by venture capital firms, pension funds, and certain charitable entities exempt from federal taxation under § 501(c) of the Internal Revenue Code. Like SBICs, these entities often make financial investments in small companies when they receive ownership positions which can be held for subsequent resale. The same control limitations imposed by SBA on SBICs would be imposed on the investors covered by this affiliation exclusion.

The exclusion for business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act, or Native Hawaiian Organizations would be clarified so that affiliation would not be found solely by reason of such ownership, but still could be found where other grounds (e.g., common management) exist.

The exclusion for businesses owned or controlled by Community Development Corporations was added to SBA regulations on June 7, 1995, and would be retained with only minor editorial adjustments.

The proposed rule would add an exclusion be for small businesses that are members of pools approved by the Administrator, after consultation with the Attorney General and the Chairman of the Federal Trade Commission, for a joint program of research and development. Concerns which are members of such pools would not be considered affiliated with other pool members solely by reason of their joint participation on pool approved activities. Such pools have been statutorily authorized for some time, but there has not been a corresponding

exclusion from affiliation specifically recognized in the size regulations.

The proposed rule would also add an exclusion from affiliation for concerns that lease administrative and/or other employees from a concern whose principal business is leasing employees to other businesses. The two concerns would not be considered affiliated solely by reason of the leasing agreements.

Finally, the proposed rule would add an exclusion for firms participating in Federal Mentor-Protege Programs. Although affiliation would not be found based solely on such mentor-protege relationship, affiliation could be found to exist based on other factors.

Section 121.401(c), pertaining to the nature of control, would be eliminated in the revised affiliation rule. Affiliation by stock ownership and common management would be addressed in proposed §§ 121.103(c) and (d). The non-essential elements of affiliation expressed in current subsection 401(c) would be eliminated without sacrificing clarity or definitiveness.

Section § 121.401(e), redesignated as § 121.103(c), would be clarified.

Section 121.401(f), redesignated as § 121.103(d), would clarify what constitutes an agreement in principle, and make other minor editorial changes.

Section 121.401(g) now requires SBA to determine whether a voting trust was entered into primarily for a ''legitimate purpose.'' Since such a requirement is unnecessary and overly subjective, it would be eliminated.

The proposed rule would redesignate § 121.401(h), pertaining to common management, as § 121.103(e), and clarify that common management must control both the firm whose size status is at issue and one or more other concerns in order to constitute affiliation. It would eliminate the references to key employees, but provide that affiliation can exist where the chief executive officer, one or more general partners, or one or more members of the board of directors, control the board of directors or management of another concern.

The proposed rule would eliminate §§ 121.401(i) and (j) as separate bases for affiliation. Most firms simply sharing common facilities do not act in concert, and SBA believes that there is little likelihood of abuse if this provision is eliminated. Similarly, the ''newly organized concern'' basis for affiliation seldom appears alone, and its elimination as a separate basis for affiliation would not eliminate the underlying reasons for finding affiliation on other grounds.

Section 121.401(k) would be eliminated as a separate basis for affiliation, but referenced as a factor that may cause affiliation under the totality of circumstances in proposed § 121.103(a)(2).

Affiliation through joint ventures would be moved from § 121.401(l) to § 121.103(f). The proposed rule would eliminate a specific definition of the term joint venture as unnecessary. The current regulations unintentionally define a joint venture as being formed for a single, specific contract. SBA believes it to be obvious that a joint venture may be formed to carry out more than one contract, and the regulation will be so implemented. The revision also would be reworded for brevity and clarity.

The provisions of §§ 121.401(l)(2) and (3) would be redesignated as §§ 121.103(f)(1) and (2), respectively. The provisions would be reworded for clarity, and provisions not affecting the substantive rule would be eliminated.

Section 121.401(l)(4) (proposed § 121.103(f)(3)) would be amended in two respects. It would clarify that whether a subcontractor should be considered a joint venturer depends on all circumstances pertaining to the subcontract arrangement between the parties and does not hinge solely on the percentage of subcontracted work. For example, the fact that a subcontractor is to perform a relatively large percentage of the total value of the contract might not cause SBA to consider the arrangement a joint venture where the prime contractor would be actively engaged in the performance of the contract and would exercise a supervisory role. In addition, subcontractors that supply materials may be distinguished from subcontractors that perform work. For example, a small business construction contractor would not be deemed an affiliate of a large subcontractor from which needed asphalt constituting more than 50 percent of the value of the contract was purchased where the large business was scheduled to perform no work on the contract other than the cost of the asphalt.

Section 121.401(l)(5) would be reworded for clarity and redesignated as § 121.103(f)(4).

The franchise rule in § 121.401(m) would be rewritten for clarity and redesignated as § 121.103(g).

The proposed rule would revise ''annual receipts'' in proposed § 121.104 (current § 121.402) to mean gross or total income plus cost of goods sold as reported on a concern's Federal income tax return. The term is meant to include revenue from the sale of products or services, interest, dividends, rents, royalties, fees, commissions, or other income. The same allowances and proceeds collected for another concern currently subtracted from receipts would continue to be subtracted in the proposed rule. Accordingly, the size of a concern would be based upon the information shown on the Federal income tax return, as opposed to the present requirement of utilizing its regular books of account. SBA specifically requests comments on this proposed definition. Because SBA would use a concern's income tax return to determine ''receipts,'' the concern would not be required to restate its revenue under the accrual basis of accounting if its return was filed other than under the accrual method as is presently the case.

The proposed rule would also exclude from the calculation of annual receipts amounts collected for another by conference management services firms. This action is being taken to better measure the magnitude of operations of conference management services providers. In response to a decision of the United States District Court for the District of Columbia (Civil Action No. 91–1569), the proposed rule would also exclude such ''pass-through'' amounts would also be excluded for advertising agents.

The SBA reviews requests to exclude revenues of certain business activities on a case-by-case basis. In an August 25, 1992 proposed rule (*See* 57 FR 38452), SBA noted characteristics under which it might be appropriate to exclude from a concern's revenues certain funds received from a client firm to be transmitted to an unaffiliated third party. These include the following five characteristics:

(1) A broker or agent-like relationship between a firm and its third party provider exists that represents a dominant or crucial activity of firms in these industries.

(2) The pass-through funds associated with the broker or agent-like relationship is a significant proportion of total receipts.

(3) As the normal business practice of firms in the industry, a firm's income remaining after the pass-through funds are remitted to a third party is typically derived from a standard commission or fee.

(4) Firms do not usually consider billings that are reimbursed to other firms as their own income, preferring instead to count only those receipts that are retained for their own use.

(5) Federal government agencies which engage in the collection of statistics and other industry analysts usually represent receipts of the firms on an adjusted receipts basis.

An analysis of the conference management services industry suggests that most of these characteristics are shared by concerns active in this industry. Conference management

services firms provide a range of services in support of organizing and facilitating conferences, such as travel, lodging, ground transportation, honoraria and other administrative support services. The sponsoring organization is responsible for developing the conference and its contents and for all conference expenses. The conference management service provider principally acts as an agent on behalf of the sponsoring organization by arranging for various support services in connection with the conference and provides few, if any, of the support services itself. The arrangements made through the conference management services provider to a third party provider are paid using the sponsoring organization's funds or by the conference management services provider and later reimbursed by the sponsoring organization. The pass-through monies paid to third-party providers generally account for a majority of the total expenses incurred by the conference management services provider. The conference management services provider's earnings are based on fees or commissions from these activities.

The scope of activities and business operations of conference management services providers appear to conform with the characteristics outlined above to support the exclusion of funds received in trust for an unaffiliated third party. The SBA believes that the revenues a conference management services provider received for a third party provider represents revenues intended for the third party. Accordingly, an exclusion of these types of revenues is warranted. The fees and commissions earned by the conference management services provider from its activities is also a more representative measure of the magnitude of operations of the firm and of the services provided.

Before a final decision is made on the exclusion of pass-through revenues for conference management services firms, the SBA would find additional information helpful on the practices of firms in the conference management services industry. In particular, the SBA seeks comments from the public concerning the typical relationship between clients of conference managers and conference management services providers themselves. Pertinent information would include:

(1) To what extent are funds passed through to other vendors in this industry, particularly the extent of booking costs for transportation, lodging and meeting room space?

(2) To what extent are funds ''escrowed'' in which the client firm provides an account to be used by the conference facilitator to ''perform a condition'' and meet ongoing expenses? What is the typical nature of these accounts in ownership and liability terms?

(3) Are conferences typically planned by the client firm or the independent conference planner? Who prepares the program and selects the speaker? Does the conference management services provider usually act as a mere facilitator or as a planner in which the entire production would be planned by the conference management services provider?

(4) How does the conference management services provider recover costs and make profits? Are arrangements normally on a cost-plus fixed-fee basis, a standard commission basis or fixed price?

This proposed rule does not change the current size standard of $5.0 million applicable to firms in SIC 8741, Management Services. However, if pass-through funds are excluded from the calculation of revenues for conference management services firms as proposed, it would effectively increase the size standard applicable to these type of firms. At this time, the SBA does not have available data to determine if the $5.0 million size standard continues to be appropriate for the conference management services industry. Accordingly, the SBA is also seeking information on the economic characteristics of conference management services firms, such as average firm size, the degree of concentration, the size distribution of firms, start-up costs and the difficulty of entry. Other information which may influence the size standard, and the need for a new size standard, may also be submitted. The SBA will consider this information to assess the appropriateness of the current size standard, which may lead to a future rulemaking proposing a different size standard than $5.0 million.

This proposed rule would also clarify that SBA may use all available information to determine annual receipts when making a size determination, especially if other information is available which disputes a firm's Income Tax returns.

Section 121.402(e)(i) would be redesignated as § 121.104(d) and amended to add language indicating that the annual receipts for a concern and its affiliates are calculated in accordance with proposed § 121.104(b) even though this may result in different time frames being used to calculate the concern's and affiliate's revenues.

Sections 121.403(a) and (b) would be redesignated as §§ 121.105(a) and (b), respectively, and revised for clarity. A new subsection (c) would be added to make it clear that if one entity is replaced by another having the same assets and liabilities, the successor firm is not a new entity for purposes of calculating annual receipts/employees.

The current definition of employees in § 121.404 would be combined with the definition of number of employees in § 121.407 into proposed § 121.106, and rewritten for clarity. The proposed rule would eliminate the list of numerous factors bearing on the issue of whether individuals are employees of a concern or employees of an independent employment contractor, and simply authorize SBA to look at all relevant factors concerning the issue.

The provisions of § 121.406 would be eliminated as unnecessary. Language indicating that dominance is taken into account in the setting of industry size standards would be added to proposed § 121.102.

The proposed rule would add a new § 121.107 which states the existence of statutory penalties for misrepresentations of size status.

The substance of § 121.601 would be redesignated as § 121.201, which would be amended to eliminate unnecessary language.

The size standards table identified by SIC industry would be greatly streamlined. The redesigned size standard table would list the size standard applying to each Division within the SIC System and each Major Group within that Division if different from the general Division size standard. Only those industries having a size standard different from the applicable Division or Major Group size standard, or those to which a footnote applies, would be specifically listed in the table by four-digit SIC code. This change would eliminate the duplication of listing four-digit SIC code after four-digit SIC code within a Division or Major Group with identical size standards.

The asterisks identifying new SIC codes for 1987 would also be eliminated from the table as no longer relevant or useful.

Many of the footnotes to the size standards in proposed § 121.201 would be clarified and simplified. Some footnotes have been deleted resulting in the need to renumber remaining ones as identified below. Size standards themselves would not be amended by this proposed rule.

Footnote 1 would be deleted as unnecessary. The Table of Size Standards itself, as well as the introductory language to the Table, indicates that size standards are in number of employees or average annual receipts unless otherwise specified.

Footnote 2, redesignated as footnote 1, would be clarified to indicate that the 40 percent requirement in the footnote

applies to government procurement only.

Footnotes 3, 4, and 5, redesignated as footnotes 2, 3, and 4, respectively, would be reworded for clarity.

Footnote 6, redesignated as footnote 5, would be amended by replacing the words ''which it manufactured worldwide'' with the words ''comprising its total worldwide manufacture'' to clarify that SBA intended no difference in the application of those words.

The substance of footnote 7 would be transferred into the size standard table for SIC code 4212, and the footnote eliminated.

Footnote 8 would be incorporated into the Table, and eliminated as a separate footnote.

Footnote 9 would be eliminated as unnecessary.

Footnote 10, redesignated as footnote 6, would clarify that gross commissions of a travel, real estate or advertising agency are to be counted when determining such a concern's size, whether paid directly (e.g., through some sort of escrow account) or indirectly (i.e., received first by the agency and then paid to the individual) to individual agents of the concern. SIC codes relating to advertising agents (SIC codes 7311, 7312, 7313, and 7319) and that part of SIC code 8741 dealing with conference management service providers would be added to this footnote.

The substance of footnotes 11 and 12 would be incorporated into the size standard table for SIC codes 4212 and 5599 respectively, and the footnotes eliminated.

Footnote 13 would be deleted as duplicative of restrictions on financial assistance covered in Part 120.

Footnote 14, redesignated as footnote 6, would be revised to incorporate the substance of existing §§ 121.1402(a) and (b).

Footnote 15, redesignated as footnote 7, would be rewritten for clarity.

Footnote 16 would be eliminated and its substance combined with the statement at the beginning of the size standards chart dealing with the $5 million alternate size standard.

Footnotes 17, 18 and 20 would be clarified for ease of use and renumbered as footnotes 9, 10, and 12, respectively.

Footnotes 21 and 22 would be incorporated into the size Table, and eliminated as separate footnotes.

Footnote 23 would be redesignated as footnote 13.

Sections 121.801 and 121.802 (proposed §§ 121.301 and 121.302) would be amended for clarity and ease of use. The proposed rule would eliminate differentials in size standards for Redevelopment Areas. Differentials for Redevelopment Areas would be eliminated because almost all counties are so designated, and such designations tend to be permanent or long lasting designations once designated.

Section 121.803(a) (proposed § 121.303(a)) would be amended to clarify that the size of an applicant for financial assistance is determined as of the date the application for such assistance is received by SBA (or, in the case of the preferred lenders program, the date of approval of the loan by the Preferred Lender).

The current § 121.803(b) would be eliminated since it is covered in revised § 121.103(d).

Section 121.803(c), redesignated as § 121.303(b), would be rewritten for clarity.

Sections 121.804 through 121.806 (proposed §§ 121.304 through 121.306) would be rewritten for clarity and ease of use. SBA's Government Contracting Area Directors also would be substituted for staff in regional offices. They are familiar with size issues and principles because of their work in the government procurement area and have sufficient knowledge and expertise to make size determinations pertaining to financial assistance.

Proposed § 121.307 would clarify that a MED concern which qualifies for award of a specific 8(a) subcontract would be eligible for SBA financial assistance to finance the subcontract.

Section 121.901, redesignated as § 121.401, would clarify that it covers MED issues, but that additional size issues pertaining to the MED program are discussed in §§ 121.601 through 121.604.

Sections 121.902 and 121.903 would be redesignated as §§ 121.402 and 121.403, respectively, and revised for clarity.

Section 121.904, redesignated as § 121.404, would be rewritten for clarity and ease of use. The substance of subsection 121.904(b) has been transferred to proposed § 121.103(a)(4). Subsection (c) has been eliminated, and subsection (d) redesignated as subsection (b). This section would also call for determining size as of the date of best and final offers in negotiated procurements (rather than the date of self-certification) when a size protest alleges that a small business dealer is not supplying the product of a small business manufacturer or that a small business' subcontracting plan creates a joint venture that should be considered large. A concern's proposed supplier or subcontractors often will change during the process of negotiation, and it is unreasonable to expect subcontracting plans to be finalized at the time a concern self-certifies and submits its initial offer on the solicitation.

Sections 121.905 and 121.906, redesignated as §§ 121.405 and 121.406, respectively, would be amended for clarity and ease of use.

Section 121.907 would be redesignated as § 121.407, with the example deleted as unnecessary.

Section 121.908 would be redesignated as § 121.408. Subsections (a) and (b) would be consolidated and would clarify that a formal size determination is required if the size status of an applicant for a COC is at issue. Subsection (c) would be eliminated as duplicative (*see* § 121.404), and subsection (d) redesignated as subsection (b).

Section 121.909 would be redesignated as § 121.409.

Section 121.910 would be redesignated as § 121.410. Minor editorial changes and a corrected cross-reference would be made in subsections (a) and (b). Language referring to subcontracting for financial services under section 8(d) of the Small Business Act would be transferred to a new subsection (c).

Section 121.911 would be redesignated as § 121.411, and rewritten for clarity. Cross-references to sections would be corrected and a clarification made that prime contractors must notify unsuccessful offerors for Section 8(d) subcontracts of the apparent successful offeror to enable unsuccessful offerors to timely protest the size of the apparent successful offeror where appropriate.

A new § 121.412 would be added to the regulations to clarify that a concern must meet the applicable size standard only for that portion of a partial small business set-aside that is set-aside for small business. The concern is not required to qualify as a small business for that portion of a requirement that is open to both small and large business concerns. For instance, to be eligible as a small business concern for petroleum refining in SIC Code 2911, a concern is required to refine 90 percent of the petroleum from either crude oil or bona fide feedstocks. On a partial small business set-aside, a concern would have to meet this requirement on the portion of the offer that is set-aside, but would not have to meet this requirement on the unrestricted portion.

Sections 121.1001 through 121.1003 would be redesignated as §§ 121.501 through 121.503, and reworded for clarity.

Section 121.1004(a) would be redesignated as § 121.504, and reworded for clarity. The substance of subsection

(b) would be transferred to proposed § 121.103(a)(4).

Section 121.1005 would be redesignated as § 121.505, and reworded for brevity.

Proposed § 121.506 consolidates definitions (important for sales and leases of Government-owned timber) that are presently contained in different sections.

Section 121.1006, redesignated as § 121.507, clarifies that the Alaskan resale limitation applies when the original purchaser, and not necessarily the repurchaser, is an Alaskan business.

Sections 121.1006 through 121.1010 would be renumbered as §§ 121.507 through 121.511, and reworded for clarity and brevity.

Section 121.1011, redesignated as § 121.512, would clarify that SBA considers a concern's affiliates in determining the size of a stockpile purchaser.

Sections 121.1012 and 121.1013 would be redesignated as §§ 121.513 and 121.514, respectively, and amended for clarity and brevity.

Section 121.1101 would be eliminated as unnecessary.

Section 121.1102 would be reorganized for clarity. The substance of subsections (a)(1), (a)(2), and (b)(1) would be redesignated as §§ 121.601, 121.604(a), and 121.603, respectively. The substance of subsections (b)(2), (c) and (d) would be consolidated into § 121.402.

Section 121.1103 would be reorganized for clarity. The substance of subsections (a), (b), and (c) would be redesignated as §§ 121.602, 121.604(a), and 121.605, respectively. The substance of subsection (d) would be consolidated into § 121.404(b).

Section 121.1104 would be redesignated as § 121.604, and amended for clarity.

Sections 121.1105 and 121.1106 would be consolidated into §§ 121.405 and 121.406, respectively.

The substance of 121.1108 would be redesignated as § 121.605.

Section 121.1201 would be redesignated as § 121.701 and the definition of funding agreement in § 121.1202(b) would be moved to this section in order to keep definitions in one place.

Section 121.1202 would be redesignated as § 121.702 and the language would be simplified.

Section 121.1203 would be redesignated as § 121.703 and rewritten for clarity.

Section 121.1204 would be redesignated as § 121.704. The reference to a firm of more than 500 employees being ineligible for award would be deleted as duplicative of revised § 121.702. Section 121.1205 would be redesignated as § 121.705 and amended for clarity.

Sections 121.1301 through 121.1305 would be redesignated as §§ 121.801 through 805, respectively, with slight changes for clarity.

Sections 121.1401 through 121.1405 would be deleted as unnecessary since size eligibility of financial institutions for subcontracting purposes would be addressed in proposed § 121.410(c) and footnote 9 of proposed § 121.201.

Section 121.1501, redesignated as § 121.901 and rewritten for clarity, would address the procedures for size determinations and discretionary appeals currently set forth in § 121.1505.

Sections 121.1502 and 121.1503 would be consolidated into a new § 121.902.

A proposed amendment of § 121.1502 was published in the Federal Register (58 Fed. Reg. 44620) for public comment on August 23, 1993. It would have implemented Section 222 of Public Law 102–366, amending the Small Business Act, to delineate the limited circumstances under which a Federal department or agency may prescribe its own standard for determining whether an entity is a small business concern. After reviewing public comments, SBA has decided to publish for further comment a new proposal for the rule as part of this proposed rule.

After publication of the initial proposal, Congress modified Section 3(a)(2) of the Small Business Act further, thereby affecting two aspects of the proposed rule (*See* § 301, Public Law 103–403). Public Law 103–403 modified the time period for determining the size of a manufacturing concern from ''over a period of not less than three years'' to ''a manufacturing concern's pay periods for the preceding 12 months.'' This modification makes the time period of measurement of a manufacturing concern's size consistent with the time period used by SBA in calculating the size of other business concerns subject to an employee-based size standard. Public Law 103–403 then expanded upon the types of size standard measures that could be used for certain industries. While § 301 requires that the number of employees be used to determine the size of a manufacturing concern, and gross receipts used to determine the size of concerns providing services, § 301 permits these or some other measure of size to be used for size standards for all other industry categories (e.g., retail trade, wholesale trade, and construction). Other measures of size standards could include net worth, net income, or some other quantitative measure that appropriately delineates business concerns by size. These statutory modifications have been incorporated into this final rule.

The current statutory provisions under Section 3(a)(2) of the Small Business Act establish certain requirements for the development of size standards by a Federal department or agency. Those requirements would be repeated in the regulations under this proposal. The head of a Federal department or agency may only prescribe a size standard different from that prescribed by SBA when it is for use in connection with a program of the department or agency, and other statutory criteria are met.

SBA proposes to adopt appropriate measures to implement this statutory authority. As stated in revised § 121.901, SBA applies the rules and procedures contained in this regulation when making size determinations for other agencies. This includes the definition of the size standard measure as well as all other criteria related to the size standard. SBA will consider the use of alternative definitions and other size related criteria by other agencies where appropriate. As required by statute, SBA also is publishing a list of non-SBA size standards currently in effect. The list contained in this proposed rule will be updated periodically by notices published in the Federal Register as non-SBA size standards become established or when additional existing non-SBA size standards are identified. The current list is as follows:

TABLE OF STATUTORY AND REGULATORY SIZE STANDARDS SET BY AGENCIES OTHER THAN SBA

Agency/Program	Size standard	Cite
Bureau of Land Management, Timber Sales	SBA size standards	43 CFR 5400.0–5
Department of Agriculture, SBIR program	Fewer than 500 employees; all requirements of 13 CFR 121.	7 CFR 3403.2(o)

TABLE OF STATUTORY AND REGULATORY SIZE STANDARDS SET BY AGENCIES OTHER THAN SBA—Continued

Agency/Program	Size standard	Cite
Department of the Air Force, Licensing Government-Owned Inventions.	SBA size standards	32 CFR 841.4
Department of the Army, Timber Sales	SBA size standards	32 CFR 644.509
Department of Commerce, International Trade Administration, Antidumping Duty Procedures.	''Small business'' means any business concern which, in the agency's judgment, due to its small size, has neither adequate internal resources nor financial ability to obtain qualified outside assistance in preparing and filing petitions and applications for remedies and benefits under trade laws. (19 USC 1339).	19 CFR 353.12
Department of Commerce, International Trade Administration, Countervailing Duty Procedures.	''Small business'' means any business concern which, in the agency's judgment, due to its small size, has neither adequate internal resources nor financial ability to obtain qualified outside assistance in preparing and filing petitions and applications for remedies and benefits under trade laws. (19 USC 1339).	19 CFR 355.12
Department of Commerce, Licensing Government-Owned Inventions.	SBA size standards	37 CFR 404.3
Department of Commerce, Patent Rights Clause	SBA size standards	37 CFR 401.14
Department of Commerce, Rights to Inventions	SBA size standards	37 CFR 401.2
Department of Defense, Business Type Certification—Commercial Items.	13 CFR part 121	48 CFR 252.211–7020
Department of Defense, Contract Goals for Small Disadvantaged Businesses.	Section 8(d) of the Small Business Act	10 USC 2323
Department of Defense, Notice of Partial Small Business Set-aside.	13 CFR part 121	48 CFR 252.219–7001
Department of Energy, Domestic Uranium Project	''[A]s defined by SBA''	10 CFR 760.1
Department of Energy, Electric and Hybrid Vehicle Research, Development, Demonstration and Production Loan Guaranties.	13 CFR 121.310	10 CFR 791.3
Department of Energy, Financial Assistance Rules	Not dominant in its field; independently owned and operated; meets criteria of SBA.	10 CFR 600.3
Department of Energy, Financial Assistance Rules—Grants.	Not dominant in its field; independently owned and operated; meets criteria of SBA.	10 CFR 600.3
Department of Energy, Geothermal Loan Guaranty Program.	Not dominant in field; does not have assets in excess of $9 million or net worth in excess of $4 million; does not have average net income, after Federal income tax, for the preceding 2 years in excess of $400,000.	10 CFR 790.5
Department of Energy, Patent Rights of Grantees	13 CFR 121.3–8, 121.3–12	10 CFR 600.33
Department of Energy, State Energy Conservation Program.	SBA regulations	10 CFR 420.2
Department of Housing and Urban Development, Employment Opportunities for Businesses and Lower Income Persons in Connection with Assisted Projects.	SBA size standards	24 CFR 135.5
Department of Labor, OSHA, Occupational Safety and Health Standards, Cadmium.	19 or fewer employees	29 CFR 1910.1027(p)(2)
Department of Transportation, Implementation of § 105(f) of the Surface Transportation Assistance Act of 1982.	Section 3 of the Small Business Act and SBA regulations, except that a small business concern will not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual(s) which has average annual gross receipts in excess of $15 million over the previous 3 fiscal years (amount is increased annually for inflation).	49 CFR 23.62
Department of Transportation, Size Standards for Airport Concessionaires.	See note below for size standards for specific airport concessionaires.	49 CFR 23.89
Department of Transportation, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs.	Small business is a business having not more than 500 employees working at the site being acquired or displaced by a project or program, which site is the location of economic activity. Sites occupied solely by outdoor advertising signs, displays, or devices do not qualify as a business.	49 CFR 24.2(t)
Environmental Protection Agency, Cooperative Agreements and Superfund State Contracts for Superfund Response Actions.	Section 3 of the Small Business Act	40 CFR 30.6015
Environmental Protection Agency, Issuance of Statements Required by § 7(g) of the Small Business Act.	SBA size standards	40 CFR 21.2
Environmental Protection Agency, Procurement Under Assistance Agreements.	Small Business Act	40 CFR 33.005
Environmental Protection Agency, Stationary Source Technical and Environmental Compliance Assistance Program.	100 employees	42 USC 7661(f)
Family and Medical Leave Act	Fewer than 50 employees	Public Law 103–1, § 101

TABLE OF STATUTORY AND REGULATORY SIZE STANDARDS SET BY AGENCIES OTHER THAN SBA—Continued

Agency/Program	Size standard	Cite
FAR, Patent Rights, Retention by Contractor (Short Form).	Section 2 of the Small Business Act and SBA regulations.	48 CFR 52.227–11
FAR, Patent Rights, Retention by Contractor (Long Form).	Section 2 of the Small Business Act and SBA regulations.	48 CFR 52.227–12
FAR, Patent Rights Under Government Contracts	16 USC 632 and SBA regulations	48 CFR 27.301
FAR, Size Standards	SBA size standards	48 CFR 19.102
FAR, Small Business Competitiveness Demonstration Program.	Emerging small business: size is no greater than 50% of numerical SIC size standard.	48 CFR 19.1002
FAR, Socioeconomic Programs	13 CFR 121 and not dominant in field	48 CFR 19.001
FAR, Utilization of Small Business Concerns and Small Disadvantaged Business Concerns.	Section 3 of the Small Business Act and SBA regulations.	48 CFR 52.219–8
General Services Administration, Small Business Concern Representation.	13 CFR part 121	48 CFR 552.219–1
Internal Revenue Service, Dollar-value Method of Pricing LIFO Inventories.	Average annual gross receipts of the taxpayer for the 3 preceding taxable years do not exceed $5 million.	26 CFR 1.472–8
Internal Revenue Service, Loss on Small Business Stock.	(1) Post-1978 stock: capital receipts of small business corporation may not exceed $1 million (capital receipts means aggregate dollar amount received by the corporation for its stock). (2) Pre-1978 stock: sum of aggregate amount to be paid for pre-1978 stock may not exceed $500,000.	26 CFR 1.1244(c)-2
Internal Revenue Service, S Corporation Defined	Fewer than 35 shareholders; no shareholder (other than an estate or trust) who is not an individual; no nonresident alien as shareholder; only one class of stock.	26 CFR 1.1361–1
Internal Revenue Service, Simplified Dollar-value LIFO Method for Certain Small Businesses.	Average annual gross receipts of the taxpayer for the 3 preceding taxable years do not exceed $5 million.	26 USC 474
Internal Revenue Service, Subchapter S Corporation	Fewer than 35 shareholders; no shareholder (other than an estate or trust) who is not an individual; no nonresident alien as shareholder; only one class of stock.	26 USC 1361(b)(1)(A)
International Trade Commission, Trade Remedy Assistance.	SBA size standards	19 CFR 213.2
Interstate Commerce Commission, Negotiated Rates Act.	Small Business Act	49 USC 10701
NASA, Licensing of Inventions	13 CFR 121.3–8 and 121.3–12	14 CFR 1245.202
NASA, Patent Rights—Retention by Grantee	13 CFR 121.3–8 and 121.3–12	14 CFR 1260 App.
National Science Foundation, Patent Rights of Grantee	13 CFR 121.3–8 and 121.3–12	45 CFR 650.4
Patent and Trademark Office	13 CFR 121.12	37 CFR 1.9
Regulatory Flexibility Act	Section 3 of the Small Business Act, unless an agency, after consultation with the Office of Advocacy of SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.	5 USC 601
Securities & Exchange Commission, Integrated Disclosure System for Small Business Issuers.	Small business issuer-revenues less than $25 million; US or Canadian issuer; not an investment company; if a majority owned subsidiary, parent corporation must also be a small business issuer.	17 CFR 228.10
Securities & Exchange Commission Registration and Reporting.	Small business issuer-revenues less than $25 million; US or Canadian issuer; not an investment company; if a majority owned subsidiary, parent corporation must also be a small business issuer.	17 CFR 240.12b–2
Selective Service, Placement of Orders	500 employees	50 App. USC 468(a)
Federal Communications Commission, Licensing of Broadband Personal Communications Services.	$40 million in average annual gross revenues	47 CFR 24.720(b)(1)
Federal Communications Commission, Licensing of Narrowband Personal Communications Services.	$40 million in average annual gross revenues and $40 million in personal net worth.	47 CFR 24.320(b)
Federal Communications Commission, Licensing of Multipoint Distribution Services (Wireless Cable).	$40 million in average annual gross revenues	47 CFR 21.961(b)
Federal Communications Commission, Regulatory Relief for Small Cable Entities.	Small cable systems of 15,000 or fewer subscribers owned by cable companies with 400,000 or fewer subscribers.	47 CFR 76.901(c)
Nuclear Regulatory Commission, Regulatory Flexibility Analyses.	$5 million in average annual gross revenues for concerns providing services and 500 employees for manufacturing concerns.	10 CFR 2.810
Department of the Treasury, Office of the Comptroller of the Currency, Community Reinvestment Act.	$1 million in average annual gross revenues	12 CFR 25.22(b)(3)
Department of the Treasury, Office of Thrift Supervision, Community Reinvestment Act.	$1 million in average annual gross revenues	12 CFR 563e.22(b)(3)(iii)
Board of Governors of the Federal Reserve System, Community Reinvestment Act.	$1 million in average annual gross revenues	12 CFR 228.22(b)(3)(ii)

TABLE OF STATUTORY AND REGULATORY SIZE STANDARDS SET BY AGENCIES OTHER THAN SBA—Continued

Agency/Program	Size standard	Cite
Federal Deposit Insurance Corporation, Community Reinvestment Act.	$1 million in average annual gross revenues	12 CFR 345.22(b)(3)(ii)
Department of Agriculture, Commodity Credit Corporation, Market Promotion Program.	SBA size standards	7 CFR 1485.11(oo)

Note for Airport Concessionaire Size Standards

Following is a list of the maximum average annual gross receipts in the preceding 3 years (in millions of dollars):

Concession	Amount
Food and beverage	30.00
Book stores	30.00
Auto rental	40.00
Banks	[1]100.00
Hotels and motels	30.00
Insurance machines and counters	30.00
Gift, novelty, and souvenir shop	30.00
Newsstands	30.00
Shoe shine stands	30.00
Barber shops	30.00
Automobile parking	30.00
Jewelry stores	30.00
Liquor stores	30.00
Travel agencies	30.00
Drug stores	30.00
Pastries and baked goods	30.00
Luggage cart rental	30.00
Coin-operated T.V.'s	30.00
Game rooms	30.00
Luggage and leather goods stores	30.00
Candy, nut, and confectionery stores	30.00
Toy stores	30.00
Beauty shops	30.00
Vending machines	30.00
Coin-operated lockers	30.00
Florists	30.00
Advertising	30.00
Taxicab	30.00
Limousines	30.00
Duty free shops	30.00
Pay telephones	[2]1,500
Gambling machines	30.00
Other concessions not shown above	30.00

[1] As measured by total assets.
[2] Number of employees.

SBA will briefly describe and respond to the comments received in response to its initial proposed rule regarding alternate size standards of other agencies. Several of the commenters, although supportive of the proposed rule, identified the following issues that they felt warranted further clarification or modification to the proposed procedures. These issues are identified below along with the SBA's response.

Definition and Calculation of Average Annual Receipts and Number of Employees: The commenters raised two questions concerning annual average receipts and number of employees—how are these terms defined and how are they calculated? As specified in revised § 121.901, the SBA utilizes its rules, standards and procedures when making size determinations for other agencies. For clarification on the definition and calculation of size standard measures, § 121.902(b)(1)(ii)(D) of this part has been added to incorporate, by reference, the SBA's criteria for defining and calculating gross receipts and number of employees. The SBA's policy of applying the criteria specified in this regulation to another agency's size standard does not preclude a department or agency from requesting a change to the definition of procedures regarding its size standard. Such request would be part of the SBA's review of the proposed size standard.

Size Standard Measures: Two commenters suggested that these regulations should permit the use of size standard measures other than gross receipts and number of employees, such as net worth, and permit the use of number of employees for non-manufacturing industries. For non-SBA size standards, the law clearly requires that the size standard for manufacturing concerns be established based on number of employees, and for concerns providing services that the size standards be established based on gross receipts. SBA believes that the statutory changes pursuant to § 301 of Public Law 103–403 permit an agency to request establishment of a size standard for all other types of concerns (e.g., agriculture, construction, retail trade) based on gross receipts, number of employees or another quantitative measure of size suitable for the purpose and industry under consideration, and this final rule allows a department or agency to make such a request.

Application of Size Standards to Programs: The comments reviewed reflected confusion about the application of non-SBA size standards to Federal government programs. Several commenters indicated that they were unsure if non-SBA size standards were only to be used within a specific department or agency, even though a program may be implemented across several agencies or departments. Second, some commenters appeared to be under the misunderstanding that individual agencies would be able to establish their own size standards for use in SBA programs within their agency.

These regulations allow departments and agencies to prescribe unique size standards only for programs under their responsibility. For example, this means that size standards established by the Department of Transportation for a program under its control are applicable to all departments or agencies that must also implement such a program. Similarly, the SBA size standards are applicable to all programs under the SBA area of cognizance, regardless of where implemented. This means that the SBA size standards must be used by all departments and agencies for the Small Business Set-Aside and MED Programs.

In another case, a statute may require the use of SBA's size standards or refer to small business as defined under the Small Business Act. An example is the Department of Defense's Small Disadvantaged Business Program. In those cases, the SBA size standards clearly must be used. However, if use of SBA's size standards has not been statutorily required, a Federal department or agency is free to either use the SBA's size standards or endeavor to obtain the approval of SBA to establish a different size standard.

Size Determinations and Appeals to Non-SBA Size Standards: A commenter raised the question of how size determinations and appeals would be made for non-SBA size standards in cases involving a dispute over the size status of a business concern. When requested, the SBA will provide size determinations for other Federal government agencies, even in cases where size standards are established by statute or the SBA has approved size standards different from its own size standards (See proposed § 121.1001(b)(6)). The SBA also provides a discretionary appeal process from such size determinations that would be available to other Federal agencies. The procedures regarding size appeals are contained in part 134 (See proposed § 121.1102).

Documentation for SBA Review of Non-SBA Size Standards: A commenter requested clarification on what

documentation must accompany its requests for approval of non-SBA size standards, particularly regarding submission of copies of comments received on the proposed rule. In order for the SBA to properly evaluate requests to issue proposed rules, an agency proposing a size standard shall provide the SBA with (1) the reasons for proposing a size standard different from the SBA's size standard, and (2) industry related data or other data supporting its proposed size standard. In order to properly evaluate each request for non-SBA size standards and approve the issuance of a final rule, the SBA shall also be provided with copies of all comments that relate to the establishment of the size standard, not just copies of all comments received on the proposed rule. The SBA has modified a provision of the proposed rule to specify that only comments related to the size standard need to be provided to the SBA as part of its review of an agency final rule.

Another commenter recommended modifying the requirement to provide the SBA with a copy of the final rule prior to approval by the SBA's Administrator. To expedite the SBA's review of the size standard at this stage of the rulemaking process, the commenter recommended that agencies be allowed to submit the intended size standard with an accompanying justification. The SBA agrees, and has modified this provision of the proposed rule. When possible, the requesting agency should submit a draft final rule and preamble. However, correspondence containing a justification for the intended size standard is acceptable, provided the agency furnishes the SBA a copy of the final rule and its preamble before submitting it for publication in the Federal Register.

Clarify ''Other Factors'' Considered by the SBA Administrator: Several commenters requested clarification on the information the SBA believes it should review when complying with the requirement to ''consider other factors the Administrator deems to be relevant.'' When establishing or approving size standards, the SBA Administrator is required to ensure that size standards vary by industry to the extent necessary to reflect industry differences and to consider other relevant factors. The SBA generally evaluates the structural characteristics of an industry to determine the appropriate differences between industry size standards. These characteristics include, but are not limited to: average firm size, industry competition, the extent of industry dominance by large firms, the distribution of sales and employees by firm size, and start-up costs. Other relevant factors generally pertain to all other types of information that could influence the decision on the size standard. Although this may vary for each request, several important factors would include the goals and objectives of the program, the impact of the size standard on small businesses, conventional industry business practices, and the administration and application of size standard requirements.

Timeliness of SBA Decisions on Approval Process: Several commenters were concerned about the timeliness of the SBA approval process and what impact it might have on rulemaking. The SBA shares this concern and will make every effort to ensure that the regulatory process is not delayed. However, the SBA believes specifying a time frame for these reviews is impractical. Each request will likely have different implications. That makes estimating within this rule a definite completion date for a review inappropriate. The SBA will, as a matter of policy, respond to requests for non-SBA size standards within 30 days. Where the SBA cannot respond within 30 days, the agency will advise the requester as soon as possible.

SBA Reviews and Legislation Providing Authority to Establish Size Standard: One comment questioned the need for an agency to request the SBA's approval for a non-SBA size standard if the enabling legislation for a particular program specifically authorized the agency to establish a size standard without specifying a size standard.

The SBA believes that if the enabling legislation does not designate the size standard, the department or agency would be required to follow the approval procedures specified in the Small Business Act and these regulations. Only in instances in which legislation specifically establishes a size standard would an agency or department be exempted from these procedures.

Section 121.1504 would be redesignated as § 121.903, and reworded in plain English.

Section 121.1601 would be redesignated as § 121.1001 and reworded for clarity. The section would be revised to reflect the new names of offices under SBA's reorganization. References to the Agency's regional offices would be changed to the offices of SBA Government Contracting Area Director or SBA District Director, as appropriate. Reference to any inactive assistance program would be deleted. In addition, proposed § 121.1001(b)(1)(iv) would be amended by expanding the first sentence to clarify existing policy. The regulations currently state that a large business may initiate a size protest as an interested party if only one offer was received. This change would clarify that this does not include a concern that is found to be other than small for a particular procurement protesting the size of the only remaining offeror.

Proposed § 121.1001(b)(5) (present § 121.1601(a)(5)) would be amended to clarify that SBA will make size determinations when a procurement is unrestricted, and that the Office of Hearings and Appeals (OHA) will issue decisions on size appeals and Standard Industrial Classification (SIC) code appeals on unrestricted procurements. This change is necessary because OHA has issued decisions in the past that the SBA regional offices have no jurisdiction to make size determinations when a procurement is unrestricted, and that OHA has no jurisdiction over size appeals or SIC Code appeals when a procurement is unrestricted. SBA disagrees with OHA's interpretation of the existing regulations, and therefore proposes to clarify the regulations. OHA has said that small business status is beneficial only for small business set-aside contracts. This is not true. Small business status is beneficial in unrestricted procurements as well for the following reasons, among others:

1. Small Businesses receive the contract award in the case of a tie bid with a large business.
2. Small businesses are eligible to apply for a Certificate of Competency when a contracting officer makes a determination of non-responsibility.
3. Small businesses are exempt from the Cost Accounting Standards.
4. Small businesses may receive accelerated progress payments.
5. Small businesses are exempt from submitting subcontracting plans.

In the January 1, 1990, revision to 13 CFR Part 121, SBA attempted to clarify this issue by providing the example of the tie bids and the Certificate of Competency eligibility. It was not SBA's intention to limit size determinations and size appeals to just those two examples when a procurement is unrestricted. However, after publication of the revised regulations, OHA ruled that it would not make a decision on a size determination appeal unless there were tie bids or the contracting officer made a determination of non-responsibility. There are many benefits to being a small business in unrestricted procurements. It is SBA's policy to make size determinations when a

protest is received on any unrestricted procurement, regardless of whether there is an apparent benefit at the time the protest is received. Additionally, SBA is attempting to clarify that OHA has jurisdiction to issue decisions concerning SIC appeals on unrestricted procurements. Currently, a concern has no recourse when a contracting officer issues an unrestricted solicitation with an incorrect SIC Code.

The revised § 121.1001 would be further amended to use the term ''headquarters'' in lieu of the term ''principal office'' in referring to a concern's primary headquarters. SBA believes the term ''headquarters'' more accurately describes the location where a firm's business or corporate records are maintained and business decisions are made.

Section 121.1602 would be redesignated as § 121.1002, rewritten for clarity, and amended to provide for changes in offices responsible for making formal size determinations as a result of the Agency's reorganization. The Government Contracting Area Director would assume the responsibilities formerly held by SBA regional administrators for making size determinations. The term ''headquarters'' would be used instead of ''principal offices'' when describing the primary location of a concern's executive office.

Section 121.1603 would be broken out into proposed §§ 121.1003 through 121.1006 for ease of use and clarity. Individual sections would be created relating to where a protest should be filed, what time limits apply to size protests, how a protest must be filed with the contracting officer, and referral of a size protest to the appropriate SBA Government Contracting Area Office.

Proposed § 121.1004 would clarify that although a protest filed by a contracting officer is timely whether filed before or after award, such a protest will be dismissed by SBA as premature if filed before the selection of the apparent successful offeror. This change would prohibit a contracting officer from protesting the size of several concerns at once (e.g., all firms found to be in the competitive range) and would authorize a protest only after the apparent successful offeror has been selected.

Section 121.1604(a) and (b) would be redesignated as § 121.1007(b) and (c), reworded for clarity, and the examples deleted. A portion of present § 121.1601(a)(1)(iv) would be added to proposed § 121.1007 as subsection (a) for the purpose of clarifying that a protest not pertaining to a particular procurement or sale would not be acted upon by SBA. Subsection (c) which pertains to appeals of dismissals would be eliminated as unnecessary in this section addressing size determinations.

Section 121.1605 would be redesignated as § 121.1008 and would be reworded for clarity and user ease. In addition, the revised § 121.1008(a) would be amended to allow any overnight mail delivery service that provides proof of receipt to be used in the size determination process. This change is necessary in order that size determinations may be made in a timely manner.

Section 121.1606 would be redesignated as § 121.1009. Its provisions would be reworded for clarity. The revision would permit use of any overnight mail delivery service that provides proof of receipt to be used in the size determination process. The change would assist SBA in making size determinations in a timely manner. Paragraph (g)(3) would be further amended to provide that a concern which had self certified as small on a pending procurement or assistance application would have to provide notice of any adverse size determination to officials responsible for the pending procurement or assistance request. Subsection (h) would be added to permit the SBA office that performed a formal size determination to reopen that determination in the limited instance where the size determination contains clear administrative error or a clear mistake of fact, provided that no appeal has been taken to OHA and that no contract has been awarded. This provision would permit SBA to correct the error or mistake without requiring the filing of an appeal at OHA.

Section 121.1607 would be redesignated as § 121.1010. The proposed provision would be reworded for ease of use and clarity.

Section 121.1701 would be amended and the substance of subsections (a) and (b) redesignated as § 121.1101 and § 121.1103, respectively. Proposed § 121.1101 would materially alter the right of a party adversely affected by a size determination to appeal the adverse determination to OHA and further provide that OHA has the unfettered discretion to select and review formal size determinations. There would no longer be a right to appeal a size determination. SBA believes that this amended procedure will simplify and speed the final consideration of size status issues. Unless a petition for review is accepted by OHA, the size determinations made by Government Contracting offices and disaster area offices would be final Agency decisions and would end the size determination process. Under the revised procedures, the procurement process generally would not be delayed because of size determination appeals to OHA. OHA could elect to consider any size determination appeal request.

Section 121.1702 has been eliminated. Part of proposed § 121.1101 simply references procedures for discretionary OHA reviews as contained in part 134.

Section 121.1703(a) would be incorporated into § 121.1101. Sections 121.1703 (b) and (c) would be incorporated into §§ 121.1103, and 121.1703(d) would be eliminated.

Section 121.1704 would be incorporated into § 121.1103. The revised section would address procedures for appealing SIC code designations. The revision would provide that appeal procedures would be those outlined in FAR 19–303.

Sections 121.1705 through 121.1722 would be eliminated and their substance transferred to part 134.

Sections 121.2001 through 121.2005 would be redesignated as §§ 121.1201 through 121.1206. The sections would be revised to reflect better clarity and organizational content. The substance of these provisions would remain substantially unaffected. Minor editorial changes would be made, for example, to eliminate outdated information such as procurement funding levels for prior years. The content of the current § 121.2004 would be rearranged in a more logical sequence. Where organizational titles have changed, the revisions would adopt the new titles.

Sections 121.2101 through 121.2104 would be redesignated as §§ 121.1301–121.1304, respectively, § 121.2105 would be incorporated into proposed § 121.1304, and § 121.2106 would be redesignated as § 121.1305. Minor editorial changes pertaining to class waivers would be made for ease of reading and use.

In addition, SBA is proposing to incorporate in these sections procedural rules pertaining to individual waivers of the Nonmanufacturer Rule for specific solicitations. On November 15, 1988, the enactment of Public Law 100–656 incorporated into the Small Business Act the previously existing SBA requirement that recipients of small business set-asides or SBA 8(a) subcontracts for manufactured products that are not the actual manufacturers (nonmanufacturers) be themselves small business regular dealers. This legislation specifies that regular dealers may provide only the product of domestic small business manufacturers or processors on small business set-asides and 8(a) procurements. This requirement is commonly known as the

Nonmanufacturer Rule. Section 303(h) of Public Law 100–656 authorized the Administrator of the SBA to grant a waiver of the Nonmanufacturer Rule for a product or class of products for which there are no small business manufacturers or processors in the Federal market. The requirement that a small business supplier provide a product manufactured or processed by a small business concern in the U.S. under a contract set-aside for small business or under an SBA 8(a) subcontract is found in SBA regulations at §§ 121.406(b). On June 15, 1989, Public Law 101–37 renumbered the elements in the Nonmanufacturer Rule and added the requirement that a small business concern must meet the numerical size standard for the Standard Industrial Classification code assigned to the contract solicitation on which the offer is being made. Further, on November 15, 1990, Public Law 101–574 modified the wording of the waiver provision. The new wording allowed the Administrator of the SBA to waive the requirement for any product or class of products for which there is no small business manufacturer or processor ''available to participate in the Federal procurement market.'' The law also added a provision which allows the Administrator to waive the requirements of the Nonmanufacturer Rule after receiving a determination by the contracting officer stating that no small business manufacturer or processor can reasonably be expected to offer a product meeting the specification, including period of performance, required of an offeror on a solicitation.

On September 21, 1993, SBA published in the Federal Register proposed procedural rules for individual waivers of the Nonmanufacturer Rule. SBA received two sets of comments in response to the proposed rule. Due to the passage of time since the proposed rule was originally published, SBA is not issuing final regulations pertaining to individual waivers but is again proposing revised regulations taking into account the comments received. The first commenter was the United States Department of the Interior, Geological Survey (DOI). Its first comment was a request to include in the regulations a definition of ''nonmanufacturing.'' Since this term is not used in the proposed regulations, a definition is unnecessary.

DOI's second comment was a request to clarify the language of the regulation by shortening word and sentence lengths. SBA reviewed the regulation and, where possible, reduced the length of the sentences and the size of the words.

The second commenter was a small business wholesaler who submitted four comments. The first comment was that SBA should review and grant class waivers for individual items. The statute authorizing waivers does permit class waivers for products for which there are no small business manufacturers available to participate in the Federal procurement market and current SBA regulations already address this. Consequently, no action on the comment is necessary.

The small business wholesaler's second comment was that a SBA Business Opportunity Specialist should be allowed to request waivers for individual procurements. Waivers for individual procurements are routinely granted for both small business set-asides and SBA 8(a) subcontracts. SBA believes that the best procedure to maintain administrative consistency is to allow only the procuring agencies' contracting officers to request individual waivers for both set-asides and 8(a) awards. We believe that the procuring agency contracting officer ultimately responsible for contract award is the most qualified individual to determine whether small business products are available and/or meet the specifications of a particular solicitation.

The small business wholesaler's third comment was that SBA state procurement center representatives should be allowed to request individual waivers of the Nonmanufacturer Rule. Public Law 101–574, Section 210, is explicit in its language allowing only contracting officers to request individual waivers. Therefore, SBA has no authority to allow anyone other than contracting officers to request individual waivers of the Nonmanufacturer Rule.

The fourth comment by the small business wholesaler was that SBA 8(a) subcontractors should be allowed to request individual waivers of the Nonmanufacturer Rule. As with the commenter's third comment, Public Law 101–574, Section 210, is explicit in its language allowing only contracting officers to request individual waivers.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this proposed rule would not be considered a significant rule within the meaning of Executive Order 12866 and would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. This rule is would clarify SBA's procedural and definitional size rules, but would not change the size standard for any particular industry. As such, size eligibility for the various SBA programs should not be affected by this proposal. The rule would have no effect on the amount or dollar value of any Federal contract requirements or of any financial assistance provided through SBA. Therefore, it is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this proposed rule, if adopted in final form, would contain no new reporting or recordkeeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule would not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects in 13 CFR Part 121

Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

Accordingly, pursuant to the authority set forth in sections 3(a) and 5(b)(6) of the Small Business Act, 15 U.S.C. 632(a) and 634(b)(6), SBA hereby proposes to revise part 121 of Title 13, Code of Federal Regulations (CFR), to read as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

Subpart A—Size Eligibility Provisions and Standards

Provisions of General Applicability

Sec.

121.101 What are SBA size standards?
121.102 How does SBA establish size standards?
121.103 What is affiliation?
121.104 How does SBA calculate annual receipts?
121.105 How does SBA define ''business concern or concern''?
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6121.201 What size standards has SBA identified by Standard Industrial Classification codes?

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6121.401 What procurement programs are subject to size determinations?
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6121.403 Are SBA size determinations and SIC code designations binding on parties?
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6121.408 What are the size procedures for SBA's Certificate of Competency Program?
6121.409 What size standard applies in an unrestricted procurement for Certificate of Competency purposes?
6121.410 What are the size standards for SBA's Section 8(d) Subcontracting Program?
6121.411 What are the size procedures for SBA's Section 8(d) Subcontracting Program?
6121.412 What are the size procedures for partial small business set-asides?

Size Eligibility Requirements for Sales or Lease Of Government Property

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6121.507 What are the size standards and other requirements for the purchase of Government-owned timber (other than Special Salvage timber)?
6121.508 What are the size standards and other requirements for the purchase of Government-owned Special Salvage Timber?
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Size Eligibility Requirements for the Minority Enterprise Development (MED) Program

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Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a) and 644(c); and Pub. L. 102–486, 106 Stat. 2776, 3133.

Provisions of General Applicability

§ 121.101 What are SBA size standards?

SBA's size standards define whether a business entity is small and, thus, eligible for Government programs and preferences reserved for ''small business'' concerns. Size standards have been established for types of economic activity, or industry, generally under the Standard Industrial Classification (SIC) System. The SIC System is described in the ''Standard Industrial Classification Manual'' published by the Office of Management and Budget, Executive Office of the President, and sold by the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. The SIC System assigns four-digit SIC codes to all economic activity within ten major divisions. Section 121.201 describes the size standards now established. A full table matching a size standard with each four-digit SIC code is also published annually by SBA in the Federal Register.

§ 121.102 How does SBA establish size standards?

(a) SBA considers economic characteristics comprising the structure of an industry, including degree of competition, average firm size, start-up costs and entry barriers, and distribution of firms by size. It also considers technological changes, competition from other industries, growth trends, historical activity within an industry, unique factors occurring in the industry which may distinguish small firms from other firms, and the objectives of its programs and the impact on those programs of different size standard levels.

(b) As part of its review of a size standard, SBA will investigate if any concern at or below a particular standard would be dominant in the industry. SBA will take into consideration market share of a concern and other appropriate factors which may allow a concern to exercise a major controlling influence on a national basis in which a number of business concerns are engaged. Size standards seek to ensure that a concern that meets a specific size standard is not dominant in its field of operation.

(c) Please address any requests to change existing size standards or establish new ones for emerging industries to the Assistant Administrator for Size Standards, Small Business Administration, 409 3rd Street, S.W., Washington, D.C. 20416.

§ 121.103 What is affiliation?

(a) *General Principles of Affiliation.* (1) Concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.

(2) SBA considers factors such as ownership, management, and contractual relationships, in determining whether affiliation exists.

(3) Individuals or firms that have identical or substantially identical business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships, may be treated as one party with such interests aggregated.

(4) SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern's size.

(b) *Exclusion from affiliation coverage.* (1) Business concerns owned in whole or substantial part by investment companies licensed, or development companies qualifying, under the Small Business Investment Act of 1958, as amended, or by Investment Companies registered under the Investment Company Act of 1940, as amended, are not considered affiliates of such investment companies or development companies.

(2) Business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601), Native Hawaiian Organizations, or Community Development Corporations authorized by 42 U.S.C. 9805 are not considered affiliates of such entities, or with other concerns owned by these entities solely because of their common ownership.

(3) Business concerns which are part of a SBA approved pool of concerns for a joint program of research and development as authorized by the Small Business Act are not affiliates of one another because of the pool.

(4) Business concerns which lease employees from concerns primarily engaged in leasing employees to other businesses are not affiliated with the leasing company solely on the basis of a leasing agreement.

(5) For financial, management, or technical assistance under the Small Business Investment Company program, an applicant concern will not be affiliated with the following investors, provided the investors do not control the concern other than to the extent that would be permitted under § 107.865 of this chapter:

(i) Venture capital operating companies as defined in the U.S. Department of Labor Regulations found at 29 CFR 2510.3–101(d);

(ii) Employee benefit or pension plans established and maintained by the Federal government or by any state, their political subdivisions, or any agency or instrumentality thereof for the benefit of employees;

(iii) Employee benefit or pension plans within the meaning of the Employee Retirement Income Security Act of 1974; or

(iv) Charitable trusts, foundations, endowments, or similar organizations exempt from Federal income taxation under Section 501(c) of the Internal Revenue Code of 1986.

(6) A protege firm is not an affiliate of a mentor firm solely because the protege firm receives assistance from the mentor firm under Federal Mentor-Protege programs.

(c) *Affiliation based on stock ownership.* (1) A person is an affiliate of a concern if the person owns or controls, or has the power to control 50 percent or more of its voting stock, or a block of stock which affords control because it is large compared to other outstanding blocks of stock.

(2) If two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, with minority holdings that are equal or approximately equal in size, but the aggregate of these minority holdings is large as compared with any other stock holding, each such person is presumed to be an affiliate of the concern.

(d) *Affiliation arising under stock options, convertible debentures, and agreements to merge.* Since stock options, convertible debentures, and agreements to merge (including agreements in principle) affect the power to control a concern, SBA treats them as though the rights granted have been exercised (except that an affiliate cannot use them to appear to terminate control over another concern before it actually does so). SBA gives present effect to an agreement to merge or sell stock whether such agreement is unconditional, conditional, or finalized but unexecuted. Agreements to open or continue negotiations towards the possibility of a merger or a sale of stock at some later date are not considered

''agreements in principle'' and, thus, are not given present effect.

(e) *Affiliation based on common management.* Affiliation arises where one or more officers, directors or general partners controls the board of directors and/or the management of another concern.

(f) *Affiliation based on joint venture arrangements.* (1) Parties to a joint venture are affiliates if any one of them seeks SBA financial assistance for use in connection with the joint venture.

(2) Concerns bidding on a particular procurement or property sale as joint venturers are affiliated with each other with regard to performance of that contract.

(3) A contractor and subcontractor are treated as joint venturers if the ostensible subcontractor will perform primary and vital requirements of a contract or if the prime contractor is unusually reliant upon the ostensible subcontractor. All requirements of the contract are considered in reviewing such relationship, including contract management, technical responsibilities, and the percentage of subcontracted work.

(4) For size purposes, a concern must include in its revenues its proportionate share of joint venture receipts.

(g) *Affiliation based on franchise and license agreements.* The restraints imposed on a franchisee or licensee by its franchise or license agreement relating to standardized quality, advertising, accounting format and other similar provisions, generally will not be considered in determining whether the franchisor or licensor is affiliated with the franchisee or licensee provided the latter has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Affiliation may arise, however, through other means, such as common ownership, common management or excessive restrictions upon the sale of the franchise interest.

§ 121.104 How does SBA calculate annual receipts?

(a) *Definitions.* In determining annual receipts of a concern:

(1) *Receipts* is defined as gross or total income, plus cost of goods sold, as reported on a concern's Federal Income Tax return. However, the term receipts excludes net capital gains or losses, taxes collected for and remitted to a taxing authority if included in gross or total income, proceeds from the transactions between a concern and its domestic or foreign affiliates (if also excluded from gross or total income on a consolidated return filed with the IRS), and amounts collected for another by a travel agent, real estate agent, advertising agent, or conference management service provider.

(2) *Completed fiscal year* means a taxable year including any short period. Taxable year and short period have the meaning attributed to them by the IRS.

(3) Unless otherwise defined in this section, all terms shall have the meaning attributed to them by the IRS.

(b) *Period of measurement.* (1) Annual receipts of a concern which has been in business for 3 or more completed fiscal years means the receipts of the concern over its last 3 completed fiscal years divided by three.

(2) Annual receipts of a concern which has been in business for less than 3 complete fiscal years means the receipts for the period the concern has been in business divided by the number of weeks in business, multiplied by 52.

(3) Annual receipts of a concern which has been in business 3 or more complete fiscal years but has a short year as one of those years means the receipts for the short year and the two full fiscal years divided by the number of weeks in the short year and the two full fiscal years, multiplied by 52.

(c) *Use of information other than the Federal tax return.* Where other information gives SBA reason to regard Federal Income Tax returns as false, SBA may base its size determination on such other information.

(d) *Annual receipts of affiliates.* (1) If a concern has acquired an affiliate or been acquired as an affiliate during the applicable averaging period or before small business self-certification, the annual receipts in determining size status include the receipts of both firms. Furthermore, this aggregation applies for the entire applicable period used in computing size rather than only for the period after the affiliation arose. Receipts are determined for the concern and its affiliates in accordance with paragraph (b) of this section even though this may result in different periods being used to calculate annual receipts.

(2) The annual receipts of a former affiliate are not included as annual receipts if affiliation ceased before the date used for determining size. This exclusion of annual receipts of a former affiliate applies during the entire period used in computing size, rather than only for the period after which the affiliation ceased.

§ 121.105 How does SBA define ''business concern or concern''?

(a) A business concern eligible for assistance from SBA as a small business is a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.

(b) A business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the form is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture.

(c) A firm will not be treated as a separate business concern if a substantial portion of its assets and/or liabilities are the same as those of a predecessor entity. In such a case, the annual receipts and employees of the predecessor will be taken into account in determining size.

§ 121.106 How does SBA calculate number of employees?

(a) Employees counted in determining size include all individuals employed on a full-time, part-time, temporary, or other basis. SBA will consider the totality of the circumstances, including factors relevant for tax purposes, in determining whether individuals are employees of the concern in question.

(b) Where the size standard is number of employees, the method for determining a concern's size includes the following principles:

(1) The average number of employees of the concern is used (including the employees of its domestic and foreign affiliates) based upon numbers of employees for each of the pay periods for the preceding completed 12 calendar months.

(2) Part-time and temporary employees are counted the same as full-time employees.

(3) If a concern has not been in business for 12 months, the average number of employees is used for each of the pay periods during which it has been in business.

(4) The treatment of employees of former affiliates or recently acquired affiliates is the same as for size determinations using annual receipts in § 121.104(d).

§ 121.107 How does SBA determine a concern's ''primary industry''?

In determining the primary industry in which a concern or a concern combined with its affiliates is engaged, SBA considers the distribution of receipts, employees and costs of doing business among the different industries in which business operations occurred for the most recently completed fiscal

year. SBA may also consider other factors, such as the distribution of patents, contract awards, and assets.

§ 121.108 What are the penalties for misrepresentation of size status?

In addition to other laws which may be applicable, section 16(d) of the Small Business Act, 15 U.S.C. 645(d), provides severe criminal penalties for knowingly misrepresenting the small business size status of a concern in connection with procurement programs. Section 16(a) of the Act also provides, in part, for criminal penalties for knowingly making false statements or misrepresentations to SBA for the purpose of influencing in any way the actions of the Agency.

Size Standards Used to Define Small Business Concerns

§ 121.201 What size standards has SBA identified by Standard Industrial Classification codes?

The size standards described in this section apply to all SBA programs unless otherwise specified. The number of employees or annual receipts indicates the maximum allowed for a concern and its affiliates to be considered small. The following is a listing of size standards for industries under the SIC System. Size standards are listed by Division and apply to all industries in that Division except those specifically listed with separate size standards.

SIZE STANDARDS BY SIC INDUSTRY

SIC code and description	Size standards in number of employees or millions of dollars
DIVISION A—AGRICULTURE	
MAJOR GROUP 01—AGRICULTURAL PRODUCTION-CROPS	0.5
MAJOR GROUPS 02—LIVESTOCK AND ANIMAL SPECIALTIES	0.5
EXCEPT:	
0211 Beef Cattle Feedlots (Custom)	1.5
0252 Chicken Eggs	9.0
MAJOR GROUP 07—AGRICULTURAL SERVICES	5.0
MAJOR GROUP 08—FORESTRY	5.0
MAJOR GROUP 09—FISHING, HUNTING, AND TRAPPING	3.0
DIVISION B—MINING	
MAJOR GROUP 10—METAL MINING	500
MAJOR GROUP 12—COAL MINING	500
MAJOR GROUP 13—OIL AND GAS EXTRACTION AND MAJOR GROUP 14—MINING AND QUARRYING OF NONMETALLIC MINERALS, EXCEPT FUELS.	500
EXCEPT:	
1081 Metal Mining Services	5.0
1241 Coal Mining Services	5.0
1382 Oil and Gas Field Exploration Services	5.0
1389 Oil and Gas Field Services, N.E.C.	5.0
DIVISION C—CONSTRUCTION	
MAJOR GROUP 15—GENERAL BUILDING CONTRACTORS	17.0
MAJOR GROUP 16—HEAVY CONSTRUCTION, NON BUILDING	17.0
EXCEPT:	
1629 (Part) Dredging and Surface Cleanup Activities	13.5 [1]
MAJOR GROUP 17—CONSTRUCTION—SPECIAL TRADE CONTRACTORS	7.0
DIVISION D—MANUFACTURING [2]	500
EXCEPT:	
2032 Canned Specialties	1,000
2033 Canned Fruits, Vegetables, Preserves, Jams and Jellies	500 [3]
2043 Cereal Breakfast Foods	1,000
2046 Wet Corn Milling	750
2052 Cookies and Crackers	750
2062 Cane Sugar Refining	750
2063 Beet Sugar	750
2076 Vegetable Oil Mills, Except Corn, Cottonseed, and Soybean	1,000
2079 Shortening, Table Oils, Margarine, and Other Edible Fats and Oils, N.E.C	750
2085 Distilled and Blended Liquors	750
2111 Cigarettes	1,000
2211 Broadwoven Fabric Mills, Cotton	1,000
2261 Finishers of Broadwoven Fabrics of Cotton	1,000
2295 Coated Fabrics, Not Rubberized	1,000
2296 Tire Cord and Fabrics	1,000
2611 Pulp Mills	750
2621 Paper Mills	750
2631 Paperboard Mills	750
2656 Sanitary Food Containers, Except Folding	750
2657 Folding Paperboard Boxes, Including Sanitary	750

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC code and description		Size standards in number of employees or millions of dollars
2812	Alkalies and Chlorine	1,000
2813	Industrial Gases	1,000
2816	Inorganic Pigments	1,000
2819	Industrial Inorganic Chemicals, N.E.C	1,000
2821	Plastics Materials, Synthetic Resins, and Nonvulcanizable Elastomers	750
2822	Synthetic Rubber (Vulcanizable Elastomers)	1,000
2823	Cellulosic Manmade Fibers	1,000
2824	Manmade Organic Fibers, Except Cellulosic	1,000
2833	Medicinal Chemicals and Botanical Products	750
2834	Pharmaceutical Preparations	750
2841	Soap and Other Detergents, Except Specialty Cleaners	750
2865	Cyclic Organic Crudes and Intermediates, and Organic Dyes and Pigments	750
2869	Industrial Organic Chemicals, N.E.C	1,000
2873	Nitrogenous Fertilizers	1,000
2892	Explosives	750
2911	Petroleum Refining	1,500 [4]
2952	Asphalt Felts and Coatings	750
3011	Tires and Inner Tubes	1,000 [5]
3021	Rubber and Plastics Footwear	1,000
3211	Flat Glass	1,000
3221	Glass Containers	750
3229	Pressed and Blown Glass and Glassware, N.E.C	750
3241	Cement, Hydraulic	750
3261	Vitreous China Plumbing Fixtures and China and Earthenware Fittings and Bathroom Accessories	750
3275	Gypsum Products	1,000
3292	Asbestos Products	750
3296	Mineral Wool	750
3297	Nonclay Refractories	750
3312	Steel Works, Blast Furnaces (Including Coke Ovens), and Rolling Mills	1,000
3313	Electrometallurgical Products, Except Steel	750
3315	Steel Wiredrawing and Steel Nails and Spikes	1,000
3316	Cold-Rolled Steel Sheet, Strip, and Bars	1,000
3317	Steel Pipe and Tubes	1,000
3331	Primary Smelting and Refining of Copper	1,000
3334	Primary Production of Aluminum	1,000
3339	Primary Smelting and Refining of Nonferrous Metals, Except Copper and Aluminum	750
3351	Rolling, Drawing, and Extruding of Copper	750
3353	Aluminum Sheet, Plate, and Foil	750
3354	Aluminum Extruded Products	750
3355	Aluminum Rolling and Drawing, N.E.C	750
3356	Rolling, Drawing, and Extruding of Nonferrous Metals, Except Copper and Aluminum	750
3357	Drawing and Insulating of Nonferrous Wire	1,000
3398	Metal Heat Treating	750
3399	Primary Metal Products, N.E.C	750
3411	Metal Cans	1,000
3431	Enameled Iron and Metal Sanitary Ware	750
3482	Small Arms Ammunition	1,000
3483	Ammunition, Except for Small Arms	1,500
3484	Small Arms	1,000
3511	Steam, Gas, and Hydraulic Turbines, and Turbine Generator Set Units	1,000
3519	Internal Combustion Engines, N.E.C	1,000
3531	Construction Machinery and Equipment	750
3537	Industrial Trucks, Tractors, Trailers, and Stackers	750
3562	Ball and Roller Bearings	750
3571	Electronic Computers	1,000
3572	Computer Storage Devices	1,000
3575	Computer Terminals	1,000
3577	Computer Peripheral Equipment, N.E.C	1,000
3578	Calculating and Accounting Machines, Except Electronic Computers	1,000
3585	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment	750
3612	Power, Distribution, and Speciality Transformers	750
3613	Switchgear and Switchboard Apparatus	750
3621	Motors and Generators	1,000
3624	Carbon and Graphite Products	750
3625	Relays and Industrial Controls	750
3631	Household Cooking Equipment	750
3632	Household Refrigerators and Home and Farm Freezers	1,000
3633	Household Laundry Equipment	1,000

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC code and description	Size standards in number of employees or millions of dollars
3634 Electric Housewares and Fans	750
3635 Household Vacuum Cleaners	750
3641 Electric Lamp Bulbs and Tubes	1,000
3651 Household Audio and Video Equipment	750
3652 Phonograph Records and Prerecorded Audio Tapes and Disks	750
3661 Telephone and Telegraph Apparatus	1,000
3663 Radio and Television Broadcasting and Communications Equipment	750
3669 Communications Equipment, N.E.C	750
3671 Electron Tubes	750
3692 Primary Batteries, Dry and Wet	1,000
3694 Electrical Equipment for Internal Combustion Engines	750
3695 Magnetic and Optical Recording Media	1,000
3699 Electrical Machinery, Equipment, and Supplies, N.E.C	750
3711 Motor Vehicles and Passenger Car Bodies	1,000
3714 Motor Vehicle Parts and Accessories	750
3716 Motor Homes	1,000
3721 Aircraft	1,500
3724 Aircraft Engines and Engine Parts	1,000
3728 Aircraft Parts and Auxiliary Equipment, N.E.C	1,000 [9]
3731 Shipbuilding and Repair of Nuclear Propelled Ships	1,000
Shipbuilding of Nonnuclear Propelled Ships and Nonpropelled Ships	1,000
Ship Repair (Including Overhauls and Conversions) Performed on Nonnuclear Propelled and Nonpropelled Ships East of the 108 Meridian.	1,000
Ships Repair (Including Overhauls and Conversion) Performed on Nonnuclear Propelled and Nonpropelled Ships West of the 108 Meridian.	1,000
3743 Railroad Equipment	1,000
3761 Guided Missiles and Space Vehicles	1,000
3764 Guided Missile and Space Vehicle Propulsion Units and Propulsion Units Parts	1,000
3769 Guided Missiles and Space Vehicle Parts and Auxiliary Equipment, N.E.C	1,000
3795 Tanks and Tank Components	1,000
3812 Search, Detection, Navigation, Guidance, Aeronautical, and Nautical Systems and Instruments	750
3996 Linoleum, Asphalted-Felt-Base, and Other Hard Surface Floor Coverings, N.E.C	750

DIVISION E—TRANSPORTATION, COMMUNICATIONS ELECTRIC, GAS, AND SANITARY SERVICES

MAJOR GROUP 40—RAILROAD TRANSPORTATION	1500
EXCEPT:	
4013 Railroad Switching and Terminal Establishments	500
MAJOR GROUP 41—LOCAL AND SUBURBAN TRANSIT AND INTERURBAN HIGHWAY AND PASSENGER TRANSPORTATION.	5.0
MAJOR GROUP 42—MOTOR FREIGHT TRANSPORTATION AND WAREHOUSING	18.5
EXCEPT:	
4212 (Part) Garbage and Refuse Collection, Without Disposal	6.0
4231 Terminal and Joint Terminal Maintenance Facilities for Motor Freight Transportation	5.0
MAJOR GROUP 44—WATER TRANSPORTATION	500
EXCEPT:	
4491 Marine Cargo Handling	18.5
4492 Towing and Tugboat Services	5.0
4493 Marinas	5.0
4499 Water Transportation Services, N.E.C.	5.0
Offshore Marine Water Transportation Services	20.5
MAJOR GROUP 45—TRANSPORTATION BY AIR	1500
EXCEPT:	
4522 Air Transportation, Nonscheduled	1500
Offshore Marine Air Transportation Services	20.5
4581 Airports, Flying Fields, and Airport Terminal Services	5.0
MAJOR GROUP 46—PIPELINES, EXCEPT NATURAL GAS	1500
EXCEPT:	
4619 Pipelines, N.E.C.	25.0
MAJOR GROUP 47—TRANSPORTATION SERVICES	5.0
EXCEPT:	
4724 Travel Agencies	1.0 [6]
4731 Arrangement of Transportation of Freight and Cargo	18.5
4783 Packing and Crating	18.5
MAJOR GROUP 48—COMMUNICATIONS:	
4812 Radiotelephone Communications	1,500
4813 Telephone Communications, Except Radiotelephone	1,500

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC code and description	Size standards in number of employees or millions of dollars
4822 Telegraph and Other Message Communications	5.0
4832 Radio Broadcasting Stations	5.0
4833 Television Broadcasting Stations	10.5
4841 Cable and Other Pay Television Services	11.0
4899 Communications Services, N.E.C.	11.0
MAJOR GROUP 49—ELECTRIC, GAS, AND SANITARY SERVICES	5.0
EXCEPT:	
4911 Electric Services	4 million megawatt hrs.
4924 Natural Gas Distribution	500
4953 Refuse Systems	6.0
4961 Steam and Air-Conditioning Supply	9.0
DIVISION F—WHOLESALE TRADE	100
(Not Applicable to Government procurement of supplies. The nonmanufacturer size standard of 500 employees shall be used for purposes of Government procurement of supplies.)	
DIVISION G—RETAIL TRADE	5.0
(Not Applicable to Government procurement of supplies. The nonmanufacturer size standard of 500 employees shall be used for purposes of Government procurement of supplies.)	
5271 Mobile Home Dealers	9.5
5311 Department Stores	20.0
5331 Variety Stores	8.0
5411 Grocery Stores	20.0
5511 Motor Vehicle Dealers (New and Used)	21.0
5521 Motor Vehicle Dealers (Used Only)	17.0
5541 Gasoline Service Stations	6.5
5599 Automobile Dealers, N.E.C.	5.0
Aircraft Dealers, Retail	7.5
5611 Men's and Boy's Clothing and Accessory Stores	6.5
5621 Women's Clothing Stores	6.5
5651 Family Clothing Stores	6.5
5661 Shoe Stores	6.5
5722 Household Appliance Stores	6.5
5731 Radio, Television, and Consumer Electronics Stores	6.5
5734 Computer and Computer Software Stores	6.5
5812 Food Service, Institutional	15.0
5961 Catalog and Mail-Order Houses	18.5
5983 Fuel Oil Dealers	9.0
DIVISION H—FINANCE, INSURANCE, AND REAL ESTATE	5.0
EXCEPT:	
6021–6082 National and Commercial Banks, Savings, Institutions and Credit Unions	100 Million in assets[7]
6331 Fire, Marine, and Casualty Insurance	1,500
6515 (Part) Leasing of Building Space to Federal Government by Owners	15.0[8]
6531 Real Estate Agents and Managers	1.5[6]
DIVISION I—SERVICES	5.0
EXCEPT:	
7211 Power Laundries, Family and Commercial	10.5
7213 Linen Supply	10.5
7216 Drycleaning Plants, Except Rug Cleaning	3.5
7217 Carpet and Upholstery Cleaning	3.5
7218 Industrial Launderers	10.5
7311 Advertising Agencies	5.0[6]
7312 Outdoor Advertising Services	5.0[6]
7313 Radio, Television, and Publishers' Advertising Representatives	5.0[6]
7319 Advertising, N.E.C.	5.0[6]
7349 Building Cleaning and Maintenance Services, N.E.C.	12.0
7371 Computer Programming Services	18.0
7372 Prepackaged Software	18.0
7373 Computer Integrated Systems Design	18.0
7374 Computer Processing and Data Preparation and Processing Services	18.0
7375 Information Retrieval Services	18.0
7376 Computer Facilities Management Services	18.0
7377 Computer Rental and Leasing	18.0
7378 Computer Maintenance and Repair	18.0
7379 Computer Related Services, N.E.C.	18.0
7381 Detective, Guard, and Armored Car Services	9.0
7382 Security Systems Services	9.0

SIZE STANDARDS BY SIC INDUSTRY—Continued

SIC code and description	Size standards in number of employees or millions of dollars
7389 Business Services, N.E.C.	5.0
Map Drafting Services, Mapmaking (Including Aerial) and Photogrammetric Mapping Services	3.5
7513 Truck Rental and Leasing, Without Drivers	18.5
7514 Passenger Car Rental	18.5
7515 Passenger Car Leasing	18.5
7534 Tire Retreading and Repair Shops	10.5
7699 Repair Shops and Related Services, N.E.C.	5.0[9]
7812 Motion Picture and Video Tape Production	21.5
7819 Services Allied to Motion Picture Production	21.5
7822 Motion Picture and Video Tape Distribution	21.5
8299 Flight Training Services	18.5
8711 Engineering Services	2.5
Military and Aerospace Equipment and Military Weapons	20.0
Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992	20.0
Marine Engineering and Naval Architecture	13.5
8712 Architectural Services (Other Than Naval)	2.5
8713 Surveying Services	2.5
8721 Accounting, Auditing, and Bookkeeping Services	6.0
8731 Commercial Physical and Biological Research	500[10]
Aircraft	1,500
Aircraft Parts, and Auxiliary Equipment, and Aircraft Engines and Engine Parts	1,000
Space Vehicles and Guided Missiles, their Propulsion Units, their Propulsion Units Parts, and their Auxiliary Equipment and Parts.	1,000
8741 (Part) Conference Management Services	5.0[6]
8744 Facilities Support Management Services	5.0[11]
Base Maintenance	20.0[12]
Environmental Remediation Services	500[13]

Footnotes:

[1] SIC code1629—Dredging: To be considered small for purpose of Government procurement, a firm must perform at least 40 percent of the volume dredged with its own equipment or equipment owned by another small dredging concern.

[2] SIC Division D—Manufacturing: For rebuilding machinery or equipment on a factory basis, or equivalent, use the SIC code for a newly manufactured product. Concerns performing major rebuilding or overhaul activities do not necessarily have to meet the criteria for being a ''manufacturer'' although the activities may be classified under a manufacturing SIC code. Ordinary repair services or preservation are not considered rebuilding.

[3] SIC code 2033: For purposes of Government procurement for food canning and preserving, the standard of 500 employees excludes agricultural labor as defined in § 3306(k) of the Internal Revenue Code, 26 U.S.C. 3306(k).

[4] SIC code 2911: For purposes of Government procurement, the firm may not have more than 1,500 employees nor more than 75,000 barrels per day capacity of petroleum-based inputs, including crude oil or bona fide feedstocks. Capacity includes owned or leased facilities as well as facilities under a processing agreement or an arrangement such as an exchange agreement or a throughput. The total product to be delivered under the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks.

[5] SIC code 3011: For purposes of Government procurement, a firm is small for bidding on a contract for pneumatic tires within Census Classification codes 30111 and 30112, provided that: (1) The value of tires within Census Classification codes 30111 and 30112 which it manufactured in the United States during the previous calendar year is more than 50 percent of the value of its total worldwide manufacture, (2) the value of pneumatic tires within Census Classification codes 30111 and 30112 comprising its total worldwide manufacture during the preceding calendar year was less than 5 percent of the value of all such tires manufactured in the United States during that period, and (3) the value of the principal product which it manufactured or otherwise produced, or sold worldwide during the preceding calendar year is less than 10 percent of the total value of such products manufactured or otherwise produced or sold in the United States during that period.

[6] SIC codes 4724, 6531, 7311, 7312, 7313, 7319, and 8741: As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenue.

[7] A financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year. *Assets* for the purposes of this size standard means the assets defined according to the Federal Financial Institution Examinations Council 034 call report form.

[8] SIC code 6515: Leasing of building space to the Federal Government by Owners: For Government procurement, a size standard of $15.0 million in gross receipts applies to the owners of building space leased to the Federal Government. The standard does not apply to an agent.

[9] SIC codes 7699 and 3728: Contracts for the rebuilding or overhaul of aircraft ground support equipment on a contract basis are classified under SIC 3728.

[10] SIC code 8731: For research and development contracts requiring the delivery of a manufactured product, the appropriate size standard is that of the manufacturing industry.

(1) Research and Development means laboratory or other physical research and development. It does not include economic, educational, engineering, operations, systems, or other nonphysical research; or computer programming, data processing, commercial and/or medical laboratory testing.

(2) For purposes of the Small Business Innovation Research (SBIR) program only, a different definition has been established by law. See § 121.701 of these regulations.

(3) Research and development for guided missiles and space vehicles includes evaluation and simulation, and other services requiring thorough knowledge of complete missiles and spacecraft.

[11] Facilities Management, a component of SIC code 8744, includes establishments, not elsewhere classified, which provide overall management and the personnel to perform a variety of related support services in operating a complete facility in or around a specific building, or within another business or Government establishment. Facilities management means furnishing three or more personnel supply services which may include, but are not limited to, secretarial services, typists, telephone answering, reproduction or mimeograph service, mailing service, financial or business management, public relations, conference planning, travel arrangements, word processing, maintaining files and/or libraries, switchboard operation, writers, bookkeeping, minor office equipment maintenance and repair, or use of information systems (not programming).

[12] SIC code 8744: (1) If one of the activities of base maintenance, as defined below, can be identified with a separate industry and that activity (or industry) accounts for 50 percent or more of the value of an entire contract, then the proper size standard is that of the particular industry, and not the base maintenance size standard.

(2) ''Base Maintenance'' requires the performance of three or more separate activities in the areas of service or special trade construction industries. If services are performed, these activities must each be in a separate SIC code including, but not limited to, Janitorial and Custodial Service, Fire Prevention Service, Messenger Service, Commissary Service, Protective Guard Service, and Grounds Maintenance and Landscaping Service. If the contract requires the use of special trade contractors (plumbing, painting, plastering, carpentry, etc.), all such special trade construction activities are considered a single activity and classified as Base Housing Maintenance. Since Base Housing Maintenance is only one activity, two additional activities are required for a contract to be classified as ''Base Maintenance.''

[13] SIC code 8744: (1) For SBA assistance as a small business concern in the industry of Environmental Remediation Services, other than for Government procurement, a concern must be engaged primarily in furnishing a range of services for the remediation of a contaminated environment to an acceptable condition including, but not limited to, preliminary assessment, site inspection, testing, remedial investigation, feasibility studies, remedial design, containment, remedial action, removal of contaminated materials, storage of contaminated materials and security and site closeouts. If one of such activities accounts for 50 percent or more of a concern's total revenues, employees, or other related factors, the concern's primary industry is that of the particular industry and not the Environmental Remediation Services Industry.

(2) For purposes of classifying a Government procurement as Environmental Remediation Services, the general purpose of the procurement must be to restore a contaminated environment and also the procurement must be composed of activities in three or more separate industries with separate SIC codes or, in some instances (e.g., engineering), smaller sub-components of SIC codes with separate, distinct size standards. These activities may include, but are not limited to, separate activities in industries such as: Heavy Construction; Special Trade Construction; Engineering Services; Architectural Services; Management Services; Refuse Systems; Sanitary Services, Not Elsewhere Classified; Local Trucking Without Storage; Testing Laboratories; and Commercial, Physical and Biological Research. If any activity in the procurement can be identified with a separate SIC code, or component of a code with a separate distinct size standard, and that industry accounts for 50 percent or more of the value of the entire procurement, then the proper size standard is the one for that particular industry, and not the Environmental Remediation Service size standard.

Size Eligibility For SBA Financial Assistance

§ 121.301 What size standards are applicable to financial assistance programs?

(a) For Business Loans and Disaster Loans (other than physical disaster loans), an applicant must not exceed the size standard for the industry in which:

(1) The applicant combined with its affiliates is primarily engaged; and

(2) The applicant alone is primarily engaged.

(b) For Development Company programs, an applicant must meet one of the following standards:

(1) Including its affiliates, net worth not in excess of $6 million, and average net income after Federal income taxes (excluding any carry-over losses) for the preceding two completed fiscal years not in excess of $2 million; or

(2) The same standards applicable under paragraph (a) of this section.

(c) For the Small Business Investment Company (SBIC) program, an applicant must meet one of the following standards:

(1) Including its affiliates, net worth not in excess of $18 million average and net income after Federal income taxes (excluding any carry-over losses) for the preceding 2 completed fiscal years not in excess of $6 million; or

(2) The same standards applicable under paragraph (a) of this section.

(d) For Surety Bond Guarantee assistance—

(1) Any construction (general or special trade) concern or concern performing a contract for services is small if its average annual receipts do not exceed $5.0 million.

(2) Any concern not specified in paragraph (d)(1) of this section must meet the size standard for the primary industry in which it, combined with its affiliates, is engaged.

(e) The applicable size standards for the purpose of all SBA financial assistance programs, excluding the Surety Bond Guarantee assistance program, are increased by 25 percent whenever the applicant agrees to use the assistance within a labor surplus area. Labor surplus areas are listed monthly in the Department of Labor publication called ''Area Trends.''

§ 121.302 When does SBA determine the size status of an applicant?

(a) The size of an applicant for SBA financial assistance is determined as of the date the application for such financial assistance is received by SBA, except for the Disaster Loan and Preferred Lenders programs.

(b) For the Preferred Lenders program, size is determined as of the date of approval of the loan by the Preferred Lender.

(c) For disaster loan assistance (other than physical disaster loans), size status is determined as of the date the disaster commenced, as set forth in the Disaster Declaration.

(d) Changes in size subsequent to the applicable date when size is determined will not disqualify an applicant for assistance.

§ 121.303 What size procedures are used by SBA before it makes a formal size determination?

(a) A concern that submits an application for financial assistance is deemed to have certified that it is small under the applicable size standard. SBA may question the concern's status based on information supplied in the application or from any other source.

(b) A small business investment company, a development company, a surety bond company, or a preferred lender may accept as true the size information provided by an applicant, unless credible evidence to the contrary is apparent.

(c) Size is initially considered by the individual with final financial assistance authority. This is not a formal size determination. A formal determination may be requested prior to a denial of eligibility based on size.

(d) An applicant may request a formal size determination when assistance has been denied for size ineligibility. Except for disaster loan eligibility, a request for a formal size determination must be made to the Government Contracting Area Director serving the area in which the headquarters of the applicant is located, regardless of the location of the parent company or affiliates. For disaster loan assistance, the request for a size determination must be made to the Area Director for the Disaster Area Office which denied the assistance.

(e) There are no time limitations for making a formal size determination for purposes of financial assistance. The official making the formal size determination must provide a copy of the determination to the applicant, to the requesting SBA official, and to other interested SBA program officials.

§ 121.304 What are the size requirements for refinancing an existing SBA loan?

If natural growth (as distinguished from merger, acquisition or similar management action) since the date of original financing causes a firm to exceed its applicable size standard, it will still be small for the purpose of refinancing an existing SBA loan or guarantee. Otherwise, the firm and its affiliates must be small at the time of application for refinancing.

§ 121.305 What size eligibility requirements exist for obtaining business loans relating to particular procurements?

A concern qualified as small for a particular procurement, including an 8(a) subcontract, is small for financial assistance directly and primarily relating to the performance of the particular procurement.

Size Eligibility Requirements for Government Procurement

§ 121.401 What procurement programs are subject to size determinations?

The requirements set forth in §§ 121.401–121.412 cover all procurement programs for which status as a small business is required, including the small business set-aside program, SBA's Certificate of Competency Program, SBA's Minority Enterprise Development program, the Small Business Subcontracting program authorized under section 8(d) of the Small Business Act, and federal Small Disadvantaged Business programs.

§ 121.402 What size standards are applicable to procurement assistance programs?

(a) A concern must meet the size standard for the SIC code specified in the solicitation.

(b) The procuring agency contracting officer, or authorized representative, designates the proper SIC code and size standard in a solicitation, selecting the SIC code which best describes the principal purpose of the product or service being acquired. Primary consideration is given to the industry descriptions in the SIC Manual, the product or service description in the solicitation and any attachments to it, the relative value and importance of the components of the procurement making up the end item being procured, and the function of the goods or services being purchased. Other factors considered include previous Government procurement classifications of the same or similar products or services, and the classification which would best serve the purposes of the Small Business Act. A procurement is usually classified according to the component which accounts for the greatest percentage of contract value.

(c) The SIC code assigned to a procurement and its corresponding size standard is final unless timely appealed to SBA's Office of Hearings and Appeals (OHA), or unless SBA assigns a SIC code or size standard as provided in paragraph (d) of this section.

(d) An unclear, incomplete or missing SIC code designation or size standard in the solicitation may be clarified, completed or supplied by SBA in connection with a formal size determination or size appeal.

(e) Any offeror or other interested party adversely affected by a SIC code designation or size standard designation may appeal the designations to OHA under Part 134 of this chapter.

§ 121.403 Are SBA size determinations and SIC code designations binding on parties?

Formal size determinations and SIC code designations made by authorized SBA officials are binding upon the parties. Opinions otherwise provided by SBA officials to contracting officers or others are advisory in nature, and are not binding or appealable.

§ 121.404 When does SBA determine the size status of a business concern?

Generally, SBA determines the size status of a concern (including its affiliates) as of the date the concern submits a written self-certification that it is small to the procuring agency as part of its initial offer including price. The following are two exceptions to this rule:

(a) The size status of an applicant for a Certificate of Competency (COC) relating to an unrestricted procurement is determined as of the date of the concern's application for the COC.

(b) Size status for purposes of compliance with the nonmanufacturer rule set forth in § 121.406(b)(1) and the ostensible subcontractor rule set forth in § 121.103(f)(3) is determined as of the date of the best and final offer.

§ 121.405 May a business concern self-certify its small business size status?

(a) A concern must self-certify it is small under the size standard specified in the solicitation, or as clarified, completed or supplied by SBA pursuant to § 121.402(d).

(b) A contracting officer may accept a concern's self-certification as true for the particular procurement involved in the absence of a written protest by other offerors or other credible information which causes the contracting officer or SBA to question the size of the concern.

(c) Procedures for protesting the self-certification of an offeror are set forth in §§ 121.1001–121.1009.

§ 121.406 How does a small business concern qualify to provide manufactured products under small business set-aside or MED procurements?

(a) *General.* In order to qualify as a small business concern for a small business set-aside or 8(a) contract to provide manufactured products, an offeror must either:

(1) Be the manufacturer of the end item being procured (and the end item must be manufactured or produced in the United States); or

(2) Comply with the requirements of paragraphs (b), (c) or (d) of this section as a nonmanufacturer, a kit assembler or a supplier under Simplified Acquisition Procedures.

(b) *Nonmanufacturers.* (1) A concern may qualify for a requirement to provide manufactured products as a nonmanufacturer if it:

(i) Does not exceed 500 employees;

(ii) Is primarily engaged in the wholesale or retail trade and normally sells the items being supplied to the general public; and

(iii) Will supply the end item of a small business manufacturer or processor made in the United States, or obtains a waiver of such requirement pursuant to paragraph (b)(3) of this section.

(2) For size purposes, there can be only one manufacturer of the end item being acquired. The manufacturer is the concern which, with its own facilities, performs the primary activities in transforming inorganic or organic substances, including the assembly of parts and components, into the end item being acquired. The end item must possess characteristics which, as a result of mechanical, chemical or human action, it did not possess before the original substances, parts or components were assembled or transformed. The end item may be finished and ready for utilization or consumption, or it may be semifinished as a raw material to be used in further manufacturing. Firms which perform only minimal operations upon the item being procured do not qualify as manufacturers of the end item. SBA will evaluate the following factors in determining whether a concern is the manufacturer of the end item:

(i) The proportion of total value in the end item added by the efforts of the concern, excluding costs of overhead, testing, quality control, and profit; and

(ii) The importance of the elements added by the concern to the function of the end item, regardless of their relative value.

(3) The Administrator or designee may waive the requirement set forth in paragraph (b)(1)(iii) of this section under the following two circumstances:

(i) The contracting officer has determined that no small business manufacturer or processor reasonably can be expected to offer a product meeting the specifications (including period for performance) required by a particular solicitation and SBA reviews and accepts that determination; or

(ii) SBA determines that no small business manufacturer or processor of

the product or class of products is available to participate in the Federal procurement market.

(4) The two waiver possibilities identified in paragraph (b)(3) of this section are called ''individual'' waivers and ''class'' waivers respectively, and the procedures for them are contained in § 121.1301.

(5) Any SBA waiver of the nonmanufacturer rule has no effect on requirements external to the Small Business Act which involve domestic sources of supply, such as the Buy American Act.

(c) *Kit assemblers.* (1) Where the manufactured item being acquired is a kit of supplies or other goods provided by an offeror for a special purpose, the offeror cannot exceed 500 employees, and 50 percent of the total value of the components of the kit must be manufactured by business concerns in the United States which are small under the size standards for the SIC codes of the components being assembled. The offeror need not itself be the manufacturer of any of the items assembled.

(2) Where the Government has specified an item for the kit which is not produced by U.S. small business concerns, such item shall be excluded from the calculation of total value in paragraph (c)(1) of this section.

(d) *Simplified Acquisition Procedures.* Where the procurement of a manufactured item is processed under Simplified Acquisition Procedures, as defined in § 13.101 of the Federal Acquisition Regulation (FAR) (48 CFR 13.101), and where the anticipated cost of the procurement will not exceed $25,000, the offeror need not supply the end product of a small business concern as long as the product acquired is manufactured or produced in the United States, and the offeror does not exceed 500 employees. The offeror need not itself be the manufacturer of any of the items acquired.

§ 121.407 What are the size procedures for multiple item procurements?

If a procurement calls for two or more specific end items or types of services with different size standards and the offeror may submit an offer on any or all end items or types of services, the offeror must meet the size standard for each end item or service item for which it submits an offer. If the procurement calls for more than one specific end item or type of service and an offeror is required to submit an offer on all items, the offeror may qualify as a small business for the procurement if it meets the size standard of the item which accounts for the greatest percentage of the total contract value.

§ 121.408 What are the size procedures for SBA's Certificate of Competency Program?

(a) A firm which applies for a COC must file an ''Application for Small Business Size Determination'' (SBA Form 355). If the initial review of SBA Form 355 indicates the applicant, including its affiliates, is small for purposes of the COC program, SBA will process the application for COC. If the review indicates the applicant, including its affiliates, is other than small, SBA will initiate a formal size determination as set forth in § 121.1009. In such a case, SBA will not further process the COC application until a formal size determination is made.

(b) A concern is ineligible for a COC if a formal SBA size determination finds the concern other than small.

§ 121.409 What size standard applies in an unrestricted procurement for Certificate of Competency purposes?

For the purpose of receiving a Certificate of Competency in an unrestricted procurement, the applicable size standard is that corresponding to the SIC code set forth in the solicitation. For a manufactured product, a concern must also furnish a domestically produced or manufactured product, regardless of the size status of the product manufacturer. The offeror need not be the manufacturer of any of the items acquired.

§ 121.410 What are the size standards for SBA's Section 8(d) Subcontracting Program?

For subcontracting purposes pursuant to section 8(d) of the Small Business Act, a concern is small:

(a) For subcontracts of $10,000 or less which relate to Government procurements, if its number of employees (including its affiliates) does not exceed 500 employees. However, subcontracts for engineering services awarded under the National Energy Policy Act of 1992 have the same size standard as Military and Aerospace Equipment and Military Weapons under SIC code 8711;

(b) For subcontracts exceeding $10,000 which relate to Government procurements, if its number of employees or average annual receipts (including its affiliates) does not exceed the size standard for the product or service it is providing on the subcontract; and

(c) For subcontracts for financial services, if the concern (including its affiliates) is a commercial bank or savings and loan association whose assets do not exceed $100 million.

§ 121.411 What are the size procedures for SBA's Section 8(d) Subcontracting Program?

(a) Prime contractors may rely on the information contained in SBA's Procurement Automated Source System (PASS), or equivalent data base maintained or sanctioned by SBA, as an accurate representation of a concern's size and ownership characteristics for purposes of maintaining a small business source list. Even though a concern is on a small business source list, it must still qualify and self-certify as a small business at the time it submits its offer as a section 8(d) subcontractor.

(b) Upon determination of the successful subcontract offeror for a competitive subcontract, but prior to award, the prime contractor must inform each unsuccessful subcontract offeror in writing of the name and location of the apparent successful offeror.

(c) The self-certification of a concern subcontracting or proposing to subcontract under section 8(d) of the Small Business Act may be protested by the contracting officer, the prime contractor, the appropriate SBA official or any other interested party.

§ 121.412 What are the size procedures for partial small business set-asides?

A firm is required to meet size standard requirements only for the small business set-aside portion of a procurement, and is not required to qualify as a small business for the unrestricted portion.

Size Eligibility Requirements for Sale or Lease of Government Property

§ 121.501 What programs for sale or lease of Government property are subject to size determinations?

Sections 121.501–121.512 apply to small business size determinations for the purpose of the sale or lease of Government property, including the Timber Sales Program, the Special Salvage Timber Sales Program, and the sale of Government petroleum, coal and uranium.

§ 121.502 What size standards are applicable to programs for sale or lease of Government property?

(a) Unless otherwise specified in this part—

(1) A concern primarily engaged in manufacturing is small for sale or lease of Government property if it does not exceed 500 employees;

(2) A concern not primarily engaged in manufacturing is small for sale or lease of Government property if it has annual receipts not exceeding $2 million.

(b) Size status for such sales and leases is determined by the primary industry of the applicant business concern.

§ 121.503 Are SBA size determinations binding on parties?

Formal size determinations based upon a specific Government sale or lease, or made in response to a request from another Government agency under § 121.901, are binding upon the parties. Other SBA opinions provided to contracting officers or others are only advisory, and are not binding or appealable.

§ 121.504 When does SBA determine the size status of a business concern?

SBA determines the size status of a concern (including its affiliates) as of the date the concern submits a written self-certification that it is small to the Government as part of its initial offer including price where there is a specific sale or lease at issue, or as set forth in § 121.903 if made in response to a request of another Government agency.

§ 121.505 What is the effect of a self-certification?

(a) A contracting officer may accept a concern's self-certification as true for the particular sale or lease involved, in the absence of a written protest by other offerors or other credible information which would cause the contracting officer or SBA to question the size of the concern.

(b) Procedures for protesting the self-certification of an offeror are set forth in §§ 121.1001–121.1009.

§ 121.506 What definitions are important for sales or leases of Government-owned timber?

(a) *Forest product industry* means logging, wood preserving, and the manufacture of lumber and wood related products such as veneer, plywood, hardboard, particle board, or wood pulp, and of products of which lumber or wood related products are the principal raw materials.

(b) *Logging of timber* means felling and bucking, yarding, and/or loading. It does not mean hauling.

(c) *Manufacture of logs* means, at a minimum, breaking down logs into rough cuts of the finished product.

(d) *Sell* means, in addition to its usual and customary meaning, the exchange of sawlogs for sawlogs on a product-for-product basis with or without monetary adjustment, and an indirect transfer, such as the sale of the assets of a concern after it has been awarded one or more set-aside sales of timber.

(e) *Significant logging of timber* means that a concern uses it own employees to perform at least two of the following: felling and bucking, yarding, and loading.

§ 121.507 What are the size standards and other requirements for the purchase of Government-owned timber (other than Special Salvage Timber)?

(a) To be small for purposes of the sale of Government-owned timber (other than Special Salvage Timber) a concern must:

(1) Be primarily engaged in the logging or forest products industry;

(2) Not exceed 500 employees, taking into account its affiliates; and

(3) If it does not intend at the time of the offer to resell the timber—

(i) Agree that it will manufacture the logs with its own facilities or those of another business which meets the requirements of paragraphs (a)(1) and (a)(2) of this section;

(ii) Agree that if it eventually resells the timber, it will resell no more than 30% of the sawtimber volume to other businesses which do not meet the requirements of paragraphs (a)(1) and (a)(2) of this section; and

(iii) Agree that if it becomes acquired or controlled by a business which does not meet the requirements of paragraphs (a)(1) and (a)(2) of this section, it will require as a condition of the acquisition or change of control that the acquiring or controlling business resell at least 70% of the sawtimber volume to businesses which do meet the requirements of paragraphs (a)(1) and (a)(2) of this section; or

(4) If it intends at the time of offer to resell the timber—

(i) Agree that is will not sell more than 30% of such timber (50% of such timber if the concern is an Alaskan business) to a business which does not meet the requirements of paragraphs (a)(1) and (a)(2) of this section; and

(ii) Agree that if it becomes acquired or controlled by a business which does not meet the requirements of paragraphs (a)(1) and (a)(2) of this section, it will require as a condition of the acquisition or change of control that the acquiring or controlling business resell at least 70% of the sawtimber volume (or at least 50% of the sawtimber volume, if it is an Alaskan business) to businesses which meet the requirements of paragraphs (a)(1) and (a)(2) of this section.

(b) For a period of three years following the date upon which a concern purchases timber under a small business set-aside (other than through the Special Salvage Timber Sale program), it must maintain a record of:

(1) The name, address and size status of every concern to which it sells the timber or sawlogs; and

(2) The species, grades and volumes of sawlogs sold.

(c) For a period of three years following the date upon which a concern purchases timber, it must by contract require all small business repurchasers of the sawlogs or timber it purchased under the small business set-aside to maintain the records described in paragraph (b) of this section.

§ 121.508 What are the size standards and other requirements for the purchase of Government-owned Special Salvage Timber?

(a) In order to purchase Government-owned Special Salvage Timber from the United States Forest Service or the Bureau of Land Management as a small business, a concern must:

(1) Be primarily engaged in the logging or forest product industry;

(2) Have, together with its affiliates, no more than twenty-five employees during any pay period for the last twelve months; and

(3) If it does not intend at the time of offer to resell the timber—

(i) Agree that it will manufacture a significant portion of the logs with its own employees; and

(ii) Agree that it will log the timber only with its own employees or with employees of another business which is eligible for award of a Special Salvage Timber sales contract; or

(4) If it intends at the time of offer to resell the timber, agree that it will perform a significant portion of timber logging with its own employees and that it will subcontract the remainder of the timber logging to a concern which is eligible for award of a Special Salvage Timber sales contract.

§ 121.509 What is the size standard for leasing of Government land for coal mining?

A concern is small for this purpose if it:

(a) Together with its affiliates, does not have more than 250 employees;

(b) Maintains management and control of the actual mining operations of the tract; and

(c) Agrees that if it sublease the Government land, it will be to another small business, and that it will require its sublessors to agree to the same.

§ 121.510 What is the size standard for leasing of Government land for uranium mining?

A concern is small for this purpose if it, together with its affiliates, does not have more than 100 employees.

§ 121.511 What is the size standard for buying Government-owned petroleum?

A concern is small for this purpose if it is primarily engaged in petroleum

refinancing and meets the size standard for a petroleum refining business.

§ 121.512 What is the size standard for stockpile purchases?

A concern is small for this purpose if:

(a) It is primarily engaged in the purchase of materials which are not domestic products; and

(b) Its annual receipts, together with its affiliates, do not exceed $42 million.

Size Eligibility Requirements for the Minority Enterprise Development (MED) Program

§ 121.601 What is a small business for purposes of admission to SBA's Minority Enterprise Development (MED) program?

An applicant must be small under the size standard corresponding to its primary industry classification in order to be admitted to SBA's Minority Enterprise Development (MED) program.

§ 121.602 At what point in time must a MED applicant be small?

A MED applicant must be small for its primary industry at the time SBA certifies it for admission into the program.

§ 121.603 How does SBA determine whether a Participant is small for a particular MED subcontract?

(a) *Self certification by Participant.* A MED Participant must certify that it qualifies as a small business under the SIC code assigned to a particular MED subcontract as part of its initial offer including price to the procuring agency. The Participant also must submit a copy of its offer, including its self-certification as to size, to the appropriate SBA district office at the same time it submits the offer to the procuring agency.

(b) *Verification of size by SBA.* Within 30 days of its receipt of a Participant's size self-certification for a particular MED subcontract, the SBA district office serving the geographic area in which the Participant's principal office is located will review the Participant's self-certification and determine if it is small for purposes of that subcontract. The SBA district office will review the Participant's most recent financial statements and other relevant data and then notify the Participant of its decision.

(c) *Changes in size between date of self-certification and date of award.* (1) Where SBA verifies that the selected Participant is small for a particular procurement, subsequent changes in size up to the date of award, except those due to merger with or acquisition by another business concern, will not affect the firm's size status for that procurement.

(2) Where a Participant has merged with or been acquired by another business concern between the date of its self-certification and the date of award, the concern must recertify its size status, and SBA must verify the new certification before award can occur.

(d) *Finding Participant to be other than small.* (1) A Participant may request a formal size determination (pursuant to §§ 121.1001–121.1009) with the SBA Government Contracting Area Office serving the geographic area in which the principal office of the Participant is located within 5 working days of its receipt of notice from the SBA district office that it is not small for a particular MED subcontract.

(2) Where the Participant does not timely request a formal size determination, SBA may accept the procurement in support of another Participant, or may rescind its acceptance of the offer for the MED program, as appropriate.

§ 121.604 Are MED Participants considered small for purposes of other SBA assistance?

A concern which SBA determines to be a small business for the award of a MED subcontract will be considered to have met applicable size eligibility requirements of other SBA programs where that assistance directly and primarily relates to the performance of the MED subcontract in question.

Size Eligibility Requirements for the Small Business Innovation Research (SBIR) Program

§ 121.701 What SBIR programs are subject to size determinations?

(a) These sections apply to size status for award of a funding agreement pursuant to the Small Business Innovation Development Act of 1982 (Pub. L. 97–219, 15 U.S.C. 638(e) through (k)).

(b) *Funding agreement officer* means a contracting officer, a grants officer, or a cooperative agreement officer.

(c) *Funding agreement* means any contract, grant or cooperative agreement entered into between any Federal agency and any small business for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government. Such work includes:

(1) A systematic, intensive study directed toward greater knowledge or understanding of the subject studied;

(2) A systematic study directed specifically toward applying new knowledge to meet a recognized need; or

(3) A systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements.

§ 121.702 What size standards are applicable to the SBIR program?

To be eligible to compete for award of funding agreements in SBA's Small Business Innovation Research (SBIR) program, a business concern must:

(a) Be at least 51 percent owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States; and

(b) Not have more than 500 employees, including its affiliates.

§ 121.703 Are formal size determinations binding on parties?

Size determinations by authorized SBA officials are formal actions based upon a specific funding agreement, and are binding upon the parties. Other SBA opinions provided to funding agreement officers or others, are only advisory, and are not binding or appealable.

§ 121.704 When does SBA determine the size status of a business concern?

The size status of a concern for the purpose of a funding agreement under the SBIR program is determined as of the date of the award for both Phase I and Phase II SBIR awards.

§ 121.705 Must a business concern self-certify its size status?

(a) A firm must self-certify it is small in its SBIR funding proposal.

(b) A funding agreement officer may accept a concern's self-certification as true for the particular funding agreement involved in the absence of a written protest by other offerors or other credible information which would cause the funding agreement officer or SBA to question the size of the concern.

(c) Procedures for protesting an offeror's self-certification are set forth in §§ 121.1001–121.1009.

Size Eligibility Requirements for Paying Reduced Patent Fees

§ 121.801 May patent fees be reduced if a concern is small?

Sections 121.801–121.805 apply to size status for the purpose of paying reduced patent fees authorized by Pub. L. 97–247. The eligibility requirements for independent inventors and nonprofit organizations for the purpose of paying reduced patent fees are set forth in regulations of the Patent and Trademark Office of the Department of Commerce, 37 CFR 1.9, 1.27, 1.28.

§ 121.802 What size standards are applicable to reduced patent fees programs?

A concern eligible for reduced patent fees is one:

(a) Whose number of employees, including affiliates, does not exceed 500 persons; and

(b) Which has not assigned, granted, conveyed, or licensed (and is under no obligation to do so) any rights in the invention to any person who made it and could not be classified as an independent inventor, or to any concern which would not qualify as a non-profit organization or a small business concern under this section.

§ 121.803 Are formal size determinations binding on parties?

Size determinations by authorized SBA officials are formal actions, based upon a specific patent application pursuant to the rules of the Patent and Trademark Office, Department of Commerce, and are binding upon the parties. Other SBA opinions provided to patent applicants or others are only advisory, and are not binding or appealable.

§ 121.804 When does SBA determine the size status of a business concern?

Size status is determined as of the date of the patent applicant's written verification of size.

§ 121.805 May a business concern self-certify its size status?

(a) A concern verifies its size status with its submission of its patent application.

(b) Any attempt to establish small size status improperly (fraudulently, through gross negligence, or otherwise) may result in remedial action by the Patent and Trademark Office.

(c) In the absence of credible information indicating otherwise, the Patent and Trademark Office may accept the verification by the concern as a small business as true.

(d) Question concerning the size verification are resolved initially by the Patent and Trademark Office. If not verified as small, the applicant may request a formal SBS size determination.

Size Eligibility Requirements for Compliance With Programs of Other Agencies

§ 121.901 Can other Government agencies obtain SBA size determinations?

Upon request by another Government agency, SBA will provide a size determination, under SBA rules, standards and procedures, for its use in determining compliance with small business requirements of its statutes, regulations or programs.

§ 121.902 What size standards are applicable to programs of other agencies?

(a) *SBA size standards.* The size standards for compliance with programs of other agencies are those for SBA programs which are most comparable to the programs of such other agencies, unless otherwise agreed by the agency and SBA.

(b) *Special size standards.* (1) Federal agencies or departments promulgating regulations relating to small businesses usually use SBA size criteria. In limited circumstances, if they decide the SBA size standard is not appropriate, then agency heads may establish a small business definition for the exclusive use of such program which is more appropriate, but only when:

(i) The size standard is first proposed for public comment pursuant to the Administrative Procedure Act, 4 U.S.C. 553;

(ii) The proposed size standard provides for determining size measured by average number of employees over 12 months for manufacturing concerns, average annual revenues over three years for concerns providing services, and data over a period of not less than three years for all other concerns (unless approved by SBA, ''annual receipts'' and ''number of employees'' must be determined in accordance with §§ 121.104 and 121.106, respectively); and

(iii) The proposed size standard is approved by SBA's Administrator.

(2) In order to receive the approval of SBA's Administrator, the agency head must:

(i) Request approval prior to publishing the proposed rule containing the size standard. The request must include: an explanation of the contemplated industry size standard, the reasons the SBA size standard is not appropriate, and the reasons the proposed size standard would be appropriate; and a certification that there will be compliance with the criteria set forth in paragraphs (b)(1)(i) and (b)(1)(ii) of this section; and

(ii) Agree to provide written notice to SBA's Administrator prior to publishing the contemplated size standard as a final rule. The notice must include: a copy of the intended final rule, including the preamble, or a separate written justification for the intended size standard followed by a copy of the intended final rule and preamble prior to its publication; copies of all public comments relating to the size standards received in response to the proposed rule; and any other supporting documentation relevant to the size standard and requested by SBA's Administrator.

(3) When approving any size standard established pursuant to paragraph (b) of this section, SBA's Administrator will ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries, and consider other relevant factors.

(4) Where the agency head is developing a size standard for the sole purpose of performing a Regulatory Flexibility Analysis pursuant to the Regulatory Flexibility Act, the department or agency may, after consultation with the SBA Office of Advocacy, establish a size standard different from SBA's which is more appropriate for such analysis.

§ 121.903 When does SBA determine the size status of a business concern?

For the purpose of compliance with programs of other agencies, SBA will base its size determination on the size of the concern as of the date set forth in the request of the other agency.

Procedures for Size Protests and Requests for Formal Size Determinations

§ 121.1001 Who may initiate a size protest or a request for formal size determination?

(a) *Size Status Protests.* (1) For SBA's Small Business Set-Aside Program, including the Property Sales Program, the following entities may file a size protest in connection with a particular procurement or sale:

(i) Any offeror;

(ii) The contracting officer;

(iii) The SBA Government Contracting Area Director having responsibility for the area in which the headquarters of the protested offeror is located, regardless of the location of a parent company or affiliates, or the Associate Administrator for Government Contracting; and

(iv) Other interested parties. Other interested parties include large businesses where only one concern submitted an offer for the specific procurement in question. A concern found to be other than small in connection with the procurement is not an interested party unless there is only one remaining offeror after the concern is found to be other than small.

(2) For SBA's Subcontracting Program, the following entities may protest:

(i) The prime contractor;

(ii) The contracting officer;

(iii) Other potential subcontractors;

(iv) The responsible SBA Government Contracting Area Director or the Associate Administrator for Government Contracting; and

(v) Other interested parties.

(3) For SBA's Small Business Innovation Research (SBIR) Program, the following entities may protest:

(i) A prospective offeror;

(ii) The funding agreement officer;

(iii) The responsible SBA Government Contracting Area Director or the Assistant Administrator for Technology; and

(iv) Other interested parties.

(4) For the Department of Defense's Small Disadvantaged Business (SDB) Program, and any other similar program of another Federal agency, the following entities may file a protest in connection with a particular SDB procurement:

(i) Any offeror for the specific SDB requirement;

(ii) The contracting officer; and

(iii) The responsible SBA Government Contracting Area Director, the Associate Administrator for Government Contracting, or the Associate Administrator for MED.

(5) For any unrestricted Government procurement in which status as a small business may be beneficial, including, but not limited to, the award of a contract to a small business where there are tie bids, the opportunity to seek a Certificate of Competency by a small business, and SDB price evaluation preferences, the following entities may protest in connection with a particular procurement:

(i) Any offeror;

(ii) The contracting officer; and

(iii) The responsible SBA Government Contracting Area Director, the Associate Administrator for Government Contracting, or the Associate Administrator for MED.

(b) *Request for Size Determinations.* (1) For SBA's Financial Assistance Programs, the following entities may request a formal size determination:

(i) The applicant for assistance; and

(ii) The SBA official with authority to take final action on the assistance requested.

(2) For SBA's MED program—

(i) Concerning initial MED eligibility, the following entities may request a formal size determination:

(A) The MED applicant concern; and

(B) The Director of the Division of Program Certification and Eligibility or the Associate Administrator for MED.

(ii) Concerning individual 8(a) subcontract awards, whether sole source or competitive, the following entities may request a formal size determination:

(A) The MED concern nominated by SBA for the particular sole source 8(a) award or the apparent successful offeror for the particular competitive 8(a) award;

(B) The SBA program official with authority to execute the 8(a) subcontract; and

(C) The SBA District Director in the district serving the area in which the headquarters of the MED concern is located, regardless of the location of a parent company and affiliates, or the Associate Administrator for MED.

(3) For SBA's Certificate of Competency Program, the following entities may request a formal size determination:

(i) The offeror who has applied for a COC; and

(ii) The responsible SBA Government Contracting Area Director or the Associate Administrator for Government Contracting.

(4) For SBA's sale or lease of government property, the following entities may request a formal size determination:

(i) The responsible SBA Government Contracting Area Director or the Associate Administrator for Government Contracting; and

(ii) Authorized officials of other Federal agencies administering a property sales program.

(5) For eligibility to pay reduced patent fees, the following entities may request a formal size determination:

(i) The applicant for the reduced patent fees; and

(ii) The Patent and Trademark Office.

(6) For purposes of determining compliance with small business requirements of another Government agency program not otherwise specified in this section, an official with authority to administer the program involved may request a formal size determination.

§ 121.1002 Who makes a formal size determination?

The responsible Government Contracting Area Director or designee makes all formal size determinations in response to either a size protest or a request for a formal size determination, with the exception of size determinations for purposes of the Disaster Loan Program, which will be made by the Disaster Area Office Director or designee responsible for the area in which the disaster occurred.

§ 121.1003 Where should a size protest be filed?

A protest involving a government procurement or sale must be filed with the contracting officer for the procurement or sale, who must forward the protest to the SBA Government Contracting Area Office serving the area in which the headquarters of the protested concern is located, regardless of the location of any parent company or affiliates.

§ 121.1004 What time limits apply to size protests?

(a) *Protests by entities other than contracting officers or SBA—(1) Non-negotiated procurement or sale.* A protest must be received by the contracting officer prior to the close of the 5th day, exclusive of Saturdays, Sundays, and legal holidays, after bid or proposal opening.

(2) *Negotiated procurement.* A protest must be received by the contracting officer prior to the close of business on the 5th day, exclusive of Saturdays, Sundays, and legal holidays, after the contracting officer has notified the protestor of the identity of the prospective awardee.

(3) *Multiple award schedule.* On a multiple award schedule procurement set aside for small business, protests will be considered timely if received by SBA at any time prior to the expiration of the contract period (including renewals).

(b) *Protests by contracting officers or SBA.* The time limitations in paragraph (a) of this section do not apply to contracting officers or SBA, and they may file protests before or after awards, except to the extent set forth in paragraph (e) of this section.

(c) *Effect of contract award.* A timely filed protest applies to the procurement in question even though a contracting officer awarded the contract prior to receipt of the protest.

(d) *Untimely protests.* A protest received after the allotted time limits must still be forwarded to SBA. SBA will dismiss untimely protests.

(e) *Premature protests.* A protest filed by any party, including the contracting officer, before bid opening or notification to offerors of the selection of the apparent successful offer will be dismissed as premature.

§ 121.1005 How must a protest be filed with the contracting officer?

A protest must be delivered to the contracting officer by hand, telegram, mail, FAX, or telephone. If a protest is made by telephone, the contracting officer must later receive a confirming letter either within the 5-day period in § 121.1004 (b)(1) or postmarked no later than one day after the date of the telephone protest.

§ 121.1006 When will a size protest be referred to an SBA Government Contracting Area Office?

(a) A contracting officer who receives a protest (other than from SBA) must forward the protest promptly to the SBA Government Contracting Area Office serving the area in which the headquarters of the offeror is located.

(b) A contracting officer's referral must contain the following information:

(1) The protest and any accompanying materials;

(2) A copy of the self-certification as to size;

(3) Identification of the applicable size standard;

(4) A copy of the solicitation;

(5) Identification of the date of bid opening or notification provided to unsuccessful offerors;

(6) The date on which the protest was received; and

(7) A complete address and point of contact for the protested concern.

§ 121.1007 Must a protest of size status relate to a particular procurement and be specific?

(a) *Particular procurement.* A protest challenging the size of a concern which does not pertain to a particular procurement or sale will not be acted on by SBA.

(b) *A protest must include specific facts.* A protest must be sufficiently specific to provide reasonable notice as to the grounds upon which the protested concern's size is questioned. Some basis for the belief or allegation stated in the protest must be given. A protest merely alleging that the protested concern is not small or is affiliated with unnamed other concerns does not specify adequate grounds for the protest. No particular form is prescribed for a protest. Where materials supporting the protest are available, they should be submitted with the protest.

(c) *Non-specific protests will be dismissed.* Protests which do not contain sufficient specificity will be dismissed by SBA.

§ 121.1008 What happens after SBA receives a size protest or a request for a formal size determination?

(a) When a size protest is received, the SBA Government Contracting Area Director, or designee, will promptly notify the contracting officer, the protested concern, and the protestor that a protest has been received. In the event the size protest pertains to a requirement involving SBA's SBIR Program, the Government Contracting Area Director will advise the Assistant Administrator for Technology of the receipt of the protest. SBA will provide a copy of the protest to the protested concern along with a blank SBA Application for Small Business Size Determination (SBA Form 355) by certified mail, return receipt requested, or by any overnight delivery service that provides proof of receipt. SBA will ask the protested concern to respond to the allegations of the protestor.

(b) When SBA receives a request for a formal size determination in accord with § 121.1001(b), SBA will provide a blank copy of SBA Form 355 to the concern whose size is at issue.

(c) The protested concern or concern whose size is at issue must return the completed SBA Form 355 and all other requested information to SBA within 3 working days from the date of receipt of the blank form from SBA. SBA has discretion to grant an extension of time to file the form. The firm must attach to the completed SBA Form 355 its answers to the allegations contained in the protest, where applicable, together with any supporting material.

(d) If a concern does not submit a completed SBA Form 355, answers to the protest allegations, or other requested information within the allotted time provided by SBA, or if it submits incomplete information, SBA may presume that disclosure of the form, any information missing from it, or other missing information would show or tend to show that the concern is other than a small business.

§ 121.1009 What are the procedures for making the size determination?

(a) *Time frame for making size determination.* After receipt of a protest or a request for a formal size determination, SBA will make a formal size determination within 10 working days, if possible.

(b) *Basis for determination.* The size determination will be based primarily on information supplied by the protestor or the entity requesting the size determination and the subject concern. The determination, however, may also be based on other grounds not raised in the protest or request for size determination. SBA may utilize other information in its files and may make inquiries including requests to the protestor, the protested concern and any alleged affiliates, or other persons for additional specific information.

(d) *Burden of persuasion.* The concern whose size is under consideration has the burden of establishing its small business size.

(e) *Weight of evidence.* SBA will give greater weight to specific, signed, factual evidence than to general, unsupported allegations or opinions. In the case of refusal or failure to furnish requested information within a required time period, SBA may assume that disclosure would be contrary to the interests of the party failing to make disclosure.

(f) *Formal size determination.* The SBA will base its formal size determination upon the record, including reasonable inferences from the record, and will state in writing the basis for its findings and conclusions.

(g) *Notification of determination.* SBA will promptly notify the contracting officer, the protestor, and the protested offeror, as well as each affiliate or alleged affiliate, of the size determination. The notification will be by certified mail, return receipt requested, or by any overnight delivery service that provides proof of receipt.

(h) *Results of an SBA size determination.* (1) A formal size determination becomes effective immediately and remains in full force and effect unless and until reversed by OHA, or unless the concern is formally recertified as a small business by SBA.

(2) Once SBA has determined that a concern is other than small for purposes of a particular procurement, the concern cannot later become eligible for the procurement by reducing its size.

(3) A concern determined to be other than small for a particular size standard is ineligible for any procurement or assistance authorized by the Small Business Act or the Small Business Investment Act of 1958, requiring the same or a lower size standard, unless recertified as small pursuant to § 121.1010. Following an adverse size determination, a concern cannot again self-certify as small within the same or a lower size standard unless it is recertified as small by SBA. If it does so, it may be in violation of criminal laws, including section 16(d) of the Small Business Act, 15 U.S.C. 645(d). If the concern has already certified itself as small on a pending procurement or on another assistance application, the concern must immediately inform the officials responsible for the pending procurement or other requested assistance of the adverse size determination.

(i) *Limited reopening of size determinations.* In cases where the size determination contains clear administrative error or a clear mistake of fact, the SBA office that made the size determination may, in its sole discretion, reopen the size determination to correct the error or mistake, provided the case has not been accepted for review by OHA.

§ 121.1010 How does a concern become recertified as a small business?

(a) A concern may request SBA to recertify it as small at any time by filing an application for recertification with the Government Contracting Area Office responsible for the area in which the headquarters of the applicant is located, regardless of the location of parent companies or affiliates. No particular form is prescribed for the application;

however, the request for recertification must be accompanied by a current completed SBA Form 355 and any other information sufficient to show a significant change in its ownership, management, or other factors bearing on its status as a small concern.

(b) Recertification will not be required nor will the prohibition against future self-certification apply if the adverse SBA size determination is based solely on a finding of affiliation due to a joint venture (e.g., ostensible subcontracting) limited to a particular Government procurement or property sale, or is based on an ineligible manufacturer where the eligible small business bidder or offeror is a nonmanufacturer on a particular Government procurement.

(c) A denial of an application for recertification is a formal size determination and may be reviewed by OHA at the discretion of that office.

(d) The granting of an application for recertification has future effect only. While it is a formal size determination, notice of recertification is required to be given only to the applicant.

Appeals of Size Determinations and SIC Code Designations

§ 121.1101 Are formal size determinations subject to appeal?

There is no right of appeal of a size determination. OHA, however, may, in its sole discretion, review a formal size determination made by a SBA Government Contracting Area Office or by a Disaster Area Office. Unless OHA accepts a petition for review of a formal size determination, the size determination made by a SBA Government Contracting Area Office or by a Disaster Area Office is the final decision of SBA. The procedures for requesting discretionary reviews by OHA of formal size determinations are set forth in part 134 of this chapter.

§ 121.1102 Are SIC code designations subject to appeal?

Appeals may be made to OHA, which has exclusive jurisdiction to determine appeals of SIC code designations pursuant to part 134 of this chapter.

§ 121.1103 What are the procedures for appealing a SIC code designation?

(a) Generally, any interested party who has been adversely affected by a SIC code designation may appeal the designation to OHA. However, with respect to a particular MED contract, only the Associate Administrator for MED may appeal.

(b) Procedures for perfecting SIC code appeals with OHA are contained in § 19.303 of the Federal Acquisition Regulations, 48 CFR 19.303.

Subpart B—Other Eligibility Provisions

Eligibility of Organizations for the Handicapped for Small Business Set-asides

§ 121.1201 May handicapped organizations be awarded Federal procurements set aside for small business?

Section 15 of the Small Business Act, 15 U.S.C. 644(c), provides that public or private organizations for the handicapped are eligible to participate in Federal procurements which are set aside for small business.

§ 121.1202 What is an organization for the handicapped?

An organization for the handicapped means a public or private entity:

(a) Which is organized under the laws of the United States or any state and operated in the interest of handicapped individuals, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual; and

(b) Which complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor.

§ 121.1203 Who are handicapped individuals?

A handicapped individual means a person who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable.

§ 121.1204 What are the eligibility requirements for organizations for the handicapped to receive awards of contracts set aside for small business?

Organizations for the handicapped are eligible if at least 75 percent of the direct labor performed on each item being produced under the contract, or performed in providing each type of service under the contract, is performed by handicapped individuals, and the statutory maximum allowable amount of such awards for the applicable fiscal year has not been reached.

§ 121.1205 What are the procedures for filing protests of the status of handicapped organizations?

(a) *Who may protest.* A responsive offeror, the affected contracting officer, or SBA may file a protest.

(b) *Procedure to protest and time frame.* A protest must be delivered to the contracting officer by hand, telegram, or be placed in the U.S. mail prior to the close of business on the fifth working day after bid opening, or, in the case of a negotiated procurement, the fifth working day after receipt of notification of the identity of the apparent successful offeror.

(c) *Protest must be specific.* Protests must allege specific information tending to show that the protested organization does not meet the eligibility criteria.

(d) *Receipt of protest by SBA from contracting officer.* The contracting officer who received the protest must promptly forward it to the Associate Administrator for Government Contracting, Small Business Administration, 409 Third Street, S.W., Washington, D.C. 20416.

(e) *Notice to the protested organization.* SBA will notify the protested organization in writing of the protest and request documentation addressing the allegations supporting the protest.

(f) *Required response from protested organization.* Within three business days of receipt of written notification of the protest from SBA, the protested organization must provide SBA with required documentation, including any other documentation or information it wishes SBA to consider. Failure to submit required documentation may be grounds for a finding against the protested organization.

(1) Except as provided in paragraph (f)(2) of this section, the following documentation, where applicable, must be provided to SBA in order to demonstrate the eligibility of an organization:

(i) A copy of the articles of incorporation of the protested organization showing the date of filing and the signature of an appropriate State official.

(ii) A copy of the bylaws of the protested organization.

(iii) If the articles of incorporation or bylaws do not include a statement to the effect that no part of its net income may inure to the benefit of any shareholder or other individual, one of the following documents:

(A) A certified copy of the State statute under which the organization was incorporated which includes wording to the effect that no part of its net income may inure to the benefit of any shareholder or other individual;

(B) A copy of a resolution approved by the governing body of the corporation, certified by an officer of the corporation, to the effect that no part of its net income may inure to the benefit of any shareholder or other individual; or

(C) A copy of the Internal Revenue Service certificate, duly executed during the prior twelve months, indicating that the corporation has been accepted as a non-profit agency for taxation purposes.

(2) A State-owned or State-operated workshop for the blind or other severely handicapped shall demonstrate its eligibility by submitting the following documents:

(i) A certified copy of the State statute establishing or authorizing the establishment of a workshop for the handicapped; and

(ii) In the case of a wholly-owned State corporation, a certified copy of the corporate bylaws; and, in the case of a State agency, a certified true copy of implementing regulations, operating procedures, notice of establishment of the workshop, or other similar documents.

(3) If the protested organization is a workshop participating under the Javits-Wagner-O'Day Program, the required documentation may be delivered by the Committee for Purchase from the Blind and Other Severely Handicapped which maintains workshop eligibility documentation on file in its offices. Delivery may be made by hand, telegram or placement in the U.S. Postal Service.

(g) *Required consultation.* The Associate Administrator for Government Contracting will consult with the Executive Director of the Committee for Purchase from the Blind and other Severely Handicapped before rendering a determination.

(h) *Notice of decision.* SBA shall, within ten business days of receipt of a protest, notify all parties of its decision. Notification will be considered complete upon hand delivery, receipt of a telegram, or placement in the U.S. Postal Service.

(i) *Final SBA decision.* The Associate Administrator for Government Contracting makes the final Agency decision.

§ 121.1206 How does SBA handle appeals of economic impact?

A proposed award of a small business set-aside to an organization for the handicapped may be appealed to SBA if a small business concern has experienced or is likely to experience severe economic injury as the result of the proposed award.

(a) *Who may appeal.* An appeal may be filed by a small business concern making an offer on the solicitation which:

(1) Is or was the incumbent contractor on a predecessor contract for the services or products being solicited; or

(2) Was the apparent otherwise successful offeror on a prior small business set-aside contract that was awarded to an organization for the handicapped.

(b) *Grounds for appeal.* (1) An incumbent contractor must show that:

(i) Absent competition by organizations for the handicapped, it is likely to receive the instant award; and

(ii) The dollar amount of the instant award represents at least 25 percent of the concern's annual receipts in its most recently completed fiscal year.

(2) Offerors appealing on the grounds of prior small business set-aside contract awards to organizations for the handicapped must show that:

(i) Absent competition by organizations for the handicapped, it is likely to receive the instant award;

(ii) The dollar amount of the instant award represents at least 25 percent of the concern's annual receipts in its most recently completed fiscal year; and

(iii) The dollar amount of the prior small business set-aside contract awarded to an organization for the handicapped for which the concern was the apparent otherwise successful offeror represented at least 25 percent of its annual receipts for the fiscal year in which the contract was awarded. If the fiscal year in which the prior contract was awarded to an organization for the handicapped is not yet completed, the award must represent at least 25 percent of the concern's most recently completed fiscal year.

(c) *Procedure for appeal.* (1) Appeals must be submitted to the contracting officer who must promptly forward them to the Associate Administrator for Government Contracting, Small Business Administration, 409 3rd Street, S.W., Washington, D.C. 20416. The Associate Administrator makes the final Agency decision.

(2) Appeals must be delivered by hand, telegraph, or placed in the United States mail, by the close of business of the tenth calendar day after opening of bids or, in the case of negotiated procurements, after receipt of notification of the identity of the apparent successful offeror.

(3) The Associate Administrator will consult with the Executive Director of the Committee for Purchase from the Blind and Other Severely Handicapped and will decide the appeal within ten working days after its receipt.

(4) The Associate Administrator will notify the appellant and contracting officer of SBA's decision and require the contracting officer to proceed with award or to make an award without regard to offers by organizations for the handicapped.

Waivers of the Nonmanufacturer Rule for Classes of Products

§ 121.1301 What is the Nonmanufacturer Rule?

The Nonmanufacturer Rule is set forth in § 121.406(b).

§ 121.1302 When will a waiver of the Nonmanufacturer Rule be granted for a class of products?

(a) A waiver for a class of products (class waiver) will be granted when there are no small business manufacturers or processors available to participate in the Federal market for that class of products.

(b) *Federal market* means acquisitions by the Federal Government from offerors located in the United States, or such smaller area as SBA designates if it concludes that the class of products is not supplied on a national basis.

(1) When considering the appropriate market area for a product, SBA presumes that the entire United States is the relevant Federal market, unless it is clearly demonstrated that a class of products cannot be procured on a national basis. This presumption may be particularly difficult to overcome in the case of manufactured products, since such items typically have a market area encompassing the entire United States.

(2) When considering geographic segmentation of a Federal market, SBA will not necessarily use market definitions dependent on airline radius, political, or SBA regional boundaries. Market areas typically follow established transportation routes rather than jurisdictional borders. SBA examines the following factors, among others, in cases where geographic segmentation for a class of products is urged:

(i) Whether perishability affects the area in which the product can practically be sold;

(ii) Whether transportation costs are high as a proportion of the total value of the product so as to limit the economic distribution of the product;

(iii) Whether there are legal barriers to transportation of the item;

(iv) Whether a fixed, well-delineated boundary exists for the purported market area and whether this boundary has been stable over time; and

(v) Whether a small business, not currently selling in the defined market area, could potentially enter the market from another area and supply the market at a reasonable price.

(c) *Available to participate* in the context of the Federal market means that contractors exist that have been awarded or have performed a contract to supply a specific class of products to the

Federal Government within 24 months from the date of the request for waiver, either directly or through a dealer, or who have submitted an offer on a solicitation for that class of products within that time frame.

(d) *Class of products* is an individual subdivision within a four-digit Industry Number as established by the Office of Management and Budget in the SIC Manual.

§ 121.1303 When will a waiver of the Nonmanufacturer Rule be granted for an individual contract?

An individual waiver for a product in a specific solicitation will be approved when the SBA Associate Administrator for Government Contracting reviews and accepts a contracting officer's determination that no small business manufacturer or processor can reasonably be expected to offer a product meeting the specifications of a solicitation, including the period of performance.

§ 121.1304 What are the procedures for requesting and granting waivers?

(a) *Waivers for classes of products.* (1) SBA may, at its own initiative, examine a class of products for possible waiver of the Nonmanufacturer Rule.

(2) Any interested person, business, association, or Federal agency may submit a request for a waiver for a particular class of products. Requests should be addressed or hand-carried to the Associate Administrator of Government Contracting, Small Business Administration, 409 3rd Street S.W., Washington, D.C.

(3) Requests for a waiver of a class of products need not be in any particular form, but should include a statement of the class of products to be waived, the applicable SIC code, and detailed information on the efforts made to identify small business manufacturers or processors for the class.

(4) If SBA decides that there are small business manufacturers or processors in the Federal procurement market, it will deny the request for waiver, issue notice of the denial, and provide the names, addresses, and telephone numbers of the sources found. If SBA does not initially confirm the existence of small business manufacturers or processors in the Federal market, it will:

(i) Publish notices in the Commerce Business Daily and the Federal Register seeking information on small business manufacturers or processors, announcing a notice of intent to waive the Nonmanufacturer Rule for that class of products and affording the public a 15-day comment period; and

(ii) If no small business sources are identified, publish a notice in the Federal Register stating that no small business sources were found and that a waiver of the Nonmanufacturer Rule for that class of products has been granted.

(5) An expedited procedure for issuing a class waiver may be used for emergency situations, but only if the contracting officer provides a determination to the Associate Administrator for Government Contracting that the procurement is proceeding under the authority of FAR (48 CFR 6.302–2 for ''unusual and compelling urgency,'' or provides a determination materially the same as one of unusual and compelling urgency. Under the expedited procedure, if a small business manufacturer or processor is not identified by a PASS search, the SBA will grant the waiver for the class of products and then publish a notice in the Federal Register. The notice will state that a waiver has been granted, and solicit public comment for future procurements.

(6) The decision by the Associate Administrator for Government Contracting to grant or deny a waiver is the final decision by the Agency.

(7) A waiver of the Nonmanufacturer Rule for classes of products has no specific time limitation. SBA will, however, periodically review existing class waivers to the Nonmanufacturer Rule to determine if small business manufacturers or processors have become available to participate in the Federal market for the waived classes of products and the waiver should be terminated.

(i) Upon SBA's receipt of evidence that a small business manufacturer or processor exists in the Federal market for a waived class of products, the waiver will be terminated by the Associate Administrator for Government Contracting. This evidence may be discovered by SBA during a periodic review of existing waivers or may be brought to SBA's attention by other sources.

(ii) SBA will announce its intent to terminate a waiver for a class of products through the publication of a notice in the Federal Register, asking for comments regarding the proposed termination.

(iii) Unless public comment reveals that no small business manufacturer or process in fact exists for the class of products in question, SBA will publish a final Notice of Termination in the Federal Register.

(b) *Individual waivers for specific solicitations.* (1) A contracting officer's request for a waiver of the Nonmanufacturer Rule for specific solicitations need not be in any particular form, but must, at a minimum, include:

(i) A definitive statement of the specific item to be waived and justification as to why the specific item is required;

(ii) The solicitation number, SIC code, dollar amount of the procurement, and a brief statement of the procurement history;

(iii) A determination by the contracting officer that there are no known small business manufacturers or processors for the requested items (the determination must contain a narrative statement of the contracting officer's efforts to search for small business manufacturers or processors of the item and the results of those efforts, and a statement by the contracting officer that there are no known small business manufacturers for the items and that no small business manufacturer or processor can reasonably be expected to offer the required items); and

(iv) For contracts expected to exceed $500,000, a copy of the Statement of Work.

(2) Requests should be addressed to the Associate Administrator for Government Contracting, Small Business Administration, 409 3rd Street, S.W., Washington, D.C. 20416.

(3) SBA will examine the contracting officer's determination and any other information it deems necessary to make an informed decision on the individual waiver request. If SBA's research verifies that no small business manufacturers or processors exist for the item, the Associate Administrator for Government Contracting will grant an individual, one-time waiver. If a small business manufacturer or processor is found for the product in question, the Associate Administrator will deny the request. Either decision represents a final decision by SBA.

§ 121.1305 How is a list of previously granted class waivers obtained?

A list of classes of products for which waivers of the Nonmanufacturer Rule have been granted will be maintained in SBA's Procurement Automated Source System (PASS). A list of such waivers may also be obtained by contacting the Office of Government Contracting at the Small Business Administration, Washington, D.C. 20416, or at the nearest SBA Government Contracting Area Office.

Dated: November 11, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–28449 Filed 11–22–95; 8:45 am]

BILLING CODE 8025–01–P

13 CFR Part 123

Disaster Loan Program

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: In response to President Clinton's regulatory review directive, the Small Business Administration has completed a page-by-page and line-by-line review of its regulations. As a result, SBA is proposing to clarify and streamline its regulations, revising or eliminating any duplicative, outdated, inconsistent or confusing provisions. This proposed rule would reorganize the entire regulation 123 covering the disaster loan program to make it more clear and easier to use.

DATES: Comments must be submitted on or before December 26, 1995.

ADDRESSES: Written comments should be addressed to David R. Kohler, Regulatory Reform Initiative Team Leader (123), Small Business Administration, 409 Third Street, SW., Suite 13, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Bernard Kulik, Associate Administrator for Disaster Assistance, at (202) 205–6734.

SUPPLEMENTARY INFORMATION: Part 123 of Chapter I, 13 CFR contains policies governing the eligibility of disaster victims to obtain low-cost loans to restore their damaged property to its pre-disaster condition. This proposed rule would reorganize the entire Part 123 to make it more clear and easier to use. It would eliminate references to disasters which occurred years ago, and it would eliminate Subpart D—Persian Gulf Troop Deployment Economic Injury Loans because the authority for that loan program has expired. A conversion table follows:

Existing section	Action	New section
123.1	Revise	123.1
123.2	Revise	123.101
123.3	Revise	123.3, 123.4, 123.5, 123.10, 123.101
123.4	Revise	123.5
123.5	Delete	
123.6	Revise	123.8
123.7	Revise	123.3
123.8	Delete	
123.9	Revise	123.101, 123.104, 123.105
123.10	Delete	
123.11	Revise	123.11
123.12	Revise	123.13
123.13	Revise	123.16, 123.104
123.14	Revise	123.101
123.15	Delete	
123.16	Delete	
123.17	Revise	123.201
123.18	Revise	123.12
123.19	Revise	123.9
123.20	Delete	
123.21	Revise	123.100, 123.200
123.22	Revise	123.3
123.23	Revise	123.3
123.24	Revise	123.6, 123.7, 123.12, 123.101, 123.105, 123.106, 23.107, 123.201, 123.202
123.25	Revise	123.15, 123.105
123.26	Revise	123.202, 123.203
123.27	Delete	
123.28	Revise	123.202
123.29	Delete	
123.40	Delete	
123.41	Revise	123.14, 123.301, 123.302, 123.303
123.60–69	Delete	

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5.U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this rule does not have a significant economic impact on a substantial number of small entities within the meaning of Executive Order 12866, or the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule contains no new reporting or recordkeeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule has no federalism implications warranting preparation of the federalism assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects in 13 CFR Part 123

Disaster assistance, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

Accordingly, pursuant to the authority set forth in sections 5(b)(6), 7(b)(1), and 7(c)(6) of the Small Business Act, SBA hereby proposes to revise Part 123 of Title 13 of the Code of Federal Regulations to read as follows:

PART 123—DISASTER LOAN PROGRAM

Overview

Sec.

123.1 What do these rules cover?
123.2 What are disaster loans and disaster declarations?
123.3 How are disaster declarations made?
123.4 What is a disaster area and why is it important?
123.5 What kinds of loans are available?
123.6 What does SBA look for when considering a disaster loan applicant?
123.7 Are there restrictions on how disaster loans can be used?
123.8 Does SBA charge any fees for obtaining a disaster loan?
123.9 What happens if I don't use loan proceeds for the intended purpose?
123.10 What happens if I cannot use my insurance proceeds to make repairs?
123.11 Does SBA require collateral for any of its disaster loans?
123.12 Are books and records required?
123.13 What happens if my loan application is denied?
123.14 Application of the Federal Debt Collection Procedures Act of 1990.
123.15 What if I change my mind?
123.16 Loan Administration and Servicing.
123.17 Application of Federal requirements relating to flood insurance, environmental considerations, and other matters.

Home Disaster Loans

123.100 Am I eligible to apply for a home disaster loan?
123.101 When am I not eligible to apply for a home disaster loan?
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Authority: 15 U.S.C. 634(b)(6), 636(b), 636(c) and 636(f); Pub. L. 102–395, 106 Stat. 1828, 1864; and Pub. L. 103–75, 107 Stat. 739.

Overview

§ 123.1 What do these rules cover?

This part covers the disaster loan programs authorized under the Small Business Act, 15 U.S.C. 636(b), (c), and (f). Since SBA cannot predict the occurrence or magnitude of disasters, it reserves the right to change these rules, without advance notice, by publishing interim emergency regulations in the Federal Register.

§ 123.2 What are disaster loans and disaster declarations?

SBA offers low interest, fixed rate loans to disaster victims, enabling them to repair or replace property damaged or destroyed in declared disasters. It also offers such loans to affected small businesses to help them recover from economic injury caused by such disasters. Disaster declarations are official notices recognizing that specific geographic areas have been damaged by floods and other acts of nature, riots, civil disorders, or industrial accidents such as oil spills. These disasters are sudden events which cause severe physical damage, and do not include slower physical occurrences such as shoreline erosion or gradual land settling. Sudden physical events that cause substantial economic injury may be disasters even if they do not cause physical damage to a victim's property. Past examples include ocean conditions causing significant displacement (major ocean currents) or closure (toxic algae blooms) of customary fishing waters, as well as contamination of food or other products for human consumption from unforeseeable and unintended events beyond the control of the victims.

§ 123.3 How are disaster declarations made?

(a) There are four ways in which disaster declarations are issued which make SBA disaster loans possible:

(1) The President declares a Major Disaster and authorizes Federal assistance, including individual assistance (temporary housing and Individual and Family Grant Assistance).

(2) SBA makes a physical disaster declaration, based on the occurrence of at least a minimum amount of physical damage to buildings, machinery, equipment, inventory, homes and other property. Such damage usually must meet the following tests:

(i) In any county or other smaller political subdivision of a State or U.S. possession, at least 25 homes or 25 businesses, or a combination of at least 25 homes, businesses, or other eligible institutions, must each sustain uninsured losses of 40 percent or more of the estimated fair replacement value or pre-disaster fair market value of the damaged property, whichever is lower; or

(ii) In any such political subdivision, at least three businesses each sustain uninsured losses of 40 percent or more of the estimated fair replacement value or pre-disaster fair market value of the damaged property, whichever is lower, and, as a direct result of such physical damage, 25 percent or more of the work force in their community would be unemployed for at least 90 days; and

(iii) The Governor of the State in which the disaster occurred submits a written request to SBA for a physical disaster declaration by SBA (OMB Approval No. 3245–0121). This request should be delivered to the SBA Disaster Area Office serving the region where the disaster occurred within 60 days of the date of the disaster.

(3) SBA makes an economic injury disaster declaration in response to a determination of a natural disaster by the Secretary of Agriculture.

(4) SBA makes an economic injury declaration in reliance on a state certification that at least 5 small business concerns in a disaster area have suffered substantial economic injury as a result of the disaster and are in need of financial assistance not otherwise available on reasonable terms. The state certification must be signed by the Governor, must specify the county or counties or other political subdivisions in which the disaster occurred, and must be delivered (with supporting documentation) to the servicing SBA Disaster Area Office within 120 days of the disaster occurrence.

(b) SBA publishes notice of any disaster declaration in the Federal Register. The published notice will identify the kinds of assistance available, the date and nature of the disaster, and the deadline and location for filing loan applications. SBA will accept applications after the announced deadline only when SBA determines that the late filing resulted from substantial causes essentially beyond the control of the applicant. Additionally, SBA will use the local media to inform potential loan applicants where to obtain loan applications and otherwise to assist victims in applying for disaster loans.

§ 123.4 What is a disaster area and why is it important?

Each disaster declaration defines the geographical areas affected by the disaster. Only those victims located in the declared disaster area are eligible to apply for SBA disaster loans. When the President declares a major disaster, the Federal Emergency Management Agency defines the disaster area. In major disasters, economic injury disaster loans may be made for victims in contiguous counties or other political subdivisions. Disaster declarations issued by the Administrator of SBA include contiguous counties for both physical and economic injury assistance. Contiguous counties or other political subdivisions are those land areas which abut the land area of the declared disaster area without geographic separation other than by a minor body of water, not to exceed one mile between the land areas of such counties.

§ 123.5 What kinds of loans are available?

SBA offers three kinds of disaster loans: physical disaster home loans, physical disaster business loans, and economic injury business loans. SBA makes these loans directly or in participation with a financial institution. If a loan is made in participation with a financial institution, SBA's share in that loan may not exceed 90 percent.

§ 123.6 What does SBA look for when considering a disaster loan applicant?

There must be reasonable assurance that you can repay your loan out of your personal or business cash flow, and you must have satisfactory credit and character. SBA will not make a loan to you if repayment depends upon the sale of collateral through foreclosure or any other disposition of assets owned by you. SBA is prohibited by statute from making a loan to you if you are engaged in the production or distribution of any product or service that has been determined to be obscene by a court.

§ 123.7 Are there restrictions on how disaster loans can be used?

You must use disaster loans to restore or replace your primary home (including a mobile home used as primary residence) and your personal or business property as nearly as possible to their condition before the disaster occurred, and within certain limits, to protect damaged or destroyed real property from possible future similar disasters.

§ 123.8 Does SBA charge any fees for obtaining a disaster loan?

SBA does not charge points, closing, or servicing fees on any disaster loan.

You will be responsible for payment of any closing costs owed to third parties, such as recording fees and title insurance premiums. Also, if your loan is made in participation with a financial institution, SBA will charge a guaranty fee to the financial institution and the financial institution may recover the guaranty fee from you.

§ 123.9 What happens if I don't use loan proceeds for the intended purpose?

(a) When SBA approves each loan application, it issues a loan authorization which specifies the amount of the loan, repayment terms, any collateral requirements, and the permitted use of loan proceeds. If you wrongfully misapply these proceeds, you will be liable to SBA for one and one-half times the proceeds disbursed to you as of the date SBA learns of your wrongful misapplication. Wrongful misapplication means the willful use of any loan proceeds without SBA approval contrary to the loan authorization. If you fail to use loan proceeds for authorized purposes for 60 days or more after receiving a loan disbursement check, such non-use also is considered a wrongful misapplication of the proceeds.

(b) If SBA learns that you may have misapplied your loan proceeds, SBA will notify you at your last known address, by certified mail, return receipt requested. You will be given at least 30 days to submit to SBA evidence that you have not misapplied the loan proceeds or that you have corrected any such misapplication. Any failure to respond in time will be considered an admission that you misapplied the proceeds. If SBA finds a wrongful misapplication, it will cancel any undisbursed loan proceeds, call the loan, and begin collection measures to collect your outstanding loan balance and the civil penalty. You may also face criminal prosecution.

§ 123.10 What happens if I cannot use my insurance proceeds to make repairs?

If you must pay insurance proceeds to the holder of a recorded lien or encumbrance against your damaged property instead of using them to make repairs, you may apply to SBA for the full amount needed to make such repairs. If you voluntarily pay insurance proceeds to a recorded lienholder, your loan eligibility is reduced by the amount of the voluntary payment.

§ 123.11 Does SBA require collateral for any of its disaster loans?

Generally, SBA will not require that you pledge collateral to secure a disaster home loan or a physical disaster business loan of $10,000 or less, or an economic injury disaster loan of $5,000 or less. For loans larger than these amounts, you will be required to provide available collateral such as a lien on the damaged or replacement property, a security interest in personal property, or both.

(a) Sometimes a borrower, including affiliates as defined in Part 121 of this chapter, will have more than one loan after a single disaster. In deciding whether collateral is required, SBA will add up all physical disaster loans to see if they exceed $10,000 and all economic injury disaster loans to see if they exceed $5,000.

(b) SBA will not decline a loan if you lack a particular amount of collateral as long as it is reasonably sure that you can repay your loan. If you refuse to pledge available collateral when requested by SBA, however, SBA may decline or cancel your loan.

§ 123.12 Are books and records required?

You must retain complete records of all transactions financed with your SBA loan proceeds, including copies of all contracts and receipts, for a period of 3 years after you receive your final disbursement of loan proceeds. If you have a physical disaster business or economic injury loan, you must also maintain current and accurate books of account, including financial and operating statements, insurance policies, and tax returns. You must retain applicable books and records for 3 years after your loan matures including any extensions, or from the date when your loan is paid in full, whichever occurs first. You must make available to SBA or other authorized government personnel upon request all such books and records for inspection, audit, and reproduction during normal business hours and you must also permit SBA and any participating financial institution to inspect and appraise your assets. (OMB Approval No. 3245–0110.)

§ 123.13 What happens if my loan application is denied?

(a) If SBA denies your loan application, SBA will notify you in writing and set forth the specific reasons for the denial. Any applicant whose request for a loan is declined for reasons other than not being a small business (size) has the right to present information to overcome the reason or reasons for the denial and to request reconsideration. (OMB Approval No. 3245–0122.)

(b) Any decline due to size can only be appealed as set forth in Part 121 of this chapter.

(c) Any request for reconsideration must be in writing and must be delivered to the SBA office that declined the original application within six months of the date of the notice of the denial. After six months, a new loan application is required.

(d) A written request for reconsideration must contain all significant new information that you rely on to overcome SBA's denial of your original loan application. Your request for reconsideration of a business loan application must also be accompanied by current business financial statements.

(e) If SBA declines your application a second time, you have the right to appeal to the Area Director's Office. All appeals must be in writing and be received by the office that processed and declined the prior reconsideration within 30 days of the decline action. Your request must state that you are appealing, and must contain your written justification for believing that the decline action should be reversed.

(f) The decision of the Area Director is final unless:

(1) The Area Director does not have authority to approve the requested loan;

(2) The Area Director refers the matter to the Associate Administrator for Disaster Assistance; or

(3) The Associate Administrator for Disaster Assistance, upon a showing of special circumstances, requests the Area Director's office to forward the matter to him or her for final consideration. Special circumstances may include, but are not limited to, policy considerations, alleged improper acts by SBA personnel or others in processing the application, and conflicting policy interpretations between two Area Offices.

§ 123.14 Application of the Federal Debt Collection Procedures Act of 1990.

(a) Under the Federal Debt Collection Procedures Act of 1990 (28 U.S.C. 3201(e)), a debtor who owns property which is subject to an outstanding judgment lien for a debt owed to the United States is generally not eligible to receive physical and economic injury disaster loans. The SBA Associate Administrator for Disaster Assistance, or designee, may waive this restriction against receiving disaster loans upon a demonstration of good cause. Good cause means a written representation by you under oath which convinces SBA that:

(1) The declared disaster was a major contributing factor to the delinquency which led to the judgment lien, regardless of when the original debt was incurred; or

(2) The disaster directly prevented you from fulfilling the terms of an agreement with SBA or any other Federal Government entity to satisfy its pre-disaster judgment lien; in this situation, the judgment creditor must certify to SBA that you were complying with the agreement to satisfy the judgment lien when the disaster occurred; or

(3) Other circumstances exist which would justify a waiver.

(b) The waiver determination by the Associate Administrator for Disaster Assistance, or designee, is a final, non-appealable decision. The granting of a waiver does not include loan approval; a waiver recipient must then follow normal loan application procedures.

§ 123.15 What if I change my mind?

If SBA required you to pledge collateral for your loan, you may change your mind and rescind your loan pursuant to the Consumer Credit Protection Act, 15 U.S.C. 1601, and Regulation Z of the Federal Reserve Board, 12 CFR Part 226. Your note and any collateral documents signed by you will be canceled upon your return of all loan proceeds and your payment of any interest accrued.

§ 123.16 Loan Administration and Servicing.

(a) If you obtained your disaster loan from a participating lender, that lender is responsible for closing and servicing your loan. If you obtained your loan directly from SBA, your loan will be closed and serviced by SBA. The SBA rules on servicing are found in part 120 of this chapter.

(b) If you are unable to pay your SBA loan installments in a timely manner for reasons substantially beyond your control, you may request that SBA suspend your loan payments, extend your maturity, or both.

§ 123.17 Application of Federal requirements relating to flood insurance, environmental considerations, and other matters.

As a condition of disbursement, you must be in compliance with certain requirements relating to flood insurance, lead-based paint, earthquake hazards, coastal barrier islands, and child support obligations, as set forth in §§ 120.170 through 120.175 of this chapter.

Home Disaster Loans

§ 123.100 Am I eligible to apply for a home disaster loan?

(a) You are eligible to apply for a home disaster loan if you:

(1) Own and occupy your primary residence and have suffered a physical loss to your primary residence, personal property, or both; or

(2) Do not own your primary residence, but suffered a physical loss to your personal property. Family members residing in the same household are eligible if they are not dependents of the owners of the residence.

(b) Losses may be claimed only by the owners of the property at the time of the disaster, and all such losses will be verified by SBA. SBA will consider beneficial ownership as well as legal title (for real or personal property) in determining who suffered the loss.

§ 123.101 When am I not eligible for a home disaster loan?

You are not eligible for a home disaster loan if:

(a) You have been convicted, during the past year, of a felony during and in connection with a riot or civil disorder or other declared disaster;

(b) You acquired voluntarily more than a 50 percent ownership interest in the damaged property after the disaster, and no contract of sale existed at the time of the disaster;

(c) Your damaged property can be repaired or replaced with the proceeds of insurance, gifts or other compensation, including condemnation awards (with one exception, these amounts must either be deducted from the amount of the claimed losses or, if received after SBA has approved and disbursed a loan, must be paid to SBA as principal payments on your loan. You must notify SBA of any such recoveries collected after receiving an SBA disaster loan (OMB Approval No. 3245–0124). The one exception applies to the Individual and Family Grant Program of the Federal Emergency Management Agency solely to meet an emergency need pending processing of an SBA loan. In such an event, you must repay the financial assistance with SBA loan proceeds if it was used for purposes also eligible for an SBA loan);

(d) SBA determines that you assumed the risk (for example, by not maintaining flood insurance as required by an earlier SBA disaster loan when the current loss is also due to flood);

(e) Your damaged property is a secondary home (although if you rented the property out before the disaster and the property would not constitute a ''residence'' under the provisions of Section 280A of the Internal Revenue Code, you may be eligible for a physical disaster business loan);

(f) Your damaged property is the type of vehicle normally used for recreational purposes, such as motorhomes, aircraft, and boats;

(g) Your damaged property consists of cash or securities;

(h) The replacement value of your damaged personal property is extraordinarily high and not easily verified, such as the value of antiques, artworks, or hobby collections;

(i) You or other principal owners of the damaged property are presently incarcerated, or on probation or parole following conviction for a serious criminal offense;

(j) Your only interest in the damaged property is in the form of a security interest, mortgage, or deed of trust;

(k) The damaged building, including contents, was newly constructed or substantially improved on or after February 9, 1989, and (without a significant business justification) is located seaward of mean high tide or entirely in or over water; or

(l) You voluntarily decide to relocate outside the business area in which the disaster has occurred, and there are no special or unusual circumstances leading to your decision (Business area means the municipality which provides general governmental services to your damaged home or, if not located in a municipality, the county or equivalent political entity in which your damaged home is located).

§ 123.102 What circumstances would justify my relocating?

SBA may approve a loan if you intend to relocate outside the business area in which the disaster has occurred if your relocation is caused by such special or unusual circumstances as:

(a) Demonstrable risk that the business area will suffer future disasters;

(b) A change in employment status (such as loss of job, transfer, lack of adequate job opportunities within the business area or scheduled retirement within 18 months after the disaster occurs);

(c) Medical reasons; or

(d) Special family considerations which necessitate a move outside of the business area.

§ 123.103 What happens if I am forced to move from my home?

If you must relocate inside or outside the business area because local authorities will not allow you to repair your damaged property, SBA considers this to be a total loss and a mandatory relocation. In this case, your loan would be an amount that SBA considers sufficient to replace your residence at your new location, plus funds to cover losses of personal property and eligible refinancing.

§ 123.104 What interest rate will I pay on my home disaster loan?

If you can obtain credit elsewhere, your interest rate is set by a statutory formula, but will not exceed 8 percent per annum. If you cannot obtain credit elsewhere, your interest rate is one-half the statutory rate, but will not exceed 4 percent per annum. Credit elsewhere means that, with your cash flow and disposable assets, SBA believes you could obtain financing from non-federal sources on reasonable terms. If you cannot obtain credit elsewhere, you also may be able to borrow from SBA to refinance existing recorded liens against your damaged real property. Under prior legislation, some SBA disaster loans had split interest rates. On any such loan, repayments of principal are applied first to that portion of the loan with the lowest interest rate.

§ 123.105 How much can I borrow with a home disaster loan and what limits apply on use of funds and repayment terms?

(a) For all disasters occurring on or after October 26, 1993, there are limits on how much money you can borrow for particular purposes:

(1) $40,000 for repair or replacement of household and personal effects;

(2) $200,000 for repair or replacement of a primary residence (including upgrading in order to meet minimum standards of safety and decency or current building code requirements). Repair or replacement of landscaping and/or recreational facilities can not exceed $5,000;

(3) $200,000 for eligible refinancing purposes; and

(4) 20 percent of the loan amount (not including refinancing) up to a maximum of $48,000 for mitigation.

(b) You may not use loan proceeds to repay any debts on personal property, secured or unsecured, unless you incurred those debts as a direct result of the disaster.

(c) SBA determines the loan maturity and repayment terms based on your needs and your ability to pay. Generally, you will pay equal monthly installments of principal and interest, beginning five months from the date of the loan, as shown on the Note securing the loan. SBA will consider other payment terms if you have seasonal or fluctuating income, and SBA may allow installment payments of varying amounts over the first two years of the loan. The maximum maturity for a home disaster loan is 30 years. There is no penalty for prepayment of home disaster loans.

§ 123.106 What is eligible refinancing?

(a) If your home (primary residence) is totally destroyed or substantially damaged, and you do not have credit elsewhere, SBA may allow you to borrow money to refinance recorded liens or encumbrances on your home. Your home is totally destroyed or substantially damaged if it has suffered uninsured or otherwise uncompensated damage which, at the time of the disaster, is either:

(1) 40 percent or more of the home's market value or replacement cost at the time of the disaster, including land value, whichever is less; or

(2) 50 percent or more of its market value or replacement cost at the time of the disaster, not including land value, whichever is less.

(b) Your home disaster loan for refinancing existing liens or encumbrances cannot exceed an amount equal to the lesser of $200,000, or the physical damage to your primary residence after reductions for any insurance or other recovery.

§ 123.107 What is mitigation?

Mitigation means specific measures taken by you to protect against recurring damage in similar future disasters. Examples include retaining walls, sea walls, grading and contouring land, relocating utilities and modifying structures. The money that you can borrow for mitigation is limited to the lesser of the cost of mitigation, or 20 percent of your loan to repair or replace your damaged primary residence and personal property. SBA will not accept a request for a loan increase for mitigation filed after final disbursement of your original loan unless you can show that your request was late because of substantial reasons beyond your control.

Physical Disaster Business Loans

§ 123.200 Am I eligible to apply for a physical disaster business loan?

(a) Almost any business concern or charitable or other non-profit entity whose real or tangible personal property is damaged in a declared disaster area is eligible to apply for a physical disaster business loan. Your business may be a sole proprietorship, partnership, corporation, limited liability company, or other legal entity recognized under State law. Your business' size (average annual receipts or number of employees) is not taken into consideration in determining your eligibility for a physical disaster business loan. If your damaged business occupied rented space at the time of the disaster, and the terms of your business' lease require you to make repairs to your business' building, you may have suffered a physical loss and can apply for a physical business disaster loan to repair the property. In all other cases, the owner of the building is the eligible loan applicant.

(b) Damaged vehicles, of the type normally used for recreational purposes, such as motorhomes, aircraft, and boats, may be repaired or replaced with SBA loan proceeds if you can submit evidence that the damaged vehicles were used in your business at the time of the disaster.

§ 123.201 When am I not eligible to apply for a physical disaster business loan?

(a) You are not eligible for a physical disaster business loan if your business is an agricultural enterprise or if you fit into any of the categories in § 123.101. Agricultural enterprise means a business primarily engaged in the production of food and fiber, ranching and raising of livestock, aquaculture and all other farming and agriculture-related industries.

(b) Sometimes a damaged business is engaged in both agricultural and non-agricultural business activities. If the primary business activity of your damaged business is not an agricultural enterprise, you may apply for a physical disaster business loan, but loan proceeds may not be used, directly or indirectly, for the benefit of your agricultural enterprises, even if they also suffered damage.

(c) If your business is going to relocate voluntarily outside the business area in which the disaster occurred, you are not eligible for a physical disaster business loan. If, however, the relocation is due to uncontrollable or compelling circumstances, SBA will consider the relocation to be involuntary and eligible for a loan. Such circumstances may include, but are not limited to:

(1) The elimination or substantial decrease in the market for your products or services, as a consequence of the disaster;

(2) A change in the demographics of your business area within 18 months prior to the disaster, or as a result of the disaster, which makes it uneconomical to continue operations in your business area;

(3) A substantial change in your cost of doing business, as a result of the disaster, which makes the continuation of your business in the business area not economically viable;

(4) Location of your business in a hazardous area such as a special flood hazard area or an earthquake-prone area;

(5) A change in the public infrastructure in your business area which occurred within 18 months or as a result of the disaster that would result in substantially increased expenses for your business in the business area;

(6) Your implementation of decisions adopted and at least partially implemented within 18 months prior to the disaster to move your business out of the business area; and

(7) Other factors which undermine the economic viability of your business area.

§ 123.202 How much can my business borrow with a physical disaster business loan?

(a) Disaster business loans, including both physical disaster and economic injury loans to the same borrower, together with its affiliates, cannot exceed the greater of the uncompensated physical loss and economic injury or $1.5 million. Physical disaster loans may include amounts to meet current building code requirements. If your business is a major source of employment, SBA may waive the $1.5 million limitation. A major source of employment is a business concern which has one or more locations in the disaster area which:

(1) Employed 10 percent or more of the entire work force within the commuting area of a geographically identifiable community (no larger than a county), provided that the commuting area does not extend more than 50 miles from such community; or

(2) Employed 5 percent of the work force in an industry within the disaster area and, if the concern is a non-manufacturing concern, employed no less than 50 employees in the disaster area, or if the concern is a manufacturing concern, employed no less than 150 employees in the disaster area; or

(3) Employed no less than 250 employees within the disaster area.

(b) SBA will consider waiving the $1.5 million loan limit only if:

(1) Your damaged location or locations are out of business or in imminent danger of going out of business as a result of the disaster, and a loan in excess of $1.5 million is necessary to reopen or keep open the damaged locations in order to avoid substantial unemployment in the disaster area; and

(2) You have used all reasonably available funds from your business, its affiliates and its principal owners (20% or greater ownership interest) and all available credit elsewhere (as described in Section 123.104) to alleviate your physical damage and economic injury.

(c) Physical disaster business borrowers may request refinancing of liens on both damaged real property and machinery and equipment, but for an amount reduced by insurance or other compensation. To do so, your business property must be totally destroyed or substantially damaged, which means:

(1) 40 percent or more of the aggregate value (lesser of market value or replacement cost at the time of the disaster) of the damaged real property (including land) and damaged machinery and equipment; or

(2) 50 percent or more of the aggregate value (lesser of market value or replacement cost at the time of the disaster) of the damaged real property (excluding land) and damaged machinery and equipment.

(d) Loan funds allocated for repair or replacement of landscaping or recreational facilities may not exceed $5,000 unless the landscaping or recreational facilities fulfilled a functional need or contributed to the generation of business.

§ 123.203 What interest rate will my business pay on a physical disaster business loan and what are the repayment terms?

(a) SBA will announce interest rates with each disaster declaration. If your business, together with its affiliates and principal owners, have credit elsewhere, your interest rate is set by a statutory formula, but will not exceed 8 percent per annum. If you do not have credit elsewhere, your interest rate will not exceed 4 percent per annum. The maturity of your loan depends upon your repayment ability but cannot exceed 3 years if you have credit elsewhere. Otherwise, the maximum maturity is 30 years.

(b) Generally, you must pay equal monthly installments, of principal and interest, beginning five months from the date of the loan as shown on the Note. SBA will consider other payment terms if you have seasonal or fluctuating income, and SBA may allow installment payments of varying amounts over the first two years of the loan. There is no penalty for prepayment for disaster loans.

Economic Injury Disaster Loans

§ 123.300 Is my business eligible to apply for an economic injury disaster loan?

(a) If your business is located in a declared disaster area, and suffered substantial economic injury as a direct result of a declared disaster, you are eligible to apply for an economic injury disaster loan.

(1) Substantial economic injury is such that a business concern is unable to meet its obligations as they mature or to pay its ordinary and necessary operating expenses.

(2) Loss of anticipated profits or a drop in sales is not considered substantial economic injury for this purpose.

(b) Economic injury disaster loans are available only if you were a small business (as defined in part 121 of this chapter) when the declared disaster commenced, you and your affiliates and principal owners (20% or more ownership interest) have used all reasonably available funds, and you are unable to obtain credit elsewhere (as described in § 123.104).

(c) Eligible businesses do not include agricultural enterprises, but do include—

(1) Small nurseries affected by a drought disaster designated by the Secretary of Agriculture (nurseries are commercial establishments deriving 50 percent or more of their annual receipts from the production and sale of ornamental plants and other nursery products, including, but not limited to, bulbs, florist greens, foliage, flowers, flower and vegetable seeds, shrubbery, and sod);

(2) Small agricultural cooperatives; and

(3) Producer cooperatives.

§ 123.301 When would my business not be eligible to apply for an economic injury disaster loan?

Your business is not eligible for an economic disaster loan if you fit into any of the categories in §§ 123.101 and 123.201, or if your business is:

(a) Engaged in gambling, lending, multi-level sales distribution, loan packaging, speculation, or investment (except for real estate investment with property held for rental when the disaster occurred);

(b) A non-profit or charitable concern;

(c) A consumer or marketing cooperative; or

(d) Not a small business concern.

§ 123.302 What is the interest rate on an economic injury disaster loan?

Your economic injury loan will have an interest rate of 4 percent per annum or less.

§ 123.303 How can my business spend my economic injury disaster loan?

(a) You can only use the loan proceeds for working capital necessary to carry your concern until resumption of normal operations and for expenditures necessary to alleviate the specific economic injury, but not to exceed that which the business could have provided had the injury not occurred.

(b) Loan proceeds may not be used to:

(1) Refinance indebtedness which you incurred prior to the disaster event; or

(2) Make payments on loans owned by another federal agency (including SBA)

or a Small Business Investment Company licensed under the Small Business Investment Act; or

(3) Pay, directly or indirectly, any obligations resulting from a federal, state or local tax penalty as a result of negligence or fraud, or any non-tax criminal fine, civil fine, or penalty for non-compliance with a law, regulation, or order of a federal, state, regional, or local agency or similar matter; or

(4) Repair physical damage; or

(5) Pay dividends or other disbursements to owners, partners, officers or stockholders, except for reasonable remuneration directly related to their performance of services for the business.

Dated: November 11, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–28450 Filed 11–22–95; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–ASO–25]

Proposed Establishment of Class E Airspace; Stuart, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Stuart, FL. GPS RWY 11 and GPS RWY 29 Standard Instrument Approach Procedures (SIAP's) have been developed for Witham Field. Controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate these SIAP's and for instrument flight rules (IFR) operations at Witham Field. The operating status of the airport will change from VFR to include IFR operations concurrent with publication of these SIAP's.

DATES: Comments must be received on or before January 5, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 95–ASO–25, Manager, System Management Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–ASO–25.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch, ASO–530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Stuart, FL. GPS RWY 11 and GPS RWY 29 SIAP's have been developed for Witham Field. Controlled airspace extending upward from 700 feet AGL is needed to accommodate these SIAP's and for IFR operations at Witham Field. The operating status of the airport will change from VFR to include IFR operations concurrent with publication of these SIAP's. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation

Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

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

* * * * *

ASO FL E5 Stuart, FL [New]

Witham Field, FL
(lat. 27°10′51″ N, long. 80°13′19″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Witham Field.

* * * * *

Issued in College Park, Georgia, on November 8, 1995.

Benny L. McGlamery,

Acting Manager, Air Traffic Division, Southern Region.

FR Doc. 95–28738 Filed 11–22–95; 8:45 am]

BILLING CODE 4910–13–M

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–ASO–24]

Proposed Amendment to Class E Airspace; Jasper, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Jasper, GA, to include the Cherokee County Airport at Canton, GA, which has a NDB RWY 4 Standard Instrument Approach Procedure (SIAP). Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for instrument flight rules (IFR) operations at the Cherokee County Airport.

DATES: Comments must be received on or before December 31, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 95–ASO–24, Manager, System Management Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–ASO–24.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch, ASO–530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace area at Jasper, GA, to include the Cherokee County Airport at Canton, GA, which has a NDB RWY 4 SIAP. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for IFR operations at the Cherokee County Airport. Class E Airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective

September 16, 1995, is amended as follows:

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

* * * * *

ASO GA E5 Jasper, GA [Revised]

Jasper/Pickens County Airport, GA
(lat. 34°27′05″ N, long. 84°27′24″ W)
Canton/Cherokee County Airport
(lat. 34°18′38″ N, long. 84°25′26″ W

That airspace extending upward from 700 feet above the surface within a 10-mile radius of the Jasper/Pickens County Airport and within an 8.5-mile radius of the Canton/Cherokee County Airport.

* * * * *

Issued in College Park, Georgia, on November 8, 1995.

Benny L. McGlamery,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 95–28739 Filed 11–22–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 95–AGL–19]

Modification of Class E Airspace; Rice Lake, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E5 airspace to accommodate a Very High Frequency Omnidirectional Range (VOR) for runway 1/19 approach and a Nondirectional Radio Beacon (NDB) for runway 19 approach at Rice Lake Regional-Carl's Field Airport, Rice Lake, WI. Additional controlled airspace extending upward from 700 to 1,200 feet above ground level (AGL) is needed for aircraft executing the approach at Regional-Carl's Field Airport.

DATES: Comments must be received on or before December 23, 1995.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 95–AGL–19, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The Official docket may be examined in the office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 95–AGL–19.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E5 airspace to accommodate a Very High Frequency Omnidirectional Range (VOR) for runway 1/19 approach and a Nondirectional Radio Beacon (NDB) for runway 19 approach at Rich Lake Regional-Carl's Field Airport, Rice Lake, WI. Additional controlled airspace extending upward from 700 to 1,200 feet AGL is needed to contain aircraft executing the approach at Regional-Carl's Field Airport. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designation and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

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

* * * * *

AGL WI E5 Rice Lake, WI [Revised]

Rice Lake Regional-Carl's Field Airport, WI (lat. 45°25′14″ N, long. 91°46′25″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Rice Lake Regional-Carl's Field Airport, excluding that airspace within the Cumberland, WI, airspace area.

* * * * *

Issued in Des Plaines, Illinois on November 8, 1995.

Maureen Woods,

Acting Manager, Air Traffic Division.

[FR Doc. 95–28740 Filed 11–22–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 95–NM–95–AD]

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Jetstream Model 4101 airplanes. This proposal would require inspections of the handrail assembly at the main entrance door to detect loose or missing rivets, abnormal movement between the handrail pivot-tube and the spigot that attaches to the bearing assembly, and cracks on the handrail pivot-tube. It would also require repair or replacement of the assembly, if necessary. This proposal is prompted by a report indicating that fatigue cracks and loose rivets were found on the handrail assembly of the main passenger entrance door on an in-service airplane. The actions specified by the proposed AD are intended to prevent these conditions, which can lead to the failure of the door handrail assembly; such failure could allow the door to fall free and subsequently cause injury to people on the airplane or on the ground.

DATES: Comments must be received by January 2, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–95–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–95–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–95–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, has notified the FAA that an unsafe condition may exist on certain Jetstream Model 4101 airplanes. The CAA advises that cracks and loose rivets have been found on the handrail assembly of the main passenger entrance door. These conditions are the result of fatigue stress. If such cracking were to lead to complete failure of the handrail assembly, the entrance door, which is hinged on the bottom, could fall free. This condition, if not corrected, could result in injury to passengers, flightcrew, or groundcrew.

Description of Relevant Service Information

Jetstream has issued Alert Service Bulletin J41–A52–036, dated June 13, 1994, which describes procedures for conducting repetitive inspections of the handrail assembly at the main entrance door to detect:

1. loose or missing rivets,
2. abnormal movement between the handrail pivot-tube and the spigot that attaches to the bearing assembly, and
3. cracks on the handrail pivot-tube.

If the inspection reveals evidence of loose or missing rivets or abnormal movement between the handrail pivot-tube and the spigot, the service bulletin calls for removing the rivets and conducting inspections for elongation of the rivet holes and for cracks in the pivot tube under the cross-tube fitting and pivot rod.

If the inspection reveals evidence of elongation of the rivet holes, the service bulletin calls for drilling the holes to a certain maximum diameter and installation of new rivets.

If any of the inspections reveal evidence of cracking in the assembly, the service bulletin calls for installing either:

1. a standard handrail assembly;
2. an interim reinforcement of the handrail assembly, or
3. structural improvements to the door and door support, and a completely redesigned handrail assembly.

If a standard handrail assembly is installed, the repetitive inspections must continue. If the interim reinforcement is installed, or if the

structural improvements and redesigned handrail assembly are installed, the repetitive inspections are no longer needed.

The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

Jetstream also has issued Service Bulletin J41–52–041–42619, dated June 13, 1994, which describes procedures for installing an interim reinforcement of the handrail assembly (Customer Option Kit No. JK2619). The reinforcement entails installing a new improved pivot trunnion and handrail pivot tube to strengthen the main handrail sub-assembly. The CAA classified this service bulletin as optional.

Additionally, Jetstream Service Bulletin J41–52–041–42619 refers to Flight Refuelling Service Bulletin 6020303–52–1, dated June 10, 1994, which contains detailed instructions for installing the interim reinforcement of the handrail assembly, identified as ''Flight Refuelling Modification No. 60291.'' When the reinforcement is installed, the part number of the handrail assembly is changed to ''Flight Refuelling Part Number 6020203 Issue D.''

Jetstream also has issued Service Bulletin J41–52–025, dated February 11, 1994, which describes procedures for installing structural improvements of the door and door support, and a completely redesigned handrail assembly (Modification No. JM41224A). Once all of these items are installed, the resulting assembly is stronger and has improved fatigue life. The CAA also classified this service bulletin as optional.

Additionally, Jetstream Service Bulletin J41–52–025 refers to Flight Refuelling Service Bulletin 6020303–52–2, Revision 1, dated December 10, 1993, which contains detailed instructions for installing the completely redesigned handrail assembly, specified as Flight Refuelling Part No. 6020205. The redesigned handrail assembly includes a new latch mechanism and tensator spring to secure (safety) the overcenter lock. It also includes new gas struts that have better reliability.

Description of the Proposed Rule

The Jetstream Model 4101 airplane is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive inspections of the handrail assembly at the main entrance door to detect loose or missing rivets; abnormal movement between the handrail pivot-tube and the spigot that attaches to the bearing assembly; and cracks on the handrail pivot-tube.

If evidence of loose/missing rivets or abnormal movement is detected, operators would be required to accomplish various corrective procedures. If cracking is detected, operators would be required to correct the discrepancy by either:

1. replacing the handrail assembly with a serviceable like part, and continuing with the repetitive inspections; or

2. installing an interim reinforcement of the handrail assembly, which would constitute terminating action for the repetitive inspections; or

3. installing structural improvements of the door and door support, and a completely redesigned handrail assembly, which would constitute terminating action for the repetitive inspections.

The proposed actions would be required to be accomplished in accordance with the Jetstream service bulletins described previously.

Economic Impact

The FAA estimates that 4 airplanes of U.S. registry would be affected by this proposed AD. To accomplish the proposed inspections, it would take approximately 1 work hour per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $240, or $60 per airplane, per inspection.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [Amended]

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

Jetstream: Docket 95–NM–95–AD.

Applicability: Model 4101 airplanes; equipped with handrail assembly, Part No. 6020203 Issue C, with Modification No. JM41179 (reference Jetstream Alert Service Bulletin J41–A52–009); certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (f) of this AD to

request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the entrance door handrail assembly, which subsequently could result in injury to passengers, flightcrew, or groundcrew, accomplish the following:

(a) Within 50 landings after the effective date of this AD, conduct a detailed visual inspection of the handrail assembly at the main entrance door to detect loose or missing rivets, abnormal movement between the handrail pivot-tube and the spigot that attaches to the bearing assembly, and cracks on the handrail pivot-tube, in accordance with Jetstream Alert Service Bulletin J41–A52–036, dated June 13, 1994.

(b) If no cracks or other discrepancies are detected during the inspection required by paragraph (a) of this AD, repeat the inspection thereafter at intervals not to exceed 300 hours time-in-service.

(c) If evidence of any loose or missing rivet is revealed, or if abnormal movement between the handrail pivot-tube and the spigot that attaches to the bearing assembly is detected, as a result of any of the inspections required by this AD, prior to further flight, accomplish the procedures specified in paragraph 2.B.(4) of Jetstream Alert Service Bulletin J41–A52–036, dated June 13, 1994. Thereafter, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 300 hours time-in-service.

(d) If evidence of cracking is revealed as a result of any of the inspections required by this AD, prior to further flight, accomplish the requirements of either paragraph (d)(1), (d)(2), or (d)(3) of this AD:

(1) Install a new handrail assembly, Part No. 6020203 Issue C standard, as specified in paragraph 2.B.(5)(d) of Jetstream Service Bulletin J41–A52–036, dated June 13, 1994. After installation, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 300 hours time-in-service. Or

(2) Install the interim reinforcement of the handrail assembly (Customer Option Kit. No. Jk42619) in accordance with Jetstream Service Bulletin J41–52–041–42619, dated June 13, 1994. Such installation constitutes terminating action for the inspections required by this AD. Or

Note 2: Jetstream Service Bulletin J41–52–041–42619 refers to Flight Refuelling Service Bulletin 6020303–52–1 for additional installation information.

(3) Install the structural improvements of the door and door support, and the completely redesigned door handrail assembly, in accordance with Jetstream Service Bulletin J41–52–025, dated February 11, 1994. Such installation constitutes terminating action for the inspections required by this AD.

Note 3: Jetstream Service Bulletin J41–52–025 refers to Flight Refuelling Service Bulletin 6020303–52–2 for additional installation information.

(e) Terminating action for the inspections required by this AD consists of installation of the item(s) specified in either paragraph (e)(1) or (e)(2) of this AD:

(1) Installation of the interim reinforcement of the handrail assembly (Customer Option Kit. No. Jk42619) in accordance with Jetstream Service Bulletin J41–52–041–42619, dated June 13, 1994. Or

(2) Installation of the structural improvements of the door and door support, and the completely redesigned door handrail assembly, in accordance with Jetstream Service Bulletin J41–52–025, dated February 11, 1994.

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

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished. Issued in Renton, Washington, on November 15, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–28524 Filed 11–22–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201, 208, 314, and 601

[Docket No. 93N–0371]

RIN 0910–AA37

Prescription Drug Product Labeling; Medication Guide Requirements; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to December 22, 1995, the comment period for the proposed rule for Prescription Drug Product Labeling; Medication Guide Requirements, which appeared in the Federal Register of August 24, 1995 (60 FR 44182). FDA is taking this action in response to several requests for an extension of the comment period.

DATES: Written comments by December 22, 1995.

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

FOR FURTHER INFORMATION CONTACT: Louis A. Morris, Center for Drug Evaluation and Research (HFD–240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–6818.

SUPPLEMENTARY INFORMATION: In the Federal Register of August 24, 1995 (60 FR 44182), FDA published a proposed rule for Prescription Drug Product Labeling; Medication Guide Requirements. Interested persons were given until November 22, 1995, to submit comments on the proposal. In response to the proposal, FDA received several requests for an extension of the comment period for an additional 90 days. Requestors specified that this extension would allow sufficient time to adequately review and analyze the proposal by various organization members, in order to formulate and submit comments. After careful consideration, FDA is granting a 30-day extension. Accordingly, the comment period is extended to December 22, 1995.

Interested persons may, on or before December 22, 1995, submit to the Dockets Management Branch (address above) written comments regarding the proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 13, 1995.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 95–28520 Filed 11–22–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

Bureau of Economic and Business Affairs

22 CFR Part 89

[Public Notice 2283]

Foreign Prohibitions on Longshore Work by U.S. Nationals

AGENCY: Department of State.

ACTION: Notice of proposed rulemaking.

SUMMARY: In accordance with the Immigration and Nationality Act of 1952, the Department of State is issuing a proposed rule updating the list, of longshore work by particular activity, of countries where performance of such a particular activity by crewmembers aboard United States vessels is prohibited by law, regulation, or in practice in the country.

DATES: Interested parties are invited to submit comments in triplicate by December 26, 1995.

ADDRESSES: Comments may be mailed to the Office of Maritime and Land Transport (EB/TRA/MA), Room 5828, Department of State, Washington, DC 20520–5816.

FOR FURTHER INFORMATION CONTACT: Richard T. Miller, Office of Maritime and Land Transport, Department of State, (202) 647–6961.

SUPPLEMENTARY INFORMATION: Section 258(d) of the Immigration and Nationality Act of 1952, 8 U.S.C. 1288, as amended by the Immigration Act of 1990, Pub. L. 101–649, directs the Secretary of State (hereinafter the Secretary) to compile and annually maintain a list, of longshore work by particular activity, of countries where performance of such a particular activity by crewmembers aboard United States vessels is prohibited by law, regulation, or in practice in the country. The Attorney General will use the list to determine whether to permit an alien crewmember to perform an activity constituting longshore work in the United States or its coastal waters, in accordance with the conditions set in the Act.

The Department of State (hereinafter the Department) published such a list as a final rule on December 27, 1991 (56 FR 66970), corrected on January 14, 1992 (57 FR 1384). An updated list was last published on December 13, 1993 at 57 FR 65118. On March 24, 1994, an Advance Notice of Proposed Rulemaking (59 FR 13904) gave notice that the list would be updated and invited comments on the subject, particularly with respect to the Department's interpretation of Section 258.

Methodology

The Department bases the lists on reports from U.S. diplomatic posts abroad and submissions from interested parties in response to the notice-and-comment process. At the request of the Committee on Foreign Affairs of the House of Representatives, the Government Accounting Office (hereinafter the GAO) reviewed the Department's criteria and methodology for compiling the list. See U.S. General Accounting Office, State Department: Problems in Compiling List of Countries Restricting Longshore Activities (1994) (hereinafter GAO Report). Noting that the criteria and methodology followed by the Department in the past have tended to limit the number of countries placed on the list, the GAO concluded that the Department can ''significantly improve its data collection and decision-making procedures.'' The GAO also concluded that the language of Section 258, particularly the phrase ''in practice,'' is susceptible to differing interpretations.

The GAO made five recommendations to improve data collection and decision-making procedures:

1. Clearly and thoroughly state the criteria for determining which countries to place on the list.

—Standards for the reciprocity exception are discussed below.

2. Determine specific data requirements and develop appropriate questions designed to solicit required information. [and]

3. Design a standardized reporting format to facilitate analysis.

—In response to these two recommendations and to ensure greater consistency in reports from U.S. diplomatic posts abroad, the Department has drafted a more detailed questionnaire about different types of restrictions in foreign countries on longshore work by U.S. mariners. To the maximum extent possible, the questions can be answered with a yes or no. The questionnaire covers general requirements for work permits, laws and regulations specifically relating to longshore work and collective bargaining agreements.

4. Obtain information on all seaport countries or clearly identify in the Federal Register those countries for which no information was obtained and the reason why.

—To determine which areas had ports, the Department consulted ''The World Factbook,'' published annually by the Central Intelligence Agency. According to ''The World Factbook,'' 172 geographic entities have ports, including dependent areas associated in some way with another country.

—The Department did not collect information about areas with a population of less than 5,000 inhabitants. In addition, the following entities with ports were not included in the instructions sent to posts: Anguilla (a dependent territory of the United Kingdom), Mayotte (a territorial collectivity of France), and Wallis and Fortuna (an overseas territory of France). According to ''The World Factbook,'' none of these entities has a ship registry.

—U.S. Embassies did not receive any replies from host country officials about the Cook Islands (a self-governing state in free association with New Zealand), Macau (an overseas territory of Portugal), Norfolk Island (a territory of Australia) and the French dependencies surveyed: The French Antilles, French Guiana, French Polynesia, New Caledonia, Reunion, and St. Pierre and Miquelon. According to ''The World Factbook,'' none of the French dependencies have separate ship registers; for the purposes of this rulemaking, ships of these areas will be considered as French ships.

—The Department does not have information at this time sufficient to determine the status of Albania, Antigua, Gambia, Guinea-Bissau, Lebanon, St. Kitts, Sao Tome and Principe, and Somalia.

—The following countries were excluded from this rulemaking procedure because their vessels are currently prohibited from calling at U.S. ports: Cuba, Iran, Iraq, North Korea, Libya, Sudan, and Syria. In addition, Serbia and Montenegro was excluded because of the effects of UN economic sanctions.

5. Develop a follow-up procedure to ensure that reports are received from all tasked overseas post and to obtain any necessary clarification.

—The Department has set up a data base to track the status of replies and requests for clarification. At regular intervals, reminders are sent to posts with replies outstanding.

In addition to the recommendations listed above, the GAO recommended that the Secretary add to the list those countries with restrictions on longshore work that were previously omitted on the basis that no U.S. ships had called on their ports within the previous year or that they did not enforce their restrictions. The Department has

followed this recommendation and added countries to the list accordingly.

Public Comments

In response to the notice published on March 24, 1994 at 59 FR 13904, twelve parties submitted comments. In general, ocean carriers, port administrators and shippers expressed support for the Department's previous application of Section 258, while representatives of organized labor argued that the Department's previous application was inappropriate.

In a letter dated April 11, 1994, Icicle Seafoods, Inc. supported the original definition of practice and stated that any expansion of this definition would be detrimental and confusing to its business.

In a letter dated April 19, 1994, the International Longshoremen's Association took the position that the Department's definition of ''in practice'' was improper and inaccurate and should have included collective bargaining agreements and other local practices irrespective of whether they were sanctioned by governmental authorities. The Association urged implementation of the recommendations from the GAO Report and agreed with the GAO position that various interpretations of the term ''in practice'' were legally supportable. It enclosed and referred to a previous letter to Undersecretary of State Joan Spero in which the Association argued that Congress intended the legislation to cover private as well as government restrictions.

In a letter dated April 19, 1994, the Council of European & Japanese National Shipowners' Associations submitted that the Department had correctly interpreted the language and intent of the Act and that the Department should not change its original interpretation.

In a letter dated April 20, 1994, the Federation of American Controlled Shipping stated that the Department had properly construed the statutory phrase ''in practice'' as requiring some degree of involvement by a foreign government. It asserted that denying reciprocity to countries in which the foreign government plays no role in restrictive labor practices is akin to holding the U.S. government responsible for practices privately negotiated by unions in this country. Since the law defers to U.S. collective bargaining agreements, it would, the Federation argued, be inconsistent to treat similar foreign agreements as impermissible. Finally, the Federation stated that any other interpretation would be unrealistic from the point of view of administrative practicality and cost effectiveness.

In a letter dated April 21, 1994, the Lake Carriers Association expressed its support for regulations in which the Department confined the list to countries in which crew members of U.S. vessels were precluded from performing longshore work by virtue of specific laws, regulations, or government imposition or approval of collective bargaining agreements.

In a letter dated April 22, 1994, the International Longshoremen's & Warehousemen's Union expressed its disagreement with the Department's previous rulemaking on this issue. The Union stated that the reciprocity exception was intended by Congress to be narrow, and that the term ''in practice'' should cover any restrictive practice, irrespective of whether a foreign government had prompted, adopted or approved it. It noted that the language in the statute refers to restrictions in the country rather than by the country. The Union also argued that the original interpretation of the exception was deemed wholly inconsistent with a major policy underlying immigration laws, the protection of the interests of the American workforce. It cited Congressional support for these views and provided an extensive discussion of the GAO Report in support of its position.

In a letter dated April 22, 1994, American Great Lakes Ports saw no reason to change the interpretation of the statute. It noted the GAO's determination that while section 258(d) is susceptible to differing interpretations, the interpretation that restrictions should apply only in those cases where a foreign country has actively imposed or approved restrictions is a legally supportable reading of the law.

In a letter dated April 22, 1994, CANAMCO fully and unequivocally supported the Department's original interpretation. It cited the GAO's conclusion that the interpretation is legally supportable and stated that nothing has occurred that requires a change. CANAMCO expressed the view that a broader interpretation of section 258(d) to include all restrictive practices would present the Department with an impossible definitional and administrative undertaking.

In a letter dated April 25, 1994, the Shipping Federation of Canada noted that the terms of many Canadian and other nations' collective bargaining agreements restrict certain work to unionized longshoremen, and that a change in interpretation of the statute to include such agreements would cause these nations to lose their reciprocity exemption. It stated that a change would result in significant new cargo handling costs and delays at U.S. ports and urged retention of the Department's original interpretation.

In a letter dated April 25, 1994, Cargill, Incorporated supported the original interpretation and described the language enacted by Congress as a carefully crafted compromise designed to keep U.S. exports competitive by limiting the unnecessary escalation of costs at U.S. ports and fostering the use of innovative technology in cargo-handling operation. Cargill argued that a revised definition of reciprocity would cause cargos to be diverted to ports outside the United States and provide a gain in long-term competitive advantage for foreign agricultural and industrial exporters.

In a letter dated April 25, 1994, the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) described the purpose of the law as to preserve and protect longshore work for United States longshore workers. It noted that Congress was capable of excluding private restrictions from consideration if it had wanted to, but had not chosen to do so. It drew a parallel between the reciprocity exception and the separate ''prevailing practice'' exception for U.S. ports where foreign crewmembers normally perform longshore work, noting that the prevailing practice exception takes collective bargaining agreements into account. The AFL–CIO contended that there is no legal barrier to a change in interpretation, citing the GAO Report in this regard, and concluded that a wider interpretation would be neither unbalanced nor unfair, reflecting the most natural meaning of reciprocity.

In a letter dated April 1994, the Maritime Trades Department of the AFL–CIO described the original interpretation as unwarranted and an egregious wrong to U.S. longshore workers. It argued that the interpretation had led to the loss of thousands of jobs in an industry already suffering from widespread unemployment as a result of containerization and other technological advancements. It expressed the view that the reciprocity exception was intended to accommodate only a relatively few countries.

Standards for Reciprocity Exception

Laws and Regulations

The Department previously listed those countries where restrictions on longshore activities by crewmembers of U.S. ships are imposed by law or

regulation of the foreign government on a national basis or by law or regulation of a regional or local government, provided the laws and regulations were actually enforced on U.S. ships which called at ports in those countries. Taking note of the recommendations of the GAO, the fact that ''general practice'' was the standard set forth in the legislative conference report, and the practical difficulties of determining the extent to which laws are enforced, the Department has chosen to alter its consideration of ''laws and regulations'' for purposes of section 258. Countries are now listed based on the existence of restrictions imposed by national, regional or local laws or regulations, provided such restrictions are pervasive enough to constitute general practice, irrespective of whether the laws are actually or consistently enforced or whether U.S. ships call at ports in the country in question.

Practices

In earlier rulemakings, in addition to the countries listed because of restrictive laws and regulations, the Department listed only those countries with restrictions arising through collective bargaining agreements directly negotiated by a foreign government with other parties, or through restrictions in collective bargaining agreements imposed or approved by a foreign government. In its study of the Department's implementation of the legislation, the GAO concluded that the statutory phrase ''in practice'' is susceptible to differing interpretations. The GAO found that the Department's interpretation was legally supportable, but noted that the language and legislative history could support an interpretation under which privately negotiated collective bargaining agreements would disqualify a country for a reciprocal exception. The Department accepts the GAO's conclusion that either interpretation is legally supportable.

In the absence of unequivocal statutory language, the Department must interpret the ''in practice'' provision. Upon consideration of the legislative history, comments from interested parties, the basic policy reflected in the statutory scheme, and U.S. economic interests, the Department has concluded that a longshore activity by alien crewmembers cannot qualify for the reciprocity exception in section 258(d) if U.S. mariners are prohibited from performing that activity in the country of the foreign vessel due to restrictive practices, e.g. private collective bargaining agreements, irrespective of governmental involvement in those restrictions.

The purpose of section 258 is to protect U.S. longshore workers by restricting foreign crewmembers from performing longshore work in the United States, the performance of which had not been explicitly prohibited prior to the enactment of the statute in 1990. Section 258 prohibits such work in general, and then provides limited exceptions to that prohibition. The Department was guided by this basic purpose and recognizes that to apply the exception to countries in which longshore activity by U.S. mariners is restricted in any way would not further that purpose. For example, applying the exception in such a case could conceivably create a situation in which all longshore work in a country was foreclosed to U.S. mariners by collective bargaining agreements, but mariners from that country were permitted to engage in longshore activity in the United States.

The Department also notes the ''prevailing practice'' exception of section 258(c), which applies to private practices, whether or not any governmental action requires or sanctions those practices. Likewise, the Department recognizes that the statute emphasizes conditions that actually prevail in ports, as well as formal governmental actions.

As observed by the GAO, the Department's original interpretation tended to maximize the number of countries granted a reciprocity exception. While the result may have been a benefit to shipping companies, those benefits came at the expense of U.S. longshore workers. The Department has concluded that, in the context of the statutory scheme created by Congress, the benefits gained by U.S. longshore workers through this new interpretation outweigh any benefits to U.S. businesses under the Department's previous interpretation.

The Department has chosen this manner of applying section 258(d) after thorough consideration of its previous position and the practical difficulties of applying the statute accordingly. As a practical matter, the Department's previous application required an often difficult determination of the extent of government involvement in restrictive labor practices. This inquiry was cumbersome and, in many cases, indeterminate, since there was no guidance as to the level of government involvement which would place a country on the list. Under the Department's new position, however, the level of government involvement need not be established. Thus, this manner of application lends consistency and predictability to the process of listing countries in which longshore work is restricted ''in practice.''

Voluntary Commercial Practice

Several comments submitted in connection with the original rulemaking on this subject observed that carriers may use local longshore workers as a matter of commercial choice. In the absence of restrictive laws, regulations, collective bargaining agreements or restrictions consistently imposed by national custom or practice as described above, the Department does not list countries based on U.S. carriers' voluntary commercial decisions.

Compensation of Port Workers

In several countries, the Department has found that the performance of longshore work by U.S. crewmembers is permitted, but the ship is required to pay for the services of local longshore workers even if crewmembers are actually doing the work. In previous rulemaking the Department considered such practices restrictive only if the compensation exceeded ordinary market wages. However, because the Department has found that such monetary charges, at whatever wage level, have both a negative economic impact on the U.S. carrier and a deterrent effect on the performance of such work by U.S. crewmembers, the Department has decided to consider such practices as restrictive for purposes of this rulemaking and to place countries where such practices are in effect on the list.

List of Subjects in 22 CFR Part 89

Aliens, Crewmembers, Immigration, Labor, Longshore Work.

For the reasons set out in the preamble, 22 CFR Chapter I is amended as follows:

PART 89—PROHIBITIONS ON LONGSHORE WORK BY U.S. NATIONALS

1. The authority for part 89 is maintained to read as follows:

Authority: 8 U.S.C. 1288, Public Law 101–649, 104 Stat. 4878.

2. Part 89 is amended by revising § 89.1 to read as follows:

§ 89.1 Prohibitions on longshore work by U.S. nationals; listing by country.

The Secretary of State has determined that, in the following countries, longshore work by crewmembers aboard United States vessels is prohibited by law, regulation, or in practice, with respect to the particular activities noted:

Algeria

(a) All longshore activities.

Angola

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches and
(2) Rigging of ship's gear.

Argentina

(a) All longshore activities.
(b) Exceptions:
(1) Cargo tiedown and untieing,
(2) When a disaster occurs,
(3) Provision of vessel supplies, and
(4) Opening and closing of hatches.

Australia

(a) All longshore activities.
(b) Exceptions:
(1) When shore labor cannot be obtained at rates prescribed by collective bargaining agreements,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Bahamas

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment on board the ship,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear, and
(4) Use of specialized equipment which port workers cannot handle alone, with the concurrence of the local longshore union.

Bangladesh

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment integral to the vessel when there is a shortage of port workers able to operate the equipment and with the permission of the port authority, and
(2) Opening and closing of hatches.

Barbados

(a) All longshore activities.

Belgium

(a) All longshore activities.

Belize

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches and
(3) Rigging of ship's gear.

Benin

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment.
(2) Opening and closing of hatches and
(3) Rigging of ship's gear.

Bermuda

(a) Loading and discharge of cargo using cranes and loading equipment situated on the docks or wharves.
(b) Line handling on the docks.

Brazil

(a) All longshore activities at public terminals.

Bulgaria

(a) All longshore activities.
(b) Exceptions
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear,
(4) Mooring and line handling, and
(5) Operation of special equipment and discharge of dangerous cargo, with the preliminary authorization of the Port Administration and Harbor Master.

Burma

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches and
(2) Rigging of ship's gear.

Cameroon

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches and
(2) Rigging of ship's gear.

Canada

(a) All longshore activities.
(b) Exceptions in connection with bulk cargo at Great Lakes ports only:
(1) Handling of mooring lines on the dock when the vessel is made fast or let go,
(2) Moving the vessel to place it under shoreside unloading equipment,
(3) Moving the vessel in position to unload the vessel onto specific cargo piles, hoppers or conveyor belt systems, and
(4) Operation of cargo related equipment integral to the vessel.

Cape Verde

(a) All longshore activities.

China

(a) Handling of mooring lines.

Colombia

(a) All longshore activities.
(b) Exceptions: When local workers are unable or unavailable to provide longshore services.

Comoros

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear,
(4) Other activities, with government authorization.

Costa Rica

(a) Operation of equipment fixed to the ground.

Cote d'Ivoire

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches and
(2) Rigging of automated ship's gear.

Croatia

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment on board the ship when outside of port, and
(2) Operation of specialized unloading equipment.

Cyprus

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Djibouti

(a) All longshore activities.
(b) Exception: Operation of cranes aboard ship.

Dominica

(a) All longshore activities.

Dominican Republic

(a) All longshore activities.
(b) Exception: Operation of equipment with which local port workers are not familiar.

Ecuador

(a) All longshore activities.

Egypt

(a) Cargo loading and unloading activities not on board the ship.

El Salvador

(a) All longshore activities.

Eritrea

(a) All longshore activities.

Estonia

(a) All longshore activities.
(b) Exceptions:
(1) On-board mooring activities,
(2) Replacement of lines,
(3) Lifting and movement of ladders,
(4) Movement of vessel's equipment,
(5) Loading of food and vessel's equipment by cargo-related equipment of the vessel, and

(6) Securing of general cargo, vehicles and containers to the vessel.

Fiji

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment, except for discharging cargo,
(2) Opening and closing hatches, and
(3) Rigging of ship's gear.

Finland

(a) All longshore activities.
(b) Exceptions, when not related to cargo loading and discharge:
(1) Operation of cargo related equipment,
(2) Opening and closing hatches, and
(3) Rigging of ship's gear.

Gabon

(a) All longshore activities.

Georgia

(a) All longshore activities.

Germany

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Ghana

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Greenland

(a) Cargo handling activities on shore.
(b) Exception: Loading and discharging of cargo between vessel and dock by use of ship's gear.

Guatemala

(a) All longshore activities.

Guinea

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Guyana

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment aboard ship,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Haiti

(a) All longshore activities.

Honduras

(a) All longshore activities.
(b) Exceptions:
(1) Operations of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Hong Kong

(a) Operation of equipment on the pier.

Iceland

(a) All longshore activities.
(b) Exception: Operation of shipboard equipment and cranes.

India

(a) All longshore activities
(b) Exception: Operation of shipboard equipment that local port workers cannot operate.

Indonesia

(a) All longshore activities.
(b) Exceptions:
(1) With the permission of the port administrator, when no local port workers with requisite skills are available, and
(2) In the event of an emergency.

Ireland

(a) All longshore activities.

Israel

(a) All longshore activities.

Jamaica

(a) All longshore activities.
(b) Exceptions:
(1) Operation of equipment integral to the vessel,
(2) Opening and closing of hatches, jointly with local port workers, and
(3) Rigging of ship's gear, jointly with local port workers.

Japan

(a) All longshore activities.

Jordan

(a) All longshore activities.

Kenya

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches,
(2) Rigging of ship's gear,
(3) In an emergency declared by the port authority, and
(4) Direct transfer of cargo from one ship to another.

Korea

(a) All longshore activities.

Kuwait

(a) All longshore activities.
(b) Exception, when activities are declined by the port workers:
(1) Operation of cargo related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Liberia

(a) Longshore activities on shore.

Lithuania

(a) The following activities in harbor:
(1) Loading and discharge of cargo,
(2) Maintenance of port equipment,
(3) Receiving and fixing of dock ropes to harbor equipment,
(4) Transportation of cargo within the port, and
(5) Warehousing and security.
(b) Exception: Opening and closing of hatches.

Madagascar

(a) All longshore activities.

Malaysia

(a) Longshore activities on shore.
(b) Exception: Loading and discharge of hazardous materials.

Maldive Islands

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo related equipment aboard ship,
(2) Opening and closing of hatches,
(3) Rigging of ship's gear, and
(4) Other longshore activities within port limits, when authorized by the port authority in cases when the port authority is unable to provide longshore workers.

Malta

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Mauritania

(a) All longshore activities on shore.

Mauritius

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Mexico

(a) All longshore activities.

Micronesia

(a) All longshore activities.
(b) Exceptions:
(1) Operation and rigging of gear which local port workers cannot do, and
(2) When no qualified citizens are available.

Morocco

(a) All longshore activities.

(b) Exceptions:
(1) Operation of ship's gear which port workers cannot operate,
(2) Opening and closing of hatches,
(3) Rigging of gear aboard ship, and
(4) Fastening and unfastening containers.

Mozambique

(a) All longshore activities on shore.

Namibia

(a) Longshore activities on shore.

Nauru

(a) All longshore activities.

Netherlands

(a) All longshore activities.
(b) Exception: Regular crew activities on board ship, including operation of cargo related equipment, opening and closing of hatches and rigging of ship's gear.

Netherlands Antilles

(a) All longshore activities.
(b) Exceptions:
(1) Operation of ship's gear,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

New Zealand

(a) All longshore activities.

Nicaragua

(a) All longshore activities.

Pakistan

(a) Longshore activities on shore.
(b) Handling of mooring lines.
(c) Exception: Operation of equipment which dock workers are not capable of operating.

Panama

(a) All longshore activities.
(b) Exceptions:
(1) Rigging of ship's gear,
(2) Cargo handling operations with ship's gear, when port authority equipment is not available to load or unload a vessel.

Papua New Guinea

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Peru

(a) All longshore activities.
(b) Exceptions:
(1) Handling of certain types of hazardous cargo, and
(2) Operation of shipboard equipment requiring special training.

Philippines

(a) All longshore activities.
(b) Exceptions:
(1) Activities on board ship, except for loading and discharge of cargo,
(2) Longshore activities for hazardous or polluting cargoes, and
(3) Longshore activities on government vessels.

Poland

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo-related equipment,
(2) Opening and closing of hatches, and
(3) Rigging of ship's gear.

Portugal (including Azores)

(a) All longshore activities.
(b) Exceptions:
(1) Military operations,
(2) Operations in an emergency, when under the supervision of the maritime authorities,
(3) Security or inspection operations,
(4) Loading and discharge of supplies for the vessel and its crew,
(5) Loading and discharge of fuel and petroleum products at special terminals,
(6) Loading and discharge of chemical products if required for safety reasons,
(7) Placing of trailers and similar material in parking areas when done before loading or after discharge,
(8) Cleaning of the vessel, and
(9) Loading, discharge and disposal of merchandise in other boats.

Qatar

(a) All longshore activities.

Romania

(a) All longshore activities.
(b) Exceptions:
(1) Operation of specialized shipboard equipment, and
(2) Loading and discharge of cargo requiring special operations.

St. Lucia

(a) All longshore activities.

St. Vincent and the Grenadines

(a) All longshore activities.

Saudi Arabia

(a) All longshore activities.

Senegal

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches,
(2) Rigging of ship's gear, and
(3) Cargo handling when necessary to ensure the safety or stability of the vessel.

Seychelles

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Slovenia

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Solomon Islands

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

South Africa

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Spain

(a) All longshore activities.

Sri Lanka

(a) Longshore activities on shore.

Sweden

(a) Loading and discharge of cargo.
(b) Rigging of cargo nets, straps and wires to make ready for loading by the crane.
(c) Cargo handling.
(d) Line handling on the dock.

Taiwan

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo-related equipment which local longshoremen cannot operate, and
(2) Opening and closing of hatches operated automatically.

Tanzania

(a) All longshore activities.

Thailand

(a) Longshore activities on shore.
(b) Exception: Longshore activities in private ports.

Togo

(a) All longshore activities.
(b) Exceptions:
(1) Operation of cargo-related equipment on board the ship, and
(2) Opening and closing of hatches, upon the agreement of the port officer on duty.

Trinidad and Tobago

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, if done automatically, and

(2) Rigging of ship's gear.

Tunisia

(a) All longshore activities.
(b) Exception: When the number of local dock workers is insufficient or when the workers are not qualified to do the work.

Uruguay

(a) Stowing, unstowing, loading and discharge, and related activities on board ships in commercial ports.
(b) Cargo handling on the docks and piers of commercial ports.
(c) Exception: Activities usually performed by the ships crew, including operation of cargo related equipment, opening and closing of hatches and rigging of ship's gear.

Vanuatu

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Venezuela

(a) Longshore activities in private ports and terminals.

Western Samoa

(a) All longshore activities.
(b) Exceptions:
(1) Opening and closing of hatches, and
(2) Rigging of ship's gear.

Yemen

(a) All longshore activities.

Zaire

(a) All longshore activities.
(b) Exception: Operation of cargo related equipment, when authorized by the Port Authority.
(8 U.S.C. 1288, Pub. L. 010–649, 104 Stat, 4878)

Dated: October 27, 1995.

Daniel K. Tarullo,

Assistant Secretary, Economic and Business Affairs, Department of State.

[FR Doc. 95–28052 Filed 11–22–95; 8:45 am]
BILLING CODE 4710–07–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Chapter XIV

Older Workers Benefit Protection Act of 1990 (OWBPA)

AGENCY: Equal Employment Opportunity Commission (EEOC).

ACTION: Initial Meeting of Negotiated Rulemaking Advisory Committee.

SUMMARY: EEOC announces the date of the first meeting of the ''Negotiated Rulemaking Advisory Committee for Regulatory Guidance on Unsupervised Waivers of Rights and Claims under the Age Discrimination in Employment Act'' (the Committee). A Notice of Intent to form the Committee was published in the Federal Register on August 31, 1995, 60 FR 45388, and a Notice of Establishment of the Committee was published in the Federal Register on October 20, 1995, 60 FR 54207.

DATES: The first meeting will be held on December 6–7, 1995, beginning at 10:00 a.m. on December 6. It is anticipated that the meeting will last for two days.

ADDRESSES: The meeting will be held at the EEOC headquarters, 1801 L Street NW., Washington, DC 20507.

FOR FURTHER INFORMATION CONTACT: Joseph N. Cleary, Paul E. Boymel, or John K. Light, ADEA Division, Office of Legal Counsel, EEOC, 1801 L Street NW., Washington, DC 20507, (202) 663–4692.

SUPPLEMENTARY INFORMATION: Pursuant to General Services Administration regulations, at 41 CFR 101–6.1015(b)(2), I certify that exceptional circumstances exist that permit EEOC to give notice less than 15 days prior to the date of the meeting: this notice has been delivered to the Federal Register prior to the governmental furlough of November 14–19, 1995, but because of the furlough the notice could not be published until today. Participants had already made plans to attend the December meeting, and rescheduling would have caused substantial burden and delay.

The Committee membership list is attached as Addendum A. All Committee meetings, including the meeting of December 6–7, 1995, will be open to the public. Any member of the public may submit written comments for the Committee's consideration, and may be permitted to speak at the meeting if time permits. In addition, all Committee documents and minutes will be available for public inspection in EEOC's Library (6th floor of the EEOC Headquarters).

Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. To schedule an appointment call (202) 663–4630 (voice), (202) 663–4630 (TDD). Copies of this notice are available in the following alternate formats: large print, braille, electronic file on computer disks, and audio tape. Copies may be obtained from the Office of Equal Employment Opportunity by calling (202) 663–4395 (voice), (202) 663–4399 (TDD).

Purpose of Meeting/Summary of Agenda

At the first meeting, the Committee will establish Committee procedures, define the scope of Committee action, and begin to discuss the unsupervised waiver legal issues that will be considered by the Committee.

Dated: November 9, 1995.

Gilbert F. Casellas,

Chairman.

Addendum A—EEOC OWBPA Title II Negotiated Rulemaking Committee Roster

Elizabeth M. Barry—Harvard University
William H. Brown—Schnader, Harrison, Segal & Lewis
Joseph N. Cleary—Assistant Legal Counsel, EEOC
John C. Dempsey—American Federation of State, County and Municipal Employees
Raymond C. Fay—Bell, Boyd & Lloyd
Burton D. Fretz—National Senior Citizens Law Center
Peter Kilgore—National Restaurant Association
Lloyd C. Loomis—Atlantic Richfield Company
Benton J. Mathis—Drew, Eckl & Farnham
Douglas S. McDowell—Equal Employment Advisory Council
Thomas R. Meites—Meites, Frackman, Mulder & Burger
Niall A. Paul—Spilman, Thomas & Battle
Markus L. Penzel—Garrison, Phelan, Levin-Epstein & Penzel
L. Steven Platt—Arnold & Kadjan
Pamela S. Poff—Paine Webber
Michele C. Pollak—American Association of Retired Persons
Jaime Ramon—McKenna & Cuneo
Patrick W. Shea—Paul, Hastings, Janofsky, & Walker
Paul H. Tobias—Tobias, Kraus & Torchia
Ellen J. Vargyas—Legal Counsel, EEOC

[FR Doc. 95–28435 Filed 11–21–95; 9:41 am]
BILLING CODE 6570–06–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Chapter II

RIN 1010–AB57

Meetings of the Indian Gas Valuation Negotiated Rulemaking Committee

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meetings.

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

DATES: The Committee will have meetings on the dates and the times shown below:

Tuesday, December 5, 1995-9:30 a.m. to 5 p.m.
Wednesday, December 6 , 1995-8 a.m. to 5 p.m.
Thursday, December 7, 1995-8 a.m. to 5 p.m.
Tuesday, January 23, 1996-9:30 a.m. to 5 p.m.
Wednesday, January 24, 1996-8 a.m. to 5 p.m.
Thursday, January 25, 1996-8 a.m. to 5 p.m.

ADDRESSES: The December meetings will be held in the 45th floor meeting room at Holme Roberts & Owen LLC, 1700 Lincoln Street, Suite 4100, Denver, Colorado 80203–4524.

The January meetings will be held in the Building 85 Auditorium at the Denver Federal Center, located at West 6th Avenue and Kipling Streets, Lakewood, Colorado.

Written statements may be submitted to Mr. Donald T. Sant, Deputy Associate Director for Valuation and Operations, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS–3100, Denver, CO 80225–0165.

FOR FURTHER INFORMATION CONTACT: Mr. Donald T. Sant, Deputy Associate Director for Valuation and Operations, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3100, Denver, CO 80225–0165, telephone number (303) 231–3899, fax number (303) 231–3194.

SUPPLEMENTARY INFORMATION: The location and dates of future meetings will be published in the Federal Register. The meetings will be open to the public without advanced registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the Committee for its consideration.

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

Dated: November 20, 1995.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 95–28852 Filed 11–22–95; 8:45 am]

BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FRL–5333–8]

Notice of Open Meeting of the Negotiated Rulemaking Advisory Committee for Small Nonroad Engine Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: FACA Committee Meeting—Negotiated Rulemaking on Small Nonroad Engine Regulations.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), EPA is giving notice of the next meeting of the Advisory Committee to negotiate the Phase II rule to reduce air emissions from small nonroad engines. Small nonroad engines are engines which are spark ignited gasoline engines less than 25 horsepower. The meeting is open to the public without advance registration. Agenda items for the meeting include discussion of the emissions standard and standard structure. The Committee is hoping to finalize a series of recommendations to EPA regarding the control of emissions in Phase II of the rule.

DATES: The committee will meet on December 13, 1995 from 10 a.m. to 6 p.m., December 14, 1995 from 9 a.m. to 5 p.m.

ADDRESSES: The location of the meeting will be the Courtyard by Marriott, 3205 Boardwalk, Ann Arbor, MI 48108; phone: (313) 995–5900.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the substantive matters of the rule should contact Lisa Snapp, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Rd., Ann Arbor, Michigan 48105, (313) 668–4200. Persons needing further information on committee procedural matters should call Deborah Dalton, Consensus and Dispute Resolution Program, Environmental Protection Agency, 401 M Street, S.W. Washington, DC 20460, (202) 260–5495, or the Committee's facilitators, Lucy Moore or John Folk-Williams, Western Network, 616 Don Gaspar, Santa Fe, New Mexico, 87501, (505 982–9805.

Dated: November 13, 1995.

Deborah Dalton,

Designated Federal Official.

[FR Doc. 95–28394 Filed 11–22–95; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 70

[KY–JEFF–95–01; FRL–5334–6]

Clean Air Act Proposed Full Approval of Operating Permits Program; Jefferson County, Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed full approval, or proposed interim approval in the alternative.

SUMMARY: EPA proposes to grant full approval to the Operating Permits Program submitted by the Jefferson County, Kentucky Air Pollution Control District (District) located in the geographic area of Jefferson County, Kentucky. Alternatively, EPA proposes to grant interim approval if specified changes are not adopted prior to final promulgation of this rulemaking. The Jefferson County, Kentucky program was submitted for the purpose of complying with Federal requirements which mandate that state and local agencies develop, and submit to EPA programs for issuing operating permits to all major stationary sources, and to certain other sources.

DATES: Comments on this proposed action must be received in writing by December 26, 1995.

ADDRESSES: Written comments on this action should be addressed to Carla E. Pierce, Chief, Air Toxics Unit/Title V Program Development Team, Air Programs Branch, at the EPA Region 4 office listed below.

Copies of the District's submittal and other supporting information used in developing the proposed full approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE, Atlanta, GA 30365. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: Leonardo Ceron, Title V Program Development Team, Air Programs Branch, Air Pesticides & Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE, Atlanta, GA 30365, (404) 347–3555 extension 4196.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

As required under title V of the Clean Air Act Amendments of 1990 (Clean Air Act (''Act'') sections 501–507), EPA has promulgated rules that define the minimum elements of an approvable operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of state or local agency operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V and part 70 require states or authorized local agencies to develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

The Act requires that states or authorized local agencies develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. If the state's or authorized local agency's submission is materially changed during the one-year review period, 40 CFR 70.4(e)(2) allows EPA to extend the review period for no more than one year following receipt of the additional material. EPA received the District's title V operating permit program submittal on February 1, 1994. The District provided EPA with additional materials in supplemental submittals dated November 15, 1994; May 3, 1995; and July 14, 1995. Because these supplements materially changed the District's title V program submittal, EPA extended the review period and will work expeditiously to promulgate a final decision on the District's program.

EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not fully approved a program by November 15, 1995, or by the end of an interim program, it must establish and implement a Federal operating permits program.

II. Proposed Action and Implications

A. Analysis of District Submission

The District has requested full approval of its part 70 operating permits program, which covers the partial geographic area of Jefferson County, Kentucky within the Commonwealth of Kentucky. EPA has concluded that the operating permit program submitted by the District meets the requirements of title V and part 70, and proposes to grant full/interim approval to the program.

What follows are brief explanations indicating how the submittal meets the requirements of part 70. The reader may consult the Technical Support Document (TSD) contained in the docket at the address noted above for a more detailed explanation of these topics.

1. Program Support Materials

Pursuant to section 502(d) of the Act, the Governor of each state must develop and submit to the Administrator an operating permits program under state or local law or under an interstate compact meeting the requirements of title V of the Act. The Governor of the Commonwealth of Kentucky, Brereton C. Jones, requested full approval of the District's operating permits program through the Commonwealth's title V submittal. The Air Pollution Control Board of Jefferson County has full authority to administer the District's program for the geographic area of Jefferson County, Kentucky.

The District's part 70 program submittal includes section II entitled ''Complete Program Description'' which addresses the requirements of 40 CFR 70.4(b)(1) by describing how the District intends to carry out its responsibilities under the part 70 regulations. The program description has been deemed to be appropriate for meeting the requirement of 40 CFR 70.4(b)(1).

Pursuant to 40 CFR 70.4(b)(3), the Governor is required to submit a legal opinion from the Attorney General (or the attorney for the state/local air pollution control agency that has independent legal counsel) demonstrating adequate authority to carry out all aspects of a title V operating permits program. The District submitted a legal opinion from the Commissioner of the Department of Law at the Kentucky Natural Resources and Environmental Protection Cabinet and a supplemental legal opinion demonstrating adequate legal authority as required by Federal law. See section V of the District's submittal dated January 31, 1994, and section II.2 of the submittal dated July 14, 1995.

Section 70.4(b)(4) requires the submission of relevant permitting program documentation not contained in the regulations, such as permit application forms, permit forms and relevant guidance to assist in the District's implementation of its permit program. Section II of the District submittal dated January 31, 1994, includes the permit application forms and permit forms. It has been determined that the application forms and the permit forms meet the requirements of 40 CFR 70.5 and 40 CFR 70.6, respectively.

2. Regulations and Program Implementation

The District has submitted regulation 2.16 entitled ''Title V Operating Permits'' and Regulation 2.08 entitled ''Emissions Fees, Permit Fees, And Permit Renewal Procedures'' for implementing the part 70 program as required by 40 CFR 70.4(b)(2). Sufficient evidence of their procedurally correct adoption is included in Section I of the District's title V program submittal. Copies of all applicable state statutes and regulations which authorize the part 70 program, including those governing the District administrative procedures, were submitted with the District's program.

The District's operating permits regulations closely follow the Federal part 70 regulations. The following requirements set out in the part 70 program are met by the District's program and are specifically addressed in the following sections of Regulation 2.16: (A) applicability requirements, (40 CFR 70.3(a)): Section 1; (B) permit applications requirements, (40 CFR 70.5): Section 3, (c) provisions for permit content, (40 CFR 70.6): Section 4; (D) operational flexibility provisions,(40 CFR 70.4(b)(12)): Section 5.8; (E) permit review by EPA and affected states, (40 CFR 70.8): Section 5; (F) provisions for permit issuance, renewals, reopenings and revisions, (40 CFR 70.7): Section 5.

Regarding the District's rules for permit revisions, it is EPA's understanding that any changes that affect a federally enforceable term or would change a federally enforceable term must be processed through the ''Minor Permit Revision'' provisions as specified in the District's Regulation 2.16, and therefore would be federally approvable. EPA further understands the District's regulations provide for emissions trading under federal enforceable permit caps, as required by 70.4(b)(12)iii.

The District has established an enforcement agreement with the Commonwealth of Kentucky to carry out provisions for the enforcement authority requirements of 40 CFR 70.11. The Commonwealth's KRS 77.235 and 77.240, satisfy the requirements of part 70. The District has also established Regulation 2.07, which satisfies the requirements of 40 CFR 70.7(h), for the public participation requirements.

Section 70.4(b)(2) requires state and local agencies to include in their part 70 programs any criteria used to determine insignificant activities or emission levels for the purpose of determining complete applications. Section 70.5(c) states that an application for a part 70 permit may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate appropriate fee amounts. Section 70.5(c) also states that EPA may approve, as part of a state or local program, a list of insignificant activities and emissions levels which need not be included in permit applications. Under part 70, a state or local agency must request and EPA may approve as part of that state or local's program any activity or emission level that the state or local wishes to consider insignificant. Part 70, however does not establish emissions thresholds for insignificant activities. EPA has accepted emissions thresholds of five tons per year for criteria pollutants and the lesser of 1000 pounds per year or section 112(g) de minimis levels for HAPs as reasonable.

The District established Regulation 2.02, section 2, entitled ''Exemptions'' which specifically provide for certain exemptions for emission units and activities, as listed in this regulation, from application and permit requirements. Notwithstanding Regulation 2.02, the District's Regulation 2.16 requires title V permit applications to include all information needed to determine the applicability of or to impose an applicable requirement. Information is also required for the collection of any permit fees owed under the approved fee schedule. For insignificant activities which are exempt because of size or production rate, a list of such insignificant activities must be included in the permit application according to Regulation 2.16. The District has defined insignificant activities as: ''those facilities exempted from permitting requirements pursuant to Regulation 2.02, provided that such facilities are not subject to an affected facility category-specific applicable requirement.'' EPA has determined that the District's insignificant activities provisions will not interfere with implementation of an adequate title V program.

Part 70 requires prompt reporting of deviations from any permit requirements. Section 70.6(a)(3)(iii)(B) requires the permitting authority to define ''prompt'' in relation to the degree and type of deviation likely to occur and the applicable requirements. Although the permit program regulations should define ''prompt'' for purposes of administrative efficiency and clarity, an acceptable alternative is to define ''prompt'' in each individual permit. EPA believes that ''prompt'' should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. However, ''prompt'' reporting must be more frequent than the semiannual reporting requirement, given that this is a distinct reporting obligation under 40 CFR 70.6(a)(3)(iii)(A). Where ''prompt'' is defined in the individual permit but not in the program regulations, EPA may veto permits that do not require sufficiently prompt reporting of deviations.

The District's Regulation 1.07 ''Emissions During Shutdowns, Malfunctions, Startups, and Emergencies'' specifies how a source should notify the District in the event of a planned shutdown or startup, malfunction, and/or emergency. Prompt reporting for a planned shutdown or startup is required three days prior to a planned event. If a shutdown or startup is required by a facility where the owner or operator could not reasonably notify the District three days before the event then the facility is required to report such an event to the District no later than one day after such an event has begun. During emergency or malfunction events a facility is required to report by telephone to the District no later than one hour following the start of the malfunction or emergency. Additionally, the District should also be notified in writing of a malfunction or emergency within two days of such event.

The provisions addressing shutdowns, malfunctions, startups, and emergencies in Regulation 1.07, section 2.1, provide sources the legal mechanism of affirmative defense, to address enforcement actions brought about as a result of excess emissions from shutdowns, startups, or malfunctions which temporarily exceed standards. However, 40 CFR 70.6(g) only allows sources to use the legal mechanism of affirmative defense when excess emissions are emitted from a source during an emergency situation. Based on the District's deviation from the Federal requirements, EPA will not recognize or approve the affirmative defense provisions in the District's Regulation 1.07, section 2.1. However, the District has committed to the adoption of language which clarifies Regulation 1.07, section 2.1 by only allowing sources to use the affirmative defense in situations where excess emissions are a result of emergency situations, as specified in 40 CFR 70.6(g).

Additionally, Regulation 1.07, section 2.2 provides for the classification of excess emissions from emergencies to be deemed not in violation of specified standards. However, 40 CFR Part 70 requires any emissions not permitted at a source to be in violation of permit terms and conditions. Specifically, 40 CFR 70.6(g) classifies excess emissions due to emergency situations as a violation of an existing permit. Based on the District's deviation from this Federal requirement in part 70, EPA will not recognize or approve the classification of emergency emissions as not in violation of a permit within the District's Regulation 1.07, section 2.2. However, the District has committed to the adoption of language which clarifies Regulation 1.07, section 2.2 by classifying excess emissions due to emergencies as violations in section 2.2.

Based on the District's proposed adoption of changes to Regulation 1.07 which were outlined in a letter to EPA dated November 6, 1995, and as a condition of full approval, the District plans to expeditiously adopt the proposed changes to Regulation 1.07, prior to EPA's final action on the District's title V program. Alternatively, the District will be required to modify Regulation 1.07 during the specified interim approval period.

In accordance with procedures specified in the Commonwealth of Kentucky KRS 77.225–77.230 and 77.245–77.270, and as specified in the District's State Implementation Plan (SIP) Regulation 1.08, section 4, entitled ''Variance Procedures,'' the District maintains authority to grant individual variances. This authority may be exercised by the District upon request by any person or if the time necessary to correct unlawful emissions is anticipated to exceed 30 days. The EPA regards this provision as wholly external to the program submitted for approval under part 70, and consequently is proposing to take no

action on this provision of the District's regulations. The EPA has no authority to approve provisions of the District's law, such as the variance provisions referred to, which are inconsistent with the Act. The EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a Federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70. A part 70 permit may be issued or revised (consistent with part 70 permitting procedures) to incorporate those terms of a variance that are consistent with applicable requirements. A part 70 permit may also incorporate, via part 70 issuance or modification procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 40 CFR 70.5(c)(8)(iii)(C), which states that a schedule of compliance ''shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements in which it is based.''

The District's title V program submittal and TSD are available for review for more detailed information. The aforementioned TSD contains the detailed analysis of the District's program and describes the manner in which the program meets all of the operating permit program requirements of 40 CFR part 70.

3. Permit Fee Demonstration

Section 502(b)(3) of the Act requires that each permitting authority collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer a title V operating permits program. Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that aggregate fees collected from title V sources meet or exceed $25 per ton per year (tpy), as adjusted annually for inflation. The $25 per ton amount is presumed, for program approval, to be sufficient to cover all reasonable program costs and is thus referred to as the ''presumptive minimum.''

The District has elected to assess the annual presumptive minimum fee as adjusted by the CPI each year beginning in the year of program approval by EPA. The total assessed fee will be calculated by multiplying the presumptive minimum amount by the total actual emissions of a source. For the fiscal year of 1996 (July 1, 1995, through June 30, 1996) a presumptive amount of $37.70 shall be used to calculate emissions fees. A maximum of 4,000 tpy of actual emissions of a single pollutant will be counted toward the total emissions of a source. EPA has determined that the District's assessed fees will adequately fund the anticipated cost of the program consistent with the requirements of 40 CFR 70.9.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and/or Commitments for Section 112 Implementation. In its program submittal, the District has demonstrated adequate legal authority to implement and enforce section 112 requirements through the title V permit. The District has also committed to ''adopt Federal rule or standard when the Federal rule is promulgated.'' EPA has determined that this commitment, in conjunction with the District's broad statutory and regulatory authority, adequately assures compliance with all section 112 requirements. For further rationale on this interpretation, please refer to the TSD.

b. Implementation of Section 112(g) Upon Program Approval. EPA issued an interpretive notice on February 14, 1995 (60 FR 8333), which outlines EPA's revised interpretation of section 112(g) applicability. The notice postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The notice sets forth in detail the rationale for the revised interpretation.

The section 112(g) interpretative notice explains that EPA is considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow states and local agencies time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), the District must have a Federally enforceable mechanism for implementing section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of the implementing District regulations.

EPA is aware that the District lacks a program designed specifically to implement section 112(g). However, the District currently has a preconstruction program that can serve as an adequate implementation vehicle during the transition period because it would allow the District to select control measures that would meet the maximum achievable control technology (MACT), as defined in section 112, and incorporate these measures into a Federally enforceable preconstruction permit.

For this reason, EPA proposes to approve the use of the District's preconstruction program found in Regulation 2.03 under the authority of title V and part 70, solely for the purpose of implementing section 112(g) to the extent necessary during the transition period between section 112(g) promulgation and adoption of a District rule implementing EPA's section 112(g) regulations. Although section 112(l) generally provides authority for approval of state and local air programs to implement section 112(g), title V and section 112(g) provide for this limited approval because of the direct linkage between the implementation of section 112(g) and title V. The scope of this approval is narrowly limited to section 112(g) and does not confer or imply approval for purposes of any other provision under the Act (e.g., section 110). This approval will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until District regulations are adopted. The duration of this approval is limited to 18 months following promulgation by EPA of the section 112(g) rule to provide adequate time for the District to adopt regulations consistent with the Federal requirements.

c. Program for Delegation of Section 112 Standards as Promulgated. The requirements for part 70 program approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to title V sources. Section 112(l)(5) requires that the District's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA also proposes to grant approval, under section 112(l)(5) and 40 CFR 63.91, of the District's program for receiving delegation of future section 112 standards and programs that are unchanged from the Federal requirements as promulgated. In addition, EPA proposes delegation of all existing standards and programs under 40 CFR parts 61 and 63 for part 70 sources and non-part 70 sources.[1]

[1] The radionuclide National Emission Standards for Hazardous Air Pollutant (NESHAP) is a section 112 regulation and therefore, also an applicable requirement under the District's operating permits program for part 70 sources. There is not yet a Federal definition of ''major'' for radionuclide sources. Therefore, until a major source definition for radionuclide is promulgated, no source would be a major section 112 source solely due to its

The District has informed EPA that it intends to accept the delegation of future section 112 standards using the mechanisms of adoption-by-reference and case-by-case delegation. The details of the District's use of these delegation mechanisms are set forth in a letter dated August 9, 1995, submitted by the District as a title V program addendum.

d. Commitment to Implement Title IV of the Act. On June 21, 1995, the District's acid rain rule for the Phase II permitting of acid rain sources became District-effective. The District incorporated by reference 40 CFR part 72 into Regulation 6.47 and 7.82, which was submitted to EPA on July 11, 1995. The District has also committed to the incorporation of amendments or additions to the Federal Acid Rain rule as promulgated by EPA.

B. Proposed Actions

1. Full Approval

EPA proposes to fully approve the operating permits program submitted to EPA by the Jefferson County, Kentucky Air Pollution Control District, if appropriate revisions consistent with 40 CFR 70.6(g) are incorporated into the District's Regulation 1.07, sections 2.1 & 2.2, and adopted prior to the final promulgation of this rulemaking. EPA has determined that the District's program is otherwise adequate to meet the minimum elements of the part 70 requirements for an operating permits program in a partial geographic area.

2. Interim Approval

Alternatively, EPA is proposing to grant interim approval under 40 CFR 70.4(d) to the District's operating permits program if the changes required for full approval, as described above, are not made prior to final promulgation of this rulemaking. EPA can grant interim approval because the District's program substantially meets the requirements of part 70 as discussed in section II(A) of this notice. The interim approval issues noted above will not prevent the District from issuing permits that are consistent with the part 70 program.

If EPA grants interim approval to the District's program, the interim approval would extend for two years following the effective date of final interim approval, and could not be renewed. During the interim approval period, the District would be protected from sanctions, and EPA would not be obligated to promulgate, administer and enforce a Federal permits program for the District. Permits issued under a program with interim approval are fully effective with respect to part 70. The 12-month time period for submittal of permit applications by sources subject to part 70 requirements and the three-year time period for processing the initial permit applications begin upon the effective date of final interim approval.

Following the granting of final interim approval, if District fails to submit a complete corrective program for full approval by the date six months before expiration of the interim approval, EPA would start an 18-month clock for mandatory sanctions. If the District then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA is required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that the District has corrected the deficiencies by submitting a complete corrective program.

3. Other Actions

EPA proposes to approve the District's preconstruction review program found in Regulation 2.03, under the authority of title V and part 70 solely for the purpose of implementing section 112(g) to the extent necessary during the transition period between 112(g) promulgation and adoption of the District's regulation implementing EPA's section 112(g) regulations.

As discussed above in section II.A.4.c, EPA is proposing to grant approval under section 112(l)(5) and 40 CFR 63.91, to the District's program for receiving delegation of section 112 standards and programs that are unchanged from Federal rules as promulgated. In addition, EPA proposes to delegate existing standards and programs under 40 CFR parts 61 and 63 for both part 70 sources and non-part 70 sources.

IV. Administrative Requirements

A. Request for Public Comments

EPA requests comments on all aspects of this proposed full/interim approval. Copies of the District's submittal and other information relied upon for the proposed full/interim approval are contained in docket number KY–JEFF–95–01 maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed full/interim approval. The principal purposes of the docket are:

To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process; and

To serve as the record in case of judicial review. EPA will consider any comments received by December 26, 1995.

B. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

C. Regulatory Flexibility Act

EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new Federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

radionuclide emissions. However, a radionuclide source may, in the interim, be a major source under part 70 for another reason, thus requiring a part 70 permit. EPA will work with the District in the development of its radionuclide program to ensure that permits are issued in a timely manner.

Dated: November 8, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–28489 Filed 11–22–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–170; RM–8721]

Radio Broadcasting Services; Campton, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by James P. Wagner proposing the allotment of Channel 279A at Campton, Kentucky, as the community's first local aural transmission service. Channel 279A can be allotted to Campton in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 279A at Campton are North Latitude 37–44–06 and West Longitude 83–32–48.

DATES: Comments must be filed on or before January 5, 1996 and reply comments on or before January 22, 1996.

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: James P. Wagner, P.O. Box 201, Alexandria, Kentucky 41001 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MM Docket No. 95–170, adopted October 31, 1995, and released November 14, 1995. 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.

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,

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

[FR Doc. 95–28610 Filed 11–22–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85–15; Notice 18]

RIN 2127 AB87

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment; Performance-Oriented Roadway Illumination Headlighting Compliance Alternative

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

ACTION: Termination of rulemaking.

SUMMARY: This notice terminates rulemaking action on the effort known as the Vehicle-Based Roadway Illumination Performance Requirement. It was begun as an attempt to move toward a more performance-oriented, less design-restrictive regulatory solution for assuring safe roadway environment illumination. The agency has not been able to adequately explore the myriad solutions to this problem to the extent necessary to satisfy the public's demand for achieving an objective decision on performance. As a consequence, the agency has decided to temporarily cease rulemaking in this area.

FOR FURTHER INFORMATION CONTACT: Mr. Richard L. Van Iderstine, 400 Seventh Street, SW, Washington, DC 20590. Mr. Van Iderstine's telephone number is: (202) 366–5275. His facsimile number is (202) 366–4329.

SUPPLEMENTARY INFORMATION: On May 9, 1989 (54 FR 20084) the Agency published a proposal to establish an alternative means of compliance with headlighting safety regulations. This proposal was known as the Vehicle-Based Roadway Illumination Performance Requirement or Performance-Oriented Roadway Illumination. The goal was to achieve a more performance-oriented, less design-restrictive regulatory solution for assuring safe roadway environment illumination. Because the outcome of this action had the potential to be so different from any known means of specifying headlighting performance, commenters to the proposal were skeptical that any solution would be usable and that even if it were, the perceived regulatory burdens of it would not be commensurate with the uncertain potential benefits to public safety. This concern occurred because the proposal had the effect of requiring substantially more illumination than was available from contemporary headlighting systems. It was viewed as not practicable by many of the commenters. As a consequence, commenters suggested that all the assumptions underlying the proposal be justified to assure that the significant increase in illumination would at least maintain safety, and that any solution (that might someday be mandated) would be practicable and cost-beneficial. If these criteria could not be achieved, then any solution, even if it were at the manufacturer's option, would have little likelihood of being used on motor vehicles.

The challenge of responding to these comments led NHTSA on a path to attempt to develop a computer-based methodology for quickly solving hundreds of mutually exclusive illumination conditions that occur every second of nighttime driving. Trade-offs are necessary to resolve these mutually exclusive illumination conditions. These conflicting needs exist because, for example, providing the high levels of light that may be needed to see pedestrians on the right side of a straight stretch of road may create glare for oncoming drivers around the next right hand curve in the road. Should the standard require that sufficient light be provided to ensure every pedestrian can be seen, that all glare to other drivers be eliminated, or that some more mutually satisfactory (or unsatisfactory) shared risk solution be achieved? Safety must be achieved both by balancing and by reducing the risks that occur in driving. It must be done in a cost-effective manner. A computer-based tool for

analyzing the assumptions for making trade-offs in a more objective manner than NHTSA originally used is necessary to do this and resolve commenters' concerns. Without such a tool, such sensitivity analyses would take years of iteration of data and solutions.

The Agency has been unable to develop a practical tool for reliably performing sensitivity studies of the multitude of assumptions necessary for achieving a regulatory solution. This fact is presented in the final report documenting the effort: ''a considerable amount of work must still be accomplished before the goal of a safety-based device-free photometric standard may be implemented.'' Reports about this development effort are available as DOT HS 807 697 (PB 91181651) Development of a headlight system performance evaluation tool; cost $17.00, and DOT HS 808 041 (PB 94125762) Development of headlight system performance criteria; cost $19.50. The source is the National Technical Information Service, Springfield, VA 22161. These reports also are available for reading in the agency's Technical Information Library.

Without the ability to perform these sensitivity studies in a timely and resource-effective manner, the Agency is not able to examine in detail the effects of each of the trade-offs that must be made. Because of this inability, the Agency cannot make the decisions on the necessary tradeoffs between safe illumination for the myriad targets in the field of view of drivers at night. Further, this inability prevents the Agency from giving commenters the information that they desire to assess the merits of the proposal. In the past, such decisions relied on the empirical results of more than eighty years of world-wide research for guiding rational decisions on headlamp illumination trade-offs. The results have been codified in the national laws of countries around the world. With NHTSA's proposal being such a significantly different way of specifying roadway lighting performance, it is easy to understand the reluctance and concern of commenters to accept a new way of dealing with it, without having a complete and objective explanation and understanding. Because the Agency will not be able to assess and make the trade-offs, there appears to be no reason to continue this rulemaking action. However, should the agency be able to develop such information, it would reopen rulemaking at that time.

Additionally, while interest on the part of lighting and vehicle manufacturers in the proposal was high because of the potential for less regulatory burden and greater styling freedom, it would appear that the need for moving away from the traditional ''headlamp on the front corner of each vehicle'' approach to styling is blocked by many technological and regulatory unknowns. There continues to be talk in the popular press of development of distributive or centralized headlighting systems (that may use fiber optic light pipes to channel light to multiple headlamps from a remotely mounted light bulb), and adaptive headlighting with multiple beams (that may alter the beam patterns and light distribution on the road depending on the perceived needs of the driver). It appears that none of these concepts is sufficiently developed for lighting and vehicle manufacturers to decide how the present lighting regulations help or hinder the future application of these new lighting technologies to motor vehicles and thus determine what amendments should be sought. The vehicle-based roadway illumination performance requirement was one way (albeit, a bold new way) to address the need for accommodating new technology and preserving or improving safety.

Thus, someday, should the vehicle industry need such design and regulatory freedom as the Vehicle-Based Roadway Illumination Performance Requirement had the potential to offer or should there be other regulatory solutions available, the Agency would likely be enthusiastic about addressing them. But, it would probably choose a less resource-intensive route than the one being abandoned, unless there were some obvious and significant safety value to the public to be achieved from the potentially large expenditure. Also, it is likely that such a solution might best be achieved through the regulatory negotiation process, given the difficulty of detailing the merits of the trade-offs.

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: November 17, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–28683 Filed 11–22–95; 8:45 am]

BILLING CODE: 4910–59–P

Notices

Federal Register
Vol. 60, No. 226
Friday, November 24, 1995

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

Cooperative State Research, Education, and Extension Service

Notice of Intent To Revise a Currently Approved Information Collection

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Cooperative State Research, Education, and Extension Service's (CSREES) intention to revise a currently approved information collection in support of Authorizations to use the 4–H Club Name and/or Emblem.

DATES: Comments on this notice must be received on or before January 31, 1996.

ADDITIONAL INFORMATION OR COMMENTS: Contact Dr. Alma C. Hobbs, Deputy Administrator, Families, 4–H and Nutrition, Cooperative State Research, Education, and Extention Service, U.S. Department of Agriculture, 14th and Independence Avenue, S.W., Washington, D.C. 20250–0925, (202) 720–2908.

SUPPLEMENTARY INFORMATION:

Title: Application for authorization to use the 4–H Name and/or Emblem.

OMB Number: 0524–0034 (formerly 0527–0009).

Expiration Date of Approval: January 31, 1996.

Type of Request: Intent to revise and extend currently approved information collection.

Abstract: Use of the 4–H Name and/or Emblem by anyone other than the 4–H Clubs and those duly authorized by them, representatives of the Department of Agriculture, the Land-Grant colleges and universities, and persons authorized by the Secretary of Agriculture is prohibited by the provisions of 18 U.S.C. 707. The Secretary of Agriculture has delegated authority to the Administrator of the Cooperative State Research, Education, and Extension Service to authorize others to use the 4–H Name and Emblem. The Administrator has promulgated regulations at 7 CFR Part 8 that govern such use. The regulatory requirements for use of the 4–H Name and/or Emblem reflect the high standards of 4–H and its educational goals and objectives. Anyone requesting authorization from the Administrator to use the 4–H Name and Emblem is asked to describe in a formal application the proposed use. The collection of this information is used to determine whether the applicant's proposed use will meet the regulatory requirements and whether an authorization for use should be granted.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .50 hours per response.

Responsents: Individuals or households, business or other for profit, not-for-profit institutions.

Estimated Number of Respondents: 40

Estimated Number of Responses per Respondent: 2

Estimated Total Annual Burden on Respondents: 20 hours

Copies of this information collection can be obtained from Dr. Jon E. Irby, Interim Assistant Deputy Administrator, 202–720–6925.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Dr. Alma C. Hobbs, Deputy Administrator, Families, 4–H & Nutrition, Cooperative State, Research, Education, and Extension Service, U.S. Department of Agriculture, 14th and Independence Avenue, S.W., Washington, D.C. 20250–0925, (202) 720–6925.

All responses to this notice will be summarized and included in the request for OMB approval.

All comments will also become a matter of public record.

Signed at Washington, DC, November 18, 1995.

Colien Hefferan,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 95–28698 Filed 11–22–95; 8:45 am]

BILLING CODE 3410–22–M

Forest Service

Klamath Provincial Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Klamath Provincial Advisory Committee will meet on December 11 and December 12, 1995 at the Six Rivers National Forest Conference Room, 1330 Bayshore Way, Eureka, California. The meeting will begin at 10:00 a.m. on December 11 and adjourn at 5:00 p.m. The meeting will reconvene at 8:00 a.m. on December 12 and continue until 4:00 p.m. Agenda items to be covered include: (1) forest health/stewardship contract (recommendation from the Salvage Subcommittee); (2) watershed analysis selection criteria/process; (3) the role of fire in the Klamath Province; (4) management direction and guidelines for salvage in Key Watersheds and LSRs; (5) standing committee reports; and (6) public comment periods. All PAC meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Jim Anderson, USDA, Klamath National Forest, at 1312 Fairlane Road, Yreka, California 96097; telephone 916–842–6131, (FTS) 700–467–1300.

Dated: November 8, 1995.

Barbara Holder,

Designated Federal Official.

[FR Doc. 95–28644 Filed 11–22–95; 8:45 am]

BILLING CODE 3410–11–M

Natural Resources Conservation Service

Hohokam Watershed, Pinal County, Arizona

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of Availability of Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Regulations (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Hohokam Watershed, Pinal County, Arizona.

FOR FURTHER INFORMATION CONTACT: Michael Somerville, State Conservationist, Natural Resources Conservation Service, 3003 North Central Avenue, Suite 800, Phoenix, Arizona 85012. Telephone: (602) 280–8808.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mike Somerville, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purposes are agricultural water management and includes a mixture of land treatment and management practices to conserve irrigation water. The planned works of improvement include irrigation land leveling, suitable irrigation water conveyance, structures for turnouts and water measurement for irrigation water management, and plant, and fertility management practices (not cost-shared) including irrigation water management, crop residue use, conservation cropping sequence, appropriate erosion control practices as needed, nutrient management and pest management.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on the file and may be reviewed by contacting Don Paulus, at (602) 280–8780.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

(This activity is listed in the Catalog of Federal Domestic Assistance NO. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Dated: November 1, 1995.

Michael Somerville,

State Conservationist.

[FR Doc. 95–28674 Filed 11–22–95; 8:45 am]

BILLING CODE 3410–16–M

Rural Utilities Service

United Power Association; Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and RUS Environmental Policies and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact (FONSI) with respect to a project proposed by United Power Association (UPA), of Elk River, Minnesota. The proposed project consists of relocating a portion of an existing 230 kV transmission line in the vicinity of Minnewaukan and Devils Lake in Benson and Ramsey Counties, North Dakota. The line must be relocated to avoid areas flooded by the rising waters of Devils Lake. The planned reroute will move the line one mile north from its present location. This will require about 8.5 miles of new line construction. The new line will be located along the North side of Highway 19 in Townships 153 and 154 North, Ranges 66 and 67 West, Benson and Ramsey Counties, North Dakota.

RUS has concluded that the impacts from the proposed project would not be significant and that the proposed action is not a major Federal action significantly affecting the quality of the human environment. Therefore, the preparation of an environmental impact statement is not necessary.

FOR FURTHER INFORMATION CONTACT: Lawrence R. Wolfe, Senior Environmental Protection Specialist, Engineering and Environmental Staff, Rural Utilities Service, Agriculture South Building, Washington, DC 20250–1569, telephone (202) 720–1784.

SUPPLEMENTARY INFORMATION: RUS, in accordance with its environmental policies and procedures, required that UPA prepare a Borrower's Environmental Report (BER) reflecting the potential impacts of the proposed facilities. The BER, which includes input from the Federal, State, and local agencies, has been adopted as RUS's Environmental Assessment for the project in accordance with 7 CFR Section 1794.61. RUS has concluded that the BER represents an accurate assessment of the environmental impacts of the project. The proposed project will not affect any known properties listed or eligible for listing in the National Register of Historic Places. An archaeological resource survey for the transmission line was conducted and it found no known properties listed or eligible for listing in the National Register of Historic Places. However, if previously unknown resources are discovered during project construction, UPA will halt construction while the significance of the find and proper mitigation is determined. Given these procedures, the project will not have any significant effect on cultural resources. The project also should have no significant impact on floodplains, water quality, federally listed or proposed for listing threatened or endangered species or their critical habitat, important farmland or wetlands.

Alternatives considered to the project as proposed were no action, rebuilding the flooded section of the line at its present location, and relocating the flooded section. RUS has considered these alternatives and concluded that the project as proposed will allow UPA to provide adequate and reliable electric service to the customers in the State of North Dakota with a minimum of adverse impact.

Copies of the BER and FONSI are available for review at RUS at the aforementioned address, or may be reviewed at or obtained from the offices of UPA, 17845 Highway 10 East, Elk River, Minnesota 55330, telephone (612) 441–3121.

Dated: November 14, 1995.

Wally Beyer,

Administrator.

[FR Doc. 95–28536 Filed 11–22–95; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Nevada Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Nevada Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 11:30 a.m. on Tuesday, December 12, 1995, at the Southwest Gas Corporation, Building B, 5421 Spring Mountain Road, Las Vegas, Nevada 89193. The purpose of the meeting is to review current civil rights developments in the State, and plan future program activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Margo Piscevich, 702–329–0958, or Thomas V. Pilla, Acting Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 9, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–28659 Filed 11–22–95; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Virginia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Virginia Advisory Committee to the Commission will convene at 10:30 a.m. and adjourn at 3:00 p.m. on Friday, December 8, 1995, at the Omni Hotel, 1000 Omni Boulevard, Newport News, Virginia 23606. The purpose of the meeting is to plan for a factfinding meeting concerning civil rights issues in the Tidewater area.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Mrs. Jessie M. Rattley, 804–247–6771, or Edward Darden, Acting Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 9, 1995.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 95–28658 Filed 11–22–95; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act. An emergency review is being requested.

Agency: Bureau of Export Administration (BXA).

Title: Customer Survey on Electronic Access to BXA Information.

Agency Form Number: None assigned.

OMB Approval Number: None.

Type of Request: New Collection –– EMERGENCY REVIEW.

Burden: 480 hours.

Number of Respondents: 1,150.

Avg Hours Per Response: 5 minutes.

Needs and Uses: The Commerce Department's Bureau of Export Administration has been very active in the Administration's National Performance Review efforts to reduce the regulatory burden on U.S. exporters and those involved in international trade. One of its accomplishments is the simplification of the Export Administration Regulations (EAR) which are scheduled to be issued in mid–February of 1996. BXA, working with the National Technical Information Service (NTIS), intends to publish these regulations in both paper and electronic form. In order to design the electronic system in a way that ensures the broadest access for the public, BXA is seeking an emergency clearance of a customer survey to determine the best way to distribute this information electronically.

Affected Public: Exporters, freight forwarders, and those involved with international trade.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Tache, DOC Forms Clearance Officer, (202) 482–3271, U.S. Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Don Arbuckle, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503.

Dated: November 13, 1995.

Gerald Tache,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–28728 Filed 11–22–95; 8:45 am]

BILLING CODE 3510–CW–F

Office of the Secretary

Government Information Locator Service (GILS) Board Meeting

AGENCY: Office of Systems and Telecommunications Management, Office of Administration, Office of the Secretary, U.S. Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Office of Systems & Telecommunications Management (OSTM) announces a meeting of the Government Information Locator Service (GILS) Board. The GILS Board will evaluate the development and operation of GILS and recommend enhancements to GILS to meet user information needs.

DATES: The public meeting of the GILS Board is scheduled for December 6, 1995, from 10 a.m. until noon.

ADDRESSES: The Board meeting will be held in the Department of Commerce Auditorium, Herbert C. Hoover Building, 14th & Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: James E. Squier, OSTM, Office of the Secretary, (202) 482–2855.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act (PRA) of 1995, Public Law 104–13, and Office of Management and Budget (OMB) Bulletin 95–01 establish the Government Information Locator Service (GILS) to help the public and agencies locate and access information throughout the U.S. Government. Utilizing network-based information services, GILS will identify information resources throughout the Executive Branch, describe the information available and provide assistance in how to obtain the information.

The PRA and OMB Bulletin 95–01 also establish the GILS Board to oversee the implementation and subsequent operations of GILS. Membership on the Board includes representatives of the Director, Office of Management and Budget, the Secretary of Commerce, the Secretary of the Interior, the Archivist of the United States, and the Administrator of General Services. The Public Printer and the Librarian of Congress will be invited to participate. The Board may ask the heads of other agencies to designate representatives to serve on the Board or on task forces and seek input from other sources on GILS operations including the public.

The GILS Board meeting is open to the public. A one-half hour time period at the end of the meeting has been allocated for questions and discussion. Interested persons or organizations wishing to speak or to deliver materials should call the contact to make arrangements prior to the meeting.

Dated: November 13, 1995.

Ronald P. Hack,

Director, Office Systems & Telecommunications Management, Office of Administration, Office of the Secretary, U.S. Department of Commerce.

[FR Doc. 95–28729 Filed 11–22–95; 8:45 am]

BILLING CODE 3510–CW–M

International Trade Administration

[A–583–023]

Clear Sheet Glass From Taiwan, Revocation of the Antidumping Finding

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of revocation of antidumping finding.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its revocation of the antidumping finding on clear sheet glass from Taiwan because it is no longer of any interest to domestic interested parties.

EFFECTIVE DATE: November 24, 1995.

FOR FURTHER INFORMATION CONTACT: Roy Unger or Michael Panfeld, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–0651.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping finding if the Secretary concludes that the finding is no longer of any interest to domestic interested parties. We conclude that there is no interest in an antidumping finding when no interested party has requested an administrative review for five consecutive review periods and when no domestic interested party objects to revocation (19 CFR § 353.25(d)(4)(iii)).

On August 1, 1995, the Department published in the Federal Register (60 FR 39153) its notice of intent to revoke the antidumping finding on clear sheet glass from Taiwan (August 21, 1971). Additionally, as required by 19 CFR § 353.25(d)(4)(ii), the Department served written notice of its intent to revoke this antidumping finding on each domestic interested party on the service list. Domestic interested parties who might object to the revocation were provided the opportunity to submit their comments not later than the last day of the anniversary month.

In this case, we received no requests for review for five consecutive review periods. Furthermore, no domestic interested party, as defined under § 353.2 (k)(3), (k)(4), (k)(5), or (k)(6) of the Department's regulations, has expressed opposition to revocation. Based on these facts, we have concluded that the antidumping finding on clear sheet glass from Taiwan is no longer of any interest to interested parties. Accordingly, we are revoking this antidumping finding in accordance with 19 CFR § 353.25(d)(4)(iii).

Scope of the Order

Imports covered by the revocation are shipments of clear sheet glass from Taiwan. This merchandise is currently classifiable under Harmonized Tariff Schedules (HTS) item numbers 7004.90.25 and 7004.90.40. The HTS numbers are provided for convenience and customs purposes. The written description remains dispositive.

This revocation applies to all unliquidated entries of clear sheet glass from Taiwan entered, or withdrawn from warehouse, for consumption on or after August 1. Entries made during the period August 1, 1994, through July 31, 1995, will be subject to automatic assessment in accordance with 19 CFR § 353.22(e). The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after August 1, without regard to antidumping duties, and to refund any estimated antidumping duties collected with respect to those entries. This notice is in accordance with 19 CFR § 353.25(d).

Dated: November 13, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–28730 Filed 11–22–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–403–801]

Fresh and Chilled Atlantic Salmon From Norway: Termination of New Shipper Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of termination of new shipper antidumping duty administrative review.

SUMMARY: On May 23, 1995, the Department of Commerce (the Department) published in the Federal Register (60 FR 27273) the notice of initiation of the administrative review of the antidumping duty order on fresh and chilled Atlantic salmon From Norway. This review has now been terminated as a result of withdrawal of the request for review by Cocoon, Ltd. A/S (Cocoon), the last remaining respondent that requested a new shipper review.

EFFECTIVE DATE: November 24, 1995.

FOR FURTHER INFORMATION CONTACT: Todd Peterson, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W. Washington D.C. 20230, telephone: (202) 482–4195.

SUPPLEMENTARY INFORMATION:

Background

On April 28, 1995, Cocoon requested a new shipper administrative review of the Antidumping duty order on fresh and chilled Atlantic salmon from Norway for the period November 1, 1994, through April 30, 1995, pursuant to 19 USC 1675 (a)(2)(B). On May 23, 1995, the Department published in the Federal Register (60 FR 27273) the notice of initiation of that new shipper administrative review.

Cocoon withdrew its request for review on October 20, 1995, pursuant to 19 CFR 353.22(a)(5). There were no other requests for review. As a result, the Department has terminated this review.

This notice is published in accordance with section 751 of the Tariff Act of 1930, as amended (19 U.S.C. 1675) and 19 CFR 353.22.

Dated: November 2, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–28731 Filed 11–22–95; 8:45 am]

BILLING CODE 3510–DS–M

[A–201–504]

Porcelain-on-Steel Cooking Ware From Mexico; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests from two manufacturers/exporters, Esmaltaciones San Ignacio, S.A. (San Ignacio), and Cinsa, S.A. de C.V. (Cinsa), the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on porcelain-on-steel cooking ware (POS cooking ware) from Mexico on January 13, 1995 (60 FR 3192). San Ignacio has withdrawn its request for review and we have published a notice of termination in-part separately. The Department has conducted a review of Cinsa for the period December 1, 1993 through November 30, 1994.

We have preliminarily determined that Cinsa has made sales below the foreign market value (FMV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the United States price (USP) and FMV.

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: November 24, 1995.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois, or Thomas F. Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–6312/3814.

SUPPLEMENTARY INFORMATION:

Background

On December 6, 1994, the Department published a notice of ''Opportunity to Request an Administrative Review'' (59 FR 62710) of the antidumping duty order on POS cooking ware (51 FR 43415, December 2, 1986). On December 28, 1994, the petitioner requested an administrative review of Cinsa and San Ignacio. On December 30, 1994, Cinsa also requested an administrative review. We initiated an administrative review of Cinsa, covering December 1, 1993, through November 30, 1994, on January 13, 1995 (60 FR 3192). San Ignacio has withdrawn its request for review and we have published a notice of termination in-part separately.

Applicable Statute and Regulations

The Department has conducted this administrative review in accordance with section 751 of the Tariff Action 1930, as amended (the Tariff Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations refer to the provisions as the existed on December 31, 1994.

Scope of the Review

Imports covered by the review are shipments of POS cooking ware, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses.

This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item number 7323.94.00. Kitchenware currently entering under HTS item number 7323.94.00.30 is not subject to the order. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

Verification

As provided in section 776(b) of the Tariff Act, we verified information provided by the respondent, Cinsa, by using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification report.

Depreciation and Employee's Profit Sharing

As we did in the 1990–1991 review, we calculated depreciation on a revalued basis. We also treated employee's profit sharing as a direct labor expense. *See Porcelain-on-Steel Cooking Ware From Mexico; Final Results of Antidumping Duty Administrative Review.* (January 9, 1995, 60 FR 2378).

Related Parties

We have found that another company which produces subject merchandise, Esmaltaciones de Norte America, S.A. de C.V. (ENASA), was related to Cinsa during the period of review (POR).

The Department will apply a single antidumping duty margin to two or more related companies where those companies have production facilities for similar or identical products that would not require retooling at either facility to implement a decision to restructure manufacturing priorities, and where the Secretary concludes that there is a strong potential for price or production manipulation. In identifying a strong potential for price or production manipulation, the factors the Secretary may consider include:

(i) the level of common ownership;

(ii) whether managerial employees or board members of one sit on the board of directors of the related company; and

(iii) whether operations are intertwined, such as through sharing of sales information, involvement in production and pricing decisions, sharing of facilities or employees, or significant transactions between the related parties.

In our verification the Department determined that ENASA produces only heavy-gauge cooking ware while Cinsa produces only light-gauge cooking ware because both kinds of cooking ware cannot be produced using the same machinery. A shift in production from light-gauge to heavy-gauge or vice-versa could not be accomplished without fundamental and expensive retooling. Therefore, we determined that although Cinsa and ENASA are related parties, Cinsa and ENASA should not be collapsed because the two companies do not have production facilities that can make similar merchandise without fundamental and expensive retooling.

Product Matching

Cinsa changed the product codes from those used in 1990/1991 and earlier reviews. In this review the product code also incorporates color. Cinsa reported and we verified cost of production and constructed value data for every product sold in the United States. Based on that data, we determined that color caused a difference in the cost of manufacture. Therefore, we used Cinsa's product codes for product matching.

United States Price (USP)

We calculated the USP based on purchase price for Cinsa as all U.S. sales were made to unrelated parties prior to importation into the United States, in accordance with section 772(b) of the Act.

We calculated purchase price based on packed f.o.b. port or delivered prices to unrelated purchasers in the United States. We made deductions, where appropriate, for U.S. and foreign brokerage, bank charges, U.S. duty, foreign inland freight, credit costs, and rebates in accordance with section 772(d)(2) of the Act.

In addition, we adjusted USP for taxes in accordance with our practice outlined in the following section on Value Added Taxes.

No other adjustments were claimed or allowed.

Value Added Taxes

In light of the Federal Circuit's decision in *Federal Mogul* v. *United States,* CAFC No. 94–1097, the Department has changed its treatment of home market consumption taxes. Where merchandise exported to the United States is exempt from the consumption tax, the Department will add to the U.S. price the absolute amount of such taxes charged on the comparison sales in the home market. This is the same methodology that the Department adopted following the decision of the Federal Circuit in *Zenith* v. *United States,* 988 F. 2d 1573, 1582 (1993), and which was suggested by that court in footnote 4 of its decision. The Court of International Trade (CIT) overturned this methodology in *Federal Mogul* v. *United States,* 834 F. Supp. 1391 (1993), and the Department acquiesced in the CIT's decision. The Department then followed the CIT's preferred methodology, which was to calculate the tax to be added to U.S. price by multiplying the adjusted U.S. price by the foreign market tax rate; the Department made adjustments to this amount so that the tax adjustment would not alter a ''zero'' pre-tax dumping assessment.

The foreign exporters in the *Federal Mogul* case, however, appealed that decision to the Federal Circuit, which reversed the CIT and held that the statute did not preclude Commerce from using the ''*Zenith* footnote 4'' methodology to calculate tax-neutral dumping assessments (*i.e.,* assessments that are unaffected by the existence or amount of home market consumption taxes). Moreover, the Federal Circuit recognized that certain international agreements of the United States, in particular the General Agreement on Tariffs and Trade (GATT) and the Tokyo Round Antidumping Code, required the calculation of tax-neutral dumping assessments. The Federal Circuit remanded the case to the CIT with instructions to direct Commerce to determine which tax methodology it will employ.

The Department has determined that the ''*Zenith* footnote 4'' methodology should be used. First, as the Department has explained in numerous administrative determinations and court filings over the past decade, and as the *Federal Circuit* has now recognized, Article VI of the GATT and Article 2 of the Tokyo Round Antidumping Code required that dumping assessments be tax-neutral. This requirement continues under the new Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. Second, the URAA explicitly amended the antidumping law to remove consumption taxes from the home market price and to eliminate the addition of taxes to U.S. price, so that no consumption tax is included in the price in either market. The Statement of Administrative Action (p. 159) explicitly states that this change was intended to result in tax neutrality.

While the ''*Zenith* footnote 4'' methodology is slightly different from the URAA methodology, in that section 772(d)(1)(C) of the pre-URAA law required that the tax be added to United States price rather than subtracted from home market price, it does result in tax-neutral duty assessments. In sum, the Department has elected to treat consumption taxes in a manner consistent with its longstanding policy of tax-neutrality and with the GATT.

Cost of Production Analysis

In the most recent review of Cinsa we disregarded below cost sales in the home market. Therefore, the Department had reasonable grounds to believe or suspect that sales below the COP may have occurred during this review. Accordingly, in this review we also initiated a cost of production (COP) analysis.

After computing COP, we compared it to the VAT-neutral reported home market prices net of movement charges and discounts. In accordance with section 773(b) of the Tariff Act, in determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made in substantial quantities over an extended period of time, and whether such sales were made at prices which permitted recovery of all costs within a reasonable period of time in the normal course of trade.

To satisfy the requirement of Section 773(b)(1) that below cost sales be disregarded only if made in substantial quantities, we applied the following methodology. For each model for which less than 10 percent, by quantity, of the home market sales during the POR were made a prices below COP, we included all sales of that model in the computation of FMV. For each model for which 10 percent or more, but less than 90 percent, of the home market sales during the POR were priced below COP, we excluded those sales priced below COP, provided that they were made over an extended period of time. For each model for which 90 percent of more of the home market sales during the POR were priced below COP and made over an extended period of time, we disregarded all sales of that model in our calculation and, in accordance with 773(b) of the Tariff Act, we used the constructed value (CV) of those models, as described below. *See e.g., Mechanical Transfer Presses from Japan, Final Results Antidumping Duty Administrative Review,* 59 FR 9958 (March 2, 1994).

In accordance with section 773(b)(1) of the Tariff Act, to determine whether sales below cost had been made over an extended period of time, we compared the number of months in which sales below cost occurred for a particular model to the number of months which that model was sold. If a model was sold in three or more months, we did not disregard below-cost sales unless there were sales below cost in at least three of the months in which the model was sold. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Review,* 58 FR 64720, 64729 (December 8, 1993).

Because Cinsa provided no indication that its below-cost sales were at prices that would permit recovery of all costs within a reasonable period time and in the normal course of trade, we disregarded those sales of models within the ''10 to 90 percent'' category which were made below cost over an extended period of time. In addition, we based FMV on CV for all U.S. sales for which there were insufficient sales of the home market model at or above COP.

Foreign Market Value

In calculating foreign market value (FMV) for Cinsa, the Department used home market price, as defined in section 773 of the Tariff Act, when sufficient quantities of such or similar merchandise were sold in the home market, at or above the cost of production (COP), to provide a basis of comparison. Home market price was based on the packed, ex-factory or

delivered price to unrelated purchasers in the home market.

We made deductions, where appropriate, for discounts, freight, and direct selling expenses. Since packing expenses were the same in both market we made no adjustments for packing. We also made a circumstance-of-sale adjustment, where appropriate, for differences in credit expenses and commissions.

We made difference-in-merchandise adjustments, where appropriate, based on differences in the variable cost of manufacture. Finally, we adjusted for Mexican consumption taxes in accordance with our decision in *Silicomanganese from Venezuela, Preliminary Determination of Sales at Less Than Fair Value, 59 FR 31204, June 17, 1994.*

No other adjustments were claimed or allowed.

We used constructed value for models for which there were insufficient home market sales at or above the COP. Constructed value consisted of the sum of materials, fabrication, overhead, general expenses, profit, and U.S. packing. In accordance with section 773(e)(1)(B), we used the actual amount of general expenses because these amounts were more than the statutory minimum of ten percent. We used eight percent for profit because Cinsa's profit was less than the statutory minimum of eight percent.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following margins exist for the period December 1, 1993, through November 30, 1994:

Manufacturer/Producer/Exporter	Margin Percent
Cinsa	6.36

Parties to the proceeding may request disclosure within 5 days and interested parties may request a hearing not later than 10 days after publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 7 days after the time limit for filing case briefs. Any hearing, if requested, will be held 7 days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.38(e). Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in any event not later than the date the case briefs, under 19 CFR 353.38(c), are due. The Department will publish the final results of its analysis of issues raised in a case or rebuttal brief or at a hearing.

Upon completion of the final results in this review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review.

Furthermore, the following deposit requirements will be effective upon publication of our final results of review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after that publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act:

(1) The cash deposit rate for the reviewed company will be those rates established in the final results of this review;

(2) The cash deposit rate for subject merchandise exported by manufacturers or exporters not covered in this review, but covered in previous reviews or in the original LTFV investigation, will be based upon the most recently published rate in a final result or determination for which the manufacturer or exporter received a company-specific rate;

(3) The cash deposit rate for subject merchandise exported by an exporter not covered in this review, a prior review, or the original investigation, but where the manufacturer of the merchandise has been covered by this or a prior final results or determination, will be based upon the most recently published company-specific rate for that manufacturer; and

(4) The cash deposit rate for merchandise exported by all other manufacturers and exporters, who are not covered by these or any previous administrative review conducted by the Department, will be the ''all others'' rate established in the less than fair value investigation.

Because this proceeding is governed by an antidumping duty order, the ''all others'' rate will be 29.52 percent, the ''all others'' rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

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 Act and 19 CFR 353.22.

Dated: November 9, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–28732 Filed 11–22–95; 8:45 am]

BILLING CODE 3510–DS–P

[A–479–601]

Tapered Roller Bearings From Yugoslavia, Revocation of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of revocation of antidumping duty order.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its revocation of the antidumping duty order on tapered roller bearings from Yugoslavia because it is no longer of any interest to domestic interested parties.

EFFECTIVE DATE: November 24, 1995.

FOR FURTHER INFORMATION CONTACT: Kris Campbell or Michael Panfeld, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–3813.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke an antidumping duty order if the Secretary concludes that the duty order is no longer of any interest to domestic interested parties. We conclude that there is no interest in an antidumping duty order when no interested party has requested an administrative review for five consecutive review periods and when no domestic interested party objects to revocation (19 CFR 353.25(d)(4)(iii)).

On August 1, 1995, the Department published in the Federal Register (60 FR 39153) its notice of intent to revoke the antidumping duty order on tapered roller bearings from Yugoslavia (August 14, 1987). Additionally, as required by 19 CFR 353.25(d)(4)(ii), the Department served written notice of its intent to revoke this antidumping duty order on each domestic interested party on the service list. Domestic interested parties who might object to the revocation were provided the opportunity to submit their comments not later than the last day of the anniversary month.

In this case, we received no requests for review for five consecutive review periods. Furthermore, no domestic interested party, as defined under § 353.2 (k)(3), (k)(4), (k)(5), or (k)(6) of the Department's regulations, has expressed opposition to revocation. Based on these facts, we have concluded that the antidumping duty order on tapered roller bearings from Yugoslavia is no longer of any interest to interested parties. Accordingly, we are revoking this antidumping duty order in accordance with 19 CFR 353.25(d)(4)(iii).

Scope of the Order

Imports covered by the revocation are shipments of tapered roller bearings from the territory within the geographical boundries of Yugoslavia at the time the order was issued. This merchandise is currently classifiable under Harmonized Tariff Schedules (HTS) item numbers 8482.20.00, 8482.91.00.50, 8482.91.00.60, 8482.99.15, 8482.99.30, 8482.99.35, 8482.99.45, 8482.99.65.90, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.70.60.60, 8708.99.24, 8708.99.40.00, 8708.99.49.60, 8708.99.80.15, and 8708.99.80.80. The HTS numbers are provided for convenience and customs purposes. The written description remains dispositive.

This revocation applies to all unliquidated entries of tapered roller bearings (from the territory within the geographical boundries of Yugoslavia at the time the order was issued) entered, or withdrawn from warehouse, for consumption on or after August 1, 1995. Entries made during the period August 1, 1994, through July 31, 1995, will be subject to automatic assessment in accordance with 19 CFR 353.22(e). The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after August 1, 1995, without regard to antidumping duties, and to refund any estimated antidumping duties collected with respect to those entries. This notice is in accordance with 19 CFR 353.25(d).

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–28733 Filed 11–22–95; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

Monterey Bay National Marine Sanctuary Advisory Council; Open Meeting

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Monterey Bay National Marine Sanctuary Advisory Council Open Meeting.

SUMMARY: The Advisory Council was established in December 1993 to advise NOAA's Sanctuaries and Reserves Division regarding the management of the Monterey Bay National Marine Sanctuary. The Advisory Council was convened under the National Marine Sanctuaries Act.

TIME AND PLACE: Friday, December 1, 1995, from 9:00 until 3:00. The meeting will be held at the Hudson House on Point Lobos State Reserve, Highway One, Carmel, California.

AGENDA: General issues related to the Monterey Bay National Marine Sanctuary are expected to be discussed, including an update from the Sanctuary Manager, reports from the working groups, a review of Advisory Council proposal endorsement policies, and a discussion about the Central California Regional Water Recycling Project.

PUBLIC PARTICIPATION: The meeting will be open to the public. Seats will be available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Jane Delay at (408) 647–4246 or Elizabeth Moore at (301) 713–3141.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: November 16, 1995.

David L. Evans,

Acting Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 95–28557 Filed 11–22–95; 8:45 am]

BILLING CODE 3510–08–M

COMMODITY FUTURES TRADING COMMISSION

Advisory; Customer Orders

AGENCY: Commodity Futures Trading Commission.

ACTION: Advisory.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is issuing an Advisory concerning customer orders transmitted to and reported from exchange trading pits in an extremely rapid manner. The purpose of this Advisory is to inform the exchanges that, for such orders, an exchange will be deemed to have demonstrated good faith towards meeting the objectives of Section 5a(b)(3) of the Commodity Exchange Act (''Act''), provided that certain recordkeeping and enforcement provisions are met.

DATES: The Advisory is to be effective January 23, 1996.

FOR FURTHER INFORMATION CONTACT: De' Ana H. Dow, Special Counsel, or Rachel F. Berdansky, Attorney/Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Telephone: (202) 418–5490.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission is hereby issuing guidance concerning all customer orders that are transmitted to and reported from the trading pit in an extremely rapid manner through hand signals or verbally (''flashed orders''). An exchange must satisfy the standards set forth in this Advisory to demonstrate compliance with Commission Regulation 1.35(a–1)(2)(i) and 1.35(a–1)(4), as well as good faith compliance with Section 5a(b)(3).

Commission Regulation 1.35(a–1)(2)(i) and 1.35(a–1)(4) provides that order tickets, among other things, must be timed upon receipt on the trading floor (''entry time'') and when the execution price is reported from the floor (''exit time''). Section 5a(b)(3) of the Act sets forth heightened audit trail standards, including a heightened audit trail for customer orders. The enhanced standards go into effect in October 1995, in accordance with the terms thereof.

The Commission has taken several steps with respect to implementation of Section 5a(b)(3) of the Act. Specifically, the Commission issued a Report to Congress on Futures Exchange Audit Trails that assessed the progress of each exchange in complying with current and future audit trail requirements, and

stated that improvements to existing audit trail systems could demonstrate good faith efforts to comply with enhanced audit trail requirements. The Commission also has completed comprehensive testing on four large exchanges to determine, among other things, the status of their audit trails towards meeting the enhanced trade timing and sequencing standards. Based on the test results, each of those exchanges has been informed as to the specific actions that would be needed to demonstrate good faith towards meeting Section 5a(b)(3). In addition, the Commission evaluates exchange systems on a routine basis when conducting rule enforcement reviews. As mandated by Section 5a(b)(5)(A)(i) of the Act, the Commission is in the process of exempting from the requirements of Section 5a(b)(3), small exchanges that have effective trade monitoring systems.

This Advisory on flashed orders is a further step towards achieving exchange compliance with existing statutory and regulatory requirements. The Commission is concerned that the exchanges sometimes are not adequately enforcing the requirements with respect to flashed orders. Among other things, Commission staff has identified instances in which an entry timestamp apparently was recorded after an order was flashed, resulting in an inconsistency between the order ticket timestamp and the pertinent time and sales print. Such action is a direct violation of Commission Regulation 1.35(a–1)(2)(i), which specifically requires that an entry timestamp be recorded on an order ticket before the order is flashed to a broker.

II. Current Flashed Order Practices

The Commission has observed that the precise mechanics involved in flashing orders vary from firm to firm and exchange to exchange. For example, in Chicago, where flashing is most common, flashed orders usually are transmitted to the floor broker by hand-signal.[1] In New York, most flashed orders are transmitted through verbal communication. There is also some variation in how exchanges define flashed orders. Specifically, one exchange considers all orders hand-signalled into a trading pit to be flashed orders, while another exchange considers only those orders that are hand-signalled into the trading pit immediately upon receipt at the trading desk to be flashed orders. Further, not all exchanges currently have recordkeeping procedures to distinguish flashed orders from other paper orders for audit trail purposes.

In the recent notification by the Commission to the CBT and CME concerning the audit trail test results, the Commission recommended, among other things, that each Exchange require a trade submission indicator for flashed orders. Both Exchanges now require clearing firms to enter a special indicator into the clearing system for flashed orders. The Commission also recommended that the Exchanges aggressively enforce timestamping procedures for flashed orders. The Commission has not made similar recordkeeping or enforcement recommendations for the New York exchanges, where flashed orders are much less common. However, because of the Commission's concern that the exchanges are not always rigorously enforcing existing timestamp requirements for flashed orders, the Commission is setting forth in this Advisory its interpretation of relevant audit trail requirements and its expectations for all exchanges subject to Section 5a(b)(3) of the Act.

III. Standards for Flashed Orders to Comply With the Objectives of Section 5a(b)(3) of the Act

Any exchange subject to Section 5a(b)(3) of the Act, seeking to have its audit trail deemed in good faith compliance with Section 5a(b)(3), must assure compliance with the following standards:

(1) In accordance with Commission Regulation 1.35(a–1)(2)(i), an entry timestamp must be recorded on an order ticket before an order is flashed into a trading pit.

(2) In accordance with Commission regulation 1.35(a–1)(4), upon report of an order fill from the trading pit, an exit timestamp must be immediately recorded on the corresponding order ticket.

(3) Each flashed order must be identified as a flashed order on the corresponding order ticket. Identification of these orders will distinguish them from other paper orders and improve the audit trail for flashed orders.[2]

(4) Maintain effective surveillance and enforcement procedures, including without limitation, floor surveillance, periodic review of trading documents, and disciplinary action as necessary.

(5) Order tickets must accurately reflect the customer's instructions when received, including whether the order is a market or price order.

Dated: November 16, 1995.

By the Commission:

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 95–28700 Filed 11–22–95; 8:45 am]

BILLING CODE 6351–01–M

[1] Flashing is most prevalent in the Chicago financial markets because of the need for instantaneous trade execution. Trading in the financial markets on the Chicago exchanges comprises 67 percent of all trading volume in the United States and 49 percent of all world volume. The CBT has stated that nearly 100 percent of the customer orders executed in its financial markets are flashed to the broker. Similarly, the CME estimates that 80–100 percent of the customer orders in its interest rate markets and 60–80 percent of customer orders in its currency markets are flashed.

[2] The Commission believes that identification of flashed orders on the trade register required under Commission Regulation 1.35(e) would further enhance the audit trail and exchange trade surveillance, and thus, should be a goal of all exchanges subject to Section 5a(b)(3) of the Act.

Chicago Mercantile Exchange Options on the Butter Futures Contract, and Amendments to the Dormant Butter Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of a proposed commodity option contract and amendments to the underlying futures contract.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has applied for designation as a contract market in options on its butter futures contract. In addition, the CME proposes to amend the dormant butter futures contract that would underlie the proposed contract, and it has filed a request to list butter futures and option contracts. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before December 26, 1995.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CME butter futures option contract and the request to reactivate trading in the butter futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact Fred Linse of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW., Washington, DC 20581, telephone 202–418–5273.

SUPPLEMENTARY INFORMATION: The amended butter futures contract would call for the delivery of 40,000 pounds of Grade AA fresh or storage butter, packaged to conform to the requirements of the Commodity Credit Corporation for bulk butter, in carload lots containing only 25-kilogram or 68-pound net capacity boxes. Butter would be deliverable in store in Exchange-approved warehouses (not including plant storage facilities) within the 48 contiguous states. Delivery would be at par in Chicago and at location differentials to be determined by the Exchange at locations outside Chicago.

Trading would be conducted in the contract months of January, March, May, July, September, and November. Prices would be quoted in dollars and cents per pound. The minimum price fluctuation would be $0.00025 per pound. The maximum price fluctuation would be $0.025 per pound, which could be expanded to $0.05 per pound under certain conditions.

Delivery could be made on any business day of the contract month on or after the third business day following the first Friday of the contract month. Trading in an expiring contract month would end on the business day immediately preceding the last five business days of that month.

Butter options would trade in the same months as the futures contract, but would expire on the first Friday of the contract month. Thus, delivery on the futures contract would not be made until after the corresponding option had expired. Strike prices for the option would be listed at 2¢ per pound intervals above and below the previous day's closing price.

Speculative traders of the futures and option contracts would be subject to a combined position limit of 900 futures and futures equivalent option contracts net long or short in any contract month. In addition, futures positions held by speculative traders after the first Friday of expiring contract months would be subject to a limit of 300 contracts.

Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW., Washington, DC. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5097.

Other materials submitted by the CME may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CME, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on November 15, 1995.

John R. Mielke,

Acting Director.

[FR Doc. 95–28701 Filed 11–22–95; 8:45 am]

BILLING CODE 6351–01–P

New York Mercantile Exchange Proposed Futures Contract in Permian Basin Natural Gas

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity options contract.

SUMMARY: The Commodity Futures Trading Commission previously published in the Federal Register a proposal of the New York Mercantile Exchange (NYMEX or Exchange) for designation as a contract market in Permian Basin natural gas futures (60 *Fed. Reg.* 53913). The Commission has determined, in this instance, to extend the comment period.

DATE: Comments must be received on or before December 18, 1995.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Reference should be made to the NYMEX Permian Basin natural gas futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact Richard Shilts of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, telephone 202–418–5275.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5097.

Other materials submitted by the NYMEX in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the NYMEX, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on November 16, 1995.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–28702 Filed 11–22–95; 8:45 am]

BILLING CODE 6351–01–M

Customer Orders

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is defining a specified category of customer orders transmitted to and reported from exchange trading pits in an extremely rapid manner. With regard to such orders, an exchange can demonstrate substantial compliance with the objectives of Section 5a(b)(3)(B) of the Commodity Exchange Act (''Act'') without its audit trail recording a transmittal timestamp on the order ticket.

DATES: This Order is to be effective January 23, 1996.

FOR FURTHER INFORMATION CONTACT: De'Ana H. Dow, Special Counsel, or Rachel F. Berdansky, Attorney/Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Telephone (202) 418–5490.

SUPPLEMENTARY INFORMATION:

I. Introduction

Currently, Commission Regulation 1.35(a–1)(2)(i) requires that order tickets accurately reflect order receipt time on the trading floor (''entry time''). Similarly, Commission Regulation 1.35(a–1)(4) provides that order tickets also must accurately record a timestamp reflecting when the fill price is reported from the trading floor (''exit time'').[1] In October 1995, the heightened audit trail standards set forth in Section 5a(b)(3)(B) of the Act become effective to the extent deemed practicable by the Commission. Section 5a(b)(3)(B) includes a provision that exchanges' audit trail systems shall record, in addition to the entry and exit times already required by Commission regulation, the time that each customer order is received by a floor broker for execution (or when such order is transmitted in an extremely rapid manner to the broker).

The Commission has issued a Flashed Order Advisory (''Advisory'') that clearly sets forth the standards for customer orders that are transmitted to and reported from the trading pit in an extremely rapid manner through hand signals or verbally (''flashed orders'') to be deemed in good faith compliance with Section 5a(b)(3). The Commission has concluded that immediately executable flashed orders will not now require the additional transmittal timestamp, provided that such orders are in compliance with the Commission's Advisory and that appropriate recordkeeping and enforcement procedures are in place. Immediately executable flashed orders satisfying the Advisory's standards and the terms of this Order will be deemed in substantial compliance with the objectives of Section 5a(b)(3)(B) of the Act.

Exchanges subject to Section 5a(b)(3)(B) of the Act have informed the Commission that they cannot yet fully implement the systems necessary to capture broker receipt times on the trading floor or transmittal times for customer orders. The exchanges, however, have taken several steps in anticipation of the additional timestamp requirement. Among other things, one exchange has already expanded its computer fields and trade records in order for clearing firms to input the additional timestamp data. Further, the exchanges are pursuing the development of electronic systems, including order routing systems, and portable time clocks that eventually will provide audit trails with the capability to accurately record such broker receipt and transmittal times for all customer orders to the extent determined practicable by the Commission. The Commission intends to gather more information from the exchanges and brokers concerning their progress toward this goal and practicability. The Commission will then further assess, based on information obtained from the improved audit trail implemented by October 1995, distribution of order types (including market, limit, and stop orders), and data on order routing and booth processing systems.

II. Background

A. Legislative History

In a report to Congress prior to the enactment of the heightened audit trail standards found in Section 5a(b)(3) of the Act, the General Accounting Office (''GAO'') stated that:

> [C]omplete timing of trades, including the time the floor participant receives and executes trades, could help reconstruct the history of each trade, not only to detect potential abuses, but also to prove that they occurred.

The GAO report further stated that for audit trail purposes, it is crucial to capture the time when brokers receive customer orders because a time is then established when the floor broker assumes responsibility for promptly and competitively executing the order. GAO noted that without complete timing information, the history of each order is incomplete. GAO further stated that floor trade practice abuses could occur without detection and customers could be defrauded.[2]

In addition, a futures commission merchant (''FCM'') testified before the Senate Committee on Agriculture, Nutrition, and Forestry in support of capturing broker receipt times:

> [T]he biggest problem with audit trail isn't when did the order get filled. The biggest question we have is * * * what exact moment in time did the broker get the order? That's the key ingredient to a better audit trail.[3]

The FCM explained that efforts to determine the accuracy of customer fills are impeded by the window of time between when an order reaches the floor and is executed, which is generally about two minutes but can range up to three and one-half minutes.

The Futures Industry Association (''FIA'') also testified before the Senate Committee on Agriculture, Nutrition and Forestry in general support of the enhanced audit trail standards. However, the FIA expressed concern that the new standards effectively would eliminate order entry methods such as ''flashing'' orders.[4] Congress responded to this concern and adopted the specific language found in Section 5a(b)(3)(B) of the Act addressing rapidly transmitted orders. Second 5a(b)(3)(B) of the Act, specifically provides that for customer trades, among other things, exchange audit trails must record the entry and exit time for each order and the time that each order ''is received by the floor broker for execution *(or when such order is transmitted in an extremely rapid manner to the broker)* * * *'' (emphasis added).[5] Thus, for flashed orders, audit trails can capture transmittal time at the floor trading desk rather than broker receipt time.

The Commission believes that the broker receipt or transmittal timestamp would add a valuable component to exchanges' audit trails. This information would assist in market reconstruction for trade practice investigation purposes, particularly in identifying dual trading-related abuses such as trading ahead of customer orders, and resolving customer complaints about bad fills. The additional time also would narrow the timing window within which a trade execution could have occurred, thus providing another

[1] These entry and exit timestamp requirements now are codified under Section 5a(b)(3)(B) of the Act.

[2] Futures Markets—Strengthening Trade Practice Oversight, United States General Accounting Office Report to the Chairman and the Ranking Minority Member, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate (September 1989).

[3] Hearings on S. 1729 before the Senate Committee on Agriculture, Nutrition, and Forestry, 101st Cong., 1st Sess. (1989) (statement of Barry J. Lind, Chairman of Lind-Waldock & Company).

[4] *Id.* (Statement of John M. Damgrad, President, FIA). The order entry method is quite different for paper orders and flashed orders. A paper order is written down by a phone clerk and taken by a runner to a broker in the trading pit. Paper orders are filled when the market hits the appropriate price, consistent with the written order instructions. Flashed orders also are written down on order tickets by a phone clerk but are hand-signalled or shouted into the pit to a broker or his clerk, and the order usually is filled immediately.

[5] Without the parenthetical in Section 5a(b)(3)(B) of the Act, it would be difficult, if not impossible, for audit trails to capture broker receipt time for orders that are rapidly transmitted via hand-signal or verbally to a floor broker. Because the order ticket will remain at a floor trading desk until after execution, the floor broker cannot record order receipt time contemporaneously on the written order.

means of verifying the accuracy of one-minute execution times.

The legislative history of Section 5a(b)(3) of the Act contemplates that flashed orders can meet the objectives of Section 5a(b)(3)(B) without the additional transmittal timestamp. The same FCM who testified concerning the importance of recording broker receipt times, also testified that it is critical to distinguish between conventional paper orders and flashed orders because flashed orders present few audit trail problems due to the speed at which they are filled. For such orders, the FCM believed that order entry and order fill are likely to occur in the same minute.

The FCM further testified that a second or a few seconds can be critical in a fast-moving market and that an additional timestamping requirement could have a negative impact on customers and the futures market by reducing the speed and liquidity that are well-established advantages of the futures markets.[6] Section 5a(b)(5)(A)(ii) of the Act, therefore, requires that the Commission afford special treatment to flashed orders to the extent that substantial compliance with the objectives of Section 5(a)(b)(3) can otherwise be achieved.

B. Immediately Executable Flashed Orders

The Commission has determined that flashed orders that are immediately executable are capable of substantial compliance with the objectives of Section 5a(b)(3)(B) of the Act without an exchange's audit trail recording the transmittal time on an order ticket. Provided that, those exchanges where brokers do not record customer fill information on sequenced trading cards must require that any trade record prepared by a broker or his clerk reflecting the fill for flashed orders and the order ticket be retained together.[7]

Flashed orders permit firms to relay customer orders into, and order fills out of, trading pits in an extremely rapid fashion. In most cases where flashed orders are immediately executable, the entry time, the time the order is flashed and received by the floor broker, and the execution time should be virtually contemporaneous. Thus, the ''immediately executable'' requirement ensures that the orders are executed within a very narrow time window and obviates the need for an additional timestamp.[8]

''Immediately executable'' is intended to encompass only those flashed orders that are transmitted as a whole to a single broker and are immediately executed. This definition of ''immediately executable'' is intended to include a flashed order executed opposite multiple brokers or traders, provided that all portions of the order are immediately executed.[9] Further, a flashed order partially filled according to the customer's original instructions and the remaining portion executed immediately pursuant to new instructions would be within the scope of this Order.[10]

Order Relating to Flashed Orders: The Commission's Flashed Order Advisory provides guidance concerning the necessary elements for a flashed order to be deemed in good faith compliance with Section 5a(b)(3). The Commission has now determined that an exchange's audit trail system can demonstrate substantial compliance with the objectives of Section 5a(b)(3)(B) of the Act for immediately executable flashed orders.

Accordingly, the Commission Hereby Orders:

That it is appropriate to find that an exchange subject to Section 5a(b)(3) of the Act is in substantial compliance with the objectives of Section 5a(b)(3)(B), without requiring the additional transmittal timestamp, for those flashed orders that are:

(1) Capable of immediate execution when received at a floor trading desk;

(2) Immediately transmitted from a floor trading desk to a floor broker or floor broker's clerk in a trading pit through hand signals or verbal communication; and

(3) Filled immediately upon receipt by the floor broker receiving the order.

Provided that, the exchange meets the current audit trail standards under Section 5a(b)(2) of the Act, complies with the standards set forth in the Commission's Flashed Order Advisory, and ensures that trade records prepared by a broker or his clerk reflecting order fill are retained together with the order ticket.

The Commission will be providing further guidance concerning the practicability of requiring the additional broker receipt or transmittal timestamp referred to in Section 5a(b)(3)(B) of the Act for types of customer orders other than those addressed by this Order. The Commission's guidance will be based upon its review of exchange practices, as well as information the Commission expects to obtain concerning the current status of order routing systems and practicability as a result of the exchanges' good faith implementation of the October 1995 enhanced audit trail standards.[11]

Dated: November 16, 1995.

By the Commission:

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 95–28699 Filed 11–22–95; 8:45 am]

BILLING CODE 6351–01–M

[6] Hearings on S. 1729, *supra* note 4 to 4.

[7] Retaining such trade records together with the order ticket will provide a complete record of how the order was filled and will assist exchanges, as well as Commission staff, in reconstructing trades as needed for trade practice investigations.

[8] Both the entry time and the transmittal time for immediately executable flashed orders are analogous to the time that a written order is received by a floor broker for execution.

[9] Thus, flashed orders that are filled in increments over a period of time will not come within this Order. Without the additional timestamp, the audit trail for such orders would be impaired because it would be difficult to relate particular timestamps to the time at which a broker received a specific portion of the order to execute.

Orders that are held at the trading desk and then flashed when the market reaches the desired price also are excluded from this Order. Of course, for such orders, the initial retention at the trading desk must be in accordance with their terms. The enhanced order ticket timestamping requirement for such orders will be addressed at a later time.

[10] For example, an order for fifty contracts could be flashed into the pit to be purchased at a particular price which is near the prevailing market price. The broker may only fill forty contracts at that price before the market moves. Upon flash of that fill to the desk, the remaining ten contracts are then flashed back into the pit at the new price, executed and flashed back to the desk. If this all occurs virtually instantaneously, these transactions will be within the scope of this Order.

Further, flashed orders that are flashed back to the desk as completely unfilled which are then immediately flashed back to the pit with new instructions also would be considered ''immediately executable'' for purposes of this Order.

[11] As part of the Commission's effort to implement Section 5a(b)(3) of the Act, it has already gathered information on order routing systems and the progress of the exchanges towards implementing those systems.

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Grant an Exclusive Patent License

Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96–517, the Department of the Air Force announces its intention to grant Lawrence Systems, Inc., a corporation of the State of Ohio, an exclusive license under: United States Patent Application Serial No. 08/481,945 filed in the name of Lawrence Jacknin et al for a ''Virtual Navigator, An Inertial Angular Measurement System.''

The license described above will be granted unless an objection thereto,

together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within sixty (60) days from the date of publication of this notice. Copies of the patent application may be obtained, on request, from the same addressee.

All communications concerning this notice should be sent to: Mr. Samuel B. Smith, Jr., Chief, Intellectual Property Branch, Commercial Litigation Division, Air Force Legal Services Agency, AFLSA/JACNP, 1501 Wilson Blvd., Suite 805, Arlington, VA 22209–2403, telephone (703) 696–9050.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–28651 Filed 11–22–95; 8:45 am]

BILLING CODE 3910–01–P

Department of the Army

Proposal To Change Items 85 and 90 in the Military Traffic Management Command Freight Traffic Rules Publication 1A (MFTRP–1A) Governing Carrier's Entitlement to Detention Charges

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice of proposed change.

SUMMARY: The Military Traffic Management Command is proposing changes to Items 85 and 90 in the Military Traffic Management Command Freight Traffic Rules Publication 1A (MFTRP–1A) governing carrier's entitlement to detention charges. The changes increase the amount of free time available for loading or unloading and state when free time shall begin and how detention is properly documented.

DATES: Comments must be submitted on or before December 26, 1995.

ADDRESSES: All comments concerning the proposed rule changes should be addressed to Headquarters, Military Traffic Management Command, ATTN: MTOP–T–NI, Room 621, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Leon N. Patton, Jr., or John Alexander, (703) 681–6871.

SUPPLEMENTARY INFORMATION: Military shippers have requested that detention rules require detention to be documented by the carrier and the installation. The purpose of this is to avoid billing problems. Military shippers have also requested that carriers provide more free time, up to 7 hours, to reduce the number of detention instances. The proposed rules below implement these changes. New material is marked between left and right arrows (⧫ ⧫). Deleted material is marked between left and right brackets ([ ]). The proposed rule changes, if finalized, will be published in a future revision of MFTRP–1A.

ITEM 85 DETENTION: VEHICLES WITH POWER UNITS (DP)

(See NOTES 1 and 2 herein and NOTE 2, ITEM 90)

When carrier's vehicle with power unit (straight truck, tractor-trailer combination, or dromedary box) is delayed or detained for loading or unloading on the premises of consignor, consignee, or other premises approved by them, and such delay or detainment is attributable to the consignor or consignee, the shipment (or the combined weight of multiple shipments) being loaded or unloaded will be subject to the following provisions:

1. Free time: Carriers will allow the free time periods listed below for loading or unloading carrier's vehicle:

Type of shipment(s)	Free time
a. Vehicles loaded on Motor Vehicle Transport Trailers (Equipment Code A20)	1 hour (waiting time to begin loading or unloading).
b. Vehicles loaded on flat-bed equipment	3 hours.
c. Fully palletized shipments, 20,000 lbs. and over	2 hours (Note 1).
Actual weight in pounds per vehicle stop, not palletized, subject to Note 1:	
d. Less than 3,000 lbs.	1 hour.
e. 3,000 lbs. but less than 10,000 lbs.	2 hours.
f. 10,000 lbs. but less than 20,000 lbs.	3 hours.
g. 20,000 lbs. ⧫but less than 28,000 lbs.	4 hours.⧫
⧫h. 28,000 lbs. but less than 36,000 lbs.⧫	5 hours.
⧫i 36,000 lbs. but less than 44,000	6 hours.⧫
⧫j. 44,000 lbs. and over	7 hours⧫.

[Free time shall begin from the time carrier's employee notifies a responsible representative of the consignor or consignee that the vehicle is available and ready for loading or unloading, and it is within the consignor's or consignee's normal operating hours, or acceptance hours as annotated on the bill of lading.]

⧫2. Free time shall begin when the following three conditions are met:⧫

⧫a. The vehicle is cleared and approved (inspection and administrative) for loading and unloading,⧫

⧫b. the vehicle is positioned at the loading/unloading dock, and⧫

⧫c. it is within the consignor's or consignee's normal operating hours as published or acceptance hours as annotated on the bill of lading.⧫

The computation of time, in paragraph (1) above, is to be made within the normal business (shipping) day at the designated premises at the place of pickup or delivery, except if a carrier or its representative is permitted to work beyond this period, such working time shall also be included. When loading or unloading is not completed at the end of such day, time will be resumed at the beginning of the next work day, or when work the next day is actually begun by the carrier or its representative, if earlier.

[A shipment will be considered as ''fully pallatized'' when at least 90% of the shipment weight (exclusive of pallet weight) is loaded on pallets.]

⧫When a scheduled time has been designated for the carrier's equipment to begin loading and the carrier arrives late, without prior notification to the consignor, the free time will not begin until an equal amount of time has passed; e.g., the carrier was supposed to be there at 0800; arrived at 1100; free time would start at 1400. Maximum detention paid for a late arriving carrier will be limited to 2 hours per day regardless of actual weight of the shipment.⧫

⧫3. Charges:⧫ If loading or unloading extends beyond the allowable free time, the charge will be ⧫(in dollar and cents)

DP (1)$. ◀ for each hour, or fraction thereof, the vehicle is delayed beyond the allowable free time, until released by the shipper or consignee. Detention charges provided herein will be assessed during normal business hours only.

4. This rule will also apply: When shipper or consignee requires that the tractor be disconnected from the trailer during loading or unloading, and parked elsewhere on the shipper's or consignee's premises; or when shipper or consignee directs that the trailer be left overnight and the tractor be parked at other than shipper's or consignee's premises.

▶5. Documented Detention: Detention must be documented when it occurs by the carrier's representative and the installation Transportation Officer responsible. This must be accomplished prior to the driver exiting the installation following either pick-up or delivery of freight. A copy of the documentation will be forwarded along with the invoice for payment. Carrier must provide form for documentation which will include as a minimum:◀

▶a. Government bill of lading and/or carrier's freight waybill number(s).◀

▶b. Signatures of carrier and installation Transportation Officers.◀

▶c. Vehicle identification numbers including tractor and trailer numbers as applicable.◀

▶d. Exact date and time the vehicle was spotted for loading or unloading and date and time the vehicle was released to the driver.◀

▶e. Shipment weight, whether shipment is palletized and percent palletized, and whether material handling equipment was used by installation if applicable.◀

▶f. Reason for the delay.◀

Note 1: If ▶90% or more of◀ the material (boxes, crates, pieces, parts, etc.) comprising [the] ▶a◀ nonpalletized shipment is unloaded or loaded by pallet jack, fork lift, or other type of material handling equipment—without use of pallets—then the free time allowed [(not to exceed 2 hours)] will be one-half of the free time allowed for shipments not palletized ▶or 3.5 hours, whichever is less.◀ [To be eligible for this exception, at least 90% of the weight must be loaded or unloaded in the manner described.] Fully palletized shipments weighing less than [20,000] ▶44,000◀ pounds will be allowed one-half the free time in 1(d), 1(e), 1(f), ▶1(g), 1(h), 1(i), or 1(j). However, in no case will free time for loading or unloading explosive shipments be less than one hour.◀

Note 2: [Authorization for waiver of charges (effective December 17, 1986) contained in interim change letter dated December 23, 1986, is now contained in ITEM 10 of this publication. ITEM 85 amendments filed according to this letter do not have to be refiled to conform with the revised instructions in ITEM 10, unless a carrier wishes to do so.] ▶A shipment will be considered as ''fully palletized'' when at least 90% of the shipment weight (exclusive of pallet weight) is loaded on pallets.◀

ITEM 90—DETENTION: VEHICLES WITHOUT POWER UNITS (DW)

(See NOTES 1 and 2)

Subject to the availability of equipment and carrier's approval, carriers may spot vehicles without power units (empty or loaded trailers) for loading or unloading on the premises of the consignor or consignee, or on other premises designated by them. When such vehicles are delayed or detained, and the delay is attributed to the consignor or consignee, the shipment (or the combined weight of multiple shipments) being loaded or unloaded will be subject to the following provisions:

1. Free time:

(a) Trailers spotted for loading or unloading will be allowed 24 hours of free time for loading/unloading, which will commence when the trailer is spotted for loading or unloading.

(b) When any portion of the free time extends into a Saturday, Sunday or holiday, the computation of free time will resume at 12:01 a.m. on the next day which is neither a Saturday, Sunday or holiday.

(c) Free time shall not begin on a Saturday, Sunday or holiday, but at 8:00 a.m. on the next work day which is not a Saturday, Sunday, or holiday.

2. Dual transactions: When a trailer is both unloaded and reloaded, each transaction will be treated independently of the other. Free time for loading shall not begin until free time for unloading has elapsed.

3. End of detention: Detention will end when consignor or consignee notifies carrier by telephone that loading or unloading has been completed and that the trailer is available for pickup.

[a. After loading/unloading has been complete and the carrier has been notified, carrier must connect and pull his equipment in a timely manner. Carrier's equipment is considered released after carrier has been notified by the shipper or consignee.]

[b. If loading/unloading has not extended beyond the free time, but the carrier has failed to connect and move his equipment in a timely manner after being notified by the consignor or consignee, neither consignor nor consignee will not be subject to any detention charges. Also, carriers credits earned on equipment held cannot be used by the carrier to offset debits chargeable on his equipment awaiting to be moved.]

4. Charges: Charges for detention of vehicles without power units will be:

a. For each of the first and second 24-hour periods or fraction thereof that vehicle is detained beyond the allowable free time, the charge will be ▶(in dollars and cents) DW(1)$. ◀ per 24-hour day or fraction thereof.

b. For each of the third and fourth 24-hour periods or fraction thereof that vehicle is detained beyond the allowable free time, the charge will be ▶(in dollars and cents) DW(2)$. ◀ per 24-hour day or fraction thereof. For the fifth and each succeeding 24-hour period or fraction thereof that vehicle is detained beyond allowable free time, the charge will be ▶ (in dollars and cents) DW(3)$. ◀ per 24-hour day or fraction thereof.

▶5. Documented Detention: Detention must be documented, when it occurs by the carrier's representative and the installation responsible. This must be accomplished prior to the driver exiting the installation, following either pick-up or delivery of freight. A copy of the documentation will be forwarded along with the invoice for payment. The documentation will include as a minimum:◀

▶a. Government bill of lading and/or carrier's freight waybill number(s).◀

▶b. Signatures of carrier and installation Transportation Officers.◀

▶c. Vehicle identification numbers including tractor and trailer numbers as applicable.◀

▶d. Exact date and time the vehicle was spotted on the premises for loading or unloading and date and time the carrier was notified that the vehicle was released for pickup.◀

▶e. Shipment weight, whether shipment is palletized and percent palletized, and whether material handling equipment was used by installation if applicable.◀

▶f. Reason for the delay.◀

Note 1: Certain Government installations have specific agreements for storing and relocating carrier equipment for loading and unloading and/or detention charges. (See ITEMS 600 and 605 for application)

Note 2: Installations incurring charges under ITEMS 85 and/or ITEM 90 will be billed direct. SEE ITEM 78 herein.

[Note 3: Authorization for waiver of charges (effective December 17, 1986) contained in interim change letter dated December 23, 1986, is now contained in ITEM 10 of this publication. ITEM 85 amendments filed according to this letter do not have to be refiled to confirm with the

revised instruction in ITEM 10, unless a carrier wishes to do so.]

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–28588 Filed 11–22–95; 8:45 am]

BILLING CODE 3710–08–P

Transloading Shipments of Arms, Ammunition, and Explosives

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice of proposed rule change.

SUMMARY: The Military Traffic Management Command is proposing to change Item 48 in the Military Traffic Management Command Freight Traffic Rules Publication 1A (MFTRP 1A) to read as follows:

''Transloading shipments of Division 1.1, 1.2, and 1.3 ammunition and explosives will be conducted as follows:

a. Truckload shipments will not be off-loaded or transferred to another vehicle enroute, except in emergencies (as defined in 49 CFR 390.5).

b. Loading and unloading of less-than-truckload (LTL) shipments of Division 1.1, 1.2, and 1.3 ammunition and explosives will be accomplished only in a carrier terminal. For the purposes of this rule, a carrier terminal is defined as one which is equipped to safely handle the loading and unloading of Division 1.1, 1.2, and 1.3 ammunition and explosives from a commercial motor vehicle. In addition, when the transloading of Division 1.1, 1.2, and 1.3 ammunition and explosives occurs at a carrier terminal other than that of the carrier of record, as indicated on the Government Bill of Lading, prior written approval must be received from a company official or the carrier terminal manager. All Federal, State, and local guidelines for handling Division 1.1, 1.2, and 1.3 ammunition and explosives will apply when transloading occurs. The carrier accepts liability for the integrity of the shipments, to include proper blocking and bracing.

c. Transloading of ammunition and explosives on a military installation must be approved by the installation commander.''

DATES: Comments must be submitted on or before December 26, 1995.

ADDRESSES: All comments concerning the proposed rule change should be addressed to Headquarters, Military Traffic Management Command, ATTN: MTOP–QEC, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Mr. David Foreman, (703) 681–6293, Headquarters, Military Traffic Management Command, ATTN: MTOP–QEC, 5611 Columbia Pike, Falls Church, VA 22041–5050.

SUPPLEMENTARY INFORMATION: This proposed rule changes the existing rule to clarify where and under what circumstances transloading of shipments of Division 1.1, 1.2, and 1.3 ammunition and explosives is permitted. Clarification of this rule responds to concerns by munition motor carriers that the existing rule is too vague and thus difficult to follow and enforce. The objective of the proposed rule is to ensure that the handling of ammunition and explosives occurs *only* in locations where the proper equipment and facilities are available to protect the public safety. Compliance with the proposed rule will be a matter of review by MTMC safety inspection. Violation of the rule may result in administrative sanctions, to include non-use or disqualification. If approved as a final rule, the proposed rule will be published in a future revision of MFTRP 1A.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–28589 Filed 11–22–95; 8:45 am]

BILLING CODE 3710–08–M

Availability of Non-Exclusive, Exclusive, or Partially Exclusive Licensing of Infrared Flare Composition Technology

AGENCY: Picatinny Arsenal, New Jersey.

ACTION: Notice.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive, or non-exclusive licenses under the above technology. In addition, the following related patent application is available for licensing: Serial Number 08/530,403, sent for filing on 9/12/95, Docket #

DAR–42–94, by Paul Ase, Alan Snelson and Ezra Shoua. Licenses shall comply with 35 U.S.C. 209 and 37 CFR 404.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Goldberg, Chief, Intellectual Property Law Division, AMSTA–AR–GCL, U.S. Army ARDEC, Picatinny Arsenal, NJ 07806–5000, Telephone Number (201) 724–6950.

SUPPLEMENTARY INFORMATION: Written objections must be filed within 30 days from the date of publication of this notice in the Federal Register.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–28590 Filed 11–22–95; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Permit for Proposed Offshore Oil and Gas Development for the Northstar Unit in the Alaskan Beaufort Sea

AGENCY: U.S. Army Corps of Engineers, Alaska District.

ACTION: Notice of intent.

SUMMARY: The Corps is evaluating issuance of a permit to BP Exploration (Alaska), Inc. for activities to develop an off-shore oil and gas facility in State waters of the Beaufort Sea north of the Prudhoe Bay oilfields through an Environmental Impact Statement.

FOR FURTHER INFORMATION CONTACT: Ms. Terry Carpenter, Regulatory Branch, Corps of Engineers, Alaska District, Post Office Box 898, Anchorage, Alaska 99506; telephone (907) 753–2712, or in Alaska 1–(800)–478–2712.

SUPPLEMENTARY INFORMATION: BP Exploration proposes to develop the Northstar reservoir from an off-shore structure in about 40 feet of water, 2–7 miles north of the Kuparuk River Delta, and a pipeline to the shore. An on-shore pipeline would connect to existing facilities for further transportation. Placement of structures and/or fill material would require issuance of a permit under Section 10 of the Rivers and Harbor Act and Section 404 of the Clean Water Act. Other permits and authorizations may be required from the Environmental Protection Agency (EPA), the Minerals Management Service (MMS), the National Marine Fisheries Service (NMFS), the Fish and Wildlife Service (FWS), State agencies, and the North Slope Borough. BP Exploration proposes a start-up date of 1997 for construction.

A preferred alternative has not been proposed by BP Exploration. Alternatives will be identified and evaluated throughout the EIS process with a preferred alternative identified in the Draft EIS. Some options that will be considered include (1) whether produced fluids will be processed at the off-shore facility with only oil transported to shore, partially processed, or transported in 3-phase (oil, gas, water) to on-shore facilities for processing, (2) the means of transporting produced fluids (buried or drilled subsea pipeline, raised pipeline, tankering), (3) the route of a pipeline to shore, and (4) the spill-detection system to be employed. It is estimated that the DEIS will be available to the public by July 1996.

The Corps began early scoping with federal and state agencies in June 1995. EPA, the FWS, the NMFS, and MMS will be cooperating federal agencies for the EIS. State agencies, the North Slope Borough, Borough residents, and the general public will be contacted during the scoping process. A third-party contractor will prepare the EIS under direction by the Corps; the contractor is expected to be identified by December 1, 1995.

Significant issues that have been identified for the DEIS include oil spill risk and spill response plans, effects on bowhead whale migration and subsistence hunting of whales and other marine mammals, effects on denning polar bears and human interactions with polar bears, discharge of wastes from the facility that may affect air and water quality and marine food chains, navigation, and bird strikes on structures. The Corps is inviting comments from the public, agencies (Federal, State and local), Native interests, and other interested parties in order to consider and evaluate the impacts of the proposed activities.

Scoping meetings are tentatively planned for the following dates and locations:

Barrow, Alaska—late-January or February 1996

Nuiqsut, Alaska—late-January or February 1996

Anchorage, Alaska—late-January or February 1996

Fairbanks, Alaska—late-January or February 1996

Further information about these public meetings will be published locally and can be obtained by contracting the Corps as described above.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–28592 Filed 11–22–95; 8:45 am]

BILLING CODE 3710–NL–M

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Mississippi River Sediment Nutrient and Freshwater Redistribution Feasibility Study; Louisiana

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent to prepare a DEIS.

SUMMARY: This study will investigate the Federal involvement in the redistribution of Mississippi River flows at various locations between the Old River Control Structure and Head of Passes. River water will provide sediments, nutrients, and freshwater to offset wetlands loss resulting from subsidence and saltwater intrusion.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed study can be answered by Mr. Tim Axtman, (504) 862–1921, and questions concerning the DEIS can be answered by Mr. Michael Saucier, (504) 862–2525, U.S. Army Corps of Engineers, Planning Division (CELMN–PD), P.O. Box 60267, New Orleans, Louisiana 70160–0267.

SUPPLEMENTARY INFORMATION:

1. Authority

This study is being funded as specified in the Coastal Wetlands Planning, Protection, and Restoration Act (CWPPRA, PL 101–646). At the direction of the CWPPRA Task Force, the study is being led and managed by the U.S. Army Corps of Engineers. Members of the Task Force are the Secretary of the Army who serves as chairman, the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, the Secretary of Commerce, Secretary of the Interior, and the Governor of Louisiana. The other members of the Task Force will provide input to the proposed study.

2. Proposed Action

The objective of this study is the maximization of the available resources of the Mississippi River for use in creation, restoration, protection, and enhancement of coastal wetlands in Louisiana.

3. Alternatives

Alternatives for addressing wetland loss will include, but are not limited to, freshwater diversion through siphons over the river levee, freshwater diversion through structures built in the river levee, sediment diversion through structures built in the river levee, and freshwater and sediment diversion through crevasse construction in the natural river bank. These alternatives will be compared to the No-Action alternative.

4. Public Involvement and Scoping

a. Three scoping meetings will be held within the study area to identify the desires of the public. Members of the CWPPRA Task Force Environmental Work Group will participate as facilitators in the scoping meetings, organized by the Corps of Engineers. Participants in the scoping meetings will be requested to make comments on alternatives, significant issues, or impacts of alternatives for inclusion in the DEIS. Comments received as a result of this process will be compiled and analyzed, and a Scoping Document summarizing the results will be made available to all participants.

b. Significant issues to be addressed in the DEIS currently include: extent of wetland loss under current conditions and if no remedial action is taken, environmental benefits of proposed alternatives, relocations required, and effects on fish and wildlife, endangered species, cultural resources, recreation, and socio-economic concerns.

c. The U.S. Department of the Interior will provide a Fish and Wildlife Coordination Act Report to accompany the DEIS. Coordination will be maintained with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service concerning endangered and threatened species. We will prepare a Section 404(b)(1) evaluation for review by the U.S. Environmental Protection Agency and other interested parties. Coordination will be maintained with the Advisory Council on Historic Preservation and the State Historic Preservation Officer. The Louisiana Department of Natural Resources will be consulted regarding consistency with the State's Coastal Resources Program. Application for a State Water Quality Certificate will be made with the Louisiana Department of Environmental Quality.

d. A 45-day public review period will be allowed so that all interested agencies, groups, and individuals will have an opportunity to review and comment on the DEIS.

5. Meeting Schedule

The public will be informed of the dates and locations of the scoping meetings when scheduled. A public meeting will be held during the review period to receive comments on the DEIS.

6. Availability

The DEIS is scheduled to be available to the public in November 1997.

Dated: October 30, 1995.

Kenneth H. Clow,

Colonel, U.S. Army, District Engineer.

[FR Doc. 95–28591 Filed 11–22–95; 8:45 am]

BILLING CODE 3710–84–M

Department of the Navy

Notice of Public Hearing for Draft Environmental Impact Statement on Realignment to Marine Corps Air Station Camp Pendleton, CA

Pursuant to Council on Environmental Quality regulations (40 CFR Parts 1500–1508) implementing procedural provisions of the National

Environmental Policy Act, the Marine Corps has prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for realignment of Marine Corps Air Station Camp Pendleton, California.

A public hearing to inform the public of the DEIS findings and to solicit comments will be held on December 1, 1995, beginning at 6 pm, in the Fallbrook Community Center, located at 341 Heald Lane, Fallbrook, California 92028.

The public hearing will be conducted by the Marine Corps. Federal, State, and local agencies and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to assure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on this study. Equal weights will be given to both oral and written statements.

In the interest of available time, each speaker will be asked to limit their oral comments to five minutes. If longer statements are to be presented, they should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed at the end of this announcement. All written statements must be postmarked by December 17, 1995, to become part of the official record.

The DEIS has been distributed to various Federal, State, and local agencies, elected officials, and civic associations and groups. A limited number of single copies are available at the address listed at the end of this notice.

In accordance with the Defense Base Closure and Realignment Act of 1990 and the specific base closure and realignment decisions approved by the president and accepted by Congress in September 1995, the proposed action is the realignment of Marine Corps Air Station Camp Pendleton. The proposed action relocates aircraft and associated assets from MCAS Tustin and MCAS El Toro, which are closing, to MCAS Camp Pendleton.

Alternatives considered in the DEIS include: no action, development alternatives (alternative site configurations) at MCAS Camp Pendleton, and use of other military installations. The proposed action will have impacts on noise, endangered species, cultural assets, and air quality.

Additional information concerning this notice may be obtained by contacting Chief Warrant Officer Harry Roberts or Mr. Bruce Shaffer, Base Closure and Realignment Office, Marine Corps Air Station El Toro, Santa Ana, CA 92709, telephone (714) 726–3383.

By direction of the Commandant of the Marine Corps.

Dated: November 20, 1995.

Kim G. Weirick,

Assistant Head, Land Use and Military Construction Branch Facilities and Services Division, Installations and Logistics Department.

[FR Doc. 95–28609 Filed 11–22–95; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Disposition of Surplus Highly Enriched Uranium Draft Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Extension of public comment period.

SUMMARY: The Department of Energy is announcing an extension until January 12, 1996 of the comment period for the Disposition of Surplus Highly Enriched Uranium Draft Environmental Impact Statement (draft HEU EIS).

DATES: The Notice of Availability and invitation to comment on the draft HEU EIS was originally published in the Federal Register on October 27, 1995 [60 FR 55021]. In response to requests from the public, the Department is extending the close of the comment period for the draft HEU EIS from December 11, 1995 to January 12, 1996.

ADDRESSES AND FURTHER INFORMATION: Copies of the draft HEU EIS and requests for information should be directed to: Office of Fissile Materials Disposition (MD–4), Attention: HEU EIS, U.S. Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585, 1–800–820–5134. Written comments on the draft HEU EIS should be mailed to the following address: DOE—Office of Fissile Materials Disposition, P.O. Box 23786, Washington, DC 20026–3786. Comments may also be submitted orally (to a recording machine) or by fax to 1–800–820–5156.

For information on the DOE National Environmental Policy Act process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585, (202) 586–4600 or leave a message at 1–800–472–2756.

Issued in Washington, DC, November 15, 1995.

Gregory P. Rudy,

Acting Director, Office of Fissile Materials Disposition.

[FR Doc. 95–28533 Filed 11–22–95; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following Advisory Committee meeting: Environmental Management Advisory Board.

DATE AND TIMES: Thursday, November 30, 1995, 8:30 a.m.–5:00 p.m.

PLACE: U.S. Department of Energy, 1000 Independence Avenue, S.W., Room 1E–245, Washington, DC 20585, (202) 586–4400.

FOR FURTHER INFORMATION CONTACT: James T. Melillo, Executive Director, Environmental Management Advisory Board, EM–5, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586–4400. The Internet address is: James.Melillo@em.doe.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Board. The purpose of the Board is to provide the Assistant Secretary for Environmental Management (EM) with advice and recommendations on issues confronting the Environmental Management Program and the Programmatic Environmental Management Impact Statement, from the perspectives of affected groups and State and local Governments. The Board will help to improve the Environmental Management Program by assisting in the process of securing consensus recommendations, and providing the Department's numerous publics with opportunities to express their opinions regarding the Environmental Management Program.

Tentative Agenda

Thursday, November 30, 1995

8:30 a.m. Co-Chairmen Open Public Meeting, Mr. Alvin Alm and Mr. Douglas Costle

8:35 a.m. Opening Remarks, Mr. Thomas Grumbly, Assistant Secretary for Environmental Management

9:30 a.m. Presentation and Board Discussion of the Environmental Management Strategic Plan, Mr. James Werner, Director, Office of Strategic Planning & Analysis

10:15 a.m. Presentation and Board Discussion of Technology Development & Transfer Committee Findings, Dr. Edgar Berkey, Chair, Technology Development & Transfer Committee
12:15 p.m. Working Lunch—Board Discussion
2:00 p.m. Departmental Response to the Board's Risk and Budget Recommendations, Progress Report, Update and Board Discussion, Dr. Carol Henry, Science & Policy Director, Office of Integrated Risk Management, Mr. Eli Bronstein, Director, Office of Financial Management
2:45 p.m. Presentation and Board Discussion on the Worker Health & Safety Committee Findings and Recommendation, Dr. Glenn Paulson, Chair, Worker Health & Safety Committee
3:15 p.m. Presentation on the Cost Effective Committee Regulatory Streamlining Findings, Mr. Jeff Breckel, Member, Cost Effective Cleanup Committee
3:30 p.m. Presentation and Board Discussion of the NEPA Committee Findings, Mr. Brian Costner, Chair, NEPA Compliance Practices Committee
3:50 p.m. Board Business, Mr. Alvin Alm and Mr. Douglas Costle, Co-Chairs, Environmental Management Advisory Board
4:00 p.m. Presentation and Board Discussion of the Programmatic Environmental Impact Statement (PEIS) Committee Progress Report, Mr. Ben Smith, Co-Chair, PEIS Committee
4:30 p.m. Public Comment Session
5:00 p.m. Meeting Adjourns

A final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should either contact James T. Melillo at the address or telephone number listed above, or call 1–(800) 736–3282, the Center for Environmental Management Information and register to speak during the public comment session of the meeting. Individuals may also register on November 30, 1995 at the meeting site. Every effort will be made to hear all those wishing to speak to the Board, on a first come, first serve basis. Those who call in and reserve time will be given the opportunity to speak first. The Board Co-Chairs are empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days before the date of meeting due to programmatic issues that had to be resolved prior to publication.

Transcripts and Minutes: A meeting transcript and minutes will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on November 14, 1995.

Gail R. Cephas,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–28530 Filed 11–22–95; 8:45 am]

BILLING CODE 6450–01–P

Advisory Committee To Develop On-Site Innovative Technologies for Environmental Restoration and Waste Management

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Federal Advisory Committee to Develop On-Site Innovative Technologies for Environmental Restoration and Waste Management (FAC-DOIT).

Date and Time: Tuesday, December 12, 1995; 9:00 a.m.–12:00 p.m.

Place: Salt Lake City Hilton, 150 West 500 South, Salt Lake City, Utah 84101.

FOR FURTHER INFORMATION CONTACT: Dr. Clyde Frank, Deputy Assistant Secretary, Technology Development, EM–50, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–6382.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The FAC-DOIT serves as the primary vehicle for implementing the Memorandum of Understanding (MOU) regarding cooperative technology development for environmental restoration and waste management in western states. This MOU was signed in 1991 by representatives of the Department of Defense, Department of Interior, Energy, the Environmental Protection Agency and the Western Governors' Association (WGA), the latter representing 20 western states and territorial governors. The DOIT Committee's purpose is to improve Federal environmental restoration and waste management efforts by identifying technology needs at Federal facilities in western states; identifying/assessing emerging technologies within the Federal and private sectors; identifying regulatory, institutional or other governmental barriers to technology development; and identifying workforce planning and educational requirements.

Tentative Agenda

9:00 a.m. Meeting opens, introductory remarks by Dr. Clyde Frank, Designated Federal Official for the Advisory Committee;
—Discussion on DOIT Accomplishments and Activities
—Discussion on DOIT Committee Mixed Waste Working Group Model Solicitation;
—Discuss Progress of DOIT Committee Interstate Technology and Regulatory Cooperation Working Group
—Discussion on Proper Closure of DOIT
11:30 a.m. Open time for public comment
12:00 p.m. Meeting adjourns

A final agenda will be available at the meeting.

Public Participation. The meeting is open to the public. Written Statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda items should contact Dr. Clyde Frank's office at the address or telephone numbers listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Executive summaries of reports presented and recommendations made will be available at the meeting.

Minutes. The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday-Friday, except Federal Holidays.

Issued at Washington, DC on November 13, 1995.

Gail R. Cephas,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–28531 Filed 11–22–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Research

High Energy Physics Advisory Panel; Open Meeting

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is given of a meeting of the High Energy Physics Advisory Panel.

DATES: Monday, December 11, 1995; 9:00 a.m. to 6:00 p.m.; and Tuesday, December 12, 1995; 9:00 a.m.—4:00 p.m.

ADDRESSES: Fermi National Accelerator Laboratory, Kirk and Pine Road, Wilson Hall, 15th Floor, Batavia, IL 60510.

FOR FURTHER INFORMATION CONTACT: Dr. P. K. Williams, Executive Secretary, High Energy Physics Advisory Panel, U.S. Department of Energy, ER–221, GTN, Germantown, Maryland 20874, Telephone: (301) 903–4829.

SUPPLEMENTARY INFORMATION: *Purpose of the Meeting:* To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda

Monday, December 11, 1995 and Tuesday, December 12, 1995

Discussion of Department of Energy High Energy Physics Programs
Discussion of National Science Foundation Elementary Particle Physics Programs
Discussion of High Energy Physics at Fermi National Accelerator Laboratory
Discussion of Status of Large Hadron Collider Project and U.S. Participation
Discussion of University-based High Energy Physics Programs
Reports on and Discussions of Topics of General Interest in High Energy Physics
Public Comment (10 minute rule)

Public Participation: The two-day meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on November 15, 1995.

Gail Cephas,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 95–28532 Filed 11–22–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ER95–1781–000, et al.]

Portland General Electric Company, et al.; Electric Rate and Corporate Regulation Filings

November 15, 1995.

Take notice that the following filings have been made with the Commission:

1. Portland General Electric Company

[Docket No. ER95–1781–000]

Take notice that on October 23, 1995, Montana Power Company tendered for filing a Certificate of Concurrence in the above-referenced docket.

Comment date: November 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. National Gas & Electric L.P., et al.

[Docket Nos. ER90–168–024, ER94–6–001, ER94–1329–005, ER95–430–003, ER95–748–001, ER95–878–002, and ER95–1021–001 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On October 31, 1995, National Gas & Electric L.P. filed certain information as required by the Commission's March 20, 1990, order in Docket No. ER90–168–000.

On October 31, 1995, InterCoast Power Marketing Company filed certain information as required by the Commission's August 19, 1994, order in Docket No. ER94–6–000.

On October 30, 1995, Midcon Power Services Corporation filed certain information as required by the Commission's August 11, 1994, order in Docket No. ER94–1329–000.

On October 29, 1995, Phibro, Inc. filed certain information as required by the Commission's June 9, 1995, order in Docket No. ER95–430–000.

On November 1, 1995, Western Gas Resources Power Marketing Company filed certain information as required by the Commission's May 16, 1995, order in Docket No. ER95–748–000.

On October 31, 1995, Audit Pro Incorporated filed certain information as required by the Commission's June 2, 1995, order in Docket No. ER95–878–000.

On October 31, 1995, Energy Services, Inc. filed certain information as required by the Commission's June 13, 1995, order in Docket No. ER95–1021–000.

3. DC Tie, Inc., et al.

[Docket Nos. ER91–435–017, ER94–108–005, ER94–152–007, ER94–968–010, ER94–1402–004, ER94–1450–007, and ER95–252–003 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On November 2, 1995, DC Tie, Inc., filed certain information as required by the Commission's July 11, 1991, order in Docket No. ER91–435–000.

On October 31, 1995, Heartland Energy Services, Inc., filed certain information as required by the Commission's August 9, 1994, order in Docket No. ER94–108–000.

On October 30, 1995, North American Energy Conservation, Inc., filed certain information as required by the Commission's February 10, 1994, order in Docket No. ER94–152–000.

On October 31, 1995, Electric Clearinghouse, Inc., filed certain information as required by the Commission's April 7, 1994, order in Docket No. ER94–968–000.

On October 30, 1995, Cenergy, Inc., filed certain information as required by the Commission's December 7, 1994, order in Docket No. ER94–1402–000.

On October 31, 1995, Coastal Electric Services Company, filed certain information as required by the Commission's September 29, 1994, order in Docket No. ER94–1450–000.

On November 2, 1995, Howard Energy Company, filed certain information as required by the Commission's February 24, 1995, order in Docket No. ER95–252–000.

4. Tenaska Power Services Company, et al.

[Docket Nos. ER94–389–005, ER94–1188–007, ER94–1352–005, ER94–1478–005, ER94–1593–004, ER95–692–002, and ER95–1441–001 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On November 8, 1995, Tenaska Power Services Company filed certain information as required by the Commission's May 26, 1994, order in Docket No. ER94–389–000.

On November 1, 1995, LG&E Power Marketing, Inc. filed certain information as required by the Commission's August 19, 1994, order in Docket No. ER94–1188–000.

On November 2, 1995, R.J. Dahnke & Associates filed certain information as required by the Commission's August 13, 1994, order in Docket No. ER94–1352–000.

On October 30, 1995, Electrade Corporation filed certain information as required by the Commission's October 12, 1994, order in Docket No. ER94–1478–000.

On November 7, 1995, National Power Exchange filed certain information as required by the Commission's October 7, 1994, order in Docket No. ER94–1593–000.

On October 27, 1995, Transcanada Northridge Power Ltd. filed certain information as required by the Commission's June 9, 1995, order in Docket No. ER95–692–000.

On November 1, 1995, Conoco Power Marketing, Inc. filed certain information as required by the Commission's August 30, 1995, order in Docket No. ER95–1441–000.

5. Texican Energy Ventures, Inc., et al.

[Docket Nos. ER94–1362–002, ER94–1612–005, ER94–1685–005, ER95–74–003, ER95–362–003, ER95–300–004, and ER95–1034–001 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On November 8, 1995, Texican Energy Ventures, Inc. filed certain information as required by the Commission's July 25, 1994, order in Docket No. ER94–1362–000.

On October 26, 1995, Destec Power Services, Inc. filed certain information as required by the Commission's January 20, 1995, order in Docket No. ER94–1612–000.

On October 31, 1995, Citizens Lehman Power Sales filed certain information as required by the Commission's February 24, 1995, order in Docket No. ER94–1685–000.

On October 31, 1995, Mesquite Energy Services, Inc. filed certain information as required by the Commission's January 4, 1995, order in Docket No. ER95–74–000.

On October 31, 1995, Stand Energy Corporation filed certain information as required by the Commission's February 24, 1995, order in Docket No. ER95–362–000.

On October 30, 1995, Mock Electric Power Marketing filed certain information as required by the Commission's March 16, 1995, order in Docket No. ER95–300–000.

On November 8, 1995, IGI Resources, Inc. filed certain information as required by the Commission's July 11, 1995, order in Docket No. ER95–1034–000.

6. Vermont Electric Power Company, Inc.

[Docket No. ER96–194–000]

Take notice that on October 31, 1995, Vermont Electric Power Company, Inc. (VELCO), tendered for filing proposed changes to its Rate Schedule FERC No. 246. VELCO states that the filing is being made solely to recover amounts related to the provision for post-retirement benefits other than pensions being recorded pursuant to the requirement of SFAS No. 106. VELCO states that the rate change proposed would result in an increase of VELCO's revenue requirement of $67,331.10 during 1993, which will remain unfunded, and similar increases in subsequent years which will be funded by contributions to an IRC Section 401(h) subaccount in its pension plan.

VELCO states that copies of its filing have been provided to its customers and to the Vermont Public Service Board.

Comment date: November 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Consolidated Edison Company of New York, Inc.

[Docket No. ER96–195–000]

Take notice that on October 31, 1995, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule, Con Edison Rate Schedule FERC No. 129, a facilities agreement with Orange and Rockland Utilities, Inc. (O&R). The Supplement provides for an increase in the monthly carrying charges. Con Edison has requested that this decrease take effect as of November 1, 1995.

Con Edison states that a copy of this filing has been served by mail upon O&R.

Comment date: November 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Southern Company Services, Inc.

[Docket No. ER96–196–000]

Take notice that on October 31, 1995, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (Southern Companies), tendered for filing an Interchange Service Contract between Southern Companies and Enron Power Marketing, Inc. The Interchange Service Contract establishes the terms and conditions of power supply, including provisions relating to service conditions, control of system disturbances, metering and other matters related to the administration of the agreement.

Comment date: November 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Allegheny Power Service Corporation on behalf of Monongahela Power Company, et al.

[Docket No. ER96–197–000]

Take notice that on October 26, 1995, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (the APS Companies) filed a Supplement No. 5 to add two (2) Customers to the Standard Generation Service Rate Schedule under which the APS Companies offer standard generation and emergency service to these Customers on an hourly, daily, weekly, monthly or yearly basis. The following new Customers are added by this filing. The Cincinnati Gas & Electric Company and PSI Energy, Inc. The APS Companies request a waiver of notice requirements to make service available as of October 25, 1995.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: November 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Entergy Services, Inc.

[Docket No. ER96–198–000]

Take notice that on October 31, 1995, Entergy Services, Inc. (Entergy Services), on behalf of Arkansas Power & Light Company, Gulf States Utilities Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Inc. (Entergy Operating Companies), tendered for filing a Transmission Service Agreement (TSA) between Energy Services, Inc. and Municipal Energy Agency of Mississippi (MEAM). Entergy Services states that the TSA sets out the transmission arrangements under which the Energy Operating Companies provide MEAM firm transmission service under their Transmission Service Tariff.

Comment date: November 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Northeast Utilities Service Company

[Docket No. ER96–201–000]

Take notice that on October 31, 1995, Northeast Utilities Service Company (NUSCO), on behalf of the Northeast Utilities Service Companies, filed Service Agreements for firm transmission service to Massachusetts Municipal Wholesale Electric Company (MMWEC) and Pascoag Fire District (Pascoag) under NUSCO's Tariff No. 1. The Service Agreements provide for delivery of Eastern MA Municipals and Pascoag's allocations of New York Power Authority hydropower from

November 1, 1995 through October 31, 2003.

NUSCO requests an effective date of November 1, 1995 for both agreements.

NUSCO states that copies of its submission have been mailed or delivered to MMWEC and Pascoag.

Comment date: November 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Northeast Utilities Service Company

[Docket No. ER96–202–000]

Take notice that on October 31, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing a unit sale agreement between NUSCO, on behalf of The Connecticut Light and Power Company and Western Massachusetts Electric Company, and Vermont Electric Generation & Transmission Cooperative, Inc. (VEG&T).

NUSCO states that a copy of this filing has been mailed to VEG&T.

NUSCO requests that the Agreement become effective on November 1, 1995.

Comment date: November 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Multi-Energies U.S.A. Inc.

[Docket No. ER96–203–000]

Take notice that on October 31, 1995, Multi-Energies U.S.A. Inc. (MEI), tendered for filing pursuant to 18 CFR Part 385, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1.

Comment date: November 29, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Maine Electric Power Company, Inc.

[Docket No. ES96–11–000]

Take notice that on November 9, 1995, Maine Electric Power Company, Inc., filed an application under § 204 of the Federal Power Act seeking authorization to issue and renew short-term notes, from time to time, in an aggregate principal amount not to exceed $9.5 million outstanding at any one time, on or before December 31, 1997, with a maturity of one year or less.

Comment date: December 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

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, 888 First 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. 95–28634 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EC96–2–000, et al.]

Public Service Company of Colorado, et al.; Electric Rate and Corporate Regulation Filings

November 17, 1995.

Take notice that the following filings have been made with the Commission:

1. Public Service Company of Colorado and Southwestern Public Service Company

[Docket No. EC96–2–000]

Take notice that on November 9, 1995, Public Service Company of Colorado (PSCo), on behalf of itself and its subsidiary, Cheyenne Light, Fuel and Power Company (Cheyenne), and Southwestern Public Service Company (SPS) (together ''Applicants'') filed, pursuant to Section 203 of the Federal Power Act and Part 33 of the Commission's Regulations, a Joint Application requesting authorization of their merger and reorganization and the resulting consolidation of facilities subject to the Commission's jurisdiction.

Applicants state that PSCo and SPS will form a new holding company, temporarily named M–P New Co., which will be a registered holding company under the Public Utilities Holding Company Act (PUHCA). PSCo, SPS, and Cheyenne will be subsidiaries of M–P New Co., and will continue to operate in their respective service territories, as they do today. The reorganization will be effected through an exchange of common stock.

Applicants have submitted the direct testimony of six witnesses who describe the merger and its projected benefits and analyze the effects of the merger on competition in the relevant markets.

Applicants have requested that the Commission expedite consideration of the Joint Application and approve it without an evidentiary hearing.

Comment date: December 8, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. New England Power Company

[Docket Nos. ER96–200–000, ER96–233–000, ER96–234–000, ER96–235–000, ER96–236–000, ER96–237–000, and ER96–238–000]

Take notice that on October 31, 1995, New England Power Company (NEP) tendered for filing the following documents in the above-referenced dockets:

(1) A second revised page No. 1 to the service agreement between NEP and Hingham Municipal Lighting Plant entered into under NEP's FERC Electric Tariff, Original Volume No. 4;

(2) A first revised page No. 1 to the service agreement between NEP and Hull Municipal Lighting Plant entered into under NEP's FERC Electric Tariff, Original Volume No. 4;

(3) Second revised page Nos. 6 and 7 to the service agreement between NEP and Groveland Municipal Light Department entered into under NEP's Electric Tariff, Original Volume No. 1;

(4) Second revised page Nos. 6 and 7 to the service agreement between NEP and Merrimac Municipal Light Department entered into under NEP's Electric Tariff Original Volume No. 1;

(5) A first revised Page No. 3 to the service agreement between NEP and Norwood Municipal Light Department entered into under NEP's Electric Tariff, Original Volume No. 1;

(6) A long-term service agreement between NEP and the Massachusetts Municipal Wholesale Electric Company, dated as of September 29, 1995 and entered into under NEP's FERC Electric Tariff, Original Volume No. 8 (Tariff No. 8 Service Agreement); and

(7) A distribution wheeling agreement between NEP and the Massachusetts Municipal Wholesale Electric Company, dated as of September 29, 1995 (Wheeling Agreement)

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Southern California Edison Company

[Docket No. ER96–210–000]

Take notice that on October 31, 1995, Southern California Edison Company tendered for filing a Notice of Cancellation of Rate Schedule 246.41.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER96–212–000]

Take notice that on October 31, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an executed Service Agreement between GPU and New England Power Company (NEPC), dated October 27, 1995. This Service Agreement specifies that NEPC has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co.*, Docket No. ER95–276–000 and allows GPU and NEPC to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of October 27, 1995 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Maine Yankee Atomic Power Company

[Docket No. ER96–213–000]

Take notice that on October 31, 1995, Maine Yankee Atomic Power Company, tendered for filing proposed changes in its FERC Electric Service Tariff No. 1. The proposed changes would decrease revenues from jurisdictional sales and service annually by $412,670 in 1996. This is a 00.197 percent decrease over 1995 rates.

Maine Yankee is making a limited Section 205 filing solely for amounts to fund post-retirement benefits other than pensions (PBOPs) pursuant to the requirement of SFAS 106.

Copies of the limited Section 205 filing were served upon Maine Yankee's jurisdictional customers, secondary customers, and Massachusetts Department of Public Utilities, Vermont Public Service Board, Connecticut Public Utilities Control Authority, Maine Public Utilities Commission, New Hampshire Public Utilities Commission, Office of the Public Advocate, State of Maine and Rhode Island Division of Public Utilities and Carriers.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Virginia Electric and Power Company

[Docket No. ER96–214–000]

Take notice that on October 31, 1995, Virginia Electric and Power Company (Virginia Power), tendered for filing an amendment to the contract for the purchase of electricity for resale (the Amendment) between Virginia Power and North Carolina Electric Membership Corporation (NCEMC). The Amendment provides for the continuation of the requirements service previously received by NCEMC, with certain changes in the terms and conditions. The principal changes involve defining specific exceptions to NCEMC's requirements service and pricing a portion of NCEMC's capacity requirements based on the costs of peaking capacity.

Virginia Power requests that the Amendment become effective on January 1, 1996.

Virginia Power states that copies of the filing have been served upon NCEMC, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Northeast Utilities Service Company

[Docket No. ER96–215–000]

Take notice that on October 31, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing, on behalf of The Connecticut Light and Power Company, a rate schedule for sale of power to Citizens Lehman Power Sales. NUSCO requests that the charges in rate schedules become effective on January 1, 1996.

NUSCO states that copies of its submission have been mailed or delivered to Citizens Lehman Power Sales.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Boston Edison Company

[Docket No. ER96–216–000]

Take notice that on October 31, 1995, Boston Edison Company (Edison), tendered for filing, a Service Agreement and Appendix A under Original Volume No. 6, Power Sales and Exchange Tariff (Tariff) for Engelhard Power Marketing, Inc. (Engelhard). Boston Edison requests that the Service Agreement become effective as of October 5, 1995.

Edison states that it has served a copy of this filing on Engelhard and the Massachusetts Department of Public Utilities.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Boston Edison Company

[Docket No. ER96–217–000]

Take notice that on October 31, 1995, Boston Edison Company (Edison), tendered for filing a Service Agreement and Appendix A under Original Volume No. 6, Power Sales and Exchange Tariff (Tariff) for Sonat Power Marketing, Inc. (Sonat). Boston Edison requests that the Service Agreement become effective as of October 5, 1995.

Edison states that it has served a copy of this filing on Sonat and the Massachusetts Department of Public Utilities.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, et al. The Potomac Edison Company West Penn Power Company (the APS Companies)

[Docket No. ER96–220–000]

Take notice that on October 26, 1996, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (the APS Companies), filed a Standard Transmission Service Agreement to add The Cincinnati Gas & Electric Company and PSI, Energy, Inc. as Customers to the APS Companies' Standard Transmission Service Rate Schedule which has been accepted for filing by the Federal Energy Regulatory Commission. The proposed effective date under the rate schedule is October 25, 1995.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Southern California Edison

[Docket No. ER96–221–000]

Take notice that on November 1, 1995, Southern California Edison Company (Edison), tendered for filing a change in rate for scheduling and dispatching services as embodied in Edison's agreements with the following entities:

Entity	FERC rate schedule No.
City of Anaheim.	130, 246.6, 246.8, 246.13, 246.29, 246.32.1, 246.33.1, 246.36.
City of Azusa .	160, 247.4, 247.6, 247.8, 247.24, 247.29.
City of Banning.	159, 248.5, 248.7, 248.9, 248.24, 248.29.
City of Colton .	162, 249.4, 249.6, 249.8, 249.24, 249.29.
City of Riverside.	129, 250.6, 250.8, 250.10, 250.15, 250.21, 250.27, 250.35.
City of Vernon	149, 154.07, 172, 207, 272, 276, 338.
Arizona Electric Power Cooperative.	132, 161.
Arizona Public Service Company.	185.
California Department of Water Resources.	112, 113, 181, 342.
City of Burbank.	166.
City of Glendale.	143.
City of Los Angeles Department of Water and Power.	102, 118, 140, 163, 188.
City of Pasadena.	158.
Coastal Electric Services Company.	347.
Imperial Irrigation District.	259, 268.
Metropolitan Water District of Southern California.	292.
M-S-R Public Power Agency.	153, 339.
Northern California Power Agency.	240.
Pacific Gas and Electric Company.	117, 147, 256, 318.
PacifiCorp	275.
Rainbow Energy Marketing Corporation.	346.
San Diego Gas & Electric Company.	151, 247, 302.
Western Area Power Administration.	120.

Edison requests that the revised rate for these services be made effective January 1, 1996.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Southern California Edison Company

[Docket No. ER96–222–000]

Take notice that on November 1, 1995, Southern California Edison Company (Edison), tendered for filing a Network Integration Service Transmission Tariff and a Point-to-Point Transmission Service Tariff. The tariffs set forth the terms and conditions under which Edison will provide open access transmission service on its transmission system. Edison requests that an effective date of January 1, 1996 be assigned to the tariffs.

Copies of the filing were served upon the Public Utilities Commission of the State of California and Edison's existing transmission customers.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Pennsylvania Power & Light Company

[Docket No. ER96–223–000]

Take notice that on November 1, 1995, Pennsylvania Power & Light Company (PP&L), tendered for filing with the Federal Energy Regulatory Commission two Service Agreements (the Agreements) between PP&L and Virginia Power Company, dated October 18, 1995, and (2) New England Power Company, dated October 20, 1995.

The Agreements supplement a Short Term Capacity and Energy Sales umbrella tariff approved by the Commission in Docket No. ER95–782–000 on June 21, 1995.

In accordance with the policy announced in *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *clarified and reh'g granted in part and denied in part*, 65 FERC ¶ 61,081 (1993). PP&L requests the Commission to make the Agreement effective as of the date of execution of each, because service will be provided under an umbrella tariff and each service agreement is filed within 30 days after the commencement of service. In accordance with 18 C.F.R. 35.11, PP&L has requested waiver of the sixty-day notice period in 18 CFR 35.2(e). PP&L has also requested waiver of certain filing requirements for information previously filed with the Commission in Docket No. ER95–782–000.

PP&L states that a copy of its filing was provided to the customers involved and to the Pennsylvania Public Utility Commission.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Niagara Mohawk Power Corporation

[Docket No. ER96–224–000]

Take notice that on November 1, 1995, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing a proposed change to Niagara Mohawk Rate Schedule No. 174 between Niagara Mohawk and the City of Watertown, New York (The City) dated October 30, 1995.

Rate Schedule No. 174 provides for certain transmission and distribution services to The City. The proposed change revises the rates charged to The City with a requested effective date of January 1, 1996.

Copies of this filing were served upon The City and the New York State Public Service Commission.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Virginia Electric and Power Company

[Docket No. ER96–225–000]

Take notice that on November 1, 1995, Virginia Electric and Power Company tendered for filing an agreement pursuant to which it will provide transmission service to Appalachian Power Company. Virginia Power requests that the agreement be accepted for filing and made effective on January 1, 1996.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

[Docket No. ER96–226–000]

Take notice that on November 1, 1995, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) jointly tendered

for filing the existing Exhibit VII and revised Exhibits VIII and IX to the Agreement to Coordinate Planning and Operations and Interchange Power and Energy Between Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin).

Exhibit VII sets forth the specification of the rate of return on common equity to determine the overall cost of capital. The return on common equity for calendar year 1996 is the same as that used for 1995.

Exhibit VIII sets forth the specification of average monthly coincident peak demands for calendar year 1996 for each of the Companies. A statement of the impacts of these coincident peak demands on each company has been filed. These coincident peak demands were determined upon three years' data consisting of 18 months of actual and 18 months of projected peak demands. The change from the use of the average of the 12 monthly peak demand allocation method to the use of the 36 months was approved in Docket No. ER87–279–000.

Exhibit IX sets forth a specification of depreciation rates certified by the Wisconsin Public Service Commission (PSCW) and the Minnesota Public Utilities Commission (MPUC). A statement of the impact of the depreciation rates on each company has been filed.

The NSP Companies request an effective date of January 1, 1996, for this filing. Copies of the filing letter and Exhibits VII, VIII and IX have been served upon the wholesale and wheeling customers of the Companies. Copies of the filing have been mailed to the State Commissions of Michigan, Minnesota, North Dakota, South Dakota and Wisconsin.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Arizona Public Service Company

[Docket No. ER96–227–000]

Take notice that on November 1, 1995, Arizona Public Service Company (APS) tendered for filing revised Exhibit B to the Wholesale Power Agreement between APS and the Town of Wickenburg (Wickenburg) (APS-FERC Rate Schedule No. 74) and revised Exhibit A to the Transmission Service Agreement between APS and Wickenburg (APS-FERC Rate Schedule No. 170) (collectively Exhibits and Agreements). The Exhibits list ranges of Maximum and Contract Demands applicable under the Agreements.

APS states no change from the currently effective rate or revenue levels as proposed herein.

APS further states no new facilities are required as a result of this revision.

A copy of this filing has been served on Wickenburg and the Arizona Corporation Commission.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Northeast Utilities Service Company

[Docket No. ER96–228–000]

Take notice that Northeast Utilities Service Company (NUSCO) on November 1, 1995, tendered for filing a Service Agreement with North American Energy Conservation Inc. (NAEC) under the NU System Companies' System Power Sales/Exchange Tariff No. 6.

NAEC also filed a Certificate of Concurrence as it relates to exchange transactions under the Tariff.

NUSCO states that a copy of this filing has been mailed to NAEC.

NUSCO requests that the Service Agreement become effective sixty (60) days following the Commission's receipt of the filing.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Boston Edison Company

[Docket No. ER96–229–000]

Take notice that on November 1, 1995, Boston Edison Company (Edison) filed a standstill agreement between itself and Montaup Electric Company (Montaup) extending the one-year claims limitation provision in Montaup's Pilgrim power purchase contract (Boston Edison's FPC Rate Schedule No. 69) with regard to disputes over 1993 and 1994 billings. The purpose of the standstill agreements is to allow the parties to achieve a settlement agreement regarding 1993 and 1994 billing disputes. The standstill agreement makes no other changes to the rates, terms and conditions of the contract between Montaup and Edison.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER96–230–000]

Take notice that on November 1, 1995, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, an Agreement for System Power Transactions with PECO Energy Company, dated October 12, 1995. This initial rate schedule will enable Ohio Edison and Pennsylvania Power to sell capacity and energy in accordance with the terms in the Agreement.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER96–231–000]

Take notice that on November 1, 1995, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, an agreement for System Power Transactions with Louis Dreyfus Electric Power, Inc. dated October 30, 1995. This initial rate schedule will enable the parties to purchase and sell capacity and energy in accordance with the terms set forth in the Agreement.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

22. Pacific Gas and Electric Company

[Docket No. ER96–240–000]

Take notice that on November 2, 1995, Pacific Gas and Electric Company (PG&E) tendered for filing an Interconnection Agreement between PG&E and the Port of Oakland (Port) dated October 31, 1995 (Interconnection Agreement). The Interconnection Agreement supersedes the current power sale contract between Port and PG&E (PG&E Rate Schedule FERC No. 95).

Port and PG&E (the Parties) entered into the Interconnection Agreement to define their new relationship after the termination of Rate Schedule FERC No. 95. The most important change under the Interconnection Agreement is the Port, which will become an Interconnection customer of PG&E instead of a full-requirements customer. Port will purchase wholesale electric service to become in essence a full-requirements customer of Destec Power Services, Inc. (DPS). This change will reduce PG&E's yearly revenues from Port by approximately $3.5 million.

Copies of this filing have been served upon Port and the California Public Utilities Commission.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

23. Virginia Electric and Power Company

[Docket No. ER96–241–000]

Take notice that on November 2, 1995, Virginia Electric and Power Company (Virginia Power) tendered for filing a Service Agreement between Entergy Power, Inc. and Virginia Power, dated October 15, 1995, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered

Service Agreement Virginia Power agrees to provide services to Entergy Power, Inc. under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

24. Virginia Electric and Power Company

[Docket No. ER96–242–000]

Take notice that on November 2, 1995, Virginia Electric and Power Company (Virginia Power) tendered for filing a Service Agreement between NorAm Energy Services, Inc. and Virginia Power, dated October 20, 1995, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to NorAm Energy Services, Inc. under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

25. Long Island Lighting Company

[Docket No. ER96–243–000]

Take notice that Long Island Lighting Company (LILCO) on November 2, 1995, tendered for filing an Interconnection Construction Agreement and (ICA) between LILCO and Associated Universities, Inc. at Brookhaven National Laboratory (BNL).

The ICA provides, among other things, for the installation and initial construction of a new 69 KiloVolt interconnection between LILCO's electric system and BNL. It also provides for the engineering, design, procurement, construction, installation, testing, ownership and maintenance of such interconnection. LILCO requests a waiver of the Commission's notice requirements to permit the ICA to become effective on November 3, 1995 (one day after filing).

LILCO states that copies of this filing have been served by LILCO on the New York State Public Service Commission, the New York Power Authority, and Associated Universities, Inc.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

26. Virginia Electric and Power Company

Docket No. ER96–246–000

Take notice that on November 2, 1995, Virginia Electric and Power Company (Virginia Power) tendered for filing a Service Agreement between Heartland Energy Services, Inc. and Virginia Power, dated October 19, 1995, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to Heartland Energy Services, Inc. under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

27. Virginia Electric and Power Company

Docket No. ER96–247–000

Take notice that on November 2, 1995, Virginia Electric and Power Company (Virginia Power) tendered for filing a Service Agreement between South Carolina Electric & Gas Company and Virginia Power, dated October 12, 1995, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to South Carolina Electric & Gas Company under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, and the South Carolina Public Service Commission.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

28. Virginia Electric and Power Comapny

Docket No. ER96–248–000

Take notice that on November 2, 1995, Virginia Electric and Power Company (Virginia Power) tendered for filing a Service Agreement between Phibro Inc. and Virginia Power, dated October 18, 1995, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to Phibro Inc. under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

29. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

Docket No. ER96–249–000

Take notice that on November 1, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the ''GPU Operating Companies''), filed an executed Service Agreement between GPU and National Fuel Resource Inc., dated October 6, 1995. This Service Agreement specifies that National Resource Inc. has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co.*, Docket No. ER95–276–000 and allows GPU and National Fuel Resource Inc. to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service. GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of September 8, 1995 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

30. Public Service Electric and Gas Company

[Docket No. ER96–258–000]

Take notice that Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey on November 2, 1995, tendered for filing an agreement for the sale of energy and capacity to KOCH Power Services, Inc. (KPSI).

PSE&G requests the Commission to waive its notice requirements and permit the Energy Sales Agreement to become effective as of November 3, 1995.

Copies of the filing have been served upon KPSI.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

31. Portland General Electric

[Docket No. ER96–262–000]

Take notice that on November 2, 1995, Portland General Electric Company (PGE) tendered for filing the 1995–1996 One Year Share-the-Storage Agreement (the Agreement), among the following parties: Idaho Power Company; The Montana Power Company; PacifiCorp; Portland General Electric Company; Puget Sound Power & Light Company; The Washington Water Power Company; Bonneville Power Administration; Public Utility District No. 1 of Chelan County; Public Utility District No. 1 of Cowlitz County; Public Utility District No. 2 of Grant County; Public Utility District No. 1 of Pend Oreille County; Public Utility District No. 1 of Snohomish County, The Eugene Water & Electric Board; City of Seattle acting by and through its City Light Department; City of Tacoma acting by and through its Public Utilities Department.

PGE states that the Agreement relates to service for the purpose of alleviating energy shortages of one or more of the parties to the Agreement and to help ensure that all of the parties can meet their obligations to serve their respective retail customer loads. A copy of the filing was served upon the parties to the Agreement.

The Parties request that the Commission allow the Agreement to become effective January 2, 1996.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

32. Wisconsin Electric Power Company

[Docket No. ER96–263–000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on November 2, 1995, tendered for filing an Electric Service Agreement between itself and Industrial Energy Applications, Inc. (IEA). The Electric Service Agreement provides for service under Wisconsin Electric's Coordination Sales Tariff.

Wisconsin Electric requests an effective date of sixty days from date of filing. Copies of the filing have been served on IEA, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

33. Illinois Power Company

[Docket No. ER96–268–000]

Take notice that on November 2, 1995, Illinois Power Company (IPC) tendered for filing an Interchange Agreement between IPC and Engelhard Power Marketing, Inc., (Engelhard). IPC states that the purpose of this agreement is to provide for the buying and selling of capacity and energy between IPC and Engelhard.

Comment date: December 1, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28637 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EL96–9–000, et al.]

The Cleveland Electric Illuminating Company, et al.; Electric Rate and Corporate Regulation Filings

November 16, 1995

Take notice that the following filings have been made with the Commission:

1. The Cleveland Electric Illuminating Company

[Docket No. EL96–9–000 Company]

Take notice that on November 3, 1995, The Cleveland Electric Illuminating Company (CEI), filed a Petition for Declaratory Order that Company is not required to provide requested transmission service.

Comment date: December 13, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Wisconsin Electric Power Company, et al.

[Docket Nos. EC95–16–000, ER95–1357–000, and ER95–1358–000]

Take notice that on October 10, 1995, Wisconsin Electric Power Company, Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin) and Cenergy, Inc. (collectively, the ''Applicants'') filed a joint answer to various pleadings filed in the above-docketed proceedings. Contained in the joint answer are additional commitments made by the Applicants relating to their request for approval to merge and their proposed transmission tariffs. The Applicants explain that the additional commitments are intended to eliminate any ability or incentive the Applicants' may have to manipulate the transmission system.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Utah Associated Municipal Power Systems v. PacifiCorp

[Docket No. EL96–10–000]

Take notice that on November 2, 1995, Utah Associated Municipal Power Systems tendered for filing a complaint against PacifiCorp to establish a refund effective date in Docket No. ER96–8–000.

Comment date: December 18, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. South Carolina Generating Company

[Docket No. ER95–64–002]

Take notice that on October 27, 1995, South Carolina Generating Company tendered for filing its refund report in the above-referenced docket.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power Corporation

[Docket No. ER95–457–002]

Take notice that on November 1, 1995, Florida Power Corporation tendered for filing its compliance filing in the above-referenced docket.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Southern Energy Marketing, Inc.

[Docket No. ER95–976–002]

Take notice that on October 30, 1995, Southern Energy Marketing, Inc. tendered for filing its compliance filing in the above-referenced docket.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. American Electric Power Service Corporation

[Docket No. ER95–1596–000]

Take notice that on November 3, 1995, the American Electric Power Service Corporation (AEPSC), on behalf of the AEP Companies, submitted an Amendment to the Power Sales Tariff (Tariff) previously filed in this Docket, and a Service Agreement under said Tariff.

The Amendment revised the Emission Allowance cost recovery language contained at Page 7 of the Tariff to conform to the policy accepted by the Commission in Docket No. ER95–497–000. Waiver of minimum notice requirements was requested to permit designation of October 1, 1995, or an earlier effective date.

A copy of the filing was served upon parties of record, the eligible entities listed in Appendix II and the affected state regulatory commissions.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Southern Indiana Gas & Electric Company

[Docket No. ER95–1722–000]

Take notice that on November 3, 1995, Southern Indiana Gas & Electric Company (SIGECO) filed a supplement to the interchange agreement with Catex Vitol Electric, L.L.C. previously submitted in this proceeding.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Southern Indiana Gas & Electric Company

[Docket No. ER95–1723–000]

Take notice that on November 3, 1995, Southern Indiana Gas & Electric Company (SIGECO) filed a supplement to the interchange agreement with Electric Clearinghouse, Inc. previously submitted in this proceeding.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Union Electric Company

[Docket No. ER95–1788–000]

Take notice that on October 23, 1995 and October 27, 1995, Union Electric Company (UE) submitted a request to withdraw its filing of delivery point charges and extraordinary maintenance expenses dated September 15, 1995 between Associated Electric Cooperative, Incorporated and UE and terminate this docket.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Mid-Continent Power Pool

[Docket No. ER95–1849–000]

Take notice that on October 20, 1995, Mid-Continent Power Pool tendered for filing an amendment in the above-referenced docket.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Dayton Power & Light Company

[Docket No. ER95–1856–000]

Take notice that on October 31, 1995, Dayton Power and Light Company tendered for filing an amendment in the above-referenced docket.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. MidAmerican Energy Company

[Docket No. ER96–79–000]

Take notice that on November 6, 1995, MidAmerican Energy Company (MidAmerican), tendered for filing a First Amended Notice of Cancellation, effective on June 30, 1995, of Rate Schedule FERC No. 1, as supplemented, which became effective on March 19, 1984 and was filed with the Commission in docket No. ER84–325–000 by ENEREX, a partnership, and its member companies. The filing includes a Certificate of Concurrence of IES Utilities Inc. (IES), the other surviving partner of the ENEREX partnership.

MidAmerican further states that Rate Schedule FERC No. 1 is being cancelled because the ENEREX partners have entered into a Dissolution of ENEREX Partnership Agreement which provides for the dissolution of the partnership effective on June 30, 1995, and pursuant to Section 4.01 of the Interchange Agreement which constitutes Rate Schedule FERC No. 1, the Interchange Agreement shall terminate upon termination of the ENEREX partnership.

MidAmerican requests an effective date of June 30, 1995 for the cancellation of Rate Schedule FERC No. 1, as supplemented, and a waiver of the provisions of Section 35.15 requiring the Notice of Cancellation to be filed at least 60 days prior to such date.

Copies of the filing were served on IES, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. New England Power Company

[Docket No. ER96–121–000]

Take notice that on November 3, 1995, New England Power Company (NEP) filed an amendment to its October 19, 1995, submittal in this docket.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Great Bay Power Corporation

[Docket No. ER96–192–000

Take notice that on October 30, 1995, Great Bay Power Corporation (Great Bay) tendered for filing a service agreement between Montaup Electric Company (Montaup) and Great Bay for service under Great Bay's Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on November 11, 1993, in Docket No. ER93–924–000. The service agreement is proposed to be effective November 1, 1995. Great Bay states that it plans to amend the Tariff shortly and agrees to make the service agreement subject to the outcome of the docket in which the Tariff is revised.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. New England Power Company

[Docket No. ER96–193–000]

Take notice that on October 30, 1995, New England Power Company (NEP) submitted for filing a service agreement and certificate of concurrence with Boston Edison Company entered into under NEP's FERC Electric Tariff, Original Volume No. 6.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. Public Service Company of New Mexico

[Docket No. ER96–199–000]

Take notice that on October 31, 1995, Public Service Company of New Mexico tendered for filing an amendment to the San Juan Project Operating Agreement with Tucson Electric Power Company.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Arizona Public Service Company

[Docket No. ER96–204–000]

Take notice that on October 31, 1995, Arizona Public Service Company (APS), tendered for filing a revised Exhibit applicable under the Plains Electric Generation and Transmission Cooperative, Inc. Wholesale Power Supply Agreement, APS–FERC Rate Schedule No. 82.

Current rate levels are unaffected, and no other change in service to this or any other customer results from the revision 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 Plains, the Arizona Corporation Commission, and the New Mexico Public Service Commission.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

19. Central Vermont Public Service Corporation

[Docket No. ER96–205–000]

Take notice that on October 31, 1995, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with Phibro, Inc. under its FERC Electric Tariff No. 5. The tariff provides for the sale by Central Vermont of power and energy at or below Central Vermont's fully allocated costs.

Central Vermont requests waiver of the Commission's regulations to permit the service agreement to become effective on November 1, 1995.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

20. The Montana Power Company

[Docket No. ER96–206–000]

Take notice that on October 31, 1995, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.15, a Notice of Termination for Montana Rate Schedule FERC No. 178, a Firm Energy Purchase and Transmission Service Agreement, dated April 10, 1989, between Montana and PacifiCorp.

A copy of the filing was served upon PacifiCorp.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

21. Northeast Utilities Service Company

[Docket No. ER96–207–000]

Take notice that on October 31, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Toledo Edison Company (Toledo) under the NU System Companies' System Power Sales/Exchange Tariff No. 6 for sales of only system power.

NUSCO states that a copy of this filing has been mailed to Toledo.

NUSCO requests that the Service Agreement become effective on November 1, 1995.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

22. Northeast Utilities Service Company

[Docket No. ER96–208–000]

Take notice that on October 31, 1995 Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Cleveland Electric Illuminating Company (Cleveland) under the NU System Companies' System Power Sales/Exchange Tariff No. 6 for sales of only system power.

NUSCO states that a copy of this filing has been mailed to Cleveland.

NUSCO requests that the Service Agreement become effective on November 1, 1995.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

23. The Montana Power Company

[Docket No. ER96–209–000]

Take notice that on October 31, 1995, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.12, as an initial rate schedule, a Firm Transmission Agreement between Montana and Western Area Power Administration (Western).

A copy of the filing was served upon Western.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

24. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER96–211–000]

Take notice that on October 31, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the GPU Operating Companies), filed an executed Service Agreement between GPU and Northeast Utilities Service Company (NUSC), dated October 27, 1995. This Service Agreement specifies that NUSC has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in *Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co.*, Docket No. ER95–276–000 and allows GPU and NUSC to enter into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of October 27, 1995 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: November 30, 1995, in accordance with Standard Paragraph E at the end of this notice.

25. William H. Downey

[Docket No. ID–2922–000]

Take notice that on November 8, 1995, William H. Downey (Applicant) tendered for filing an application under section 305(b) to hold the following positions:

Vice President—Commonwealth Edison Company

Director—Bank One, Rockford, N.A.

Comment date: December 4, 1995, in accordance with Standard Paragraph E at the end of this notice.

26. Citizens Utilities Company

[Docket No. TX96–1–000]

Take notice that on November 8, 1995, Citizens Utilities Company (Citizens) filed with the Federal Energy Regulatory Commission an application requesting that the Commission order Swanton Village, Vermont to provide transmission services to Citizens pursuant to section 211 of the Federal Power Act.

The transmission service sought by Citizens in the Applications is as follows:

- The firm point-to-point transmission service which Swanton formerly provided to Citizens, for a period in excess of fifteen years, immediately prior to December, 1994 to accommodate Citizens' obligation to serve present and future retail loads in the Highgate Springs area;
- From Swanton's interface with the VELCO-Highgate substation (Point of Receipt) to the Highgate Springs substation (Point of Delivery) over

Swanton's ''H–12'' 48–kV radial transmission line and Swanton's interconnected 12.5 kV line;

- Commencing as soon as possible and continuing as necessary to serve present and future Highgate Springs loads;
- With a curtailment priority equal to that of Swanton's area retail loads;
- At embedded costs rates, based on the existing cost-of-service formula and utilizing the peak responsibility method for cost allocation and billing determinants based on Citizens' contribution to maximum demand, as recalculated based on updated load information and cost data; and
- With Citizens supplying its own losses, as before, from the VELCO-Highgate substation (the Point of Receipt) to the Highgate Springs substation (Citizens' Point of Delivery) at a rate of 3 percent.

Comment date: December 15, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

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, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28636 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 2794–004 Idaho]

Silver King, Ltd.; Notice of Availability of Environmental Assessment

November 16, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order 486, 52 FR 47897), the Commission's Office of Hydropower Licensing has reviewed a license surrender application for the Warren Hydroelectric Project, No. 2794–004. The Warren Hydroelectric Project is located on Slaughter Creek in Idaho County, Idaho. The licensee is applying for a surrender of the license because the project is no longer economically viable. An Environmental Assessment (EA) was prepared for the application. The EA finds that approving the application would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 2A, of the Commission's offices at 888 First Street NE., Washington, DC 20426.

Please submit any comments within 20 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426. Please affix Project No. 2794–004 to all comments. For further information, please contact the project manager, Ms. Hillary Berlin, at (202) 219–0038.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28561 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–M

Union Water Power Co.; Notice of Scoping Meeting Pursuant to the National Environmental Policy Act of 1969 for an Applicant Prepared Environmental Assessment

[Project No. UL94–1 Maine]

November 17, 1995

Pursuant to the Energy Policy Act of 1992, and as part of the license application, the Union Water Power Company (Union) intends to prepare an Environmental Assessment (EA) to file with the Federal Energy Regulatory Commission for the Upper and Middle Dam Storage Project. Two public scoping meetings will be held, pursuant to the National Environmental Policy Act of 1969, to identify the scope of environmental issues that should be analyzed in the EA. At the scoping meetings, Union will summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially qualified data, on the resources at issue; and (3) encourage statements from experts and the public on issues that should be analyzed in the EA.

Although Union's intent is to prepare an EA, there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

All interested individuals, organizations, and agencies are invited and encouraged to attend and assist in identifying and clarifying the scope of environmental issues that should be analyzed in the EA.

To help focus the discussions, a scoping document was sent out on November 7, 1995, as part of the Initial State Consultation Document (ISCD). Copies of the Scoping Document and ISCD will also be available at the meetings.

Union will conduct a scoping meeting on Wednesday, December 13, 1995, at 6:30 p.m. at the Rangley Inn, Main Street, in Rangley, Maine. A scoping meeting for federal, state and local resource agencies and non-governmental organizations will be held at the Ramada Inn, 490 Pleasant Street, Lewiston, Maine at 9:30 a.m. on Thursday, December 14, 1995. Scoping meetings are open to all interested parties.

Meeting Procedures

The meeting will be conducted according to the procedures used at Commission scoping meetings. The Commission will not conduct another NEPA scoping meeting when the application and EA are filed with the Commission in early 1999. Instead, Commission staff will attend the meeting held on December 13 and 14, 1995.

The meetings will be recorded by a stenographer and, thereby, will become a part of the formal record of the proceedings on the Upper and Middle Dam Project. Individuals presenting statements at the meetings will be asked to identify themselves for the record.

Concerned parties are encouraged to offer verbal guidance during public meetings. Speaking time allowed for individuals will be determined before each meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session, but all speakers will be provided at least five minutes to present their views.

Persons choosing not to speak but wishing to express an opinion, as well as speakers unable to summarize their positions within the allotted time, may submit written statements for inclusion in the public record.

Written scoping comments may also be mailed to Union Water Power Company, 150 Main Street, P.O. Box 12215, Lewiston, Maine 04243–1225. All correspondence should clearly show the following caption on the first page: Scoping Comments, Upper and Middle Dam Project. FERC No. UL 94–1, Maine.

For further information, please contact Laurence E. Perkins at (207) 784–4501 (Union Water Power Company) or Mark Pawlowski at (202) 219–2795.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28562 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1528–001, et al.]

Wisconsin Public Service Corporation, et al.; Electric Rate and Corporate Regulation Filings

November 13, 1995

Take notice that the following filings have been made with the Commission:

1. Wisconsin Public Service Corporation

[Docket No. ER95–1528–001]

Take notice that on October 23, 1995, Wisconsin Public Service Corporation (WPSC) of Green Bay, Wisconsin tendered for filing its First Revised Sheet No. 122 to its comparable service transmission tariff, FERC Original Volume No. 7, pursuant to the Commission's order issued October 10, 1995 in the captioned proceeding. WPSC states that it has served the filing upon the recipients of the original filing.

Comment date: November 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Citizens Power & Light Co., Enron Power Marketing, Inc., Equitable Power Services Co., CNG Power Services Corp., Power Exchange Corp., Tenneco Energy Marketing Co., Hinson Power Co.

[Docket No. ER89–401–024, Docket No. ER94–24–010, Docket No. ER94–1539–007, Docket No. ER94–1554–006, Docket No. ER95–72–003, Docket No. ER95–428–003, Docket No. ER95–1314–002 (not consolidated)]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On October 31, 1995, Citizens Power & Light Company filed certain information as required by the Commission's August 8, 1989 order, in Docket No. ER89–401–000.

On November 1, 1995, Enron Power Marketing, Inc. filed certain information as required by the Commission's December 2, 1993 order, in Docket No. ER94–24–000.

On November 2, 1995, Equitable Power Services Company filed certain information as required by the Commission's September 8, 1994 order, in Docket No. ER94–1539–000.

On October 31, 1995, CNG Power Services Corporation filed certain information as required by the Commission's October 25, 1994, order in Docket No. ER94–1554–000.

On November 2, 1995, Power Exchange Corporation filed certain information as required by the Commission's February 2, 1995, order in Docket No. ER95–72–000.

On October 31, 1995, Tenneco Energy Marketing Company filed certain information as required by the Commission's March 30, 1995, order in Docket No. ER95–428–000.

On November 1, 1995, Hinson Power Company filed certain information as required by the Commission's August 29, 1995, order in Docket No. ER95–1314–000.

3. Illinois Power Co.

[Docket Nos. ER95–764–002 and ER95–1543–002]

Take notice that on October 13, 1995, Illinois Power Company tendered for filing modifications to its proposed Transmission tariffs in the above-referenced dockets.

Comment date: November 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Texas Utilities Electric Co.

[Docket No. ER95–1725–000]

Take notice that on October 24, 1995, Texas Utilities Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: November 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. PacifiCorp

[Docket No. ER95–1792–000]

Take notice that on October 19, 1995, PacifiCorp tendered for filing an amendment to its filing in the above-referenced docket.

Comment date: November 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Wisconsin Electric Power Co.

[Docket No. ER96–19–000]

Take notice that on October 30, 1995, Wisconsin Electric Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: November 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Coral Power, Inc.

[Docket No. ER96–25–000]

Take notice that on October 31, 1995, Coral Power, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: November 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. U.S. Power & Light, Inc.

[Docket No. ER96–105–000]

Take notice that on November 2, 1995, U.S. Power & Light Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: November 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Virginia Electric and Power Co.

[Docket No. ER96–123–000]

Take notice that on October 19, 1995, Virginia Electric and Power Company (Virginia Power) tendered for filing a Service Agreement between Potomac Electric Power Company and Virginia Power, dated September 22, 1995, under the Power Sales Tariff to Eligible Purchasers dated May 27, 1994. Under the tendered Service Agreement Virginia Power agrees to provide services to Appalachian Power Company under the rates, terms and conditions of the Power Sales Tariff as agreed by the parties pursuant to the terms of the applicable Service Schedules included in the Power Sales Tariff.

Copies of the filing were served upon the Virginia State Corporation Commission, the District of Columbia Service Commission, the Maryland Public Service Commission, and the North Carolina Utilities Commission.

Comment date: November 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Boston Edison Co.

[Docket No. ER96–144–000]

Take notice that on October 24, 1995, Boston Edison Company (Edison) filed a standstill agreement between itself and Commonwealth Electric Company (Commonwealth) tolling the one-year claims limitation provision in Commonwealth's Pilgrim power purchase contract with regard to disputes over the 1993 and 1994 bills. The purpose of the standstill agreement is to allow the parties to negotiate a settlement agreement regarding 1993 and 1994 billing disputes. The standstill

agreement makes no other changes to the rates, terms and conditions of the contract between Commonwealth and Edison.

Comment date: November 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Vermont Electric Transmission Company, Inc.

[Docket No. ER96–184–000]

Take notice that on October 27, 1995, Vermont Electric Transmission Company, Inc. tendered for filing a Petition for Waiver of Section 35.13 of the Commission's filing requirements.

Comment date: November 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Electric Power Co.

[Docket No. ER96–186–000]

Take notice that on October 30, 1995, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing revisions to its FERC Rate Schedule No. 58.

Wisconsin Electric requests an effective date of November 1, 1995, in order to implement the Agreement's modifications, which do not result in revenue increases.

Comment date: November 2, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Kansas City Power & Light Co.

[Docket No. ER96–187–000]

Take notice that on October 30, 1995, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated October 11, 1995, between KCPL and Industrial Energy Applications, Inc. (IEA). KCPL proposes an effective date of October 11, 1995, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service between KCPL and IEA.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges which were conditionally accepted for filing by the Commission in Docket No. ER94–1045–000.

Comment date: November 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Consolidated Edison Company of New York, Inc.

[Docket No. ER96–188–000]

Take notice that on October 30, 1995, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing an agreement to provide interruptible transmission service for Phibro, Inc. (Phibro).

Con Edison states that a copy of this filing has been served by mail upon Phibro.

Comment date: November 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

15. Northeast Utilities Service Company

[Docket No. ER96–189–000]

Take notice that on October 30, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Atlantic Electric (AE) under the NU System Companies' System Power Sales/Exchange Tariff No. 6 for sales of only system power.

NUSCO states that a copy of this filing has been mailed to AE.

NUSCO requests that the Service Agreement become effective on December 1, 1995.

Comment date: November 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

16. Northeast Utilities Service Company

[Docket No. ER96–190–000]

Take notice that on October 30, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with GPU Service Corporation (GPU) under the NU System Companies' System Power Sales/Exchange Tariff No. 6 for sales of only system power.

NUSCO states that a copy of this filing has been mailed to GPU.

NUSCO requests that the Service Agreement become effective on December 1, 1995.

Comment date: November 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

17. PacifiCorp

[Docket No. ER96–191–000]

Take notice that on October 30, 1995, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, the annual facilities charge calculation under, PacifiCorp Rate Schedule FERC No. 298.

PacifiCorp requests that an effective date of December 31, 1995 be assigned to the annual facilities charge calculation.

Copies of this filing were supplied to Southern California Edison Company, Pacific Gas & Electric Company, the Washington Utilities and Transportation Commission, the Public Utility Commission of Oregon and the Public Utilities Commission of the State of California.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: November 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

18. Kamine/Besicorp Syracuse L.P., Kamine/Besicorp Beaver Falls L.P.

[Docket Nos. QF88–269–005 and EL96–4–000, Docket Nos. QF91–172–002 and EL96–5–000 (Not Consolidated)]

Take notice that on October 11, 1995, as completed on November 2, 1995, Kamine/Besicorp Syracuse L.P. and Kamine/Besicorp Beaver Falls L.P. (together Kamine), tendered for filing a request for limited waiver of the Commission's Regulations under the Public Utility Regulatory Policies Act of 1978 (PURPA). Kamine requests the Commission to temporarily waive the operating and efficiency standard for qualifying cogeneration facilities as set forth in Section 292.205 of the Commission's Regulations, implementing Section 201 of PURPA, as amended, 18 CFR 292.205, with respect to its 79.9 MW cogeneration facility located in the Town of Geddes, New York (the Syracuse facility) and with respect to its 79.9 MW cogeneration facility located in the Hamlet of Beaver Falls, County of Lewis, New York (the Beaver Falls facility). Specifically, Kamine requests waiver of the operating and efficiency standard for each calendar year through and including the calendar year ending December 31, 2000, to the extent required by the facilities and Niagara Mohawk Power Corporation to realize the benefits of stand-by operating status pursuant to their power purchase agreements.

Comment date: On or before December 11, 1995.

Standard Paragraph

E. Any person desiring to be heard and granting notices of intervention and unopposed timely filed motions to intervene pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214)) to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–28563 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–P

Notice of Intent To File Application for New License

November 14, 1995.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of filing*: Notice of Intent to File Application for New License.

b. *Project No.*: 2722.

c. *Date filed*: August 21, 1995.

d. *Submitted by*: PacifiCorp, current licensee.

e. *Name of project*: Hat Creek.

f. *Location*: On the Odgen River, in Weber County, Utah.

g. *Filed pursuant to*: Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

h. *Effective date of original license*: September 1, 1950.

i. *Expiration date of original license*: August 31, 2000.

j. The project consists of: (1) a flowline; (2) a surge tank; (3) a 6-foot-diameter and 4,000-foot-long riveted steel penstock; (4) a brick powerhouse with two 2,500-kW generating units and step up transformers; and (5) a tailrace canal about 3,000 feet long.

k. Pursuant to 18 CFR 16.7, information on the project is available at: Stanley A. deSousa, Director, Hydro Resources, PacifiCorp, 920 S.W. 6th Avenue, Portland, OR 97204, (503) 464–5343.

l. *FERC contact*: Hector M. Perez, (202) 219–2843.

m. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by August 31, 1998.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–28564 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ST96–1–000 et al.]

Natural Gas Pipeline Company of America; Notice of Self-Implementing Transactions

November 14, 1995.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations, Sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) and Section 7 of the NGA and Section 5 of the Outer Continental shelf Lands Act.[1]

The ''Recipient'' column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The ''Part 284 Subpart'' column in the following table indicates the type of transaction.

A ''B'' indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to Section 284.102 of the Commission's Regulations and Section 311(a)(1) of the NGPA.

A ''C'' indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to Section 284.122 of the Commission's Regulations and Section 311(a)(2) of the NGPA.

A ''D'' indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to Section 284.142 of the Commission's Regulations and Section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to Section 284.147(d) of the Commission's Regulations.

An ''E'' indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to Section 284.163 of the Commission's Regulations and Section 312 of the NGPA.

A ''G'' indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to Section 284.222 and a blanket certificate issued under Section 284.221 of the Commission's Regulations.

A ''G–I'' indicates transportation by an intrastate pipeline company pursuant to a blanket certificate issued under Section 284.227 of the Commission's Regulations.

A ''G–S'' indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to Section 284.223 and a blanket certificate issued under Section 284.221 of the Commission's Regulations.

A ''G–LT'' or ''G–LS'' indicates transportation, sales or assignments by a local/distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under Section 284.224 of the Commission's Regulations.

A ''G–HT'' or ''G–HS'' indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under Section 284.224 of the Commission's Regulations.

A ''K'' indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to Section 284.303 of the Commission's Regulations.

A ''K–S'' indicates transportation of natural gas on the Outer Continental Shelf by an intrastate pipeline on behalf of shippers other than interstate pipelines pursuant to Section 284.303 of the Commission's Regulations.

Linwood A. Watson, Jr.,

Acting Secretary.

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate schedule	Date commenced	Projected termination date
ST96–1	Natural Gas P/L Co. of America.	National Gas & Electric L.P.	10–02–95	G–S	1,000	N	F	09–01–95	09–30–95
ST96–2	Natural Gas P/L Co. of America.	Perry Gas Companies, Inc.	10–02–95	G–S	2,000	N	I	09–02–95	Indef.
ST96–3	Natural Gas P/L Co. of America.	Interenergy Gas Services Corp.	10–2–95	G–S	50,000	N	I	09–01–95	Indef.
ST96–4	Pacific Gas Transmission Co.	Jonan Gas Marketing.	10–02–95	G–S	45,000	N	I	07–17–95	Indef.
ST96–5	Pacific Gas Transmission Co.	Inland Pacific Energy Services Corp.	10–02–95	G–S	100,000	N	I	08–01–95	Indef.
ST96–6	Pacific Gas Transmission Co.	Coastal Gas Marketing Co.	10–02–95	G–S	20,000	N	F	09–01–95	Indef.
ST96–7	Pacific Gas Transmission Co.	Petro-Canada Hydrocarbons, Inc.	10–02–95	G–S	30,000	N	I	09–13–95	Indef.
ST96–8	Pacific Gas Transmission Co.	Sacramento Municipal Utility Dist.	10–02–95	G–S	100,000	N	I	07–23–95	Indef.
ST96–9	Pacific Gas Transmission Co.	Paramount Resources U.S. Inc.	10–02–95	G–S	20,000	N	I	07–31–95	Indef.
ST96–10	Transcontinental Gas P/L Corp.	Columbia Energy Services Corp.	10–02–95	G–S	500,000	N	I	09–01–95	Indef.
ST96–11	Transcontinental Gas P/L Corp.	Cenergy, Inc	10–02–95	G–S	100,000	N	I	09–01–95	Indef.
ST96–12	Transcontinental Gas P/L Corp.	Eagle Natural Gas Co.	10–02–95	G–S	40,000	N	I	09–01–95	Indef.
ST96–13	El Paso Natural Gas Co.	Chevron U.S.A. Inc.	10–02–95	G–S	7,724	N	F	09–01–95	10–01–95
ST96–14	El Paso Natural Gas Co.	Nevada Power Co.	10–02–95	G–S	15,450	N	F	09–01–95	10–01–95
ST96–15	El Paso Natural Gas Co.	Nevada Power Co.	10–02–95	G–S	7,726	N	F	09–01–95	10–01–95
ST96–16	Florida Gas Transmission Co.	Coronet Industries, Inc.	10–03–95	G–S	1,000	N	F	09–01–95	Indef.
ST96–17	Florida Gas Transmission Co.	Midcon Gas Services Corp.	10–03–95	G–S	100,000	N	I	09–01–95	Indef.
ST96–18	Egan Hub Partners, L.P.	Tennessee Gas Pipeline Co.	10–04–95	C	25,000	N	F	09–01–95	05–01–96
ST96–19	Egan Hub Partners, L.P.	East Ohio Gas Co.	10–04–95	C	60,000	N	F	09–01–95	04–01–08
ST96–20	Eagan Hub Partners, L.P.	Texas Gas Transmission Corp.	10–04–95	C	80,000	N	F	09–01–95	04–01–06
ST96–21	Egan Hub Partners, L.P.	Northern Indiana Public Service Co.	10–04–95	C	50,000	N	F	09–01–95	04–01–16
ST96–22	Egan Hub Partners, L.P.	Texas Gas Transmission Corp.	10–04–95	C	10,000	N	F	09–01–95	03–01–99
ST96–23	Egan Hub Partners, L.P.	Texas Gas Transmission Corp.	10–04–95	C	N/A	N	I	09–01–95	02–01–96
ST96–24	El Paso Natural Gas Co.	Nevada Power Co.	10–04–95	G–S	16,480	N	F	08–01–95	09–01–95
ST96–25	El Paso Natural Gas Co.	Nevada Power Co.	10–04–95	G–S	14,420	N	F	08–01–95	09–01–95
ST96–26	El Paso Natural Gas Co.	GPM Gas Corp	10–04–95	G–S	48,925	N	I	09–15–95	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate schedule	Date commenced	Projected termination date
ST96–27	Public Service Co. of New Mexico.	Transwestern Natural Gas Co., et al.	10–05–95	G–HT	100,000	N	I	09–24–95	Indef.
ST96–28	K N Interstate Gas Trans. Co.	Northwestern Public Service Co.	10–05–95	G–S	25,500	N	I	07–01–95	06–30–10
ST96–29	El Paso Natural Gas Co.	Catex Vitol Gas, Inc.	10–05–95	G–S	30,000	N	F	03–01–95	03–03–95
ST96–30	El Paso Natural Gas Co.	Cenergy, Inc	10–05–95	G–S	10,000	N	F	04–01–95	05–01–95
ST96–31	El Paso Natural Gas Co.	Fina Natural Gas Co.	10–05–95	G–S	10,000	N	F	04–01–95	Indef.
ST96–32	El Paso Natural Gas Co.	Cenergy, Inc	10–05–95	G–S	10,000	N	F	05–01–95	04–01–96
ST96–33	El Paso Natural Gas Co.	Norman Energy Services, Inc.	10–05–95	G–S	10,000	N	F	04–01–95	04–01–96
ST96–34	El Paso Natural Gas Co.	Catex Vitol Gas, Inc.	10–05–95	G–S	30,000	N	F	03–03–95	03–01–96
ST96–35	El Paso Natural Gas Co.	Noram Energy Services, Inc.	10–05–95	G–S	10,000	N	F	04–01–95	04–01–96
ST96–36	Noram Gas Transmission Co.	Seagull Marketing Services, Inc.	10–05–95	G–S	6,650	N	F	10–01–95	10–31–95
ST96–37	Noram Gas Transmission Co.	Hadson Gas Systems, Inc.	10–05–95	G–S	5,005	N	F	10–01–95	10–31–95
ST96–38	Noram Gas Transmission Co.	Boyd Rosene and Associates, Inc.	10–05–95	G–S	2,083	N	F	10–01–95	10–31–95
ST96–39	Noram Gas Transmission Co.	Amoco Energy Trading Corp.	10–05–95	G–S	30,300	N	F	10–03–95	10–31–95
ST96–40	Noram Gas Transmission Co.	Tetco Gas Marketing Co.	10–05–95	G–S	5,740	N	F	10–01–95	10–31–95
ST96–41	Noram Gas Transmission Co.	Noram Energy Services, Inc.	10–05–95	G–S	60,000	Y	F	10–01–95	10–31–95
ST96–42	Noram Gas Transmission Co.	Amoco Energy Trading Corp.	10–05–95	G–S	9,000	N	F	10–03–95	10–31–95
ST96–43	Noram Gas Transmission Co.	Noram Field Services Corp.	10–05–95	G–S	55,000	N	Y	10–01–95	12–31–95
ST96–44	Noram Gas Transmission Co.	Energy Source, Inc.	10–05–95	G–S	5,438	N	F	10–01–95	10–31–95
ST96–45	Noram Gas Transmission Co.	Tidewest Trading & Transport Co.	10–05–95	G–S	23,500	N	F	10–01–95	10–31–95
ST96–46	Noram Gas Transmission Co.	NGC Transportation, Inc.	10–05–95	G–S	50,000	N	F	10–01–95	09–30–96
ST96–47	Noram Gas Transmission Co.	Pennunion Energy Services, L.L.C.	10–05–95	G–S	5,000	N	F	10–01–95	10–31–95
ST96–48	Noram Gas Transmission Co.	Noram Energy Services, Inc.	10–05–95	G–S	8,309	Y	F	10–01–95	10–31–95
ST96–49	Noram Gas Transmission Co.	Associated Gas Services, Inc.	10–05–95	G–S	10,000	N	F	10–01–95	09–30–96
ST96–50	Williams Natural Gas Co.	Western Resources, Inc.	10–05–95	G–S	198	N	F	10–01–95	Indef.
ST96–51	Midwestern Gas Transmission Co.	Southern Indiana Gas & Electric Co.	10–06–95	G–S	14,566	N	F	10–01–95	Indef.
ST96–52	Williston Basin Inter. P/L Co.	Hadson Gas Systems, Inc.	10–06–95	G–S	75,000	A	I	09–08–95	07–31–97
ST96–53	Washington Gas Light Co.	Eastern Group .	10–06–95	C	26,953	N	I	09–06–95	09–06–95

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate schedule	Date commenced	Projected termination date
ST96–54	Transcontinental Gas P/L Corp.	Pinnacle Energy Co.	10–06–95	G–S	40,000	N	I	09–07–95	Indef.
ST96–55	Algonquin Gas Transmission Co.	Boston Edison Co.	10–10–95	B	100	N	F	10–01–95	Indef.
ST96–56	Tennessee Gas Pipeline Co.	Valero Gas Marketing Co.	10–10–95	G–S	8,333	N	F	10–01–95	Indef.
ST96–57	Tennessee Gas Pipeline Co.	Cranberry Pipeline Corp.	10–10–95	G–S	10,000	N	F	10–01–95	Indef.
ST96–58	Tennessee Gas Pipeline Co.	American Energy Management, Inc.	10–10–95	G–S	5	N	F	10–01–95	Indef.
ST96–59	Colorado Interstate Gas Co.	Wyoming Gas Co.	10–10–95	G–S	366	N	I	10–01–95	Indef.
ST96–60	Mojave Pipeline Co.	Eastex Energy Co.	10–10–95	G–S	3,000	N	I	10–01–95	07–18–96
ST96–61	Texas Gas Transmission Corp.	Louisiana Land and Exploration Co.	10–10–95	G–S	150,000	N	I	09–29–95	Indef.
ST96–62	Transtexas Gas Corp.	Florida Gas Trans. Corp., et al.	10–11–95	C	20,000	N	I	08–16–95	Indef.
ST96–63	Transcontinental Gas P/L Corp.	Apache Corp	10–11–95	G–S	13,000	N	I	09–01–95	Indef.
ST96–64	El Paso Natural Gas Co.	Westar Transmission Co.	10–11–95	B	1,545	N	I	09–27–95	Indef.
ST96–65	K N Interstate Gas Trans. Co.	Amgas Corp	10–11–95	G–S	6,000	N	F	06–01–95	09–30–05
ST96–67	Tennessee Gas Pipeline Co.	Anadarko Trading Co.	10–11–95	G–S	4	N	F	10–01–95	Indef.
ST96–68	Tennessee Gas Pipeline Co.	Midcon Gas Services Corp.	10–11–95	G–S	4	N	F	09–16–95	Indef.
ST96–69	Tennessee Gas Pipeline Co.	CNG Energy Services Corp.	10–11–95	G–S	10,000	N	F	10–01–95	Indef.
ST96–70	Tennessee Gas Pipeline Co.	Southern Indiana Gas & Electric Co.	10–11–95	G–S	5	N	F	10–01–95	Indef.
ST96–71	Tennessee Gas Pipeline Co.	Latrobe Steel Co.	10–11–95	G–S	2,040	N	F	10–01–95	Indef.
ST96–72	Trunkline Gas Co.	Conoco, Inc	10–12–95	G–S	51,750	N	I	10–01–95	Indef.
ST96–73	Trunkline Gas Co.	KNG Energy, Inc.	10–12–95	G–S	10,000	N	I	10–01–95	Indef.
ST96–74	Trailblazer Pipeline Co.	Williams Gas Marketing Co.	10–13–95	G–S	2,830	N	F	09–01–95	09–30–95
ST96–75	Questar Pipeline Co.	Barrett Resources Corp.	10–13–95	G–S	10,000	N	F	10–03–95	Indef.
ST96–76	Questar Pipeline Co.	Vesgas Co	10–13–95	G–S	10,000	N	F	10–02–95	Indef.
ST96–77	Oasis Pipe Line Co.	El Paso Natural Gas Co., et al.	10–13–95	C	50,000	N	I	08–23–95	Indef.
ST96–78	Oasis Pipe Line Co.	El Paso Natural Gas Co., et al.	10–13–95	C	50,000	N	I	08–01–95	Indef.
ST96–79	Northern Illinois Gas Co.	ANR Pipeline Co., et al.	10–16–95	G–HT	10,000	N	I	10–01–95	11–30–95
ST96–80	Northern Illinois Gas Co.	ANR Pipeline Co., et al.	10–16–95	G–HT	5,000	N	I	10–01–95	12–31–95
ST96–81	Northern Illinois Gas Co.	ANR Pipeline Co., et al.	10–16–95	G–HT	2,000	N	I	10–01–95	10–10–95
ST96–82	Panhandle Eastern Pipe Line Co.	Vesta Energy Co.	10–18–95	G–S	10,000	N	F	10–01–95	10–31–96
ST96–83	Panhandle Eastern Pipe Line Co.	American Cyanamid Co.	10–18–95	G–S	3,500	N	F	10–01–95	04–30–97
ST96–84	Panhandle Eastern Pipe Line Co.	Anadarko Petroleum Corp.	10–18–95	G–S	25,000	N	F	10–01–95	10–31–95

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate schedule	Date commenced	Projected termination date
ST96–85	Panhandle Eastern Pipe Line Co.	Natural Gas Clearinghouse.	10–18–95	G–S	25,738	N	F	10–01–95	10–31–95
ST96–86	Panhandle Eastern Pipe Line Co.	Coenergy Trading Co.	10–18–95	G–S	70,000	N	F	10–01–95	10–31–95
ST96–87	Panhandle Eastern Pipe Line Co.	Boyd Rosene and Associates, Inc.	10–18–95	G–S	75,000	N	I	10–01–95	04–30–98
ST96–88	Panhandle Eastern Pipe Line Co.	Teco Gas Marketing Co.	10–18–95	G–S	25,000	N	I	10–01–95	09–30–97
ST96–89	Panhandle Eastern Pipe Line Co.	Vesta Energy Co.	10–18–95	G–S	9,000	N	F	10–01–95	10–31–95
ST96–90	Texas Eastern Transmission Corp.	Enron Field Services Co.	10–19–95	G–S	40,000	N	I	9–19–95	Indef.
ST96–91	Trunkline Gas Co.	Tejas Power Corp.	10–19–95	G–S	51,750	N	I	10–07–95	Indef.
ST96–92	Panhandle Eastern Pipe Line Co.	Coenergy Trading Co.	10–19–95	G–S	60,000	N	I	10–01–95	09–25–97
ST96–93	Panhandle Eastern Pipe Line Co.	Aquila Energy Marketing Corp.	10–19–95	G–S	5,670	N	F	10–01–95	10–31–95
ST96–94	Panhandle Eastern Pipe Line Co.	AIG Trading Corp.	10–19–95	G–S	15,000	N	F	10–01–95	10–31–95
ST96–95	Panhandle Eastern Pipe Line Co.	Anadarko Trading Co.	10–19–95	G–S	13,818	N	F	10–01–95	10–31–95
ST96–96	Panhandle Eastern Pipe Line Co.	Transcanada Gas Services Inc.	10–19–95	G–S	30,000	N	I	10–01–95	09–30–97
ST96–97	Noram Gas Transmission Co.	Tenneco Gas Marketing Co.	10–19–95	G–S	2,500	N	F	10–10–95	10–31–95
ST96–98	Noram Gas Transmission Co.	Williams Energy Services Co.	10–19–95	G–S	17,000	N	F	10–08–95	10–31–95
ST96–99	Noram Gas Transmission Co.	Williams Energy Services Co.	10–19–95	G–S	20,000	N	F	10–05–95	10–31–95
ST96–100	Noram Gas Transmission Co.	Vastar Gas Marketing, Inc.	10–19–95	G–S	40,000	N	F	10–04–95	10–06–95
ST96–101	Panhandle Eastern Pipe Line Co.	Associated Gas Services, Inc.	10–19–95	G–S	280	Y	F	10–01–95	10–31–95
ST96–102	Noark Pipeline System, L.P.	Texas Eastern Trans. Corp., et al.	10–18–95	C	750	N	I	07–01–95	07–31–96
ST96–103	Arkansas Western Pipeline Co.	Associated Natural Gas Co.	10–18–95	B	750	Y	I	07–01–95	07–31–96
ST96–104	Public Service Co. of Colorado.	Northwest Pipeline Corp., et al.	10–20–95	G–LT	3,000	N	I	09–27–95	Indef.
ST96–105	Transcontinental Gas P/L Corp.	Transport Gas Corp.	10–20–95	G–S	20,000	N	I	09–20–95	Indef.
ST96–106	Sea Robin Pipeline Co.	Mobil Natural Gas Corp.	10–20–95	G–S	16,000	Y	F	10–01–95	09–20–00
ST96–107	Sea Robin Pipeline Co.	Enserch Exploration, Inc.	10–20–95	G–S	40,000	Y	F	09–20–95	09–20–00
ST96–108	Southern Natural Gas Co.	City of Cochran	10–20–95	G–S	59	N	F	09–21–95	10–31–95
ST96–109	Southern Natural Gas Co.	NGC Transportation Inc.	10–20–95	G–S	60,000	N	I	10–01–95	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate schedule	Date commenced	Projected termination date
ST96–110	Columbia Gulf Transmission Co.	Seagull Marketing Services, Inc.	10–20–95	G–S	5,000	N	F	10–01–95	10–31–95
ST96–111	Columbia Gulf Transmission Co.	H&N Gas, Ltd ..	10–20–95	G–S	5,000	N	F	10–01–95	10–31–95
ST96–112	Panhandle Eastern Pipe Line Co.	Central Illinois Light Co.	10–20–95	G–S	6,000	N	F	10–01–95	02–28–97
ST96–113	Panhandle Eastern Pipe Line Co.	Cerro Copper Casting Co.	10–20–95	G–S	100	N	F	10–09–95	01–31–96
ST96–114	Delhi Gas Pipeline Corp.	Koch Gateway Pipe Line Co. et al.	10–23–95	C	75,000	N	I	10–01–95	Indef.
ST96–115	Sabine Pipe Line Co.	Energy Source Inc.	10–23–95	G–S	20,000	N	I	10–04–95	Indef.
ST96–116	Kern River Gas Transmission Co.	Amoco Energy Trading Corp.	10–23–95	G–S	25,000	N	F	09–26–95	10–31–95
ST96–117	Mojave Pipeline Co.	Tehachapi-Cummings Co. Water Dist.	10–23–95	G–S	3,000	N	I	10–01–95	01–25–96
ST96–118	CNG Transmission Corp.	Willamette Industries, Inc.	10–23–95	G–S	6,600	N	F	10–01–95	10–31–95
ST96–119	Delhi Gas Pipeline Corp.	El Paso Natural Cas Co., et al.	10–23–95	C	800	N	I	10–01–95	Indef.
ST96–120	Public Service Co. of Colorado.	Northwest Pipeline Corp., et al.	10–20–95	G–LT	5,000	N	I	05–14–92	Indef.
ST96–121	El Paso Natural Gas Co.	Noram Energy Services, Inc.	10–24–95	G–S	103,000	N	I	10–01–95	Indef.
ST96–122	El Paso Natural Gas Co.	Lone Star Gas Co.	10–24–95	B	1,545	N	I	10–01–95	Indef.
ST96–123	El Paso Natural Gas Co.	Lone Star Gas Co.	10–24–95	B	40,000	N	I	10–03–95	Indef.
ST96–124	Transwestern Pipeline Co.	San Diego Gas and Electric Co.	10–24–95	G–S	5,400	N	F	09–01–95	09–30–95
ST96–125	Transwestern Pipeline Co.	Williams Gas Marketing Co.	10–24–95	G–S	20,000	N	F	09–01–95	09–30–95
ST96–126	Transwestern Pipeline Co.	Mobil Natural Gas Inc.	10–24–95	G–S	4,000	N	F	09–01–95	09–30–95
ST96–127	Transwestern Pipeline Co.	Amoco Energy Trading Corp.	10–24–95	G–S	12,141	N	F	09–01–95	09–30–95
ST96–128	Transwestern Pipeline Co.	Chevron USA Production Co.	10–24–95	G–S	26,095	N	F	09–01–95	09–30–95
ST96–129	Transwestern Pipeline Co.	Aquila Energy Marketing Corp.	10–24–95	G–S	20,266	N	F	09–01–95	09–30–95
ST96–130	Transwestern Pipeline Co.	Enron Capital and Trade Resources.	10–24–95	G–S	40,000	Y	F	09–01–95	09–30–95
ST96–131	Transwestern Pipeline Co.	NGC Transportation, Inc.	10–24–95	G–S	6,000	N	F	09–01–95	09–30–95
ST96–132	Transwestern Pipeline Co.	Aquila Energy Marketing Corp.	10–24–95	G–S	24,000	N	F	09–01–95	09–30–95
ST96–133	Transwestern Pipeline Co.	Aquila Energy Marketing Corp.	10–24–95	G–S	20,000	N	F	09–01–95	09–30–95
ST96–134	Transwestern Pipeline Co.	Enron Capital and Trade Resources.	10–24–95	G–S	20,000	Y	F	09–01–95	09–05–95
ST96–135	Transwestern Pipeline Co.	Delhi Gas Pipeline Corp.	10–24–95	B	15,000	N	F	09–01–95	09–30–95
ST96–136	Florida Gas Transmission Co.	City of Live Oak	10–25–95	G–S	1,768	N	F	10–01–95	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate schedule	Date commenced	Projected termination date
ST96–137	Florida Gas Transmission Co.	Palatka Gas Authority.	10–25–95	G–S	5,543	N	F	10–01–95	Indef.
ST96–138	Florida Gas Transmission Co.	City of Defuniak Springs.	10–25–95	G–S	1,500	N	F	10–01–95	Indef.
ST96–139	Florida Gas Transmission Co.	City of Perry	10–25–95	G–S	3,000	N	F	10–01–95	Indef.
ST96–140	Florida Gas Transmission Co.	City of Sunrise .	10–25–95	G–S	6,000	N	F	10–01–95	Indef.
ST96–141	Florida Gas Transmission Co.	Noram Energy Services, Inc.	10–25–95	G–S	100,000	N	I	09–29–95	Indef.
ST96–142	El Paso Natural Gas Co.	Williams Gas Marketing Co.	10–26–95	G–S	30,900	N	I	08–16–95	Indef.
ST96–143	Valero Transmission, L.P.	Texas Eastern Transmission Corp.	10–26–95	C	5,000	N	I	10–06–95	Indef.
ST96–144	Panhandle Eastern Pipe Line Co.	Anadarko Trading Co.	10–26–95	G–S	234,000	N	F	10–01–95	11–30–95
ST96–145	Panhandle Eastern Pipe Line Co.	BP Oil Co	10–26–95	G–S	20,000	N	F	10–01–95	03–31–96
ST96–146	Valero Transmission, L.P.	Tennessee Gas Pipeline Co.	10–27–95	C	5,000	N	I	10–01–95	Indef.
ST96–147	Mississippi River Trans. Corp.	Tenneco Gas Marketing Co.	10–27–95	G–S	150,000	A	F	09–29–95	Indef.
ST96–148	Tennessee Gas Pipeline Co.	Seitel Gas & Energy Corp.	10–30–95	G–S	5,000	N	I	10–01–95	Indef.
ST96–149	Tennessee Gas Pipeline Co.	Hadson Gas Systems Inc.	10–30–95	G–S	4,000	N	F	10–01–95	Indef.
ST96–150	Tennessee Gas Pipeline Co.	Stand Energy Corp.	10–30–95	G–S	831	N	F	10–01–95	Indef.
ST96–151	Tennessee Gas Pipeline Co.	Tenneco Gas Marketing Co.	10–30–95	G–S	351	A	I	10–01–95	Indef.
ST96–152	Midwestern Gas Transmission Co.	American Energy Management Inc.	10–30–95	G–S	8,016	N	F	10–01–95	Indef.
ST96–153	Great Lakes Gas Trasmission L.P.	UMC Petroleum Corp.	10–30–95	G–S	35,000	N	F	10–01–95	10–31–02
ST96–154	Northern Natural Gas Co.	Chevron USA Inc.	10–30–95	G–S	10,000	N	F	10–06–95	10–31–95
ST96–155	Northern Natural Gas Co.	Tristar Gas Marketing Co.	10–30–95	G–S	20,000	N	F	10–01–95	10–31–95
ST96–156	Northern Natural Gas Co.	Noram Energy Services, Inc.	10–30–95	G–S	10,000	N	F	10–01–95	10–31–95
ST96–157	Northern Natural Gas Co.	NGC Transportation, Inc.	10–30–95	G–S	11,824	N	F	10–01–95	10–31–95
ST96–158	Northern Natural Gas Co.	Koch Gas Services.	10–30–95	G–S	5,200	N	F	10–01–95	10–31–95
ST96–159	Northern Natural Gas Co.	Hugoton Capital Limited Partnership.	10–30–95	G–S	10,000	N	F	10–01–95	10–31–95
ST96–160	Northern Natural Gas Co.	Koch Gas Services.	10–30–95	G–S	5,200	N	F	10–01–95	10–31–95
ST96–161	Northern Natural Gas Co.	Tartan Energy Resources, L.C.	10–30–95	G–S	25,000	N	I	10–07–95	Indef.
ST96–162	Northern Natural Gas Co.	Watertown Municipal Utilities Dept.	10–30–95	B/G–S	2,000	N	F	10–01–95	10–31–95
ST96–163	Iroquois Gas Trans. System, L.P.	Renaissance Energy (U.S.) Inc.	10–30–95	G–S	10,000	N	F	10–01–95	10–01–96

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate schedule	Date commenced	Projected termination date
ST96–164	Natural Gas P/L Co. of America.	Feagan Gathering Co.	10–31–95	B	1,500	N	F	10–01–95	09–30–96
ST96–165	Florida Gas Transmission.	Cenergy, Inc	10–31–95	G–S	4,000	N	I	10–01–95	Indef.
ST96–166	Florida Gas Transmission.	Geneva County Gas District.	10–31–95	G–S	3,527	N	F	10–01–95	Indef.
ST96–167	Florida Gas Transmission.	Utilities Board of Florala.	10–31–95	G–S	500	N	F	10–01–95	Indef.
ST96–168	Florida Gas Transmission.	CNB Olympic Gas Services.	10–31–95	G–S	1,000	N	F	10–01–95	12–31–98
ST96–169	Florida Gas Transmission.	Torch Gas, L.C	10–31–95	G–S	25,000	N	I	10–01–95	Indef.
ST96–170	Florida Gas Transmission.	Crescent City Natural Gas.	10–31–95	G–S	1,170	N	F	10–01–95	Indef.

[1] Notice of transactions does not constitute a determination that filings comply with commission regulations in accordance with order No. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372, 10/10/85).
[2] Estimated maximum daily volumes includes volumes reported by the filing company in MMBTU, MCF and DT.
[3] Affiliation of reporting company to entities involved in the transaction. A ''Y'' indicates affiliation, an ''A'' indicates marketing affiliation, and a ''N'' indicates no affiliation.

[FR Doc. 95–28560 Filed 11–22–95; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. CP94–751–004, et al.]

Transwestern Pipeline Company, et al.; Natural Gas Certificate Filings

November 16, 1995.

Take notice that the following filings have been made with the Commission:

1. Transwestern Pipeline Company

[Docket No. CP94–751–004]

Take notice that on October 13, 1995, Transwestern Pipeline Company (Transwestern), Post Office Box 1188, Houston, Texas 77251–1188 filed an amendment (Amendment) to its original application in Docket No. CP94–751–000, as amended, which was filed pursuant to Section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon certain facilities. Transwestern states that the Amendment requests that the Commission modify the abandonment authorization granted for certain of the facilities in Docket No. CP94–751–000 by the Commission's July 27, 1995, Order Approving Contested Settlement, 72 FERC ¶ 61,085, to allow such facilities to be transferred to non-jurisdictional third parties, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Transwestern states that its original application in Docket No. CP94–751–000, requested authorization to abandon certain compressors, treater plants, meters, dehydration units and associated facilities. According to Transwestern, it amended its application to set forth certain corrections and to reflect the sale to third parties of certain of the facilities, the determination that certain of the facilities already had been abandoned, and the determination that gas was flowing through certain wellhead facilities.

Transwestern proposed to abandon the facilities in the original application through removal or abandonment in place because such facilities were no longer used or useful in its operations, or were uneconomical or otherwise unnecessary for continued operation of its pipeline. It is stated that the order authorized abandonment of such facilities subject to Transwestern's compliance with certain environmental conditions set forth in Appendix D to the order.

Transwestern states that, currently, certain non-jurisdictional third parties seek to acquire some of those facilities for their operations. Accordingly, Transwestern requests that the Commission modify its order to provide that such facilities for which abandonment was granted may be transferred to third parties, and, in such case, Transwestern is not required to comply with the environmental conditions of Appendix D, which would apply if Transwestern abandoned in place or removed such facilities. Transwestern contends that such third parties are the same entities identified in the order as acquiring related facilities for which abandonment authorization was granted in Docket No. CP95–70–000: Mobil Producing Texas and New Mexico, Inc., Agave Energy Company, Highlands Gathering and Processing Company and Enron Oil & Gas Company.

According to Transwestern, it would be economically wasteful for Transwestern to undertake the burden and expense of disposing of such facilities only to have third parties undertake the burden and expense of replacing them. Transwestern contends that the purpose of Appendix D is to protect the environment. However, in the case of the facilities the third parties wish to acquire, Transwestern argues that it would be much more disruptive to the environment to comply with Appendix D and remove such facilities, only to have the third parties reinstall them, than to simply convey the facilities to the third parties in the first place.

Given that abandonment already has been authorized for such facilities, Transwestern states that no other change to the order is required or proposed, in order to allow the transfer of such facilities rather than removal or abandonment in place under Appendix D. Transwestern states that it would receive no additional payment as the result of its transfer of such facilities and proposes that there would be no additional change in the accounting treatment for such facilities approved in the July 27, order.[1] Further, it is stated that such facilities would be subject to the default gathering contract applicable to the other related facilities transferred to third parties for which abandonment

[1] Transwestern states that, inasmuch as the accounting treatment for the abandoned assets is an integral part of the Settlement rates and revenues as approved in Docket No. RP95–271–000 and to the exten deemed necessary by the Commission, Transwestern requests waiver of the Commission's regulations in order to obtain the authorization requested herein with no change in the accounting treatment approved in the order.

was authorized in Docket No. CP95–70–000.

Comment date: December 7, 1995, in accordance with Standard Paragraph F at the end of this notice.

2. El Paso Natural Gas Company

[Docket No. CP96–44–000]

Take notice that on November 2, 1995, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP96–44–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a delivery point in Pecos County, Texas, which will permit it to transport and deliver gas to Transok Inc., (Transok) on an interruptible basis for West Texas Utilities Company (WTU) for delivery to the WTU Rio Pecos Power Plant, under El Paso's blanket certificate issued in Docket No. CP82–435–000 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.

By a letter agreement dated June 26, 1995, Transok, acting as WTU's agent, and El Paso agreed that El Paso would install a new delivery point on El Paso's Puckett Line. Transok would construct the pipeline connecting El Paso's proposed delivery point to WTU's Rio Pecos Power Plant. El Paso states that WTU intends to use the gas to fuel its Rio Pecos Power Plant. On August 30, 1995, El Paso and WTU entered into a Transportation Service Agreement which provided for interruptible transportation service from any receipt point on El Paso's system to the proposed delivery point. Accordingly, El Paso is seeking authorization to construct and operate the proposed delivery point which is to be known as the Rio Pecos Power Plant Meter Station.

El Paso proposes to construct one 8'' O.D. tap and valve assembly, one 8'' O.D. senior orifice meter run, EFM, telecommunications equipment, and almost 80 feet of 8'' O.D. pipe, all with appurtenances, at approximately milepost 29.8 on its 20'' O.D. Puckett Line in Section 87, Block 11, H&GN RR Co. Survey, Pecos County, Texas. The total estimated cost of the proposed facilities, including respective overhead and contingency fees, is $119,700. Transok, pursuant to the June 26, 1995 letter agreement, will reimburse El Paso for the costs related to the Rio Pecos Power Plant Meter Station construction.

The natural gas volumes transported to the Rio Pecos Power Plant Meter Station is estimated to be 10,950,000 Mcf annually, or an average of 30,000 Mcf per day, during the third calendar year of operation. The maximum peak day requirement during the third calendar year of service is estimated to be 35,000 Mcf.

El Paso states that the establishment of the Rio Pecos Power Plant Meter Station is not prohibited by its existing tariff and that there is sufficient capacity to accomplish deliveries without detriment or disadvantage to its other customers.

Comment date: January 2, 1996, in accordance with Standard Paragraph G at the end of this notice.

3. NE Hub Partners, L.P.

[Docket No. CP96–53–000]

Take notice that on November 7, 1995, NE Hub Partners, L.P. (''NE Hub'') located at Two Riverbend at Lansdowne, 44084 Riverside Parkway, Suite 340, Leesburg, Virginia 22075, tendered for filing an application pursuant to Section 7(c) of the Natural Gas Act and Parts 157 and 284 of the Commission's regulations requesting that the Commission (1) issue NE Hub a certificate of public convenience and necessity pursuant to Subpart A of Part 157 to permit NE Hub to construct and operate natural gas facilities necessary to provide storage and transportation services at market-based rates; (2) issue NE Hub a blanket transportation certificate pursuant to Subpart G of Part 284 to permit NE Hub to provide storage and transportation services on behalf of others; (3) issue NE Hub a blanket construction certificate pursuant to Subpart F of Part 157 to permit NE Hub to construct, acquire, and operate additional facilities following initial construction of the facilities for which authorization under Subpart A of Part 157 is being sought in the application; and (4) issue NE Hub a blanket sales certificate pursuant to Subpart J of Part 284 to provide unbundled sales service for the limited purpose of disposing of gas in storage that shippers may fail to remove.

NE Hub further requests approval of its pro forma FERC Gas Tariff included at Exhibit P to the application. NE Hub also requests that if its request for approval of market-based rates is granted, the Commission (1) waive the requirements of section 284.8(d) of its regulations, which require that rates be designed using a straight fixed-variable rate design methodology; (2) waive the requirements of section 157.14 of its regulations to permit NE Hub to omit Exhibits K, N, and O to the application; and (3) waive the accounting and reporting requirements under Part 201 and section 260.2 of the Commission's regulations.

Further, NE Hub requests that the Commission grant confidential treatment to the cultural resources report that accompanies the application.

The storage and transportation facilities which NE Hub seeks to construct and operate will be located in Tioga County, Pennsylvania. The storage facilities will consist of underground storage caverns that will be developed from a salt bed formation located underneath an existing gas storage field that is owned and operated by CNG Transmission Corporation (CNG) and North Penn Gas Company (North Penn). Each cavern to be developed by NE Hub will have approximately 2.5 to 3.0 Bcf of working gas capacity. NE Hub requests that the Commission authorize NE Hub to leach up to ten salt caverns, construct appurtenant facilities to be used to store natural gas, and construct pipeline facilities to interconnect the storage caverns with third-party pipelines (CNG, Tennessee Gas Pipeline Company and possibly North Penn) that currently provide service in interstate commerce.

While NE Hub is requesting authorization to construct all ten caverns in this proceeding, it is requesting that the Commission only approve the first two caverns for natural gas storage service at this time and that the remaining caverns only be authorized for natural gas storage service after NE Hub makes certain filings in the future showing, among other things, evidence of market demand for additional natural gas storage serine. NE Hub states that the first cavern will be available for service for the 1997–98 winter heating season and a second cavern will be available for the 1999–2000 winter heating season.

The storage and transportation services to be offered by NE Hub will be available on a firm and interruptible basis, based upon terms and conditions that are consistent with the requirements of Order No. 636. The proposed terms and conditions, as well as rate schedules on which services will be offered, are included in the pro forma tariff attached to the application. NE Hub requests that it be permitted to charge and collect market-based rates for these storage and transportation services.

Comment date: December 7, 1995, in accordance with Standard Paragraph F at the end of this notice.

4. NorAm Gas Transmission Company

[Docket No. CP96–68–000]

Take notice that on November 14, 1995, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP96–68–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to operate facilities under NGT's blanket certificate issued in Docket No. CP82–384–000, *et al.,* 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.

NGT proposes to operate an existing delivery tap for deliveries to ARKLA, a distribution division of NorAm Energy Corporation (ARKLA), for ARKLA's service to a customer other than the right-of-way grantor for whom the tap was originally installed.

Comment date: January 2, 1996, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, 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. 95–28638 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket Nos. RP94–96–013 and RP94–213–010]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 17, 1995.

Take notice that on November 14, 1995, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective November 1, 1995:

Seventh Revised Sheet No. 31
Thirteenth Revised Sheet No. 32
Thirteenth Revised Sheet No. 33
Sixth Revised Sheet No. 34
Eighth Revised Sheet No. 35
Eighth Revised Sheet No. 36
Second Revised Sheet No. 37

CNG states that the purpose of its filing is to implement a voluntary rate reduction, effective November 1, 1995, to reflect the Appendix A rates set forth in the June 28, 1995 Stipulation and Agreement filed in the captioned proceedings. CNG seeks to avoid unnecessarily collecting amounts in rates that will be refunded upon approval of the Stipulation, which has been certified to the Commission and is pending approval as an uncontested settlement. CNG states that the documentation and workpapers in support of the proposed rate reduction have been provided to the Commission, at Appendix A of the June 28 Stipulation.

CNG states that copies of this letter of transmittal and enclosures are being mailed to parties to the captioned proceeding and to CNG's customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before November 27, 1995. Protests will be considered by the Commission in determining the approrpriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28565 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MB95–7–001]

Cove Point LNG Limited Partnership; Notice of Filing

November 14, 1995.

Take notice that on November 6, 1995, Cove Point LNG Limited Partnership (Cove Point) submitted revised standards of conduct under Order Nos. 497 *et seq.*[1] and Order Nos.

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *order on rehearing,* 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶ 30,868 (1989); Order No. 497–B, *order extending sunset date,* 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986–1990 ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date,* 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date,* III FERC Stats. & Regs. ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date,* 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification,* 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date,* 59 FR 32884 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,996 (June 17, 1994).

566 and 566–A.[2] Cove Point states that it is revising its standards to incorporate the changes required by the Commission's October 6, 1995, Order on Standards of Conduct.[3]

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, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before December 1, 1995. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–28566 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–39–000]

Cove Point LNG Limited Partnership; Petition for Waiver of Tariff Provision

November 14, 1995.

Take notice that on November 7, 1995, Cove Point LNG Limited Partnership (Cove Point) filed pursuant to Section 209 of the Commission's Rules of Practice and Procedure, 18 CFR 385.209, a petition for waiver of the timing provisions of Section 4(a) of Cove Point's General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1.

Cove Point states that the waiver of the 30-day posting requirement for notice of available capacity is necessary in order to make excess peaking capacity available for the 1995–96 winter Withdrawal Season. Cove Point states it has additional peaking capacity available for this winter, but that if it posted the capacity for the 30 days provided under its tariff, it would not be able to liquefy the gas prior to the commencement of the Withdrawal Season (December 15, 1995).

Finally, Cove Point states that it has provided notice of the available capacity to its customers and has posted the notice on its electronic bulletin board. The notice provides that the capacity is available for five days (commencing November 6, 1995), and that the awarding of the capacity thereunder is subject to any necessary Commission waivers

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 21, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–28567 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–325–001]

El Paso Natural Gas Company; Notice of Compliance Filing

November 16, 1995.

Take notice that on November 13, 1995, El Paso Natural Gas Company (El Paso), submitted for filing schedules detailing the flow-through of GRI over-collections for the period January 1, 1994 through June 30, 1995.

El Paso states that the purpose of this filing is to comply with the Commission's October 31, 1995, order at Docket No. RP95–325–000 which conditionally accepted El Paso's May 31, 1995, filing and required El Paso to file revised schedules within fifteen days of the order that allocated the GRI over-collections solely to Releasing Shippers.

El Paso states that on November 7, 1995, El Paso distributed to the affected Releasing Shippers over-collections received from GRI totalling $2,667,623.41, consisting of $1,848,012.51 attributable to GRI over-collections for the calendar year 1994 and $819,610.90 attributable to GRI over-collections for the period January 1, 1995 through June 30, 1995.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 24, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28568 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–66–000]

Florida Gas Transmission Company; Notice of Request Under Blanket Authorization

November 17, 1995.

Take notice that on November 14, 1995, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP96–66–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to upgrade the existing Martin North Meter Station in Martin County, Florida under FGT's blanket certificate issued in Docket No. CP82–553–000 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.

FGT states that the proposed construction was requested to give Florida Power and Light Company (FPL) more deliverability options at the Martin North Meter Station. The proposed upgrade will not increase the certificated level of service or contractual gas quantities which FGT is currently providing FPL. FGT's peak day and annual deliveries would not be impacted, there is sufficient capacity to accommodate service without detriment or disadvantage to FGT's existing customers and FGT's existing tariff does not prohibit the proposed upgrading.

FGT proposes to install an additional 12-inch meter tube and appurtenant facilities to accommodate a total gas measurement of up to 8,500 Mcf per hour at 250 psig. The estimated cost is

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[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing,* 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing,* 59 FR 65707 (December 21, 1994); 69 FERC ¶ 61,334 (December 14, 1994); *appeal docketed sub nom. Conoco, Inc. v. FERC,* D.C. Cir. No. 94–1745 (December 14, 1994).

[3] 73 FERC ¶ 61,045 (1995).

$75,000, inclusive of tax gross-up, and FPL will reimbruse FGT for all direct and indirect costs. The location of the proposed upgrade is Section 14, Township 38 South, Range 40 East, Martin County, Florida.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28569 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–2–4–000]

Granite State Gas Transmission, Inc., Proposed Changes in FERC Gas Tariff

November 14, 1995.

Take notice that on November 7, 1995, Granite State Gas Transmission, Inc. (Granite State) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets, containing changes in rates to take effect on January 1, 1996:

Sixth Revised Sheet No. 21
Seventh Revised Sheet No. 22
Sixth Revised Sheet No. 23

According to Granite State, the above revised tariff sheets reflect the Gas Research Institute surcharges approved by the Commission in Opinion No. 402, effective January 1, 1996, as applied to Granite State's rate schedules for firm and interruptible transportation services.

Granite State further states that copies of its filing have been served on its firm and interruptible transportation customers and on the regulatory agencies of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 21, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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 inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–28570 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–M

Kentucky West Virginia Gas Company; Notice of Proposed Changes in FERC Gas Tariff

[Docket No. TM96–2–46–000]

November 15, 1995.

Take notice that on November 9, 1995 Kentucky West Virginia Gas Company (Kentucky West) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet to become effective January 1, 1996:

Second Revised Sheet No. 162

Kentucky West states the revised tariff sheet amends its Gas Research Institute (GRI) funding change to place in effect on January 1, 1996, the new Gas Research Institute funding unit of $0.0088 per Dth on all applicable nondiscounted commodity units and nondiscounted one-part rates for transportation service. Additionally, there will be a $0.26 per Dth per month demand or reservation surcharge on all firm transportation entitlements for customers with load factors exceeding 50% and $0.16 per Dth per month for Customers with load factors of 50% or less. A surcharge of $0.02 per Dth will be assessed to all VTS Customers. This funding unit was approved by the FERC in Opinion No. 402, issued on October 13, 1995, under Docket No. RP95–374–000.

Kentucky West states that a copy of its filing has been served upon each of its jurisdiction customer and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 22, 1995. 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. 95–28571 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG96–14–000]

Mid-Georgia Cogen, L.P.; Notice of Application for Commission Determination of Exempt Wholesale Generator Status

November 17, 1995.

On November 9, 1995, Mid-Georgia Cogen L.P. (''Applicant'') filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to 18 CFR Part 365.

Applicant is a Delaware limited partnership formed to develop, own and operate a nominal 280 MW natural gas-fired cogeneration facility to be located in Kathleen, Georgia.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before November 24, 1995 and must be served on Applicant. 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. 95–28572 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–89–004]

MIGC, Inc; Notice of Report of Refund

November 16, 1995.

Take notice that on October 27, 1995, MIGC, Inc. tendered for filing a refund report. The report documents the refund of amounts pertaining to FTS–1 and

ITS–1 service due customers under MIGC's settlement in Docket No. RP93–89.

MIGC, Inc. states that it is filing the refund report pursuant to Article IV of the Settlement filed on May 17, 1995, in the above referenced docket. Additionally, in accordance with section 154.67(c)(2)(iii) of the Commission's Regulations, MIGC, Inc. states that interest is included on the refund amount.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests should be filed on or before November 24, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28573 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–456–001]

Mississippi River Transmission Corporation; Notice of Compliance Filing

November 17, 1995.

Take notice that on November 13, 1995, Mississippi River Transmission Corporation (MRT) submitted for filing to become part its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets listed below, with a proposed effective date of October 1, 1995:

Substitute Fourteenth Revised Sheet No. 5
Substitute Fourteenth Revised Sheet No. 6

MRT states that the tariff sheets reflected above are being filed in compliance with the Commission's October 25, 1995 Order in the above referenced proceeding. MRT also states that the filing reflects a recalculation of the interest on Pricing Differentials and includes explanations and justification for the prior period adjustments reflected in the September 29, 1995 filing.

MRT states that a copy of the filing excluding the voluminous documentation for the prior period adjustments has been mailed to each of its customers and the State Commissions of Arkansas, Missouri and Illinois.

Any person desiring to protest the subject filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before November 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28574 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–42–000]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 17, 1995.

Take notice that on November 15, 1995, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective January 1, 1996:

Fifth Revised Sheet Number 156
Sixth Revised Sheet Number 157
First Revised Sheet Number 162
Fifth Revised Sheet Number 500
Eighth Revised Sheet Number 501

Northern Border states that the purpose of this filing is to (i) Revise the Maximum Rate and Minimum Revenue Credit under Rate Schedule IT–1; (ii) provide flexibility concerning use of financial statements for IT–1 Shipper credit support; and (iii) reflect housekeeping changes.

Northern Border states that the herein proposed changes do not result in a change in Northern Border's total revenue requirement due to its cost of service form of tariff.

Northern Border proposes to increase the Maximum Rate from 4.074 cents per 100 Dekatherm-Miles to 4.213 cents per 100 Dekatherm-Miles and to decrease the Minimum Revenue Credit from 2.335 cents per 100 Dekatherm-Miles to 2.091 cents per 100 Dekatherm-Miles. The revised Maximum Rate and Minimum Revenue Credit are being filed in accordance with Northern Border's Tariff provisions under Rate Schedule IT–1. Northern Border also will provide flexibility in accepting IT–1 Shipper's unaudited financial statements in conjunction with audit based statements.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before November 27, 1995. Protests will be considered by the Commission in determining the appropriate action to the proceeding, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28575 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–57–000]

Northern Natural Gas Company; Notice of Application

November 17, 1995.

Take notice that on November 9, 1995, Northern Natural Gas Company (Northern), 1111 South 103d Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP96–57–000 an application pursuant to Section 7(b) and 7(c) of the Natural Gas Act requesting permission and approval to abandon compressor station facilities and authorization to construct and operate compression, pipeline and measuring station facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Northern proposes to increase the capacity of its mainline system by approximately 46,400 Mcf per day by extending its 30-inch ''C-line'' loop by approximately 2.24 miles and replacing the 10,600 horsepower at its Owatonna compressor with similarly rated horsepower approximately 22 miles downstream at a new station near Faribault, Minnesota. Northern proposes to abandon the units at the Owatonna compressor station in-place. In addition, Northern proposes to increase the capacity of its Elk River system by extending the existing 20-inch Elk River branchline loop approximately 3.30 miles in Anoka County, Minnesota.

Northern also proposes to increase the capacity of its St. Cloud system by installing the following branchline loops: (a) approximately 3.07 miles of 4-inch St. Michael branchline loop in Wright County, Minnesota; b) approximately 5.01 miles of 8-inch Princeton branchline loop in Mille Lacs and Sherburne Counties, Minnesota; c) approximately 1.96 miles of 4-inch Monticello branchline loop in Wright County, Minnesota; and d) approximately 14.52 miles of 6-inch Paynesville to Watkins tie-over connecting the Paynesville branchline and the Watkins branchlines. Additonally, Northern proposes to upgrade the metering instruments at the following TBSs: New Richmond, Mondovi, Coon Rapids #1B, Lexington #1, Lexington #1A, Annandale #1 and Maple Lake #1.

Northern estimates the cost of the proposed facilities to be $18.5 million, which Northern states will be financed with internally generated funds. Northern states these facilities will allow Northern to provide incremental firm transportation service to LSP-Cottage Grove, L.P., Northern States Power-Minnesota, Minnegasco, a Division of NorAm Energy Corp., Great Plains Natural Gas Company, Midwest Natural Gas Company, and Natural Gas Inc. Northern requests a determination that rolled-in rate treatment is appropriated for these facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 8, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulation 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 is 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 Northern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28576 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–20–000 (CP92–184–013)]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 15, 1995.

Take notice that on October 27, 1995, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheet to be effective November 1, 1995:

Ninth Revised Sheet No. 34A

Texas Eastern asserts that the purpose of this filing is to comply with the Commission's orders issued March 17, 1995 and June 6, 1995 in Docket No. CP92–184, *et al.*

Texas Eastern states that on August 29, 1994 in Docket No. CP92–184–009, Texas Eastern filed an application pursuant to Section 7(c) of the NGA to amend its July 1993 ITP certificate to, *inter alia*, modify the facility configuration for changing customer requirements and to revise the initial rates authorized for its 1995 and 1996 ITP service. In the March 17, 1995 order, the Commission approved Texas Eastern's application and amended Texas Eastern's ITP certificate as requested.

Texas Eastern states that it is filing Ninth Revised Sheet No. 34A to implement 1995 ITP service.

Texas Eastern states that copies of the filing were served upon the firm customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protested said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426 in accordance with Section 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 20, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28577 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–21–000 (CP94–654–003)]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 15, 1995.

Take notice that on October 27, 1995, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheet to be effective November 1, 1995:

Original Sheet No. 34C
Fifth Revised Sheet No. 211
Third Revised Sheet No. 212
Third Revised Sheet No. 431
Fifth Revised Sheet No. 463
Sixth Revised Sheet No. 631
Sixth Revised Sheet No. 633

Texas Eastern asserts that the purpose of this filing is to comply with the Commission's order issued July 31, 1995 in Docket Nos. CP94–654–000 and CP94–654–001.

Texas Eastern states that the tariff sheets listed above are filed in compliance with the Commission's July 31, 1995 ''Order Issuing Certificate'' in Docket Nos. CP94–654–000 and –001 (July 31 Order) to implement as of November 1, 1995 the approved incremental rates for new firm transportation service to UGI Utilities, Inc. (UGI) and PECO Energy Company (PECO). Service for UGI is scheduled to commence on November 1, 1995, and service for PECO is scheduled to commence on November 17, 1995.

Texas Eastern states that in compliance with the July 31 Order, Texas Eastern in filing initial rates pursuant to its Part 284 blanket transportation certificate for service associated with the incremental facilities as authorized in the July 31 Order. The initial rates shall consist of a Reservation Charge of $11.1390/dth and a Usage-2 Charge of $0.3662/dth as

set forth on Original Sheet No. 34C. Pursuant to Ordering Paragraph (C) of the July 31 Order, the Reservation Charge rate components are: (1) Transmission of $10.896; and (2) Non-Spot Fuel charge of $0.243. Under Texas Eastern's PCB Settlement which was approved on March 18, 1992, PCB costs are only allocated to firm services which exist as of December 1 of each year. Thus the new service contemplated here will be rendered without a PCB component for approximately two weeks.

Texas Eastern is also proposing other limited revisions to its FERC Gas Tariff, Sixth Revised Volume No. 1. Fifth Revised Sheet No. 211 and Third Revised Sheet No. 212 incorporate appropriate modifications to reflect inclusion of Sheet No. 34C. Third Revised Sheet No. 431, Fifth Revised Sheet No. 463, Sixth Revised Sheet No. 631 and Sixth Revised Sheet No. 633 revised Sections 1, 3.14, 15.4 and 15.5 of the General Terms and Conditions, respectively also to reflect inclusion of Original Sheet No. 34C.

Texas Eastern states that copies of the filing were served upon the firm customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC, 20426 in accordance with Section 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 20, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to be proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28578 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–4–001]

Transcontinental Gas Pipe Line Corporation, Notice of Proposed Changes in FERC Gas Tariff

November 16, 1995.

Take notice that on November 13, 1995, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheets are enumerated in Appendix A to the filing. Such tariff sheets are proposed to be effective December 13, 1995.

Transco states that the instant filing is being made in compliance with the Commission's letter order issued on October 26, 1995 in Docket No. RP96–4–000 (October 26 Order). The October 26 Order directed Transco to file, within 15 days of such order, additional information and, if necessary, revised tariff sheets responding to the concerns of certain parties raised in their comments and protests to Transco's October 2, 1995 filing in RP96–4–000. Transco states that the instant filing provides additional information and explanations, including revised tariff sheets, in compliance with the Commission's directive.

Transco states that it is serving copies of the filing to its customers, State Commissions and interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426 in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 24, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28579 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–4–29–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 17, 1995.

Take notice that on November 13, 1995, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1 enumerated in Appendix A attached to the filing.

Transco states that the purpose of the instant filing is to track rate or fuel changes attributable to (1) storage service purchased from CNG Transmission Corporation (CNG) under its Rate Schedule GSS the costs of which are included in the rates and charges payable under Transco's Rate Schedule LSS, (2) transportation service purchased from Texas Gas Transmission Corporation (Texas Gas) under its Rate Schedule FT the costs of which are included in the rates and charges payable under Transco's Rate Schedule FT–NT, and (3) storage service purchased from CNG under its Rate Schedule GSS the costs of which are included in the rates and charges payable under Transco's Rate Schedule GSS. This tracking filing is being made pursuant to Section 4 of Transco's Rate Schedule LSS, Section 4 of Transco's Rate Schedule FT–NT, and Section 3 of Transco's Rate Schedule GSS.

Transco states that Appendices B through D attached to the filing contain explanations of the rate or fuel changes and details regarding the computation of the revised LSS, FT–NT, and GSS rates, respectively.

Transco states that copies of the filing are being mailed to each of its LSS, FT–NT, and GSS customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 27, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28580 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR96–2–000]

Transok, Inc.; Notice of Petition for Rate Approval

November 16, 1995.

Take notice that on November 1, 1995, Transok, Inc. (Transok), filed pursuant to section 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable rates for firm and interruptible transportation services performed under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA) on Transok's Traditional System.

Transok proposes a two-part maximum firm rate, consisting of a reservation charge of $2.736 per MMBtu and a commodity charge of $0.1751 per MMBtu delivered. The proposed maximum rate for interruptible service is $0.2650 per MMBtu delivered. Transok also proposes to charge each shipper its pro rata share of compressor fuel consumed and 0.5% per volumes delivered for system losses.

Transok states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA and it owns and operates an intrastate pipeline system in the State of Oklahoma. Transok proposes an effective date of November 1, 1995.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before December 1, 1995. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28581 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–437–002]

WestGas InterState, Inc.; Notice of Compliance Filing

November 16, 1995.

Take notice that on November 13, 1995, WestGas InterState, Inc. (WGI) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet, to become effective November 1, 1995:

2 Sub Second Revised Sheet No. 5

WGI asserts that the purpose of this filing is to comply with the Commission's order issued October 27, 1995, in Docket Nos. RP95–437–000 and RP95–437–001.

WGI states that the Commission in its October 27, 1995 Letter Order directed WGI to file revised firm transportation rates based on the certificated level of service of 13,300 Dth/d. The above tariff sheet reflects a revised maximum reservation charge of $1.1272 per Dth for firm transportation service under Rate Schedule FT and a revised maximum commodity charge of $0.371 per Dth for interruptible transportation service under Rate Schedule IT. WGI states that the revised FT rate reflects the originally-certificated system design capacity of 13,300 Dth/d and the revised IT rate reflects the 100-percent load factor derivative FT rate.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 24, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–28582 Filed 11–22–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL–5230–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed November 13, 1995 Through November 17, 1995 Pursuant to 40 CFR 1506.9.

EIS No. 950536, Final EIS, AFS, ID, Idaho Panhandle National Forests Noxious Weed Management Projects, Implementation, Bonners Ferry Ranger District, Boundary County, ID, Due: December 26, 1995, Contact: Bob Klarich (208) 267–5561.

EIS No. 950537, Draft EIS, FHW, TN, TN 840 North from I–40 East near Lebanon in Wilson County to I–40 West in Dickson County, Construction, COE Section 404 and CGD Permits, Wilson, Dickson, Sumner, Robertson, Montgomery and Cheatham Counties, TN, Due: January 08, 1996, Contact: Dennis C. Cook (615) 736–5394.

EIS No. 950538, Draft EIS, SFW, WA, Plum Creek Timber Sale, Issuance of a Permit to Allow Incidental Take and Habitat Conservation Plan (HCP) for Threatened and Endangered Species, Implementation, Eastern and Western Cascade Provinces in the Cascade Mountains, King and Kittitas Counties, WA, Due: January 08, 1996, Contact: William O. Vogel (360) 534–9330.

EIS No. 950539, Draft EIS, FRC, Promoting Wholesale Competition through Open Access Non-Discriminatory Transmission Service by Public Utilities (RM95–8–000) and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities (Docket No. RM–94–7–001, Proposed Rulemaking, Due: January 08, 1996, Contact: William Meroney (202) 208–1371.

EIS No. 950540, Final EIS, FHW, AK, Whittier Access Project, Construction between Port of Whittier and Seward Highway, Funding, Right-of-Way Agreement and COE Section 10 and 404 Permits, Chugach National Forest, Municipality of Anchorage, City of Whittier, AK, Due: December 26, 1995, Contact: Phillip Smith (907) 586–7428.

EIS No. 950541, Final Supplement, COE, TX, Galveston Bay Area Navigation Improvements, Houston Ship and Galveston Channels, Additional Information, Funding and Implementation, Galveston and Harris Counties, TX, Due: December 26, 1995, Contact: Robert Bass (409) 766–3037.

EIS No. 950542, Final EIS, FHW, OR, Port of the Dalles (Chenoweth) Columbia River Highway, Construction of New Interchange North of Hostetler Street near Second and Division Streets, Funding and COE Section 404 Permit, Wasco County, OR, Due: December 26, 1995, Contact: John H. Gernhauser (503) 399–5749.

EIS No. 950543, Draft Supplement EIS, FTA, NJ, Hudson River Waterfront Transportation Corridor Improvements, (officially now referred to as Hudson-Bergen Light Rail Transit System), Funding, Jersey City, Hudson and Bergen Counties, NJ, Due: January 08, 1996, Contact: Anthony Carr (212) 264–8973.

EIS No. 950544, Draft Supplement EIS, FTA, NJ, Hudson-Bergen Light Rail Transit System, Bayonne Extension, Improvements, Funding, Hudson and Bergen Counties, NJ, Due: January 08, 1996, Contact: Anthony Carr (212) 264–8973.

EIS No. 950545, Final EIS, AFS, OR, Sandy River Delta Plan, Implementation, Special Management Area (SMA), Columbia River Gorge National Scenic Area (NSA), Several

Permits for Approval, US Coast Guard Bridge Permit and COE Section 404 Permit, Multnomah County, OR, Due: January 08, 1996, Contact: Virginia Kelly (503) 386–2333.

Dated: November 21, 1995

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–28856 Filed 11–22–95; 8:45 am]

BILLING CODE 6560–50–U

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Advisory Committee of the Export-Import Bank of the United States

SUMMARY: The Advisory Committee was established by P.L. 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

TIME AND PLACE: Thursday, December 7, 1995, at 9:30 a.m. to 12 noon. The meeting will be held at EX–IM Bank in Room 1143, 811 Vermont Avenue, N.W., Washington, D.C. 20571.

AGENDA: The meeting agenda will include a discussion of the following topics: Lundine/Key Linkages Report; Roundtable Discussion on ''Final Small Business Plan: Marketplace Feedback''; and other topics.

PUBLIC PARTICIPATION: The meeting will be open to public participation; and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Cheryl Conlin, Room 1112, 811 Vermont Avenue, N.W., Washington, D.C. 20571, (202) 565–3955, not later than December 6, 1995. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to November 30, 1995, Cheryl Conlin, Room 1112, 811 Vermont Avenue, N.W., Washington, DC 20571, Voice: (202) 565–3955 or TDD: (202) 565–3377.

FURTHER INFORMATION: For further information, contact Cheryl Conlin, Room 1112, 811 Vermont Avenue, N.W., Washington, D.C. 20571, (202) 565–3955.

Stephen G. Glazer,

Acting General Counsel.

[FR Doc. 95–28827 Filed 11–22–95; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2113]

Petition for Reconsideration of Actions in Rulemaking Proceedings

November 14, 1995.

Petition for reconsideration have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition must be filed December 11, 1995. See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Pike Road and Ramer, AL) (MM Docket No. 93–244, RM–8315, RM–8401)

Number of Petition Filed: 1

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Cadiz and Oak Grove, KY) (MM Docket No. 93–314, RM–8396)

Number of Petition Filed: 1

Subject: Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992; Rate Regulation. (MM Docket No. 92–266)

Number of Petitions Filed: 2

Subject: Price Cap Performance Review for Local Exchange Carriers; Treatment of Video Dialtone Services Under Price Cap Regulation. (CC Docket No. 94–1)

Number of Petitions Filed: 2.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–28727 Filed 11–22–95; 8:45 am]

BILLING CODE 6712–01–M

GENERAL SERVICES ADMINISTRATION

Notice of Intent to Prepare an Environmental Impact Statement and to Conduct Public Scoping

SUMMARY: The U.S. General Services Administration (GSA), Rocky Mountain Region, is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared to assess the potential effects of implementing the Master Site Plan of the Denver Federal Center (DFC) in Lakewood, Colorado. The purpose of the Master Site Plan of the DFC is to adequately plan for the efficient use and potential future development of the DFC. To ensure that all significant issues related to the proposed action are identified, the GSA will conduct a public scoping meeting.

ADDRESSES: Comments may be mailed or delivered to GSA at the following address: U.S. General Services Administration, Ms. Lisa Morpurgo, Asset Manager, Portfolio Management, P.O. Box 25546, Building 41, Denver Federal Center, Denver, Colorado, 80225–0546.

FOR FURTHER INFORMATION CONTACT: U.S. General Services Administration: Ms. Lisa Morpurgo, (303) 236–7131 ext. 250, or Mr. Lyle Marsh, (303) 236–7131 ext. 246.

SUPPLEMENTARY INFORMATION: GSA will prepare an EIS on implementing a Master Site Plan of the DFC in Lakewood, Colorado. Several development alternatives proposed in the Master Site Plan will be evaluated in the EIS, including the No Action Alternative (continuation of current development objectives and policies). The environmental review of the Master Site Plan will be conducted in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4371, et seq.), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500–1508), U.S. General Services Administration regulations (PBS P 1095.4 B), and all applicable Federal, state and local government laws, regulations and policies.

Public Scoping Meeting

GSA solicits public comments for consideration in the Draft EIS through a public scoping meeting on the proposed action. To ensure the full range of issues related to this proposed action are addressed and all significant issues are identified early in the process, comments and suggestions are invited from all interested and/or potentially

affected parties. These individuals or groups are invited to attend a public scoping meeting that will be conducted at 7 p.m. on Thursday, December 7, 1995, at the City of Lakewood City Council Chambers, 445 South Allison Parkway, Lakewood, Colorado. Written comments will be accepted for 30 days thereafter until January 8, 1995.

Dated: November 2, 1995.

Polly Baca,

Regional Administrator, General Services Administration, Rocky Mountain Region.

[FR Doc. 95–28664 Filed 11–22–95; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95N–0368]

Cord Blood Stem Cells: Discussion of Procedures for Preparation and Storage; Notice of Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop to discuss procedures for preparation and storage of cord blood stem cells. The purpose of this scientific workshop, sponsored by FDA and the National Heart, Lung, and Blood Institute, National Institutes of Health, is to identify and discuss the steps for the collection, processing, and storage of cord blood for transplantation and to identify areas in need of further research. The scientific information presented at this workshop will aid FDA in regulating cord blood stem cells and identifying product standards.

DATES: The public workshop will be held on December 13, 1995, from 8 a.m. to 4:30 p.m. Preregistration is recommended because seating is limited. Registration is requested by December 7, 1995.

ADDRESSES: The public workshop will be held at the National Institutes of Health, Natcher Conference Center, 9000 Rockville Pike, Bldg. 45, conference room E, Bethesda, MD.

FOR FURTHER INFORMATION CONTACT:

Regarding information on registration: Wanda Keyes, Prospect Associates, 1801 Rockville Pike, suite 500, Rockville, MD 20852, 301–468–6555, or FAX 301–770–5164.

Regarding information on this document: Liana Harvath, Center for Biologics Evaluation and Research (HFM–335), Food and Drug Administration, 8800 Rockville Pike, Bldg. 29, rm. 321, Bethesda, MD 20892, 301–496–2577.

SUPPLEMENTARY INFORMATION: The purpose of this workshop is to identify and discuss, insofar as present technology permits, steps for collection, processing, and storage of cord blood stem cells for transplantation and to identify what additional scientific data is needed in this area.

Topics to be discussed include the following: informed consent, medical history, screening of the donor's mother and cord blood stem cells for infectious agents, collection location, collection containers, anticoagulants, red blood cell depletion methods, short-term and long-term storage conditions, freezing methods, histocompatibility testing, development of cord blood product standards, and a quality assurance program.

FDA intends to make available at this workshop a draft document discussing the regulatory approach FDA believes is appropriate for placental umbilical cord blood stem cell products for transplantation and, shortly thereafter, will publish in the Federal Register a notice of availability for the draft document. FDA will solicit written comments on its draft document. Written comments received will be reviewed and considered in determining whether amendments to, or revisions of, the approach are warranted.

Dated: November 20, 1995.

William K. Hubbard,

Associate Commissioner for Policy.

[FR Doc. 95–28838 Filed 11–21–95; 11:32 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Public Information Collection Requirements Submitted for Public Comment and Recommendations

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summaries of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Skilled Nursing Facility (SNF) and Skilled Nursing Facility Health Care Complex Cost Report; Form No.: HCFA–2540; Use: The Skilled Nursing Facility and Skilled Nursing Facility Health Care Complex Cost Report is the cost report is to be used by freestanding SNFs to submit annual information to achieve a settlement of costs for health care services rendered to Medicare beneficiaries. Frequency: Annually; Affected Public: Business or other for profit, not for profit institutions, and State, local, or tribal government; Number of Respondents: 7,000; Total Annual Responses: 7,000; Total Annual Hours Requested: 1,372,000.

To request copies of the proposed paperwork collections referenced above, call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Planning and Analysis Staff, Attention: Louis Blank, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 6, 1995.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources.

[FR Doc. 95–28669 Filed 11–22–95; 8:45 am]

BILLING CODE 4120–03–P

Public Information Collection Requirements Submitted for Public Comment and Recommendations

Agency: Health Care Financing Administration, HHS. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summaries of proposed collections for public comment. Interested persons are invited to send comments regarding this

burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection; Title of Information Collection: Granting and Withdrawal of Deeming Authority to Private Nonprofit Accreditation Organizations and the Clinical Laboratory Improvement Act (CLIA) Exemption Under State Laboratory Programs; *Form No.:* HCFA R–185; *Use:* The information required is necessary to determine whether a private accreditation organization/State licensure program standards and accreditation/licensure process is equal to or more stringent than those of CLIA; *Frequency:* Other (initial application/as needed); Affected Public: Not-for-profit institutions, State, local, or tribal government; *Number of Respondents:* 22; *Total Annual Hours:* 2,112.

To request copies of the proposed paperwork collections referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Planning and Analysis Staff, Attention: John Burke, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 8, 1995.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff,Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 95–28671 Filed 11–22–95; 8:45 am]

BILLING CODE 4120–03–P

Health Resources and Services Administration

Agency Forms Undergoing Paperwork Reduction Act Review

Periodically, the Health Resources and Services Administration (HRSA) publishes a list of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of these documents, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

1. Health Professions Student Loan Program and Nursing Student Loan Program Debt Management Report—Extension and Revision—The Debt Management Report is used by three programs (Health Professions Student Loan (HPSL) Program, Nursing Student Loan (NSL) Program, and Loans for Disadvantaged Students (LDS) Program) to monitor the fiscal activities of participating schools. Data are requested on collection activities, investment income, return of excess cash, compliance with performance standards, and the return of the Federal share of monies collected. The report is submitted electronically once a year. No substantive changes in the data elements are proposed; reporting frequency has been reduced by the elimination of the 3-month report previously required of closing schools. Burden estimates are as follows:

Type of form	Number of respondents	Responses per respondent	Average burden per response
Debt Management Report	1,503	1	1

Estimated Total Annual Burden: 1,503 hours.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: November 13, 1995.

J. Henry Montes,

Associate Administrator for Policy Coordination.

[FR Doc. 95–28611 Filed 11–22–95; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

National Cooperative Geologic Mapping Program Advisory Committee; Notice of Reestablishment

This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), 5 U.S.C. App. (1988). Pursuant to Public Law 102–285, the Geologic Mapping Act of 1992, the United States Geologic Survey (USGS) gives notice of the reestablishment of the Advisory Committee for the National Cooperative Geologic Mapping Program.

The Committee is established to (a) review and critique the draft implementation plan prepared by the Director; (b) review the scientific progress of the geologic mapping program; and (c) submit an annual report to the Secretary that evaluates the progress of the Federal and State mapping activities and evaluates the progress made toward fulfilling the purposes of the Geologic Mapping Act of 1992. The panel will function solely as an advisory body and in compliance with provisions of the Federal Advisory Committee Act. The Charter will be filed under the Act at least 15 days from the date of publication of this notice.

Further information regarding the Advisory Committee may be obtained from the Director, U.S. Geological Survey, Department of the Interior, 12201 Sunrise Valley Drive, Reston, Virginia 22092. Certification of reestablishment is published below.

Certification

I hereby certify that the reestablishment of the Advisory Committee for the National Cooperative Geologic Mapping Program is necessary and in the public interest in connection with performance of duties imposed on the Department of the Interior by 43 U.S.C. 31 and Sec. 4 of P.L. 102–285 (the National Geologic Mapping Act of 1992).

Dated: November 3, 1995.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 95–28687 Filed 11–22–95; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Indian Affairs

Notice of Availability of a Final Environmental Impact Statement for the Yellowstone Pipeline Easement Renewal Across Trust and Allotted Lands on the Flathead Indian Reservation, MT

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Final Environmental Impact Statement (FEIS) for the proposed easement renewal on tribal and allotted lands on the Flathead Indian Reservation, Montana, for an existing petroleum products pipeline from Billings, Montana, to Spokane and Moses Lake, Washington, is now available for public review. This notice is furnished in accordance with Council on Environmental Quality Regulations, 40 CFR 1503 and 1506.9.

DATES: The public comment period closes on December 24, 1995.

ADDRESSES: Comments may be addressed to: Mr. Ernest Moran, Superintendent, Flathead Agency, Box A, Pablo, MT 59855. Copies of the FEIS are also available at this address.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Moran at the above address, by telephone at (406) 675–7200 ext. 260, or toll-free at (800) 695–9305.

SUPPLEMENTARY INFORMATION: The Yellowstone Pipe Line Company (YPL) had a lease agreement with the Confederated Salish and Kootenai Tribes of the Flathead Nation (CSKT) for an easement from April 21, 1975, to April 21, 1995, across trust lands. The Bureau of Indian Affairs (BIA), which acts as the federal trustee for the lands, approved the lease. The YPL wishes to renew the lease in order to continue using the pipeline through the year 2016. The FEIS describes the proposed action, alternatives and affected environment, and evaluates potential impacts.

The Proposed Action, is the renewal of YPL's existing easement across trust lands, with added pipeline safety improvements. The action would allow the YPL to continue serving the needs of military and civilian consumers in the greater Spokane area for petroleum products. The 10-inch pipeline currently supplies approximately 34 percent of all consumer gasoline and diesel fuel to the Spokane market, 100 percent of the military jet fuel to the Fairchild Air Force Base, and 100 percent of the commercial jet fuel to the Grant County Airport, which supports the Boeing Aircraft and the Japan Air Lines pilot test programs.

The FEIS includes two alternatives, No Action and a Modified Existing Route Alternative. The No Action alternative would not renew the easement. Petroleum products would thus have to be transported to the Spokane markets by means which cost more and pose more risk to the environment than would the upgrading and use of the existing pipeline.

The Modified Existing Route Alternative has safety improvements similar to those for the Proposed Action, but re-routes the pipeline around areas where it may be unusually vulnerable to rupture from natural hazards, and where the concentration of people and resources that a pipeline rupture would adversely affect is unusually high. The BIA has designated this as the Preferred Alternative.

The BIA has afforded the public the opportunity to participate in the preparation of this FEIS. The Notice of Intent to prepare an EIS was published in the Federal Register on September 15, 1994. Seven scoping meetings followed between September 29, 1994, and November 21, 1994, in Pablo, Arlee, Frenchtown, St. Ignacious, Missoula and Hot Springs, Montana, and Spokane, Washington.

While the Draft EIS was being prepared, four open houses and four workshops were held during the week of February 20, 1995. These focused on the alternative-route-screening analysis and the work plans for the EIS studies. Information on these topics was also mailed to interested individuals via newsletter, and distributed to information centers in the vicinity of the study area. In addition, the EIS study team made presentations to both the CSKT Tribal Council and Cultural Committees.

The Notice of Availability for the Draft EIS was published in the Federal Register on April 26, 1995, with a 60 day public comment period ending on June 24, 1995. During this period, five open house meetings were held to inform the public about the Draft EIS alternatives, study methods and results and to provide additional opportunity for public comment.

Dated: November 7, 1995.

Ada E. Deer,

Assistant Secretary, Indian Affairs.

[FR Doc. 95–28612 Filed 11–22–95; 8:45 am]

BILLING CODE 4310–02–P

Bureau of Land Management

[CO–050–1220–00]

Emergency Closure of Public Lands; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Closure order.

SUMMARY: Notice is hereby given that effective November 20, 1995 certain public lands along Fremont County Road 3 (Temple Canyon Road), Fremont County, Colorado, are closed to all vehicle access and travel. Authority for this action is found in 43 CFR 8341.2 and 43 CFR 8364.1 and the Federal Land Policy and Management Act of 1976. This closure affects about 15 acres of public land located 3 miles southwest of Canon City, Colorado. The closure is in response to concerns of public health and safety on public land and adjacent private land, illegal dumping, and resource degradation.

DATES: This closure is effective November 20, 1995 and shall remain in effect unless revised, revoked or amended.

ADDRESSES: Details of the closure and a map of the affected area can be obtained from the Area Manager, Royal Gorge Resource Area, 3170 East Main Street, Canon City, CO 81212.

FOR FURTHER INFORMATION CONTACT:

Area Manager at the above address, or call (719) 275–0631.

SUPPLEMENTARY INFORMATION: The public lands affected by this closure are located at:

6th Principal Meridian

T. 19 S., R. 70 W., Section 7: SW¼SW¼, that portion lying west of Fremont County Road 3 (Temple Canyon Road).

This closure does not apply to emergency, law enforcement, and federal or other government vehicles while being used for official or emergency purposes, or to any vehicle whose use is expressly authorized or otherwise officially approved by BLM. A copy of this Federal Register notice and a map showing the closed area is posted in the Canon City District Office. Violation of this order is punishable by fine and/or imprisonment as defined in 18 USC 3571.

Donnie R. Sparks,

District Manager.

[FR Doc. 95–28668 Filed 11–22–95; 8:45 am]

BILLING CODE 4310–JB–M

[CA–020–5101–10–B039; CACA–31406, NVN–57250]

Notice of Availability of a Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior, Susanville District Office, California.

SUMMARY: The Bureau of Land Management (BLM) and the California Public Utilities Commission (CPUC) have prepared a final Environmental Impact Report/Statement (EIR/S) for the Alturas 345 kilovolt (KV) transmission line project proposed by Sierra Pacific Power Company (SPPCo) in BLM application number CACA–31406. The final EIR/S has been prepared to satisfy the requirements of the National Environmental Policy Act and the California Environmental Quality Act.

The BLM and CPUC believe that approval of the proposed project, with appropriate mitigation measures, has the potential to significantly impact the environment. The final EIR/S includes an evaluation of the proposed project. The final EIR/S assesses the environmental impacts of the approval, construction, operation and maintenance of a 345KV overhead electric power transmission line approximately 165 miles long, from the vicinity of Alturas, California through Modoc, Lassen, and Sierra Counties, California, through Washoe County, Nevada to the vicinity of Reno, Nevada. The proposed project would affect Federal, State and private lands. The proposed project also includes the construction of two new electrical substations, one northwest of Alturas and one in Sierra County, California, just west of Border Town, Nevada, and the expansion of SPPCo's existing North Valley Road Substation.

The final EIR/S responds to public and agency comments received on the draft EIR/S. The final EIR/S has been placed in the public files of the CPUC and the BLM, and is available for public inspection at:

California Public Utilities Commission, Central Files, 505 Van Ness Avenue, San Francisco, CA 94102, (415) 703–2045

Bureau of Land Management, Susanville District Office, 705 Hall Street, Susanville, CA 96130, (916) 257–5381

Copies of the final EIR/S are also available for inspection at BLM offices in Alturas and Susanville, California, in Carson City, Nevada, and Washington, D.C.; at the Modoc National Forest in Alturas and the Toiyabe National Forest in Sparks, NV; at public libraries in Alturas, Susanville and Reno, and at the City Hall in Loyalton. Copies have also been sent to interested Federal, State and local agencies, as well as interested groups and individuals. An Executive Summary of the key issues and impacts addressed in the EIR/S will be available upon request.

DATES AND ADDRESSES: Request for the Executive Summary should be addressed to: Peter Humm, Project Manager; Bureau of Land Management; 705 Hall Street, Susanville, California 96130.

FOR FURTHER INFORMATION CONTACT: This Federal Notice of Availability of a Final EIR/S is issued by the Eagle Lake Area Manager, Bureau of Land Management, 705 Hall Street, Susanville, California 96130. For further information write to the Area Manager or call Peter Humm, BLM Project Manager, at (916) 257–0456.

Dated: November 13, 1995.

Linda D. Hansen,

Area Manager.

[FR Doc. 95–28676 Filed 11–22–95; 8:45 am]

BILLING CODE 4310–40–M

[(WY–060–1320–01), WYW127221]

Notice of Intent to Prepare an Environmental Impact Statement on the North Rochelle Tract coal lease application (originally named the North Roundup Tract) in the decertified Powder River Federal Coal Production Region, Wyoming

SUMMARY: SMC Mining Company has applied for a coal lease for approximately 1,439 acres (approximately 140 million tons of coal) in an area adjacent to the North Rochelle Mine in Campbell County, Wyoming. The Bureau of Land Management (BLM) has recommended that approximately 81 additional acres containing approximately 9 million tons of coal be included in the tract to avoid a potential bypass situation in the future. The BLM has determined that an Environmental Impact Statement (EIS) must be prepared to evaluate the environmental impacts of coal mining which would result from issuance of this lease. The application will be processed according to the coal lease by application (LBA) regulations at 43 CFR 3425.

DATES: As part of this process a public scoping meeting has been scheduled on Tuesday, December 5, 1995, at 7 PM at the Tower West Lodge, 109 North U.S. Highway 14–16, in Gillette, Wyoming. In order to insure that comments will be considered in the draft EIS they should be received by the BLM at the address below by December 31, 1995.

ADDRESSES: Questions, comments or concerns should be addressed to the Casper District Office, Bureau of Land Management, Attn: Nancy Doelger, 1701 East E Street, Casper, Wyoming 82601.

FOR FURTHER INFORMATION CONTACT: Nancy Doelger or Mike Karbs, phone: 307–261–7600 or at the above address.

SUPPLEMENTARY INFORMATION: SMC Mining Company filed a coal lease application on July 22, 1992, with the BLM pursuant to the provisions of 43 CFR 3425.1 as a maintenance tract LBA for the following lands, which contain an estimated 140 million tons of coal:

T. 42 N., R. 70 W., 6th P.M., Wyoming

Sec. 4: Lots 5–16, 19, and 20;
Sec. 5: Lots 5–16;
Sec. 9: Lot 1;

T. 43 N., R. 70 W., 6th P.M., Wyoming

Sec. 32: Lots 9–11, 14–16;
Sec. 33: Lots 11–14.

Containing 1439.92 acres, more or less.

The BLM has recommended that the following additional lands containing an additional estimated 9 million tons of coal reserves be included in the application:

T. 43 N., R. 70 W., 6th P.M., Wyoming

Sec. 32: Lots 12 and 13.

Containing 81.16 acres, more or less.

The tract as amended by the BLM contains a total of 1521.08 acres and approximately 149 million tons of coal. The lease application area is west of and contiguous with SMC Mining Company's existing North Rochelle Mine and Thunder Basin Coal Company's Black Thunder Mine. The North Rochelle Mine began producing coal in 1990. There are currently no mine facilities or rail facilities at the North Rochelle Mine. Coal is produced by truck and shovel and the produced coal is hauled by truck from the mine site to a contracted buyer. The company has applied to lease the proposed North Rochelle Tract (initially called the North Roundup Tract) as a maintenance tract for the North Rochelle Mine.

The North Rochelle Mine has an approved mining and reclamation plan and an air quality permit allowing it to mine up to 8 million tons of coal per year. The potential impacts of the North Rochelle Mine, including construction of mine facilities and a rail loop, were previously analyzed in an EIS completed in 1983 by the Office of Surface Mining (OSM). The EIS to be prepared to evaluate the impacts of the maintenance lease application will include an evaluation of the impacts of starting up a full-scale mining operation at this time.

The U.S. Forest Service (USFS) will be a cooperating agency in the preparation of the EIS because the surface of some of the lands included in the tract is owned by the Federal government and administered by the USFS as part of the Thunder Basin National Grasslands. The OSM will also be a cooperating agency in the preparation of the EIS, because it is the Federal agency that administers surface coal mining operations under the Surface Mining Control and Reclamation Act of 1977.

The major issues, identified to date, revolve around air quality, hydrology, reclamation, and socio-economics as they relate to facilities and rail construction, and the start-up of a full-scale mining operation. If other issues or concerns are known, please address them in writing to the above individuals, or verbally at the public scoping meeting scheduled on December 5 in Gillette, Wyoming. Written comments will be accepted by the BLM at the address shown above from the date of publication of this Notice in the Federal Register, through December 31, 1995.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 95–28654 Filed 11–22–95; 8:45 am]

BILLING CODE 4310–22–P

[D–930–1020–01]

Notice of Intent To Simultaneously Modify all Idaho Management Framework Plans (MFPs) and Resource Management Plans (RMPs) and To Prepare an Environmental Impact Statement (EIS) To Adopt Standards for Rangeland Health and Guidelines for Grazing Management in Idaho and To Include Ecosystem-Based Management Strategies From the Upper Columbia River Basin (UCRB) EIS

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to modify land use plans and to prepare an Environmental Impact Statement (EIS) to adopt standards for rangeland health and guidelines for grazing management in Idaho and to adopt ecosystem-based management strategies from the Upper Columbia River Basin (UCRB) EIS.

The Challis proposed RMP/Draft EIS currently in progress will be published in the winter of 1995 and the Bennett Hills, and Owyhee Proposed RMPs currently in progress are scheduled for draft EIS publication in the spring of 1996. Notice is given that Standards for Rangeland Health and Guidelines for Grazing Management will be included in these respective plans.

SUMMARY: The Bureau of Land Management (BLM) in Idaho intends to modify all existing MFPs and RMPs in the State and to prepare an Environmental Impact Statement (EIS) for adoption of Standards Rangeland Health (terrestrial and riparian) and Guidelines for Grazing Management as provided in the BLM's new grazing regulations (43 CFR Part 4100). In addition, all Land Use Plans would be amended to include ecosystem-based management strategy from the Upper Columbia River Basin (UCRB) EIS and the Interior Columbia Basin Ecosystem Assessment. This strategy will include standards, specific objectives, and management guidelines focusing on restoring the health of forest, range, aquatic, and riparian ecosystems. Public comment is sought on the issues and alternatives to be considered, and on proposed standards and guidelines.

DATES: Comments concerning the scope of the analysis should be received in writing within 30 days following the date of the last scoping meeting to receive full consideration in the development of alternatives. Dates of those meetings will be published in local and regional newspapers.

FOR FURTHER INFORMATION CONTACT: J. David Brunner, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706; Phone 208–384–3056.

SUPPLEMENTARY INFORMATION: The BLM's new grazing administration regulations (43 CFR part 4100 59FR) which became effective August 21, 1995, require the development of Standards for Rangeland Health and Guidelines for Grazing Administration. In Idaho, BLM intends to develop these standards and guidelines through a public process and incorporate them into MFPs/RMPs. Incorporating standards and guidelines into existing plans will require some form of plan modification, ranging from simple plan maintenance to plan amendment.

Management Framework Plans (MFPs) to be modified are as follows: Kuna, Bruneau, Owyhee, Twin Falls, Malad, Big Lost, Little Lost Birch Creek, Big Desert, Ellis-Pahsimeroi, Challis, Mackay, Sun Valley, Bennett Hills, Timmerman, Magic, Emerald Empire and Chief Joseph (Bennett Hills, Challis and Owyhee are scheduled to be replaced by RMPs which are currently under development). Resource Management Plans (RMPs) to be modified are as follows: Cacasde, Jarbridge, Cassia, Medicine Lodge, Pocatello, Lemhi and Monument.

At this point, it uncertain what level of plan modification will be needed; plan maintenance or plan amendment.

This notice invites Public comment on the proposal to develop standards and guidelines and issues to be addressed and alternatives to be considered in the EIS or other NEPA analysis.

Issues preliminarily identified include: the effect that adoption of the standards will have on uses of public land, the effect that adoption of the proposed guidelines will have on grazing management and livestock operations, and riparian and aquatic ecosystems and the need for flexibility in standards and guidelines. Additional issues have been identified in the UCRB EIS. It is expected that the ecosystem management strategy being analyzed in the UCRB EIS will provide a broad framework within which Healthy Reangelands Standards and Guides will be developed.

The NEPA analysis will be conducted using an interdisciplinary team that includes persons trained in archaeology, economics, plant ecology, forestry, hydrology, soil science, range management, recreation and fish and wildlife management.

Three preliminary alternatives have been identified: the continuation of current management (no action alternative) as provided for in existing land use plans, application of the fall back standards and guidelines contained in the regulations, and the adoption of standards and guidelines developed locally and in consultation with Idaho BLM's three Resource Advisory Councils.

Dated: November 13, 1995.

J. David Brunner,

Deputy State Director for Resource Services.

[FR Doc. 95–28689 Filed 11–22–95; 8:45 am]

BILLING CODE 1020–GG–M

[ID–030–1030–00]

Intent to Prepare Forest Plan Amendments to the Deep Creek Management Framework Plan and the Pocatello Resource Management Plan, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Prepare Forest Plan Amendments to the Deep Creek Management Framework Plan and The Pocatello Resource Management Plan.

SUMMARY: Pursuant to 43 CFR 1610.3–1 (d), notice is hereby given that the Idaho East Zone Forestry Program of the Bureau of Land Management intends to conduct an Environmental Assessment Record (EAR) to provide a systematic and analytical evaluation of the potential environmental impacts of proposed forest management practices in the Malad and Pocatello Resource Areas.

FOR FURTHER INFORMATION CONTACT: Ray Brainard, East Zone Forester, Bureau of Land Management, 1111 N. 8th St., Pocatello, Idaho 83201, (208) 236–6860.

SUPPLEMENTARY INFORMATION: The Environmental Assessment Record (EAR) will provide proposals and alternatives regarding silvicultural practices in the Malad and Pocatello Resource Areas, i.e., reforestation/species selection, controlled fire, commercial and non-commercial thinning, calculation of allowable sale quantities, etc. The EAR will not preclude or eliminate detailed, site specific environmental assessments. All forest practice initiatives will continue to require a site specific EA in addition to compliance with the proposed EAR. Issues anticipated from the proposal include; increasing road densities, C–2 candidate species, wildlife habitat, etc. The following resources will be considered in preparing the EAR: wildlife, soils, hydrologic, cultural, and recreation. The times and schedules for public meetings and written comments will be announced in local news media and to individuals and groups through the postal service. Relevant documents will be available for public review at the BLM, Malad Resource Area Office, Malad City, Idaho and the Pocatello Resource Area Office, Pocatello, Idaho.

Dated: November 7, 1995.

W. Bernard Jansen,

Operations Manager.

[FR Doc. 95–28673 Filed 11–22–95; 8:45 am]

BILLING CODE 4310–GG–P

Bureau of Land Management

[ID–990–06–1020–00]

Notice of Meeting

SUMMARY: The Lower Snake River District Resource Advisory Council will meet to review concepts of rangeland ecology and discuss processes for preparing statewide standards for rangeland health and guidelines for managing livestock grazing on public lands. A public comment period will be held at 1 p.m. on December 15.

DATES: December 14 and 15, 1995; beginning at 8:15 a.m.

ADDRESSES: The meetings will be held at the regional headquarters office of the Bureau of Reclamation, 1150 North Curtis Road, Boise, Idaho 83706.

FOR FURTHER INFORMATION CONTACT: Barry Rose, Lower Snake River District Office, 3948 Development Avenue, Boise, Idaho 83705, (208) 384–3393.

Dated: November 6, 1995.

Jerry L. Kidd,

District Manager.

[FR Doc. 95–28688 Filed 11–22–95; 8:45 am]

BILLING CODE 1784–GG–P

[NV–050–1020–001]

Mojave-Southern Great Basin Resource Advisory Council—Notice of Meeting Locations and Times

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Council meeting locations and times.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM), council meeting of the Mojave-Southern Great Basin Resource Advisory Council will be held as indicated below. The agenda includes a field trip, approval of minutes of the previous meeting, continuation of council orientation, and determination of the subject matter for future meetings.

All meetings are open to the public. The public may present written comments to the council. Each formal council meeting will have a time allocated for hearing public comments. The public comment period for the council meeting is listed below. Depending of the number of persons wishing to comment, and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Michael Dwyer at the Las Vegas District Office, 4765 Vegas Dr., Las Vegas, NV 89108, telephone, (702) 647–5000.

DATES, TIMES: Dates are December 7 and 8, 1995. A field trip will be held for the Resource Advisory Council members on December 7. The council members will depart from the Las Vegas District Office at 7:30 a.m. and return at approximately 5 p.m. The itinerary for the field trip will be made available prior to departure. Members of the public who wish to accompany the council members must provide their own transportation and meals. On Friday, December 8, 1995, the council will meet at the Desert Research Institute located at 755 E. Flamingo Rd., Las Vegas, NV, at 8:30 a.m. The public comment period will begin at 3:30 p.m.

SUPPLEMENTAL INFORMATION: The purpose of the councils is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of the public lands.

FOR FURTHER INFORMATION CONTACT: Lorraine Buck, Public Affairs Specialist, Las Vegas District, telephone: (702) 647–5000.

Dated: November 6, 1995.

Michael F. Dwyer,

District Manager.

[FR Doc. 95–28643 Filed 11–22–95; 8:45 am]

BILLING CODE 4310–HC–M

Noxious, Weeds and Invasive Plant Problems; Notice of Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice, meeting on noxious weeds and invasive plants.

SUMMARY: This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 (1988) and 41 CFR 101–6, 1015(a). The Department of the Interior hereby gives notice of a public meeting to be held from 8:15 a.m. on November 30 through 12:30 p.m. on December 1, 1995. The meeting will take place at the Sheraton Yankee Trader Hotel in Ft. Lauderdale, Florida. The meeting is to discuss noxious weeds and invasive plant problems of the Eastern and Tropical United States.

Dated: November 13, 1995.

Bruce Babbit,

Secretary of the Interior.

[FR Doc. 95–28488 Filed 11–22–95; 8:45 am]

BILLING CODE 4310–84–M

[NV–930–1430–01; N–59217]

Notice of Realty Action: Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and public purpose lease/conveyance.

SUMMARY: The following described public land in Henderson, Nevada, Clark County, Nevada has been examined and found suitable for lease/

conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The City of Henderson proposes to use the land for a park site.

Mount Diablo Meridian, Nevada

T. 21 S., R. 62 E., sec. 34, S½N½NW¼.

Containing 40 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement in favor of the City of Henderson for roads, public utilities and flood control purposes.

2. Those rights for roadway purposes which have been granted to the Federal Highway Administration by Permit No. N–42699 under the Act of August 27, 1958 (23 U.S.C. 317).

3. Those rights for transmission line purposes which have been granted to Nevada Power Company by Permit No. Nev–043455 under the Act of February 15, 1901 (43 U.S.C. 959).

4. Those rights for sewerline purposes which have been granted to Clark County Sanitation District by Permit No. Nev– 059856 under the Act of February 15, 1901 (43 U.S.C. 959).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the Federal Register, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the District Manager, Las Vegas District, 4765 Vegas Drive, Las Vegas, Nevada 89108.

Classification Comments

Interested parties may submit comments involving the suitability of the land for a park site. 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 park site.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the Federal Register. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: November 6, 1995.

Mark R. Chatterton,

Acting District Manager, Las Vegas, NV.

[FR Doc. 95–28652 Filed 11–22–95; 8:45 am]

BILLING CODE 4310–HC–P

[CA–017–06–1220–00]

Supplementary Rules for the Travertine Hot Springs Area of Critical Environmental Concern and the Bodie Bowl Area of Critical Environmental Concern

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Establishment of supplemental rules for management of public lands within the Travertine Hot Springs Area of Critical Concern and the Bodie Bowl Area of Critical Concern, Bishop Resource Area, Bakersfield District, California.

SUMMARY: On public lands within the Travertine Hot Springs Area of Critical Environmental Concern and the Bodie Bowl Area of Critical Environmental Concern, the following special regulations apply:

1. Overnight camping is prohibited within the boundaries of the Travertine Hot Springs Area of Critical Environmental Concern and the Bodie Bowl Area of Critical Environmental Concern.

2. Campfires are prohibited within the boundaries of the Travertine Hot Springs Area of Critical Concern and the Bodie Bowl Area of Critical Concern.

3. Discharge of firearms is prohibited within the boundaries of the Travertine Hot Springs Area of Critical Concern and the Bodie Bowl Area of Critical Concern. For the purpose of this order, a firearm is defined as under Title 18. U.S.C., Chapter 44, section 921(a)(3). Federal, State, and local law enforcement officers are exempt from this order in the course of their official duties.

DATES: These supplemental rules to take effect on December 15, 1995.

FOR FURTHER INFORMATION CONTACT: Genivieve D. Rasmussen, Bishop Resource Area Manager, Bishop Resource Area Office, 785 N. Main St., Suite E, Bishop, California 93514. Telephone: (619) 872–4881.

SUPPLEMENTARY INFORMATION: The purpose of these supplemental rules is to eliminate camping, campfires, and firearms use from these sensitive areas. These rules are designed to improve the natural conditions of each of the Areas of Critical Concern. The public may still enjoy these areas during daily visits.

Authority for these supplemental rules is contained in Title 43 of the CFR, Chapter II, Part 8365, Subpart 8365.1–6.

Any person who fails to comply with these supplemental rules may be subject to a fine not to exceed $100,000.00 and/or imprisonment not to exceed 12 months. Penalties are contained in CFR Title 43, Chapter II, Part 8360, Subpart 8360.0–7.

Dated: November 5, 1995.

Genivieve D. Rasmussen,

Area Manager.

[FR Doc. 95–28650 Filed 11–22–95; 8:45 am]

BILLING CODE 4310–40–M

[ID–957–1420–00]

Idaho: Filing of Plats of Survey

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., November 7, 1995.

The supplemental plat prepared to correct the GPS value for the latitude and longitude at the ¼ section corner of sections 12 and 13, T. 9 N., R. 42 E., Boise Meridian, Idaho, was accepted, November 3, 1995.

This supplemental plat was prepared to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: November 7, 1995.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 95–28690 Filed 11–22–95; 8:45 am]

BILLING CODE 4310–GG–M

[OR–957–00–1420–00: G6–0019]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 22 S., R. 6 W., accepted October 3, 1995
T. 23 S., R. 6 W., accepted October 17, 1995
T. 24 S., R. 6 W., accepted October 17, 1995
T. 24 S., R. 7 W., accepted October 17, 1995
T. 27 S., R. 11 W., accepted October 20, 1995
T. 39 S., R. 13 W., accepted October 20, 1995
T. 34 S., R. 14 W., accepted October 6, 1995

Washington

T. 34 N., R. 2 W., accepted September 29, 1995

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (1515 S.W. 5th Avenue,) P.O. Box 2965, Portland, Oregon 97208.

Dated: November 7, 1995.

Tempe T. Berggren,

Acting Chief, Branch of Realty and Records Services.

[FR Doc. 95–28691 Filed 11–22–95; 8:45 am]

BILLING CODE 4310–33–M

[ID–957–1420–00]

Idaho: Filing of Plats of Survey; Idaho

The plats of the following described land were officially filed in the Idaho State Office, Bureau of Land Management, Boise, ID, effective 9:00 a.m., November 9, 1995.

The plat representing the dependent resurvey of portions of the east boundary, subdivisional lines, and subdivision of section 14, T. 12 N., R. 1 E., Boise Meridian, ID, Group No. 898, was accepted, November 9, 1995.

The plat representing the dependent resurvey of portions of the south boundary, subdivisional lines, and subdivision of section 31, T. 12 N., R. 2 E., Boise Meridian, ID, Group No. 898, was accepted, November 9, 1995.

These surveys were executed to meet certain administrative needs of the USDA Forest Service, Region IV.

All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, ID 83706.

Dated: November 9, 1995.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 95–28672 Filed 11–22–95; 8:45 am]

BILLING CODE 4310–GG–M

Bureau of Reclamation

Bay-Delta Advisory Council Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council (BDAC) will meet to discuss several issues including: review and status of the activities of the CALFED Bay-Delta Program and the alternative formation process. BDAC members are also invited to attend an informal educational session on hydrologic and ecological functions of the Bay-Delta system. Both the informal education session and the meeting are open to the public. For the meeting, interested persons may make oral statements to the BDAC or may file written statements for consideration.

DATES: The Bay-Delta Advisory Council informal educational session will be held from 7:30 pm to 9:30 pm on Tuesday, December 5, 1995. The BDAC meeting will be held from 9 am to 4 pm on Wednesday, December 6, 1995.

ADDRESSES: The Bay-Delta Advisory Council educational session and meeting will be held at the Beverly Garland Hotel, 1780 Tribute Road (at Exposition Boulevard/West), Sacramento, CA.

CONTACT PERSON FOR MORE INFORMATION: Sharon Gross, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort will be carried out under the policy direction of CALFED. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA) as the

Bay-Delta Advisory Council (BDAC) to advise CALFED on the program mission, problems to be addressed, and objectives for the CALFED Bay-Delta Program. BDAC will also provide a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff.

Minutes of the meeting will be maintained by the CALFED Bay-Delta Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: November 9, 1995.

Roger Patterson,

Regional Director, Mid-Pacific Region.

[FR Doc. 95–28734 Filed 11–22–95; 8:45 am]

BILLING CODE 4310–94–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Public Hearing

AGENCY: Overseas Private Investment Corporation.

ACTION: Notice of public hearing.

SUMMARY: This notice sets forth the schedule and requirements for participation in an annual public hearing to be conducted by the Overseas Private Investment Corporation (OPIC) on December 18, 1995. This hearing is required by the OPIC Amendments Act of 1985, and this notice is being published to facilitate public participation. The notice also describes OPIC and the subject matter of the hearing.

DATES: The hearing will be held on December 18, 1995, and will begin promptly at 2 p.m. Prospective participants must submit to OPIC before close of business December 7, 1995, notice of their intent to participate.

ADDRESSES: The location of the hearing will be: Overseas Private Investment Corporation, 1100 New York Avenue, NW, 12th Floor, Washington, DC. Notices and prepared statements should be sent to Harvey Himberg, Investment Development Department, Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527.

PROCEDURE: (a) Attendance; Participation. The hearing will be open to the public. However, a person wishing to present views at the hearing must provide OPIC with advance notice on or before December 7, 1995. The notice must include the name, address and telephone number of the person who will make the presentation, the name and address of the organization which the person represents (if any) and a concise summary of the subject matter of the presentation.

(b) Prepared Statements. Any participant wishing to submit a prepared statement for the record must submit it to OPIC with the notice or, in any event, not later than 5 p.m. on December 14, 1995. Prepared statements must be typewritten, double spaced and may not exceed twenty-five (25) pages.

(c) Duration of Presentations. Oral presentations will in no event exceed ten (10) minutes, and the time for individual presentations may be reduced proportionately, if necessary, to afford all prospective participants on a particular subject an opportunity to be heard or to permit all subjects to be covered.

(d) Agenda. Upon receipt of the required notices, OPIC will draw up an agenda for the hearing setting forth the subject or subjects on which each participant will speak and the time allotted for each presentation. OPIC will provide each prospective participant with a copy of the agenda.

(e) Publication of Proceedings. A verbatim transcript of the hearing will be compiled and published. The transcript will be available to members of the public at the cost of reproduction.

SUPPLEMENTARY INFORMATION: OPIC is a U.S. Government agency which provides, on a commercial basis, political risk insurance and financing in friendly developing countries and emerging democracies for projects which confer positive developmental benefits upon the project country while avoiding negative effects on the U.S. economy and the environment of the project country. OPIC is required by section 231A(b) of the Foreign Assistance Act of 1961, as amended (''the Act'') to hold at least one public hearing each year.

Among other issues, OPIC's annual public hearing has, in previous years, provided a forum for testimony concerning section 231A(a) of the Act. This section provides that OPIC may operate its programs only in those countries that are determined to be ''taking steps to adopt and implement laws that extend internationally recognized worker rights to workers in that country (including any designated zone in that country).''

Based on consultations with Congress, OPIC complies with annual determinations made by the Executive Branch with respect to worker rights for countries that are eligible for the Generalized System of Preferences (GSP). Any country for which GSP eligibility is revoked on account of its failure to take steps to adopt and implement internationally recognized worker rights is subject concurrently to the suspension of OPIC programs until such time as a favorable worker rights determination can be made.

For non-GSP countries in which OPIC operates its programs, OPIC reviews any country which is the subject of a formal challenge at its annual public hearing. To qualify as a formal challenge, testimony must pertain directly to the worker rights requirements of the law as defined in OPIC's 1985 reauthorizing legislation (Pub. L. 99–204) with reference to the Trade Act of 1974, as amended, and be supported by factual information.

FOR FURTHER INFORMATION ABOUT THE PUBLIC HEARING CONTACT: Harvey A. Himberg, Investment Development Department, Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527 (202) 336–8614 or by facsimile at (202) 408–9862.

Dated: November 15, 1995.

Richard C. Horanburg,

Department of Legal Affairs.

[FR Doc. 95–28633 Filed 11–22–95; 8:45 am]

BILLING CODE 3210–01–M

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders, Interstate Commerce Commission, Section of Environmental Analysis, Room 3219, Washington, DC 20423, (202) 927–6203.

Comments on the following assessment are due 15 days after the date of availability:

AB–55 (Sub-No. 516X), CSX Transportation, Inc. Abandonment in Floyd County, KY. EA available 11/17/95.

AB–369 (SUB-NO. 4X), Buffalo & Pittsburgh Railroad, Inc.—Abandonment Exemption—In Clearfield County, PA. EA available 11/17/95.

Comments on the following assessment are due 30 days after the date of availability:

None.

Vernon A. Williams,

Secretary.

[FR Doc. 95–28639 Filed 11–22–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32800]

Columbus and Steens Junction Railway, Inc.; Trackage Rights Exemption; Columbus and Greenville Railway Company

Columbus and Steens Junction Railway, Inc. (CSJ), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to acquire local trackage rights over a 8.54-mile line of railroad,[1] owned by Columbus and Greenville Railway Company (C&G). The trackage rights include: (1) The rail line of C&G lying between the north boundary line of U.S. Highway No. 182 (milepost 0.5) and the western terminus of the former main line track of C&G (milepost 6.54), a distance of 6.04 miles, and (2) the main tracks in C&G's Columbus, MS, rail yard between the yard limits on the north and east (milepost 935.0) and South Seventh Avenue on the south, a distance of 2.5 miles, including wye tracks adjacent to the C&G shop, in Lowndes County, MS.[2] The trackage rights were scheduled to become effective on November 2, 1995, the effective date of the exemption.

Any comments must be filed with the Commission and served on: Eric M. Hocky, 213 W. Miner Street, P.O. Box 796, West Chester, PA 19381–0796.

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.

Decided: November 17, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–28640 Filed 11–22–95; 8:45 am]

BILLING CODE 7035–01–P

[1] The class exemption at 49 CFR 1150.31 is properly invoked here, as 49 U.S.C. 10901 governs an acquisition of trackage rights by a noncarrier.

[2] C&G states that, under the trackage rights agreement, CSJ will have the nonexclusive right to serve all industrial side tracks and team tracks appurtenant to the subject line as well as the right to use its existing rail terminals located along or adjacent thereto. If the industrial, side, and team tracks that CSJ intends to acquire trackage rights over are an integral part of a continuous movement in interstate commerce, then the tracks are not covered by 49 U.S.C. 10907(b)(1) and the Commission has jurisdiction over the transaction. Accordingly, the exemption here applies to such track if it is used in interstate commerce.

[Docket No. AB–167 (Sub-No. 1153X)]

Consolidated Rail Corporation—Abandonment Exemption—in Niagara County, NY

Consolidated Rail Corporation (Conrail) has filed a verified notice under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon approximately 3.5 miles of rail line at or near Lockport, in Niagara County, NY. The involved lines are (1) the Gulf Line Industrial Track, between milepost 25.30± and the end of the track at milepost 26.60±, and (2) the Lockport Industrial Track between milepost 24.50± and the end of the track at milepost 26.70±.

Conrail has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in complainant's favor within the last 2 years; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 and 1152.50(d)(1) (notice to government agencies), and 49 CFR 1105.12 (newspaper publication) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether employees are adequately protected, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

This exemption will be effective December 20, 1995, unless stayed or a statement of intent to file an offer of financial assistance (OFA) is filed. Petitions to stay that do not involve environmental issues,[1] statements of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by November 30, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 11, 1995. An original and 10 copies of any such filing must be sent to the Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. In addition, one copy must be served on John J. Paylor, Consolidated Rail Corporation, Two Commerce Square, 2001 Market Street, P.O. Box 41416, Philadelphia, PA 19101.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Conrail has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Commission's Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by November 24, 1995. A copy of the EA may be obtained by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 13, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–28529 Filed 11–22–95; 8:45 am]

BILLING CODE 7035–01–P

[1] The Commission will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Commission in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Commission may take appropriate action before the exemption's effective date.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[3] The Commission will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

[Docket No. AB–55 (Sub-No. 515X)]

CSX Transportation, Inc.—Abandonment Exemption—in Jefferson County, FL

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152, Subpart F—*Exempt Abandonments* to abandon its 1.85-mile line of railroad extending between milepost SPB–772.15 and milepost SPB–774.0 at the end of the track, in Drifton, Jefferson County, FL.

CSXT has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 21, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by December 1, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 11, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, 500 Water St., J150, Jacksonville, FL 32202.

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made before the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by November 24, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 16, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–28528 Filed 11–22–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–39 (Sub-No. 19X)]

St. Louis Southwestern Railway Company—Abandonment Exemption—in Smith County, TX

St. Louis Southwestern Railway Company (Cotton Belt) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 3.54-mile line of railroad, known as the Lufkin Branch, from milepost 549.46 near rail station Lufkin Junction, to the end of the line at milepost 553.0, in Tyler, Smith County, TX. Cotton Belt proposes to consummate the abandonment on December 22, 1995.[1]

Cotton Belt has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) overhead traffic is non-existent since this is a stub-end of a branchline; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 24, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by December 4, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 14, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Gary A. Laakso, One Market Plaza, Room 846, San Francisco, CA 94105.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

Cotton Belt has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. The Section of Environmental Analysis

[1] Pursuant to 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Commission at least 50 days before the abandonment or discontinuance is to be consummated. The applicant, in its verified notice, indicated a proposed consummation date of December 21, 1995. Because the verified notice was not filed until November 2, 1995, consummation should not have been proposed to take place before December 22, 1995. Applicant's representative has subsequently agreed that the proposed consummation date is December 22, 1995.

[2] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

(SEA) will issue an environmental assessment (EA) by November 29, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 17, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–28462 Filed 11–22–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act (''CERCLA'')

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. 9622(d), notice is hereby given that a proposed consent decree in *United States* v. *Commander Oil Corporation, et al.*, Civil Action No. 95–4489 (JM), was lodged on November 2, 1995, with the United States District Court for the Eastern District of New York. The Consent Decree addresses the hazardous waste contamination at the Pasley Solvents and Chemicals Superfund Site (''Pasley Site'') in the Town of Hempstead, Nassau County, New York. The Consent Decree requires Defendant Commander Oil Corporation (''Commander'') to implement the remedial action selected by the Environmental Protection Agency in the Record of Decision dated April 24, 1992 and the Amended Record of Decision dated May 22, 1995. Commander is also required to reimburse the United States for $750,000 in U.S. EPA past costs at the Pasley Site. Additionally, sixteen other defendants are required to pay $1,849,127.71 into the Pasley Solvents and Chemicals Superfund Site Remedial Trust, which will be used by Commander to implement the remedial action.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Commander Oil Corporation, et al.*, DOJ Ref. #90–11–2–762.

The proposed consent decree may be examined at the office of the United States Attorney for the Eastern District of New York, 1 Pierrepont Plaza, Brooklyn, New York, 11201; the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, New York, 10007–1866 (contact Assistant Regional Counsel Beverly Kolenberg); and at the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $29.50 (25 cents per page reproduction costs) for the Consent Decree, and $50.50 for the Attachments to the Decree, payable to the Consent Decree Library.

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–28680 Filed 11–22–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States of America* v. *Roger J. Gautreau*, Civ. Act. No. 95–1859–A–M1 (M.D. La.), was lodged with the United States District Court for the Middle District of Louisiana on October 27, 1995. The proposed decree concerns alleged violations of the Clean Water Act, 33 U.S.C. 1311, as a result of the discharge of fill materials onto approximately 2.75 acres of wetlands by Roger J. Gautreau (''Gautreau''), in St. Amant, Ascension Parish, Louisiana.

The Consent Decree provides for the payment of a $2,500.00 civil penalty to the United States and requires partial restoration of the violation site in accord with a partial restoration plan approved by the United States Environmental Protection Agency (''EPA'').

The Department of Justice will receive written comments relating to the consent decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Attention: Jeffrey K. Lee, Environmental Defense Section, P.O. Box 23986, Washington, DC 20026–3986, and should refer to *United States* v. *Roger J. Gautreau*, DJ Reference No. 90–5–1–1–4276.

The proposed consent decree may be examined at the Office of the United States Attorney for the Middle District of Louisiana, Russell Long Federal Building, Suite 208, 777 Florida Street, Baton Rouge, Louisiana 70801; the offices of Region VI of the United States Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202, and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $7.75 for a copy of the consent decree with attachments.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 95–28681 Filed 11–22–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that on October 31, 1995, a proposed Consent Decree in *United States* v. *Kaiser Aluminum & Chemical Corporation*, Civil Action No. CS–95–0468–JLQ, was lodged with the United States District Court for the Eastern District of Washington. This consent decree represents a settlement of claims by the United States against Kaiser Aluminum for violations of the Clean Air Act.

Under the settlement, Kaiser Aluminum will pay the United States a civil penalty of $500,000. In addition, the Consent Decree requires Kaiser Aluminum to come into compliance with the Clean Air Act. More specifically, the Consent Decree requires Kaiser Aluminum to complete a program of plant improvements and operational changes in order to bring stack emissions from its melter and holder furnaces into compliance with the opacity standard in the federally-approved Washington State Implementation Plan or SIP by February 28, 1997, including installation of a baghouse emission control system, new burners and computerized combustion controls and new mass flow controls on the holders; utilization of a new molten metal charging system and new skimming procedures on the melters;

and limitations on chlorine use. Stipulated penalties may be imposed in the event Kaiser Aluminum does not comply with the requirements of the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Kaiser Aluminum & Chemical Corporation,* D.J. Ref. 90–5–2–1–94–A.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Washington, Suite 300, United States Courthouse, West 920 Riverside, Spokane, Washington 99210 and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $10.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Acting Chief, Environmental Enforcement Section Environment and Natural Resources Division.

[FR Doc. 95–28666 Filed 11–22–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

In accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. 9622(d)(2) as well as Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *The New Piper Aircraft, Inc.* (''Piper''), Civil Action No. 95–14309 was lodged with the United States District Court for the Southern District of Florida on November 7, 1995. Under this Decree, the settling defendant, Piper, will construct and operate a remedial action at its aircraft manufacturing facility located in the City of Vero Beach, Florida. The remedial action requires that Piper extract contaminated groundwater from the surficial aquifer beneath its site, threat it, and discharge the treated water to surface waters. The remedial action is designed to prevent the further migration of contaminants in the aquifer and to lower concentrations of contaminants within the aquifer to levels specified in the Consent Decree. The Consent Decree also requires that Piper reimburse EPA for costs incurred and to be incurred at the site.

The Department of Justice will receive for a period of (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *The New Piper Aircraft, Inc.,* DOJ # 90–11–2–759A.

The Decree may be examined at the offices of the United States Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30365, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 2005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $18.00 (25 cents per page reproduction costs) for the Decree only or $58.00 for the Decree plus technical appendices payable to Consent Decree Library.

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–28665 Filed 11–22–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Settlement Agreement in In Re Pacific Wood Treating Corp. and In Re Niedermeyer-Martin Co.

Notice is hereby given that a proposed Settlement Agreement among, *inter alia,* the United States on behalf of the United States Environmental Protection Agency (''EPA'') and the Department of the Interior (''DOI''), State of Washington, Trustees of the bankruptcy estates in *In re Pacific Wood Treating Corp.* and *In re Niedermeyer-Martin Co.* was lodged on November 6, 1995, with the United States Bankuptcy Court for the District of Oregon in *In re Pacific Wood Treating Corp.* and *In re Niedermeyer-Martin Co.,* No. 393–34766–p7, 393–34767–p7 (Bankr. D. Ore.) Under the Agreement, Debtor Pacific Wood Treating Corp. (''PWT'') will pay EPA $190,000 and EPA will be paid 55% of the net proceeds for general unsecured creditors in the PWT bankruptcy estate, and DOI will be paid 5% of such net proceeds. EPA will also be paid 40% of the net proceeds for general unsecured creditors in the Niedermeyer-Martin Co. (''N–M'') bankruptcy estate, and DOI will be paid 5% of such net proceeds. Any payments received by EPA will be used to implement response action at or near the Pacific Wood Treating Facility in Ridgefield, Washington or relating to any migration of hazardous substances or wastes from the Facility under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. §§ 9601 *et seq.,* or by the State of Washington, Department of Ecology, pursuant to a cooperative agreement with EPA, to implement response action pursuant to state law. Any payments received by DOI will be used to restore, replace, or acquire natural resources or assess natural resource damages at or near the Pacific Wood Treating Facility or relating to any migration of hazardous substances or wastes from the Facility. The Settlement Agreement also resolves the United States' proofs of claim on behalf of EPA filed under the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. §§ 6901 *et seq.*

The Department of Justice will receive comments relating to the proposed Settlement Agreement for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Division, Department of Justice, Washington, D.C. 20530, and should refer to *In re Pacific Wood Treating Corp.* and *In re Niedermeyer-Martin Co.,* D.J. Ref. No. 90–7–1–743A, B. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA.

The proposed Settlement Agreement may be examined at the Office of the United States Attorney for the District of Oregon, 312 U.S. Courthouse, 620 SW Main Street, Portland, Oregon 97205; the Region X Office of the United States Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005 (202–624–0892). A copy of the proposed Settlement Agreement may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy of the Settlement Agreement without attachments, please enclose a check in the amount of $6.00 (25 cents per page for reproduction

costs), payable to the Consent Decree Library.

Joel M. Gross,

Acting Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–28667 Filed 11–22–95; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Department of Justice Policy, 28 CFR 50.7, notice is hereby given that on November 9, 1995, a proposed Consent Decree was lodged with the United States District Court for the District of Oregon in *United States* v. *Southern Pacific Transportation Company*, Civil Action No. 94–6176–HO. The proposed Consent Decree settles claims asserted by the United States at the request of the United States Environmental Protection Agency (''EPA'') and the Secretary of the Department of Transportation, in a Complaint filed on April 26, 1994. In its complaint the United States sought assessment of a civil penalty pursuant to 33 U.S.C. 1321(b)(7) of the Clean Water Act (''the CWA''), 33 U.S.C. 1321(b)(7), injunctive relief pursuant to Section 309(b) of the CWA, 33 U.S.C. 1319(b), and reimbursement of the United States' removal costs pursuant to Section 1002(a) of the Oil Pollution Act, of 1990 (''OPA''), 33 U.S.C. 2702(a), or alternatively, Section 311(f) of the CWA, 33 U.S.C. 1321(f). The United States alleged that the violations occurred when a Southern Pacific train derailed near Yoncalla, Oregon on January 27, 1993 and spilled diesel fuel into the Yoncalla Creek and onto the adjacent shoreline.

Under the proposed Consent Decree, Southern Pacific will pay a civil penalty of $58,300 to the United States. Southern Pacific will also pay $200,000 of the United States' removal costs incurred in responding to the Yoncalla Spill. In return for the payments by Southern Pacific, the proposed Consent Decree provides that the settlement resolves the claims alleged by the United States in its complaint, as well as any claims for damages to natural resources arising out of the Yoncalla Spill pursuant to Section 311(f) of the CWA, 33 U.S.C. 1321(f), or Section 1002 of the Oil Pollution Act of 1990, 33 U.S.C. 2702. The covenant not to sue for natural resource damages is based in part on Southern Pacific's earlier settlement with the Oregon Department of Environmental Quality (ODEQ), under which Southern Pacific agreed to pay ODEQ approximately $215,000 for restoration of resources injured by this oil spill. The U.S. Department of the Interior and ODEQ have entered into a Memorandum of Agreement for joint selection of restoration projects.

The Department of Justice will receive written comments relating to the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Southern Pacific Transportation Co.*, D.J. Ref. No. 90–5–1–1–5057.

The proposed Consent Decree may be examined at the Region 10 Office of EPA, 7th Floor Records Center, 1200 Sixth Avenue, Seattle, WA 98101. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, D.C. 20005, (202) 624–0892. In requesting copies, please enclose a check in the amount of $3.00 (25 cents per page reproduction cost) payable to the ''Consent Decree Library.''

Joel Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–28682 Filed 11–22–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting Notice

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

DATE, TIME AND PLACE: November 28, 1995, 2 pm–4 pm, U.S. Department of Labor, Room S–3215 A/B, 200 Constitution Avenue, NW., Washington, DC 20210.

PURPOSE: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to section 9(B) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(9)(B) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be closed to the public.

FOR FURTHER INFORMATION CONTACT: Fernand Lavallee, Director, Trade Advisory Group, Phone: (202) 219–4752.

Signed at Washington, DC, this 13th day of November 1995.

Andrew Samet,

Acting Deputy Under Secretary, International Affairs.

[FR Doc. 95–28706 Filed 11–22–95; 8:45 am]

BILLING CODE 4510–28–M

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue

current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determination Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S–3014, Washington, D.C. 20210.

Due to the recent suspension of Government Activities resulting from the funding interruption, there were no Published Wage Determination Actions.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC, this 20th day of November 1995.

Philip Gloss,

Director, Division of Wage Determinations.

[FR Doc. 95–28613 Filed 11–22–95; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply For Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than December 4, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than December 4, 1995.

The petitions filed in this cases are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 30th day of October, 1995.

Russell Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 10/30/95]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
31,575	Alcoa Fujikura LTD (Wkrs)	San Antonio, TX	10/10/95	Air Bag Wire Harnesses.
31,576	Byron Jackson Pump (Wkrs)	Fresno, CA	10/04/95	Large Vertical Pumps.
31,577	Cummins Southern Plains (Wkrs)	Duncan, OK	10/10/95	Sales, Service and Repair—Diesel Engines.
31,578	SCI, Inc./Digital Equip. (Wkrs)	Augusta, ME	10/12/95	Circuit Boards.
31,579	Indian Refining (Wkrs)	Lawrenceville, IL	10/05/95	Liquid and Gas Hydrocarbon Fuels.
31,580	MFC Group (Wkrs)	Telford, PA	10/11/95	Textile Hook and Loop Fastners.
31,581	New River Industries, Inc. (Wkrs)	Radford, VA	10/05/95	Broad Woven Fabrics.
31,582	Somerville Mills, Div. of (Wkrs)	Somerville, TN	10/06/95	Ladies' Underwear.

APPENDIX—Continued

[Petitions instituted on 10/30/95]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
31,583	Ethicon, Inc. (ACTWU)	Chicago, IL	10/19/95	Gut Sutures for Surgeons.
31,584	R&R Sportswear (UNITE)	Exeter, PA	10/17/95	Children's Sportswear.
31,585	Fad Manufacturing, Inc. (UNITE)	Swoyersville, PA	10/17/95	Children's Sportwear.
31,586	Benton Fashions (UNITE)	Benton, PA	10/17/95	Bridal Gowns.
31,587	Master Package Company (UPIU)	Owen, WI	10/17/95	Fibre Shipping Drums.
31,588	Century Place, Inc. (Wkrs)	Salisbury, NC	10/16/95	T-Shirts.
31,589	Coopers Animal Health, Inc. (UFCW)	Kansas City, KS	10/20/95	Animal Health Products.
31,590	Greif Brothers Corp. (USWA)	Niagara Falls, NY	10/20/95	Steel Drums for Chemicals.
31,591	Georgia Pacific (Wkrs)	Canutillo, TX	10/16/95	Wood Moulding.
31,592	Kentile, Inc. (Co.)	Chicago, IL	10/09/95	Vinyl Floor Tiles.
31,593	Kentile, Inc. (Co.)	So. Plainfield, NJ	10/09/95	Vinyl Floor Tiles.
31,594	Reservoirs, Inc. (Co.)	Midland, TX	10/19/95	Geologic Services.
31,595	Thompson River Lumber (Wkrs)	Thompson Falls, MT	10/20/95	Softwood Lumber.
31,596	Mr. T's Apparel of Wesson (Co.)	Wesson, MS	10/19/95	Men's, Ladies' and Childrens' Blue Jeans.
31,597	Niedner, Inc. (Co.)	York, PA	10/12/95	Fire Hoses.
31,598	CMC Manufacturing, Inc. (Wkrs)	Corinth, MS	10/17/95	Telephones.
31,599	Fruit of the Loom (Wkrs)	Bowling Green, KY	10/18/95	Men's Crew Neck T-Shirts.
31,600	Palm Beach (UNITE)	Eastaboga, AL	10/24/95	Men's Slacks.

[FR Doc. 95–28707 Filed 11–22–95; 8:45 am]
BILLING CODE 4510–30–M

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of October & November, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–31,506; Highland Pumps, Evi Highland, Midland, TX

TA–W–31,520; Reynolds Metals Co., Can Division, Fulton, NY

TA–W–31,470; Pennsylvania Electric Motor Service, Inc., Eric, PA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–31,452; Montello Products Co., Montello, WI

TA–W–31,420; Eaton Corp., Crystal Lake, IL

TA–W–31,558; Hill Phoenix Southwest Div., New Braunfels, TX

TA–W–31,509; Johnson Controls, Inc., Vincennes, IN

TA–W–31,538; McInnes Steel Co., Corry, PA

TA–W–31,411; Enpak, Inc. (Formerly Owned by GNB Technologies, Inc.), Memphis, TN

TA–W–31,390; Bailey Corp., Portland, IN

TA–W–31,393; Bethlehem Steel Corp., Including the Following Divisions: Bethlehem Structural Products Corp., Bethforge, Inc., Bethlehem Foll Corp., PN & NE Subsidiary Railroad Co., Bethlehem, PA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–31,441; AT & T Network Systems Rolling Meadows, IL

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–31,511; Montana Power Co., Colstrip, MT

The investigations revealed that criterion (2) and (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles producted by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

Affirmative Determinations For Worker Adjustment Assistance

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

TA–W–31,386; Huffy Bicycle Co., Celina, OH: August 18, 1994.

TA–W–31,481; Brittany Fashions, Inc., Jersey City, NJ: September 20, 1994.

TA–W–31,546; Bethlehem Steel Corp., Bethship, Sabine Yard, Port Arthur, TX: October 11, 1994.

TA–W–31,476; ATAPCO Office Products Group, Kosciusho, MS: September 19, 1994.

TA–W–31,384; VSD, Inc., Florence, SC: August 11, 1994.

TA–W–31,589; Coopers Animal Health, Inc., dba Mallinckrodt Veterinary, Inc., Kansas City, KS: November 20, 1994.

TA–W–31,422; Concord Fabrics, Inc., Washington, GA: August 28, 1994.

TA–W–31,504; Diamond Offshore Drilling, Inc., Houston, TX & Operating at Various Locations in the Following States: A; ATX, B; AL,

C; FL, D; LA, E; MS: September 10, 1994.

TA–W–31,588; Century Place, Inc., Sewing Div., Salisbury, NC: October 16, 1994.

TA–W–31,442; AJD, Inc., Richmond, VA: August 21, 1994.

TA–W–31,544; Chadco, Inc., Corinth, MS: September 29, 1994.

TA–W–31,483; Elsan Fashions, Inc., East Newark, NJ: September 20, 1994.

TA–W–31,572; Reidbord Brothers Co., Elkins, WV

TA–W–31,573; Reidbord Brothers Co., Philippi, WV

TA–W–31,574 & A & B; Reidbord Brothers Co., Buckhannon, WV, Pittsburgh, PA, Apollo, PA; September 28, 1994

TA–W–31,508; Johnson Controls, Inc., Goshen Facility, Goshen, IN: September 19, 1994.

TA–W–31,564; W.R. Grace Co., Construction Products Div., West Chicago, IL: October 12, 1994.

TA–W–31,494; I. Appel Corp., New York, NY: June 30, 1994.

TA–W–31,482; Clara Fashions, Inc., Jersey City, NJ: September 20, 1994.

TA–W–31,464; Canton Manufacturing Co., Canton, IL: September 19, 1994.

TA–W–31,408; Columbus Energy Corp., Denver, Co: August 23, 1994.

TA–W–31,542; TA–W–31,543; Oshkosh B'Gosh, NcEwen, TN & Hermitage Spring, TN: October 3, 1994.

TA–W–31,397 A & B; Gold Medal, Inc., Crewe, VA, Sparks, NV & Richmond, VA: August 21, 1994.

TA–W–31,461 & A, TA–W–31,462, TA–W–31,463 & A,B,C,D; Brown Shoe Co/Brown Group, Pocahontas, AR (Shoe Factory) & (Cutting Factory), St. Louis, MO, Cabool, MO, Federicktown, MO, Steelville, MO, Benton, MO, Charleston, MO: September 12, 1994.

TA–W–31,473, TA–W–31,474; Brown Co/Brown Group, Dyer, TN Lesington, TN: September 20, 1994.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of October & November, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely.

(3) That imports from Mexico or Canada or articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–00649; Reynolds Metals Co., Can Division, Fulton, NY

NAFTA–TAA–00625; Johnson Controls, Inc., Vincennes, IN

NAFTA–TAA–00621; Kay's Caps, Inc., Valley Stream, NY

NAFTA–TAA–00623; Ozark Electronics, dba Oeca, Inc., Sony Department, Cullman, AL

NAFTA–TAA–00632; McDonnell Douglas Corp., McDonnell Douglas Aerospace—Productions Operations, St. Louis, MO

NAFTA–TAA–00616; Montana Power Co., Colstrip, MT

NAFTA–TAA–00599; Pennsylvania Electric Motor Service, Inc., Erie, PA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

None

Affirmative Determination NAFTA–TAA

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

NAFTA–TAA–00620; I. Appel; Corp., New York, NY: September 20, 1994.

NAFTA–TAA–00617; Johnson Controls, Inc., Goshen Facility, Goshen, IN: September 19, 1994.

NAFTA–TAA–00627, A & B; Reidbord Bros. Co., Inc., Buckhannon, WV, Elkins, WV, Philippi, WV: September 28, 1994.

NAFTA–TAA–00619; Reidbord Bros. Co., Inc. Pittsburgh, PA, Apollo, PA: September 21, 1994.

NAFTA–TAA–00615; Montello Products Co., Montello, WI: August 28, 1994.

NAFTA–TAA–00645; Alcoa Fujikura Ltd., Automotive Div., San Antonio, TX: October 16, 1994.

NAFTA–TAA–00650; W.R. Grace and Co., Construction Products Div., West Chicago, IL: October 17, 1994.

NAFTA–TAA–00635; Emerson Electric Co., Emerson Specialty Motor Div., Independence, KS: October 9, 1994.

NAFTA–TAA–00640; Bethlehem Steel Corp., Bethship, Sabine Yard, Port Arthur, TX: October 11, 1994.

NAFTA–TAA–00647; Cominco American, Inc., Spokane, WA: October 10, 1994.

I hereby certify that the aforementioned determinations were issued during the months of October & November, 1995. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: November 9, 1995.

Russell Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–28708 Filed 11–22–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00537]

Vaagen Brothers Lumber Inc. Colville, Washington; Amended Certification Regarding Eligibility to Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Notice of Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on August 28, 1995, applicable to all workers at Vaagen Brothers Lumber Inc. located in Colville, Washington. The notice was

published in the Federal Register on September 19, 1995 (60 FR 48526).

The Department reviewed the certification for workers at the subject firm. Based on new findings, the Department is amending the certification to include leased workers from the Colville Branch of Pacific Personnel located in Colville, Washington engaged in the production of softwood dimensional lumber for the subject firm.

The intent of the Department's certification is to include all workers of Vaagen Brothers Lumber adversely affected by increased imports from Mexico and Canada.

The amended notice applicable to NAFTA–00537 is hereby issued as follows:

''All workers of Vaagen Brothers Lumber Inc., Colville, Washington, and workers of Pacific Personnel, Colville Branch, Colville, Washington, engaged in the production of softwood dimensional lumber for Vaagen Brothers Lumber Inc. who became totally or partially separated from employment on or after July 22, 1994 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.''

Signed at Washington, D.C. this 7th day of November 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–28711 Filed 11–22–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00517]

John Chopot Lumber Company, Incorporated, Colville, Washington; Amended Certification Regarding Eligibility to Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C 2273), the Department of Labor issued a Notice of Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on August 18, 1995, applicable to all workers at John Chopot Lumber Company, Incorporated located at Colville, Washington. The notice was published in the Federal Register on September 1, 1995 (60 FR 45746).

The Department reviewed the certification for workers at the subject firm. Based on new findings, the Department is amending the certification to include leased workers from the Colville Branch of Pacific Personnel located at Colville, Washington engaged in the production of softwood dimensional lumber for the subject firm.

The intent of the Department's certification is to include all workers of John Chopot Lumber adversely affected by increased imports from Mexico and Canada.

The amended notice applicable to NAFTA–00517 is hereby issued as follows:

''All workers of John Chopot Lumber Company, Incorporated, Colville, Washington, and workers of Pacific Personnel, Colville Branch, Colville, Washington, engaged in the production of softwood dimensional lumber for John Chopot Lumber Company, Incorporated who became totally or partially separated from employment on or after July 3, 1994 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.''

Signed at Washington, D.C. this 24th day of November 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–28709 Filed 11–22–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00642]

McInnes Steel Company, Corry, Pennsylvania; Negative Determination Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for NAFTA–TAA.

In order to make an affirmative determination and issue a certification of eligibility to apply for NAFTA–TAA, the following group eligibility requirements in paragraph (a)(1) of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) And that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in the sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

The investigation was initiated on October 11, 1995 in response to a petition filed on behalf of former workers at McInnes Steel Company, Corry, Pennsylvania. The workers produce steel forgings.

The investigation revealed that criteria (3) and (4) were not met.

Investigative findings show that there were no unsuccessful bids submitted by the subject firm for steel forgings that were lost to foreign manufacturers during the relevant period. The findings also show that there was no shift in production from the workers' firm to Mexico or Canada.

Conclusion

After careful review, I determine that all workers of McInnes Steel Company, Corry, Pennsylvania are denied eligibility to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, DC. this 6th day of November 1995.

Russell T. Kile,

Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–28710 Filed 11–22–95; 8:45 am]

BILLING CODE 4510–30–M

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health; Full Committee Meeting

Notice is hereby given that the National Advisory Committee on Occupational Safety and Health (NACOSH), established under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act, will meet on December 13, 1995, in Room N3437 A–D of the Department of Labor Building located at 200 Constitution Avenue NW, Washington, DC. The meeting is open to

the public and will begin at 9:00 a.m. lasting until approximately 4:00 p.m.

Agenda items will be devoted to an extensive overview of all of the new initiatives of both the Occupational Safety and Health Administration (OSHA) and the National Institute for Safety and Health (NIOSH). Focus will be on how the various elements fit together and how they are in consonance with each Agency's objectives. There will also be a report from the HazCom workgroup and a brief legislative update.

Written data, views or comments for consideration by the committee may be submitted, preferably with 20 copies, to Joanne Goodell at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Anyone wishing to make an oral presentation should notify Ms. Goodell before the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Persons who request the opportunity to address the Advisory Committee may be allowed to speak to the extent time permits, at the discretion of the Chair of the Advisory Committee. Individuals with disabilities who need special accommodations should contact Tom Hall by December 6 at the address indicated below.

An official record of the meeting will be available for public inspection in the OSHA Technical Data Center (TDC) located in Room N2625 of the Department of Labor Building (202–219–7500).

For additional information contact: Joanne Goodell, Directorate of Policy, Occupational Safety and Health Administration, Room N–3641, 200 Constitution Avenue NW., Washington, DC, 20210, telephone (202) 219–8021.

Signed at Washington, DC, this 20th day of November 1995.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 95–28712 Filed 11–22–95; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 95–103]

NASA Advisory Council (NAC), Minority Business Resource Advisory Committee (MBRAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Minority Business Resource Advisory Committee.

DATES: December 6, 1995, 9 a.m. to 4 p.m.

ADDRESSES: George C. Marshall Space Flight Center, National Aeronautics and Space Administration, Building 4200, Room P106, Marshall Space Flight Center, AL 35812–0001

FOR FURTHER INFORMATION CONTACT: Mr. Ralph C. Thomas, III, Office of Small and Disadvantaged Business Utilization, National Aeronautics and Space Administration, Washington, DC 20546 (202) 358–2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Reading of Minutes
—Update on NASA SDB Program
—Public Comment
—Proposed MBRAC Recommendations
—Subcommittee Reports
—Administrator Actions
—Adjourn

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: November 14, 1995.

Danalee Green,

Chief, Management Controls Office.

[FR Doc. 95–28735 Filed 11–22–95; 8:45 am]

BILLING CODE 7510–01–M

[Notice 95–102]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that VivoRx, Inc., of Santa Monica, California, has requested a partially exclusive license to practice the inventions described in: U.S. Patent No. 5,153,132 entitled ''Three-Dimensional Co-Culture Process''; U.S. Patent No. 5,308,764 entitled ''Multi-Cellular Three-Dimensional Living Mammalian Tissue''; U.S. Patent No. 5,155,034 entitled ''Three-Dimensional Cell to Tissue Assembly Process''; U.S. Patent No. 5,330,908 entitled ''High Density Cell Culture System''; U.S. Patent No. 4,839,046 entitled ''Bio-Reactor Chamber''; and U.S. Patent No. 5,002,890 entitled ''Spiral Vane Bio-Reactor''; and the inventions disclosed in the following patent applications: Serial No. 08/170,488, Three-Dimensional Co-Culture Process''; Serial No. 08/066,292, ''Process for Complex Three-Dimensional Co-Culture of Normal Human Small Intestine''; Serial No. 08/227,827, ''Horizontal Rotating Oxygentator for High-Density Cell Culture''; Serial No. 08/172,962, ''Process for Developing High-Fidelity Three Dimensional Tumor Models for Human Bladder Carcinoma''; Serial No. 08/366,065, ''Horizontal Rotating-Wall Vessel Propagation in Vitro Human Tissue Models''; and Serial No. 08/291,791, ''Recombinant Protein Production and Insect Cell Culture and Process''; all of which are assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Mr. James M. Cate, Patent Attorney, NASA Johnson Space Center.

DATES: Responses to this notice must be received by January 23, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Cate, NASA Johnson Space Center, Mail Code HA, Houston, TX 77058; telephone number (713) 483–1001.

Dated: November 9, 1995.

Edward A. Frankle,

General Counsel.

[FR Doc. 95–28736 Filed 11–22–95; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Notice of Pending Submittal to the Office of Management and Budget (OMB) for Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review or continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: IAEA Form N–71—Design Information Questionnaire

2. Current OMB approval number: 3150–0056
3. How often the collection is required: Once.
4. Who is required or asked to report: NRC licensed or certified facilities on the U. S. eligible list who have been notified in writing by the Commission to submit the form.
5. The number of annual respondents: One.
6. The number of hours needed annually to complete the requirement or request: 360.
7. Abstract: NRC licensed or certified facilities that appear on the U. S. eligible list, pursuant to the US/IAEA Safeguards Agreement, and who have been notified in writing by the Commission, are required to complete and submit a Design Information Questionnaire, IAEA Form N–71, to provide information concerning their installation for use of the International Atomic Energy Agency.

Submit, by January 23, 1996, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW, (lower level), Washington, DC. Members of the public who are in the Washington, DC, area can access this document via modem on the Public Document Room Bulletin Board (NRC's Advance Copy Document Library), NRC subsystem, at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date of this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608.

Comments and questions may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, or by telephone at (301) 415–7233, or by Internet electronic mail at bjs1@nrc.gov.

Dated at Rockville, Maryland, this 14th day of November 1995.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 95–28607 Filed 11–22–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–003 and 50–247]

Consolidated Edison Company of New York (Indian Point Nuclear Generating Unit Nos. 1 and 2); Exemption

I

Consolidated Edison Company of New York, Inc., (the licensee) is the holder of Facility Operating License No. DPR–26 which authorizes the operation of Indian Point Nuclear Generating Unit No. 2 and Provisional Operating License (POL) No. DPR–5 which authorizes the operation of Indian Point Nuclear Generating Unit No. 1. The operating authority of POL DPR–5 for Indian Point Nuclear Generating Unit No. 1 was revoked by Commission Order dated June 19, 1980. The operating licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now and hereafter in effect.

The facility comprises two pressurized-water reactors at the licensee's site in Westchester County, New York.

II

The Code of Federal Regulations at 10 CFR 73.55, ''Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage,'' paragraph (a), in part, states that ''The licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety.''

Paragraph (1), ''Access Requirements,'' of 10 CFR 73.55(d), specifies that ''The licensee shall control all points of personnel and vehicle access into a protected area.'' 10 CFR 73.55(d)(5) requires that ''A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort.'' 10 CFR 73.55(d)(5) also states that an individual not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual ''receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area * * *''

The licensee proposed to implement an alternative unescorted access control system which would eliminate the need to issue and retrieve badges at the entrance into the protected area and would allow all individuals with unescorted access to keep their badge with them when departing the site.

An exemption from 10 CFR 73.55(d)(5) is required to allow contractors who have unescorted access to take their badges offsite instead of returning them when exiting the site. By letter dated August 10, 1995, the licensee requested an exemption from certain requirements of 10 CFR 73.55(d)(5) for this purpose.

III

Pursuant to 10 CFR 73.5, ''Specific exemptions,'' the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

Pursuant to 10 CFR 73.55, the Commission may authorize a licensee to provide alternative measures for protection against radiological sabotage provided the licensee demonstrates that the alternative measures have ''the same high assurance objective'' and meet ''the general performance requirements'' of the regulation, and ''the overall level of system performance provides protection against radiological sabotage equivalent'' to that which would be provided by the regulation.

Currently, employee and contractor identification badges/keycards, are issued and retrieved on the occasion of each entry to and exit from the protected areas of the Indian Point Nuclear Generating Unit Nos. 1 and 2 site. Station security personnel are required to maintain control of the badges/keycards while the individuals are offsite. This practice has been in effect at Indian Point Nuclear Generating Unit Nos. 1 and 2 since the operating licenses were issued. Security personnel retain each identification badge/keycard when not in use by the authorized individual, within appropriately designed storage receptacles. An individual who meets the access authorization requirements is issued an individual picture badge/keycard which allows entry into preauthorized areas of the station. While entering the plant in the present

configuration, an authorized individual is ''screened'' by the required detection equipment and by the issuing security officer. Having received the picture badge/keycard, the individual proceeds to the access portal, inserts the picture badge/keycard into the card reader, and passes through the turnstile which unlocks if the preset criteria are met.

This present procedure is labor intensive since security personnel are required to verify badges/keycards issuance, ensure badges/keycards retrieval, and maintain the badges/keycards in orderly storage until the next entry into the protected area. The regulations permit employees to remove their badges/keycards from the site, but an exemption from 10 CFR 73.55(d)(5) is required to permit contractors to take their badges/keycards offsite instead of returning them when exiting the site.

Under the proposed system, all individuals authorized to gain unescorted access will have the physical characteristics of their hand (hand geometry) recorded with their badge/keycard. Since the hand geometry is unique to each individual and its application in the entry screening function would preclude unauthorized use of a badge/keycard, the requested exemption would allow employees and contractors to keep their badges/keycards at the time of exiting the protected area. The process of verifying badge/keycard issuance, ensuring badge/keycard retrieval, and maintaining badges/keycards could be eliminated while the balance of the access procedure would remain intact. Firearm, explosive, and metal detection equipment and provisions for conducting searches will remain as well. The security officer responsible for the last access control function (controlling admission to the protected area) will also remain isolated within a bullet-resistant structure in order to assure his or her ability to respond or to summon assistance.

Use of a hand geometry biometrics system exceeds the present verification methodology's capability to discern an individual's identity. Unlike the photograph identification badge/keycard, hand geometry is nontransferable. During the initial access authorization or registration process, hand measurements are recorded and the template is stored for subsequent use in the identity verification process required for entry into the protected area.

Authorized individuals insert their picture badges/keycards into the card reader and the biometrics system records an image of the hand geometry. The unique features of the newly recorded image are then compared to the template previously stored in the database. Access is ultimately granted based on the degree to which the characteristics of the image match those of the ''signature'' template.

Since both the badges/keycards and hand geometry would be necessary for access into the protected area, the proposed system would provide for a positive verification process. Potential loss of a badge/keycard by an individual, as a result of taking the badge/keycard offsite, would not enable an unauthorized entry into protected areas.

The access process will continue to be under the observation of security personnel. The system of identification badges/keycards will continue to be used for all individuals who are authorized access to protected areas without escorts. Badges/keycards will continue to be displayed by all individuals while inside the protected area. Addition of a hand geometry biometrics system will provide a significant contribution to effective implementation of the security plan at the site.

IV

For the foregoing reasons, pursuant to 10 CFR 73.55, the NRC staff has determined that the proposed alternative measures for protection against radiological sabotage meet ''the same high assurance objective,'' and ''the general performance requirements'' of the regulation and that ''the overall level of system performance provides protection against radiological sabotage equivalent'' to that which would be provided by the regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, an exemption is authorized by law, will not endanger life or property or common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants Consolidated Edison Company of New York, Inc. an exemption from those requirements of 10 CFR 73.55(d)(5) relating to the returning of picture badges/keycards upon exit from the protected area such that individuals not employed by the licensee, i.e., contractors, who are authorized unescorted access into the protected area, can take their badges/keycards offsite.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (60 FR 56357). This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 1st day of November 1995.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–28608 Filed 11–22–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–155]

Consumers Power Company (Big Rock Point Plant); Exemption

I

Consumers Power Company (CPCo, the licensee) is the holder of Facility Operating License No. DPR–6 which authorizes operation of the Big Rock Point Plant. The facility consists of a boiling water reactor located at the licensee's site in Charlevoix County, Michigan. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

Pursuant to 10 CFR 50.12(a), the NRC may grant exemptions from the requirements of the regulations (1) which are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) where special circumstances are present.

Section 50.54(o) of 10 CFR requires that all licensees meet the requirements of Appendix J to Part 50—Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors. Paragraph III.D.2(b)(i) of Appendix J to 10 CFR Part 50 requires that containment air locks be tested at an internal pressure not less than peak pressure (P_a), which is 23 psig for Big Rock Point.

III

By letter dated October 4, 1994, as supplemented September 27, 1995, Consumers Power Company (the licensee) requested an exemption from the Appendix J requirement to test the air lock (escape lock) at P_a. Currently, the containment emergency (or escape) air lock at Big Rock Point is tested at a pressure of 2 psig. Therefore, the explicit requirement of paragraph III.D.2(b)(i) of Appendix J is not met. The requested exemption is required because of the emergency air lock manufacturer's restrictions on internal pressurization and the Big Rock Point design which necessitates frequent personnel entries. The licensee stated

that the escape air lock internal pressurization is limited by the manufacturer to 2 psig without a strongback and 5 psig with a strongback in place, thereby making pressurization to peak pressure impossible for local leak rate tests. In addition, the licensee stated that the required use of a strongback for the 5-psig test and its positioning on the inside of the lock which tends to assist the door in sealing is less conservative than the 2-psig test for the inner door. The 5-psig test has no significant increase in value. Therefore, the licensee believes that the escape air lock's performance is demonstrated with the local leak rate test at 2 psig.

As stated above, due to the manufacturer's restriction on internal pressurization, Big Rock Point has been conducting the local leak rate test of the escape air lock at 2 psig. In addition, since the reduced-pressure test is employed, the results of the 2-psig leakage test are extrapolated to the equivalent P_a test results to determine acceptability, as required by the Big Rock Point Technical Specifications. Moreover, the as-found leakage observed during the past 4 years' tests has been acceptably low. Based on the above, the staff concludes that testing the escape air lock at 2 psig, in accordance with the manufacturer's recommendations, would provide an acceptable alternative to strict compliance with the applicable Appendix J requirements. The conclusion is further supported by the past good leakage rate performance. The alternative actions proposed by the licensee in the exemption request provide reasonable assurance that airlock leakage will not exceed acceptable levels. Therefore, granting this exemption does not significantly affect the risk of facility accidents.

Thus, the staff concludes that an exemption from the requirements of paragraph III.D.2(b)(i) of Appendix J to 10 CFR Part 50 should be granted. The Commission further determines that special circumstances as provided in 10 CFR 50.12(a)(2)(ii) are present justifying the exemption; namely, that application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule.

The underlying purpose of the requirement to perform leakage rate testing of escape air lock at P_a is to measure leakage at conditions representative of the design basis accident. The escape air lock internal pressurization at Big Rock Point is limited to the manufacturer recommendation of 2 psig. In addition, the 2-psig leakage tests are extrapolated to the equivalent P_a test results to determine acceptability, as required by the Big Rock Point Technical Specifications. The testing history and the structural capability of the containment establish that there is significant assurance that testing the emergency air lock at 2 psig will not adversely impact the leak tight integrity of the containment and that test is representative of the design basis accident. Therefore, the emergency air lock at P_a is not necessary to achieve the underlying purpose of Appendix J.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, and will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances as provided in 10 CFR 50.12(a)(2)(ii) are present justifying the exemption. Therefore, the Commission hereby grants an exemption from the requirement of paragraph III.D.2(b)(i) of Appendix J to 10 CFR Part 50 to the extent that the containment emergency air lock test will be conducted at 2 psig.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this exemption will not have a significant effect on the quality of the human environment (60 FR 57025).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 14th day of November 1995.

For the Nuclear Regulatory Commission

Jack W. Roe,

Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–28603 Filed 11–22–95; 8:45am]

BILLING CODE 7590–01–P

[Docket Nos. 50–413 and 50–414]

Duke Power Company, et al.; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–35 and NPF–52 issued to Duke Power Company, et al. (the licensee) for operation of the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina.

The proposed amendments would modify Section 6.0, ''Administrative Controls,'' of the licensee's Catawba, McGuire, and Oconee nuclear stations, which have been submitted as a joint application. A summary description is provided as follows.

The requested amendments remove the specific assignment of responsibilities for the review, distribution, and approval activities contained in the Technical Review and Control Section of each station's Technical Specifications. The proposed specifications state that these activities will be performed by a knowledgeable individual/organization. Approval of the affected documents is to be at the appropriate manager/superintendent level as specified in Duke administrative controls.

The requested amendments move the requirement for the review of proposed changes in the stations' Technical Specifications and Operating Licenses by the Duke Nuclear Safety Review Board (NSRB) to Duke administrative procedures (Selected Licensee Commitments documents) and change the wording of the requirements covering NSRB meeting frequency.

The requested amendments add Technical Review and Control Program implementation and Plant Operations Review Committee (PORC) implementation to the list of required procedures and programs for each nuclear station.

The requested amendments change or clarify certain Technical Specification administrative requirements covering technical review and control activities or records retention requirements.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendments requested involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below: (It should be noted that the licensee submitted a combined

analysis that covers McGuire, Catawba, and Oconee nuclear stations.)

Standard #1. The proposed amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The provisions of these proposed amendments concern administrative changes in the stations' Technical Specifications involving the Technical Review and Control, Procedures and Programs/Station Operating Procedures, and Records Retention/Station Operating Records portions of the Administrative Controls Section. The requested changes primarily affect review and control activities, but also include other administrative changes affecting the approval of station procedures (Oconee only), records retention, and definition of the term ODCM [offsite dose calculation manual] (McGuire and [Catawba]). The provisions of the proposed amendment[s] primarily involve the relocation of existing Technical Specifications review, distribution, or approval requirements to internal Duke administrative controls. However, implementation of the proposed amendment[s] [do] involve changes to several review/distribution activities. These review/distribution activities are primarily for: 1) Proposed changes to the stations' Technical Specifications, 2) Proposed tests and experiments which affect nuclear safety and are not addressed in the stations' FSAR [Final Safety Analysis Report] or Technical Specifications, 3) Environmental radiological procedures, 4) Reportable events documentation and reports of violations of Technical Specifications, 5) Reports of special reviews and investigations, and 6) Reports of unplanned onsite releases of radiological material to the environs. Planned implementation of the proposed Technical Specifications amendments utilizing Selected Licensee Commitments will result in the above items being reviewed/received by a different organizational unit in the future. The organizational unit is to be either the recently initiated Plant Operations Review Committee (PORC) or the General Manager, Environmental Services. Personnel serving on the PORC, and the General Manager, Environmental Services will be qualified based upon education and experience to review the operational and technical considerations involved with the applicable items listed above. No required reviews are being eliminated by the requested amendments, only the organizational units responsible for performing the reviews will be changed. Future reviews of these items under the auspices of the PORC or the General Manager, Environmental Services will maintain a quality level equivalent to that being currently achieved by Duke's Qualified Reviewer Program, the Station Managers, or the Duke Nuclear Safety Review Board as applicable. Consequently, merely changing the organizational units performing future reviews, or making the additional administrative changes described above, results in no increase in the probability or consequences of an accident previously evaluated because the review function will continue to be conducted in an equivalent manner.

The implementing SLC will also permit proposed amendments to the stations' Technical Specifications and Operating Licenses to be approved for the Station Manager by a designee. However, this individual will occupy a position equivalent to, or higher, in the Duke organization as the Station Manager.

Additionally, the proposed changes do not directly impact the design or operation of any plant systems or components any more so than the review and approval processes currently being conducted in accordance with existing approved Technical Specifications.

Standard #2. The proposed amendments will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes are administrative in nature and primarily cover the review, distribution, and/or approval function performed for items identified in existing Technical Specifications. The quality level of the future reviews will not decrease and the ability of Duke to identify the possibility for the occurrence of new or different kinds of accidents prior to implementation will be maintained. Of specific interest in the consideration of Standard #2 is the review of proposed tests and experiments which affect station nuclear safety and are not addressed in the FSAR or Technical Specifications. The Technical Specifications required reviews of these tests and experiments are not being proposed for removal by these requested amendments. Only the organizational unit conducting the review of proposed tests and experiments is being changed by the requested amendments. The PORC, instead of the Station Manager, is being assigned the responsibility for conducting the reviews of proposed tests and experiments in the future. It is believed that the combined expertise of the PORC membership will enhance Duke's ability to identify potential situations which could possibly involve a new, or different, kind of accident.

Standard #3. The proposed amendments will not involve a significant reduction in any margin of safety.

The changes contained in the requested amendments are administrative in nature and do not impact the design capabilities or operation of any plant structures, systems, or components. There will be no reduction in margin of safety as a result of implementing these requested amendments. Impact upon margin of safety is a consideration primarily included in the 10 CFR 50.59 evaluation process conducted for station procedures, procedure changes, and nuclear station modifications. The 10 CFR 50.59 evaluation process is conducted under the auspices of the Duke Qualified Reviewer Program and is not affected by these requested amendments. The impact on margin of safety for future Technical Specifications and Operating License changes will be reviewed by the PORC, but these reviews will be equivalent in quality to the reviews presently conducted by the Qualified Reviewers.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments requested involve no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 18, 1995, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for

Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the York County Library, 138 East Black Street, Rock Hill, South Carolina. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Herbert N. Berkow: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated January 12, 1995, as supplemented by letter dated June 29, 1995, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the York County Library, 138 East Black Street, Rock Hill, South Carolina.

Dated at Rockville, Maryland, this 15th day of November 1995.

For the Nuclear Regulatory Commission.

Robert E. Martin,

Senior Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–28605 Filed 11–22–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–369 and 50–370]

Duke Power Co.; Notice of Withdrawal of Application for Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Duke Power Company (the licensee) to withdraw its December 7, 1994, application for proposed amendments to Facility Operating Licenses NPF–9 and NPF–17 for the McGuire Nuclear Station, Unit Nos. 1 and 2, located in Mecklenburg County, North Carolina.

The proposed amendments would have revised the Technical Specifications to modify the action statement concerning the Control Room Air Intake at times when the radiation monitors (EMF–43A and 43B) were inoperable.

The Commission had previously issued a Notice of Consideration of Issuance of Amendments published in the Federal Register on February 1, 1995 (60 FR 6299). However, by letter

dated October 26, 1995, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendments dated December 7, 1994, and the licensee's letter dated October 26, 1995, which withdrew the application for license amendments. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina.

Dated at Rockville, Maryland, this 9th day of November 1995.

For the Nuclear Regulatory Commission.

Victor Nerses,

Senior Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–28602 Filed 11–22–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–390]

Watts Bar Nuclear Plant, Unit 1, Tennessee Valley Authority; Notice of Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission), has issued Facility Operating License No. NPF–20 (the license) to Tennessee Valley Authority (the licensee). This license authorizes operation of the Watts Bar Nuclear Plant, Unit 1 (the facility), by the licensee at reactor core power levels not in excess of 170 megawatts thermal (5% of design thermal power) in accordance with the provisions of the license, the Technical Specifications (Appendix A to the license), and the Environmental Protection Plan (Appendix B to the license).

Watts Bar Nuclear Plant, Unit 1, is a pressurized-water nuclear reactor located at the licensee's site on the west bank of Chickamauga Lake in Rhea County, Tennessee.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the Federal Register on December 27, 1976 (41 FR 56244).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement (NUREG–0498), and Supplement 1, since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

Pursuant to 10 CFR 51.52, the Commission has determined that the issuance of exemptions included in this license will have no significant impact on the environment. These determinations were published in the Federal Register on April 18, 1985 (50 FR 15516) and April 25, 1995 (60 FR 20291).

For further details with respect to this action, see (1) Facility Operating License No. NPF–20 with appendices stated above; (2) the Commission's Safety Evaluation Report (NUREG–0847) dated June 1982, and Supplements 1 through 19; (3) the licensee's Final Safety Analysis Report as amended to Amendment No. 91; (4) The licensee's Environmental Report and supplements thereto; and (5) the Commission's Final Environmental Statement (NUREG–0498) dated December 1978 and Supplement 1 dated April 1995. These items are available at the NRC's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, D.C. 20555, and at the local public document room, Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402. A copy of the Facility Operating License No. NPF–20 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects I/II. Copies of the Safety Evaluation Report (NUREG–0847) and Supplements 1–19, and the Final Environmental Statement (NUREG–0498) and Supplement 1 may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, or by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250–7954 (telephone no. 202–783–3238). All orders should clearly identify the NRC publication number and the requestor's GPO deposit account, or VISA or Mastercard number and expiration date.

Dated at Rockville, Maryland, this 9th day of November, 1995.

For the Nuclear Regulatory Commission.

Peter S. Tam,

Senior Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II.

[FR Doc. 95–28601 Filed 11–22–95; 8:45 am]

BILLING CODE: 7590–01–P

[Docket Nos. STN 50–529 and STN 50–530]

Arizona Public Service Company, et al., Palo Verde Nuclear Generating Station, Unit Nos. 2 and 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–51 and NPF–74, issued to Arizona Public Service Company, et al. (the licensee), for operation of the Palo Verde Nuclear Generating Station, Unit Nos. 2 and 3, located in Maricopa County, Arizona.

Environmental Assessment

Identification of the Proposed Action

The proposed action would delete provisions added by previous amendments as a result of previous sale and leaseback arrangements entered into by El Paso Electric Company. El Paso Electric Company would re-obtain full ownership rights and continue to receive electric output from Palo Verde at its proportionate share. The requested rescission is part of a reorganization plan being pursued by El Paso Electric Company under a pending case before the U.S. Bankruptcy Court for the Western District of Texas subsequent to its filing for protection under Chapter 11 of the U.S. Bankruptcy Code on January 8, 1992.

The proposed action is in accordance with the licensee's application for amendment dated October 3, 1995.

The Need for the Proposed Action

The proposed action in the form of an amendment is needed for approval by the U.S. Bankruptcy Court for the Western District of Texas of a reorganization plan being pursued by El Paso Electric Company in a proceeding under Chapter 11 of the U.S. Bankruptcy Code initiated on January 8, 1992.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that there will be no changes to the facility or to the operating, maintenance, engineering or other nuclear-related personnel as a result of the proposed reorganization and license

amendment. No changes resulting from the reorganization are expected with regard to the following: lines of authority and responsibility, essential nuclear support functions provided to Palo Verde, effectiveness of the organization, priorities and ongoing plant improvement projects, technical qualifications, and corporate financial resources presently available in support of Palo Verde operations.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the ''Final Environmental Statement Related to the Operation of the Palo Verde Nuclear Generating Station, Units 1, 2, and 3,'' dated February 1982.

Agencies and Persons Consulted

In accordance with its stated policy, on November 9, 1995, the staff consulted with the Arizona State official, Mr. William Wright of the Arizona Radiation Regulatory Agency, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 3, 1995, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Phoenix Public Library, 12 N. Central, Phoenix, Arizona 85004.

Dated at Rockville, Maryland, this 15th day of November 1995.

For the Nuclear Regulatory Commission.

Charles R. Thomas,

Project Manager, Project Directorate IV–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–28604 Filed 11–22–95; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Board Meeting: Scientific Activities in the ESF, Repository Design Issues, Program Priorities, Use of Expert Judgment, Defense Waste Impact Issues, and Response to NAS Standards Report Top List for January 1996 Meeting in Las Vegas

Pursuant to its authority under section 5051 of Public Law 100–203, the Nuclear Waste Policy Amendments Act of 1987, the Nuclear Waste Technical Review Board will hold its winter meeting on January 10 and 11, 1996, in Las Vegas, Nevada. The meeting will be held at the Holiday Inn Crowne Plaza, 4255 South Paradise Road, Las Vegas, Nevada 89109; (Tel) 702–369–4400; (Fax) 702–369–3770. The meeting is open to the public and will begin at 8:30 a.m. both days.

Presentations during the meeting will cover a variety of subjects. Scientific activities taking place in the exploratory studies facility and repository design issues top the list. Fiscal year 1996 program priorities within the Office of Civilian Radioactive Waste Management and the use of expert judgment are also key issues that will be reviewed. Additional topics planned for the two-day meeting include: deposition of surplus weapons plutonium; defense waste planning for Yucca Mountain; reactions from the Environmental Protection Agency, the Nuclear Regulatory Commission, and the Department of Energy (DOE) to the National Academy of Sciences report on the technical bases for Yucca Mountain standards; waste management efforts in the People's Republic of China and the United Kingdom; and the DOE's technical basis report on surface processes.

Time will be set aside on the agenda for public comment and questions. To ensure that everyone wishing to speak is provided time to do so, the Board encourages those who have comments to sign the Public Comment Register, which will be located at the sign-in table. Those registering are advised that, depending on the number of people wishing to speak, a speaking time limit may have to be set on the length of individual remarks. However, written comments of any length may be submitted for the record.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987 to evaluate the technical and scientific validity of activities undertaken by the DOE in its program to manage the disposal of the nation's spent nuclear fuel and defense high-level waste. In that same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, for its suitability as a potential location for a permanent repository for the disposal of that waste.

Transcripts of the meeting will be available on computer disk or on a library-loan basis in paper format from Davonya Barnes, Board staff, beginning February 26, 1996. For further information, contact Frank Randall, External Affairs, 1100 Wilson Boulevard, Suite 910, Arlington, Virginia 22209; (Tel) 703–235–4473; (Fax) 703–235–4495.

Dated: November 16, 1995.

William Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 95–28656 Filed 11–22–95; 8:45 am]

BILLING CODE 6820–AM–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Salary Council

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the forty-seventh

meeting of the Federal Salary Council will be held at the time and place shown below. At the meeting the Council will continue discussing issues relating to locality-based comparability payments authorized by the Federal Employees Pay Comparability Act of 1990 (FEPCA). The meeting is open to the public.

DATE: December 12, 1995, at 10:00 a.m.

ADDRESS: Office of Personnel Management, 1900 E Street NW., Room 7B09, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth O'Donnell, Chief, Salary Systems Division, Office of Personnel Management, 1900 E Street NW., Room 6H31, Washington, DC 20415–0001. Telephone number: (202) 606–2838.

For the President's Pay Agent.

Lorraine A. Green,

Deputy Director.

[FR Doc. 95–28716 Filed 11–22–95; 8:45 am]

BILLING CODE 6325–01–M

RAILROAD RETIREMENT BOARD

Verification of Railroad Unemployment and Sickness Claims

AGENCY: Railroad Retirement Board.

ACTION: Notice.

SUMMARY: The Railroad Retirement Board (RRB) is announcing a change in the number of days provided for railroad employers to submit information about claims for unemployment and sickness benefits prior to the agency's decision to pay or deny benefits. For a one-year period, employers will be allowed 3 business days, rather than 7 calendar days, from the date of the RRB's notice of a claim to submit information about the claim before the agency decides to pay or deny benefits. For purposes of this action, a ''business day'' is defined as any of the days Monday through Friday which are not observed as official holidays by the United States Government.

DATES: The test program announced by this notice will commence January 2, 1996.

ADDRESSES: Comments concerning this action may be submitted within 30 days from the date of publication to John L. Thoresdale, Director of Unemployment and Sickness Insurance, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: John L. Thoresdale, Director of Unemployment and Sickness Insurance, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611, 312–751–4800.

SUPPLEMENTARY INFORMATION: Section 5(b) of the Railroad Unemployment Insurance Act (45 U.S.C. 355(b)) provides, in part, that ''When a claim for benefits is filed with the Board, the Board shall provide notice of such claim to the claimant's base year employer or employers and afford such employer or employers an opportunity to submit information relevant to the claim before making an initial determination on the claim.'' Section 3256 of the Board's regulations authorize the establishment of procedures to obtain information about benefit claims from railroad employers. These procedures have allowed employers 7 calendar days for submission of information before the RRB decides to pay or deny benefits.

The Joint Committee on Rail Labor and Rail Management recently requested the RRB to reduce the time period allowed for employers to respond to notices of claims from 7 days to 3 days. At the conclusion of the test period, the Board will determine whether to implement the 3-day verification period for the future.

Dated: November 8, 1995.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95–28670 Filed 11–22–95; 8:45 am]

BILLING CODE 7905–01–M

COMMISSION ON PROTECTING AND REDUCING GOVERNMENT SECRECY

Notice of Meeting

This notice announces the fifth in a series of public meetings of the Commission on Protecting and Reducing Government Secrecy. Pursuant to Title IX of Public Law 103–236, dated April 30, 1994, the Commission consists of twelve members, four appointed by the President, two each by the Speaker of the House and the House Minority Leader, and two each by the Senate Majority and Minority Leaders. The Commission will remain in effect for two years from the date of its first meeting.

Time and Date: 10:00 a.m., December 6, 1995.

Place: S–116, Committee on Foreign Relations Hearing Room, The Capitol.

Status: Open.

Agenda: 1. Mr. Peter D. Saderholm, Director, Security Policy Board Staff, on Board structure and activities, including implementation of Executive Orders 12958 and 12968 and recommendations of the Joint Security Commission.

Contact Person for more Information: Eric R. Biel, Staff Director, Commission on Protecting and Reducing Government Secrecy, (202) 776–8725; FAX: (202) 776–8773.

Eric R. Biel,

Staff Director, Commission on Protecting and Reducing Government Secrecy.

[FR Doc. 95–28657 Filed 11–22–95; 8:45 am]

BILLING CODE 6820–ER–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–21501; 812–9678]

Fortis Advantage Portfolios, Inc., et al.; Notice of Application

November 13, 1995.

AGENCY: Securities and Exchange Commission (the ''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Fortis Advantage Portfolios, Inc., Fortis Equity Portfolios, Inc., Fortis Fiduciary Fund, Inc., Fortis Worldwide Portfolios, Inc., Fortis Growth Fund, Inc., Fortis Money Portfolios, Inc., Fortis Securities, Inc., Fortis Series Fund, Inc., Fortis Tax-Free Portfolios, Inc., Fortis Income Portfolios, Inc., Special Portfolios, Inc. (collectively, the ''Funds''), and Lazard Frères & Co. LLC (''Lazard Frères'').

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 6(c) for an exemption from section 17(e) of the Act and rule 17e–1 thereunder.

SUMMARY OF APPLICATIONS: Applicants request an exemption to permit each Fund to use certain securities dealers that are affiliated persons of affiliated persons (''second-tier affiliates''), solely because of subadvisory relationships with one or more other Funds, to engage in principal transactions with the Fund. The order also would permit a Fund to use second-tier affiliates as brokers in connection with certain principal transactions and to pay commissions to such brokers without complying with the monitoring and recordkeeping requirements set forth in rule 17e–1.

FILING DATES: The application was filed on July 24, 1995 and amended on September 29, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be

received by the SEC by 5:30 p.m. on December 8, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 500 Bielenberg, St. Paul, Minnesota, 55125.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Staff Attorney, at (202) 942–0562, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Funds are Minnesota corporations. Except for Fortis Securities, the Funds are open-end management investment companies registered under the Act. Fortis Securities is a closed-end management investment company registered under the Act. Fortis Advisers, a registered investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''), serves as investment adviser to each of the Funds.

2. Applicants request that the relief sought in the application also apply to any other registered investment company, or separate portfolio thereof, that in the future (a) is a member of the Fortis group of investment companies as defined in rule 11a–3 under the Act, and (b) either (i) is advised by Fortis Advisers or any entity controlling, controlled by, or under common control with Fortis Advisers, or (ii) has its shares distributed by Fortis Investors, Inc. or any entity controlling, controlled by, or under common control with Fortis Investors.

3. Lazard Frères is registered as an investment adviser under the Advisers Act and as a broker-dealer under the Securities Exchange Act of 1934. Lazard Frères Asset Management, a separate operating division of Lazard Frères, Morgan Stanley Asset Management Limited, and Warburg Investment Management International Ltd. (collectively, the ''Subadvisers'') have contracted with Fortis Advisers to serve as subadvisers for three of the portfolios within Fortis Series Fund.

4. Applicants request relief to permit an ''Eligible Dealer,'' a hereinafter defined, to engage in principal transactions with a Fund in the ordinary course of business. An Eligible Dealer is a person that subadvises one or more Funds or Fund portfolios not engaging in the relevant principal transaction that conducts advisory and securities dealer operations via the same legal entity that is a second-tier affiliate of the Fund or Fund portfolio engaging in the transaction solely by reason of being a subadviser of one or more of the other Funds. An Eligible Dealer is not (a) an affiliated person of the Fund or Fund portfolio engaging in the transaction, (b) Fortis Advisers, or any other entity that in the future serves as investment adviser to the Fund or Fund Portfolio engaging in the transaction, or an affiliated person thereof, or (c) an officer, director, employee, promoter, or principal underwriter of any Fund or Fund portfolio, or an affiliated person of such officer, director, employee, promoter, or principal underwriter.

5. Applicants also request an exemption that would permit each Fund to use an ''Eligible Broker,'' as hereinafter defined, as broker in connection with the sale of securities to or by such Fund or Fund portfolio on a securities exchange. An Eligible Broker is a subadviser of one or more Funds or Fund portfolios that are not parties to the transactions, conducts advisory and brokerage operations through the same legal entity, and is a second-tier affiliate of the Fund or Fund portfolio engaging in the transaction solely by reason of subadvising one or more other Funds or Fund portfolios. The requested relief would permit the Fund or Fund portfolio engaging in the transaction to pay commissions, fees, or other remuneration to the Eligible Broker without complying with the requirements set forth in rules 17e–1(b)(3) and 17e–1(c).

6. With the exception of Lazard Frères Asset Management, each broker-dealer that is affiliated with a subadviser to a Fund is a separate legal entity from the subadviser. Lazard Frères Asset Management is a separate operating division of Lazard Frères. As the only subadviser that conducts its advisory operations through the same legal entity, Lazard Frères is currently the only entity that satisfies the definitions of Eligible Dealer and Eligible Broker.

Applicants' Legal Analysis

1. Applicants request an order under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act. Section 17(a), among other things, prohibits an affiliated person of a registered investment company, or affiliated person of such person, acting as principal, from selling to or purchasing from such registered company any security or other property.

2. Section 2(a)(3) of the Act defines ''affiliated person.'' Under this definition, each subadviser would be a second-tier affiliate of each Fund and Fund portfolio it does not manage, to the extent the Funds and Fund portfolios are deemed to be under common control with, and therefore an affiliated person of, each other Fund and each other portfolio of the Funds. Accordingly, relief from section 17(a) is required for an Eligible Dealer to engage in principal transactions with a Fund.

3. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provisions of the Act or of any rule thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act provides that the SEC may exempt a transaction from section 17(a) of the Act if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act. For the reasons discussed below, applicants believe that the proposed transactions meet the standards of sections 6(c) and 17(b).

4. Applicants believe that no element of self-dealing would be involved in the proposed transactions because the subadviser recommending the transaction would be dealing with an entity that in economic reality is a competitor of the subadviser. Applicants state that each transaction between a Fund and an Eligible Dealer would be the product of arms-length bargaining and that the subadviser recommending the transaction can neither lose nor gain financially on the basis of whether the transaction is beneficial or detrimental to the Eligible Dealer. Because the pecuniary interests of a subadviser would be solely and directly aligned with those of the Fund it subadvises, applicants argue, it is reasonable to conclude that the consideration to be paid to or received by such Fund in connection with a

principal transaction with an Eligible Dealer will be reasonable and fair.

5. Applicants also request relief under sections 6(c) and 17(b) for an exemption from section 17(a) to permit Lazard Frères to engage in principal transactions with registered investment companies, or portfolios of any registered investment company, of which Lazard Frères is, or becomes in the future, a second-tier affiliate solely because of its advisory or subadvisory relationship with other portfolios of that investment company or other investment companies under common control with that investment company.

6. Applicants furthermore request relief under section 6(c) for an exemption from section 17(e) of the Act and rule 17e–1 thereunder. Section 17(e)(2)(A) provides in relevant part that it shall be unlawful for any affiliated person of a registered investment company, or an affiliated person of such person, acting as broker in connection with the sale of securities to or by such company, to receive from any source a commission for effecting such transaction which exceeds the usual and customary broker's commission if the sale is effected on a securities exchange. When a subadviser is a second-tier affiliate of a Fund and conducts brokerage operations via the same legal entity, the brokerage component also is a second-tier affiliate of the Funds not subadvised by the subadviser. Consequently, transactions involving a Fund that are brokered by an Eligible Broker are subject to section 17(e)(2).

7. Rule 17e–1 provides that, for purposes of section 17(e)(2)(A), a commission shall be deemed as not exceeding the usual and customary broker's commission, if certain specified procedures are followed. These procedures include the requirement in rule 17e–1(b)(3) that a registered investment company's board of directors, including a majority of disinterested directors, determines, no less frequently than quarterly, that all transactions effected pursuant to the rule comply with procedures reasonably designed to provide that the brokerage commission is consistent with the standards set forth in the rule. The procedures also include the requirement in rule 17e–1(c) under the Act that the investment company maintain and preserve certain written records about each transaction effected pursuant to the rule.

8. Applicants believe that the proposed transactions raise no possibility of self-dealing or any concern that the Funds would be managed in the interest of the Eligible Brokers. A subadviser who recommends that an Eligible Broker act as broker to a particular transaction would neither lose nor gain financially on the basis of whether or not the transaction benefits the Eligible Broker, because the subadviser's only pecuniary interest in the transaction is its advisory fee, which is based on net assets under management. Accordingly, the subadviser would have no interest in benefitting Lazard Frères or any future Eligible Broker at the expense of the Fund or Funds it subadvises.

9. Applicants believe that under the circumstances the monitoring and recordkeeping provisions of rule 17e–1 would be unduly burdensome to the Funds. Applicants believe that the situations contemplated by the relief are similar to the arms-length bargaining that normally prevails when an investment adviser acts on behalf of an investment company. Accordingly, applicants believe that the proposed transactions meet the standards of section 6(c) because they are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

10. Applicants also request relief under section 6(c) from section 17(e) and rule 17e–1 to permit Lazard Frères to receive commissions from any registered investment company or portfolio thereof for which Lazard Frères is, or becomes in the future, a second-tier affiliate solely because of its advisory or subadvisory relationship with other portfolios of the same investment company or other investment companies under common control with the investment company, without compliance with the requirements of 17e–1 (b)(3) and (c). For the reasons discussed above, applicants believe that the proposal meets the section 6(c) standard.

Applicants' Condition

Applicants agree that the requested order is subject to the condition that, with respect to any brokerage transactions conducted in reliance on the requested order, applicants will comply with all of the provisions of rule 17e–1 except those of rule 17e–1 (b)(3) and (c).

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28615 Filed 11–22–95; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 21502; International Series Release No. 885; 812–8654]

Merrill Lynch, Pierce, Fenner & Smith Incorporated, et al.; Notice of Application

November 13, 1995.

AGENCY: Securities and Exchange Commission (the ''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Merrill Lynch, Pierce, Fenner, & Smith Incorporated (''Merrill Lynch''), Smith Barney Inc., Prudential Securities Incorporated, Dean Witter, Reynolds Inc., PaineWebber Incorporated, Corporate Income Fund, Equity Income Fund, The Fund of Stripped (''Zero'') U.S. Treasury Securities, Government Securities Income Fund, International Bond Fund, The Merrill Lynch Fund of Stripped (''Zero'') U.S. Treasury Securities, The Mortgage-Backed Income Fund, Defined Asset Funds, Municipal Investment Trust Fund, and The Tax-Exempt Mortgage Fund.

RELEVANT ACT SECTIONS: Order requested under section 6(c) from section 26(a)(2)(D) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit the trustees for certain unit investment trusts to deposit trust assets in the custody of foreign banks and securities depositories.

FILING DATE: The application was filed on October 27, 1993 and amended on May 23, 1995, August 10, 1995, and October 23, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 8, 1995, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reasons for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Merrill Lynch, Pierce, Fenner & Smith Incorporated, Unit Investment Trusts, P.O. 9051, Princeton, New Jersey 08543–9051.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Special Counsel, at (202) 942–0582, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Research Branch.

Applicants' Representations

1. Corporate Income Fund, Equity Income Fund, The Fund of Stripped (''Zero'') U.S. Treasury Securities, Government Securities Income Fund, International Bond Fund, The Merrill Lynch Fund of Stripped (''Zero'') U.S. Treasury Securities, The Mortgage-Backed Income Fund, Defined Asset Funds, Municipal Investment Trust Fund, and The Tax-Exempt Mortgage Fund (the ''Funds'') are registered investment companies made up of one or more series (the ''Series'') of separate unit investment trusts registered or to be registered under the Securities Act of 1933. Each Series is created by a trust indenture (an ''Indenture'') among its sponsors and a trustee and is sponsored by one or more of the following: Merrill Lynch, Smith Barney Inc., Prudential Securities Incorporated, Dean Witter Reynolds Inc., and PaineWebber Incorporated (the ''Sponsors''). Pursuant to powers of attorney executed by each of the other Sponsors, Merrill Lynch acts as agent for the Sponsors for purposes of taking action under the Indentures (including, among other things, selecting securities to be deposited or liquidated). Applicants request that any order granted pursuant to the application extend to any future unit investment trust sponsored by one or more of the Sponsors that becomes a party to an Indenture, and any future sponsor of one or more of the Series that becomes a party to an Indenture and for which Merrill Lynch acts as agent for purposes of taking action under the Indentures.

2. In 1987, the SEC issued an order (the ''Euroclear Order'')[1] that permits any trustee of a Series to deposit securities and other assets of any such Series with Morgan Guaranty Trust Company of New York, Brussels office, as operator of the Euroclear System (''Euroclear'') or Central de Livraison de Valeurs Mobilieres, S.A. (''Cedel'').[2] However, as discussed below, various Series of Corporate Income Fund, Equity Income Fund, and International Income Fund now invest in foreign securities that either are not eligible for settlement through Euroclear or Cedel or for which those depositories are not used in the ordinary course of settling securities transactions in those securities. Applicants thus request an order to permit the trustees for the Funds to deposit Fund assets in the custody of all foreign banks and securities depositories that meet the requirements described below.

3. Increasingly, transactions in foreign securities must be settled by book entry through specified clearing systems with related securities depositories. Without the requested relief, effecting a trade in securities held in those depositories means that the securities must be physically transported in certificate form for deposit with a foreign branch of a U.S. bank and then retransported and redeposited upon sale.

4. In addition, certain countries by law or regulation mandate use of a particular depository as the only means of holding a security. In other markets, maintaining securities outside a depository is not consistent with prevailing custodial practices. In some markets, anticipated time delays, as well as the costs, of maintaining securities with the nearest foreign branch of a U.S. bank, have led the Sponsors to determine not to invest Fund assets in those markets.

5. The authority to use the custodial services of foreign banks will permit the Funds to invest in countries in which U.S. banks are not authorized to operate or in which U.S. banks are not members of the depository in which the desired securities are held. Even if a U.S. bank is available, there may be settlement advantages to using a local bank.

Applicants' Legal Analysis

1. Under sections 2(a)(5) and 26(a)(1), the trustee of a unit investment trust must be a bank that is subject to regulation by the U.S. government or one of the states. Section 26(a)(2)(D) requires that the trust indenture provide that the trustee ''shall have possession of all securities and other property in which the funds of the trust are invested * * * and shall segregate and hold the same in trust * * * until distribution thereof to the security holders of the trust.'' Under these sections, the only foreign entity that qualifies as a unit investment trust custodian is an overseas branch of a U.S. bank.[3]

2. Section 6(c) provides that the SEC may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of the Act or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. The Sponsors and the Funds request an order under section 6(c) exempting them and any bank that acts as trustee (a ''Trustee'')[4] for any Series from section 26(a)(2)(D) to the extent necessary to permit a Trustee to deposit, or to cause or permit the deposit of, foreign securities (as defined in rule 17f–5, and any amendments thereto), cash, and cash equivalents in amounts reasonably necessary to effect foreign securities transactions of any Series with (1) any company that is an ''eligible foreign custodian'' as defined in rule 17f–5 or any amendments thereto and (2) any other company (a ''Qualifying Custodian'') that fails to meet the definition of eligible foreign custodian solely because it does not meet the shareholders' equity requirement of rule 17f–5(c)(i) or (ii), whichever is applicable. Under the proposed arrangement, each Trustee would provide custody services pursuant to arrangements that would be the same as those applicable to registered management investment companies except that (i) the Trustee would perform the duties that, under rule 17f–5, are assigned to the boards of directors of management investment companies; (ii) the Trustee would provide indemnification against losses due to negligence of the foreign custodian; and (iii) in the case of foreign custodians that fail to meet the shareholders' equity requirements of the rule, the Trustee or an affiliated person of the foreign custodian would provide indemnification against losses due to

[1] Merrill Lynch, Pierce, Fenner & Smith Incorporated, Investment Company Act Release Nos. 15739 (May 14, 1987) (notice) and 15813 (June 16, 1987) (order).

[2] As conditions to the Euroclear Order, the Funds agreed to include in their trust indentures provisions for custody arrangements that (i) assign to the Trustee the supervisory and monitoring duties which, under rule 17f–5, are assigned to the boards of directors of management investment companies and (ii) require the Trustee to indemnify the Funds against losses occurring by reason of the gross negligence, bad faith, or willful misconduct of Euroclear or Cedel.

[3] *See* Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. 21259 (July 27, 1995).

[4] The current Trustees are The Bank of New York, The Chase Manhattan Bank, N.A. (each acting as sole trustee), and the Bank of New York and Shawmut Bank, N.A. (acting as co-trustees for certain Series). The Sponsors may use other trustees in the future.

bankruptcy or insolvency of the foreign custodian.

4. Applicants believe that the requested exemption is closely analogous to, and appropriate in light of, the foreign custodial arrangements available to management companies under rule 17f–5. Rule 17f–5 permits management companies to use foreign banks that meet the rule's capital requirements, transnational securities depositories, and securities depositories that operate the central system for handling securities or equivalent book-entries in a particular country. In addition, applicants believe that securities held by a foreign custodian, subject to the conditions listed below, will be at least as effectively protected as the same securities would be if directly deposited with a foreign branch of a United States bank, or shipped to the United States for custody. Applicants also believe that the exposure to certain custodial risks is reduced when securities are held through certain foreign securities depositories rather than through a foreign branch of a United States bank since securities held in those depositories do not have to be physically transported in certificate form for deposit outside the system to effect a trade and then retransported and redeposited upon sale.

5. Applicants believe that the use of eligible foreign custodians and Qualifying Custodians would result in efficiencies, cost savings, and enhanced liquidity of the Funds' foreign securities. Substantial costs and inefficiencies currently arise, in part, because all sales of certain depository-eligible portfolio securities must be settled only through that depository. Thus, since a unit investment trust that purchases securities that must be settled through the depository must also hold those securities outside of the depository, the unit investment trust must withdraw the securities from the depository, send them out for registration, and then transport them to an eligible sub-custodian (*i.e.*, a foreign branch of a United States bank). In order to subsequently resell the portfolio securities, they must be transported back to the depository for redeposit.

6. During the delay due to sending securities out for registration, corporate action information is not readily available. This could lead, for example, to delays in the crediting of dividends to the Trust for the benefit of unit holders. In addition, the delay could give rise to significant liquidity problems if sales of securities were needed to meet redemptions.

7. If a trust were permitted to hold securities in the foreign depository, this delay would be virtually eliminated. This is because securities held in the depository are automatically reregistered in the name of the depository common nominee and participants may continue to settle their delivery obligations according to sufficiency of their book-entry balances in their depository stock clearing accounts, even when the underlying certificates have been submitted to share registrars for registration.

8. The Trustees will be required to exercise reasonable care in selecting foreign custodians, and each Trustee will maintain written records regarding the basis for the choice or continued use of each foreign custodian. In addition, the prospectus of each Series will provide appropriate disclosure regarding foreign securities and foreign custody. Applicants believe that in view of the cost savings and increased efficiency and liquidity described above, and the proposed indemnification and oversight by the Trustees, the requested exemption is appropriate and should be granted.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

I. Conditions Applicable to All Foreign Custodians

1. The Indenture will contain provisions under which the Trustee agrees to indemnify the Series against any loss occurring as a result of willful misfeasance, bad faith, or negligence by the foreign custodian in the performance of its duties or by reason of the foreign custodian's reckless disregard of its duties.

2. The Indenture will contain provisions under which the Trustee agrees to be liable to the Series for any loss occurring as a result of the Trustee's willful misfeasance, bad faith or negligence in the performance of its duties under the Indenture or by reason of its reckless disregard of those duties.

3. The Indenture will contain provisions under which the Trustee agrees to perform all of the duties assigned by rule 17f–5, as now in effect or as it may be amended in the future, to boards of directors of management companies. A Trustee's duties under this condition will not be delegated.

4. The Series' prospectus will contain such disclosure regarding foreign securities and foreign custody as is required for management investment companies by Forms N–1A and N–2.

5. The Trustee will maintain and keep current written records regarding the basis for the choice or continued use of each foreign custodian. These records will be preserved for a period of not less than six years from the end of the fiscal year in which the unit investment trust was terminated, the first two years in an easily accessible place. Such records will be available for inspection at the Trustee's main office during the Trustee's usual business hours, by unitholders and by the SEC or its staff.

II. Condition Applicable to Foreign Custodians With Insufficient Shareholders' Equity

1. Any foreign custodian that fails to meet the definition of ''eligible foreign custodian'' solely because it does not meet the shareholders' equity requirement of rule 17f–5(c)(2) (i) or (ii), whichever is applicable, shall not be given custody of the assets of any Series unless and until the Trustee of that Series has entered into one of the following contractual agreements, which will remain in effect at all times during which the foreign custodian fails to have the minimum shareholders' equity specified in rule 17f–5(c)(2):

a. An agreement between the Series, the Trustee, the Sponsors, and the foreign custodian, which provides that the Trustee will indemnify the Series against any loss arising out of or in connection with the bankruptcy or insolvency of the foreign custodian; or

b. An agreement between the Series, the Trustee, the Sponsors, the foreign custodian, and an affiliated person of the foreign custodian that (i) is a bank (as defined in section 2(a)(5) of the Act) or bank holding company or (ii) meets the definition of ''eligible foreign custodian'' under rule 17f–5(c)(2)(i), which provides that the affiliated person will indemnify the Series against any loss arising out of or in connection with the bankruptcy or insolvency of the foreign custodian.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28616 Filed 11–22–95; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration; (Ocelot Energy Inc., Class B Subordinate Voting Shares No Par Value) File No. 1–12076

November 13, 1995.

Ocelot Energy Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section

12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the America Stock Exchange, Inc. (''Amex'').

The reasons alleged in the application for withdrawing the security from listing and registration include the following:

The Company has determined that the trading volumes of the Security on the Amex do not justify the costs of maintaining a listing on the Amex. The Security will continue to trade on the Toronto Stock Exchange.

Any interested person may, on or before December 5, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–28614 Filed 11–22–95; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Solitron Devices, Inc., Common Stock, $.01 Par Value) File No. 1–4978

November 16, 1995.

Solitron Devices, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the Pacific Stock Exchange Incorporated (''PSE'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, they no longer meet the PSE's continued listing requirements. Currently, the Security is traded on the Nasdaq electronic bulletin board.

Any interested person may, on or before December 7, 1995, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–28618 Filed 11–22–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36481; File No. S7–24–89]

Joint Industry Plan; Solicitation of Comments and Order Partially Approving Amendment No. 6 to Reporting Plan for Nasdaq/National Market Securities Traded on an Exchange on an Unlisted or Listed Basis, Submitted by the National Association of Securities Dealers, Inc., and the Boston, Chicago and Philadelphia Stock Exchanges

November 13, 1995.

On November 13, 1995, the National Association of Securities Dealers, Inc., and the Boston, Chicago, and Philadelphia Stock Exchanges (collectively, ''Participants'') [1] submitted to the Commission proposed Amendment No. 6 to a joint transaction reporting plan (''Plan'') for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis.[2] The Commission is approving the proposed amendment to the Plan insofar as the proposal requests an extension of the effectiveness of the Plan. The Commission, however, is partially approving the proposal by approving operation of the Plan and trading pursuant to the Plan on a temporary basis to expire on December 12, 1995, and not through the entire period requested which would have been through December 29, 1995.

I. Background

The Commission originally approved the Plan on June 26, 1990.[3] The Plan governs the collection, consolidation and dissemination of quotation and transaction information for Nasdaq/National Market securities listed on an exchange or traded on an exchange pursuant UTP. The Commission originally approved trading pursuant to the Plan on a one-year pilot basis, with the pilot period to commence when transaction reporting pursuant to the Plan commenced. Consequently, the pilot period commenced on July 12, 1993. As requested by the Participants in Amendment Nos. 1, 2, 3, 4, and 5 to the Plan, the Commission has extended the effectiveness of the Plan five times. Accordingly, the effectiveness of the Plan was scheduled to expire on November 12, 1995.[4]

As originally approved by the Commission, the Plan required the

[1] The signatories to the Plan, i.e., the National Association of Securities Dealers, Inc. (''NASD''), and the Chicago Stock Exchange, Inc. (''Chx'') (previously, the Midwest Stock Exchange, Inc.), Philadelphia Stock Exchange, Inc. (''Phlx''), and the Boston Stock Exchange, Inc. (''BSE''), are the ''Participants.'' The BSE, however, joined the Plan as a ''Limited Participant,'' and reports quotation information and transaction reports only in Nasdaq/National Market (previously referred to as ''Nasdaq/NMS'') securities listed on the BSE. Originally, the American Stock Exchange, Inc., was a Participant to the Plan, but did not trade securities pursuant to the Plan, and withdrew from participation in the Plan in August 1994.

[2] The Commission notes that Section 12(f) of the Act describes the circumstances under which an exchange may trade a security that is not listed on the exchange, *i.e.,* by extending unlisted trading privileges (''UTP'') to the security. Section 12(f) was amended on October 22, 1994, 15 U.S.C. § 78*l* (1991) (as amended 1994). Prior to the amendment, Section 12(f) required exchanges to apply to the Commission before extending UTP to any security. In order to approve an exchange UTP application for a registered security not listed on any exchange (''OTC/UTP''), Section 12(f) required the Commission to determine that various criteria had been met concerning fair and orderly markets, the protection of investors, and certain national market initiatives. These requirements operated in conjunction with the Plan currently under review. The recent amendment to Section 12(f), among other matters, removes the application requirement and permits OTC/UTP only pursuant to a Commission order or rule. The order or rule is to be issued or promulgated under essentially the same standards that previously applied to Commission review of UTP applications. The present order fulfills these Section 12(f) requirements.

[3] *See* Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (''1990 Approval Order''). For a detailed discussion of the history of UTP in OTC securities, and the events that led to the present plan and pilot program, *see* 1994 Extension Order, *infra* note 4.

[4] *See* Securities Exchange Act Release No. 34371 (July 13, 1994), 59 FR 37103 (''1994 Extension Order''). *See also* Securities Exchange Act Release No. 35221, (January 11, 1995), 60 FR 3886 (''January 1995 Extension Order''), Securities Exchange Act Release No. 36102 (August 14, 1995), 60 FR 43626 (''August 1995 Extension Order''), Securities Exchange Act Release No. 36226 (September 13, 1995), 60 FR 49029 (''September 1995 Extension Order''), and Securities Exchange Act Release No. 36368 (October 13, 1995), 60 FR 54091 (''October 1995 Extension Order'').

Participants to complete their negotiations regarding revenue sharing during the one-year pilot period. The January 1995 Extension Order approved the effectiveness of the Plan through August 12, 1995, and since that time the Commission has expected the Participants to conclude their financial negotiations promptly (at that time, before January 31, 1995), and to submit a filing to the Commission that reflected the results of the negotiations.[5] To date, the Participants have not completed their financial negotiations.

Proposed Amendment No. 6 to the Plan would have extended the effectiveness and the negotiation period through December 29, 1995. In light of the lack of progress that has been made by the Participants in finalizing their negotiations, as evidenced by their failure to file a proposed amendment for revenue sharing under the Plan, the Commission believes it is appropriate only to approve the proposal partially by extending the effectiveness of the pilot program for an additional month. This should serve to continue the pilot program in place while the Commission awaits the requisite filing.[6]

II. Extension of Certain Exemptive Relief

In conjunction with the Plan, on a temporary basis scheduled to expire on November 12, 1995, the Commission granted an exemption from Rule 11Ac1–2 under the Act regarding the calculated best bid and offer (''BBO''), and granted the BSE an exemption from the provision of Rule 11Aa3–1 under the Act that requires transaction reporting plans to include market identifiers for transaction reports and last sale data. While the Participants have requested that these exemptions be extended through December 29, 1995, this order extends these exemptions only through December 12, 1995. Further, this extension will remain in effect only if the Plan continues in effect through that date pursuant to a Commission order.[7] The Commission continues to believe that exemptive relief from these provisions is appropriate through December 12, 1995.

III. Comments on the Operation of the Plan

In the January 1995 Extension Order, the August 1995 Extension Order, the September 1995 Extension Order, and the October 1995 Extension Order, the Commission solicited, among other things, comment on: (1) whether the BBO calculation for the relevant securities should be based on price and time only (as currently is the case) or if the calculation should include size of the quoted bid or offer; and (2) whether there is a need for an intermarket linkage for order routing and execution and an accompanying trade-through rule. The Commission continues to solicit comment on these matters.

IV. Solicitation of Comment

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. All submissions should refer to File No. S7–24–89 and should be submitted by December 15, 1995.

V. Conclusion

The Commission finds that proposed Amendment No. 6 to the Plan to extend the operation of the Plan and the financial negotiation period, but only for an additional month, is appropriate and in furtherance of Section 11A of the Act. The Commission finds further that extensions of the exemptive relief through December 12, 1995, as described above, also is consistent with the Act and the Rules thereunder. Specifically, the Commission believes that these extensions should serve to provide the Participants with more time to conclude their financial negotiations and with more information to evaluate the effects of and proposed course of action for the pilot program. This, in turn, should further the objects of the Act in general, and specifically those set forth in Sections 12(f) and 11A of the Act and in Rules 11Aa3–1 and 11Aa3–2 thereunder.

The Commission currently believes, however, that extension beyond December 12, 1995, of the effectiveness of the Plan and the related exemptive relief is not necessary or in furtherance of the Act because such an extension would not maximize the incentives for the Participants to complete their negotiations and file a financial amendment to the Plan, as described above. Thus, the Commission believes that partial approval of the proposal by limiting the effectiveness of the present approval order through December 12, 1995, is appropriate.

It is therefore ordered, pursuant to Sections 12(f) and 11A of the Act and (c)(2) of Rule 11Aa3–2 thereunder, that Amendment No. 6 to the Joint Transaction Reporting Plan for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis is hereby partially approved and trading pursuant to the Plan is hereby approved on a temporary basis through December 12, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(29).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28621 Filed 11–22–95; 8:45 am]

BILLING CODE 8010–01–M

[5] *See* January 1995 Extension Order, *id*, at n. 6.

[6] The NASD, in its letter attached to the present filing, states that all Plan Participants have made a good faith effort to reach a final agreement on revenue sharing under the Plan, but that the Chx has requested a limited amount of time to conclude internally its consideration of the most recent draft of the financial plan amendment. *See* letter from Robert E. Aber, NASD, to Jonathan Katz, Commission, dated November 9, 1995. The Participants are reminded that they currently are in violation of the Commission's August 1995 Extension Order that required the Participants to submit a filing concerning revenue sharing on or before August 31, 1995. The Commission continues to urge the Participants to comply with the Commission's request for the filing promptly.

[7] In the October 1995 Extension Order, the Commission extended these exemptions from October 12, 1995, through November 12, 1995. Pursuant to a request made by the NASD, this order further extends the effectiveness of the relevant exemptions but only from October 12, 1995, through November 12, 1995. *See* letter dated November 9, 1995, *id*.

[Release No. 34–36486; File No. SR–MSRB–95–16]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by Municipal Securities Rulemaking Relating to Arbitration Rules

November 16, 1995.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 9, 1995, the Municipal Securities Rulemaking Board (''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the MSRB. 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 Board proposes to amend Board rule G–35 [1] (''Arbitration Code'') by amending Section 25 of the Arbitration Code in order to conform that Section to its counterpart in the Uniform Code of Arbitration (''Uniform Code'') developed by the Securities Industry Conference on Arbitration (''SICA'').

Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Rule G–35. Arbitration.

* * * * *

Section 25. Interpretation of Arbitration Code.

The [panel of] arbitrators shall be empowered to interpret and determine the applicability of all provisions under this Arbitration Code and *to take appropriate action to obtain compliance with any ruling by the arbitrator(s).* [any s] *S*uch interpretations [or determination] *and actions to obtain compliance* shall be final and binding upon the parties.

* * * * *

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 Board 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 Board has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend Section 25 of the Arbitration Code in order to conform it to section 22 of the Uniform Code. Consistent with the Uniform Code, the Board proposes to amend Section 25 in order to clarify and codify the arbitrators' existing authority to enforce their rulings in the event of non-compliance by a party. Appropriate arbitral action under this provision could include the assessment of fees or costs, preclusion of documents or witnesses, or initiation of a disciplinary referral. Currently, such sanctions for non-compliance with the arbitrator's rulings are infrequently ordered or requested because the arbitrators and parties may be unaware of an arbitrator's power. It is expected that the arbitrators will exercise such power primarily in the area of failure to comply with discovery requests. As amended, Section 25 will specify that such arbitral rulings, as well as interpretations of the Uniform Code, will be final and binding upon the parties.

The proposed rule change is consistent with Sections 15B(b)(2)(C) and 15B(b)(2)(D) of the Act. Section 15B(b)(2)(C) requires, in pertinent part, that the Board's rules be designed:

> to promote just and equitable principles of trade . . . to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest. . . .

Section 15B(b)(2)(D) provides that the Board shall, if it deems appropriate:

> provide for the arbitration of claims, disputes, and controversies relating to transactions in municipal securities: Provided, however, That no person other than a municipal securities broker, municipal securities dealer, or person associated with such a municipal securities broker or municipal securities dealer may be compelled to submit to such arbitration except at his instance and in accordance with section 29 of this title.

The proposed rule change will facilitate the just and timely resolution of disputes between customers and dealers, thereby furthering the Board's statutory mandate to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission believes that the proposed rule change should be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act. In that regard, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Board, and, in particular, the requirements of Sections 15B(b)(2)(C) and 15B(b)(2)(D) thereof. Specifically, the Commission concludes that accelerated effectiveness of the proposal is appropriate because the substantive amendments proposed in this rule change were previously proposed by other self-regulatory organizations (''SROs''), were not the subject of public comment, and have been approved by the Commission.[2] Because the proposal is designed to protect investors and the public interest by providing for uniformity in the rules governing the administration of arbitration facilities offered by the SROs, the Commission finds good cause for approving the foregoing rule change on an accelerated basis prior to the thirtieth day after the date of publication thereof in the Federal Register.

IV. Solicitation of Comment

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of MSRB. All submissions should refer to file number SR–MSRB–95–16 and should be submitted by December 15, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [3] that the proposed rule change SR–MSRB–95–16, amending Section 25 of the Arbitration

[1] *MSRB Manual*, General Rules, Rule G–35 (CCH) ¶ 3671.

[2] *See, e.g.,* Securities Exchange Act Release No. 35263 (Jan. 23, 1995), 60 FR 5741 (Jan. 30, 1995) (order granting accelerated approval to SR–CBOE–94–51); Securities Exchange Act Release No. 34344 (July 11, 1994), 59 FR 36453 (July 18, 1994) (order approving SR–MSE–93–9); Securities Exchange Act Release No. 31464 (Nov. 16, 1992), 57 FR 55011 (Nov. 23, 1992) (order approving SR–NASD–92–33).

[3] 15 U.S.C. 78s(b)(2).

Code in order to conform that Section to the Uniform Code, is hereby approved.

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. 95–28623 Filed 11–22–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36490; File No. SR–NASD–95–52]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Gross Income Assessments for Member Firms

November 16, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. § 78s(b)(1), notice is hereby given that on November 3, 1995, 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 § 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

Pursuant to the provisions of Section 19(b)(1) under the Act, the NASD is herewith filing a proposed rule change to Section 1(c) of Schedule A to the NASD By-Laws to revise the credit allowed to members against the annual assessment on their gross income. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Schedule A to the NASD By-Laws

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of the Corporation, shall be determined on the following basis.

Section 1—Assessments

Each member shall pay an annual assessment composed of:

* * * * *

(c) Members shall receive a credit against the annual assessment on gross income stated in paragraph (a) above as follows:

(i) Portion of assessment > $5,000 – [25]*23*%

(ii) Portion of assessment > $25,000 – [5]*4*% additional

(iii) Portion of assessment > $50,000 – 5% additional

(iv) Portion of assessment > $100,000 - [5]*4*% additional

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Pursuant to Article VI of the By-Laws of the Corporation, the NASD requires its members to pay an annual assessment fee, as defined by Schedule A, Section 1 to the By-Laws (''Schedule A''). NASD members are required under Section 1(a) of Schedule A to pay an amount equal to the greater of $850.00 or the total of a specified percentage of their annual gross income from securities transactions.[1] NASD members also receive, pursuant to Section 1(c) of Schedule A, a credit against the annual assessment on their gross income imposed under Section 1(a) of Schedule A. The Schedule A, Section 1(c) credit to members is calculated by a tiered discount structure that is intended to address, to some extent, the regulatory subsidy provided by larger NASD firms.

The NASD recently has reviewed its fee structure in order to further align revenues with the cost of providing particular services to members. The proposed rule change would amend Section 1(c) of Schedule A to revise the credit allowed to members against the annual assessment on their gross income under Section 1(a) of Schedule A as follows:

(i) Portion of assessment > $5,000 – [25]*23*%

(ii) Portion of assessment > $25,000 – [5]*4*% additional

(iii) Portion of assessment > $50,000 – 5% additional

(iv) Portion of assessment > $100,000 – [5]*4*% additional

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act which require that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges in that the proposed rule change equitably adjusts fees and assessments to conform to the NASD's projected 1995 budget.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act and subparagraph (e) of Rule 19b–4 thereunder in that it constitutes a due, fee or other charge.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements

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[1] Schedule A, Section 1(a) requires NASD members to pay an amount equal to the greater of $850.00 or the total of: (i) 0.125% of annual gross revenue from state and municipal securities transactions; (ii) 0.125% of annual gross revenue from other over-the-counter securities transactions; (iii) 0.125% of annual gross revenue from U.S. Government securities transactions; and (iv) with respect to members whose books, records and financial operations are examined by the NASD, 0.125% of annual gross revenue from securities transactions executed on an exchange.

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 SR–NASD–95–52 and should be submitted by December 15, 1995.

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. 95–28617 Filed 11–22–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36489; File No. SR–NYSE–95–37]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to a Pilot Program to Display Price Improvement on the Execution Report Sent to the Entering Firm

November 16, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. § 78s(b)(1), notice is hereby given that on November 6, 1995, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On November 16, 1995, the NYSE filed Amendment No. 1 to the proposed rule change.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of additional descriptions of the pilot program whereby the Exchange will test and evaluate a means of calculating and displaying, on the execution reports sent to member firms, the dollar amounts realized as savings to their customers as a result of price improvement in the execution of their orders on the Exchange.[2] Initially, the Exchange expects to work with Merrill Lynch, Pierce, Fenner & Smith, Incorporated (''Merrill Lynch'') in testing and evaluating the proposed methodology. Assuming the results of the pilot program are successful, the Exchange will make this program available to all its member organizations in January 1996.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As noted in the Pilot Filing, the purpose of the six month pilot program is to develop, test, and evaluate a methodology and program for calculating and displaying, on an execution report sent to member firms entering orders, the dollar value saved by their customers as a result of price improvement of orders executed on the Exchange. This program does not in any way affect the actual execution of orders. The Exchange refers to this calculated dollar savings as the ''NYSE PRIME SM.''

In the Pilot Filing, the Exchange presented several examples of how NYSE PRIME is intended to work. Herein, the Exchange is providing an additional example as to how NYSE PRIME will operate in situations when an order is stopped against the prevailing bid or offer and then exposed at a better price in an effort to obtain price improvement for the order.

Assume the NYSE market quote is 50–50⅜, with 500 shares bid and 10,000 offered, and that the best offer displayed in the National Market System is 50¼ for 200 shares. A market order to buy 1,000 shares, entered on the NYSE is stopped at 50⅜, meaning it is guaranteed to buy at 50⅜ or a better price. The order is subsequently executed at 50¼ on the NYSE. Because in this situation there is not complete price improvement, there would be no representation of NYSE PRIME price improvement on the execution report.

The NYSE PRIME program operates in the same manner when an order is not stopped, but is executed at a price equal to the best price displayed in the National Market System if that quotation size is 200 shares or more.[3]

2. Statutory Basis

The basis under the Act for this rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. This rule change is designed to perfect the mechanism of a free and open market in that it enhances the information provided to investors by displaying to them the dollar value of the price improvement their orders may have received when executed on the NYSE.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In fact, the Exchange believes that the NYSE PRIME program can reasonably be expected to enhance competition by disclosing to investors the amount of savings they may realize as a result of the price improvement their orders may receive when executed on the NYSE.

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[1] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Howard Kramer, Associate Director, Division of Market Regulation, SEC, dated November 16, 1995. Amendment No. 1 modified the original filing by removing the Exchange's proposal to calculate price improvement based on size. Amendment No. 1 also modified the pilot to make the program available to all NYSE member organizations starting in January 1996.

[2] *See* Securities Exchange Act Release No. 36421 (October 26, 1995), 60 FR 55625 (November 1, 1995) (notice of filing and immediate effectiveness of proposed rule change by the NYSE relating to a six-month pilot program to display price improvement on the execution report sent to the entering firm) (File No. SR–NYSE–95–35) (''Pilot Filing'').

SM NYSE is a service mark of the New York Stock Exchange.

[3] The Commission notes that this filing initially proposed to modify the program, as soon as practicable, to reflect price improvement on 800 shares in the above example, whether or not the order was stopped. In Amendment No. 1, the NYSE indicated that it will not modify the PRIME program to represent price improvement as initially proposed in this filing. *See supra* note 1.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This rule change is filed pursuant to paragraph (A) of Section 19(b)(3) of the Act, and paragraphs (e)(5)(i), (ii), and (iii) of Rule 19b–4 thereunder. The NYSE PRIME program will entail enhancements to the Exchange's CMS (common message switch), SuperDOT and Post Trade systems. This program does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and does not have the effect of limiting access to or availability of any Exchange order entry or trading system. As such, this rule change, as amended on November 16, 1995,[4] may take effect immediately upon filing with the Commission, to modify the program described in SR–NYSE–95–35.[5] At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–95–37 and should be submitted by December 15, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28624 Filed 11–22–95; 8:45 am]

BILLING CODE 8010–01–M

[4] *See supra* note 1.

[5] *See supra* note 2.

[Release No. 34–36473; International Series Release No. 884; File No. SR–PHLX–95–62]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Selective Quoting Facility for Foreign Currency Options

November 9, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 18, 1995, the Philadelphia Stock Exchange, Inc. (''PHLX'' or ''Exchange'') 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Commentary .04 to PHLX Rule 1012, ''Series of Options Open for Trading,'' and Floor Procedure Advice (''Advice'') F–18, ''FCO Expiration Months and Strike Prices,'' establish the Selective Quoting Facility (''SQF'') for foreign currency options (''FCOs''). The SQF, a feature of the Exchange's Auto-Quote system, categorizes each FCO series as either an ''update strike'' or a ''non-update strike.'' Update strikes, for which PHLX quotes must be made available for continuous dissemination to the public throughout the trading day include, at the minimum: (1) The four strike prices below and the four strike prices above the underlying price for American-style options[1] with expiration dates of the three nearest mid-month expirations and the three nearest month-end expirations; and (2) any other European-style[2] or American-style series where there is open interest as of the commencement of that date. In addition, update series may be activated intra-day at the initiative of the PHLX or in response to a request from either the respective specialist or from an FCO floor official. The PHLX proposes to amend Exchange Rule 1012, Commentary .04 and Advice F–18 to (1) categorize series which maintain open interest but have not traded within the previous five days as non-update series;[3] and (2) amend the definition of update series, which are set at the commencement of each trading day, to include the 10, 20, 30, 40 and 50 delta[4] strikes below and above the underlying price rather than the four strike prices above and below the underlying price. The proposal to amend the definition of update series to include the 10, 20, 30, 40, and 50 delta strikes below and above the underlying price will not result in additional strike price intervals; rather, it will identify the existing strike prices which will be classified as update series.[5]

The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] An American-style option can be exercised on any business day prior to its expiration date and on its expiration date.

[2] A European-style option can only be exercised during a specified period before it expires.

[3] For non-update series, continuous dissemination of Exchange quotes to the public is not required. Although the proposal classifies series which maintain open interest but have not traded within the previous five trade days as non-update series, the proposal also provides that such series must have one bid/ask quote disseminated at the close of each trade day.

[4] Delta is a measure of how an option premium changes in relation to the price of the underlying instrument. For example, a delta of 50 means that for every one point move in the spot price of an underlying foreign currency, the option premium moves ½.

[5] Telephone conversation between Edith Hallahan, Special Counsel, Regulatory Services, PHLX, and Yvonne Fraticelli, Attorney, Options Branch, Division of Market Regulation, Commission, on October 6, 1995.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PHLX proposes to amend the SQF, contained in PHLX Rule 1012, Commentary .04, and in Advice F–18, to reduce the number of FCO strike prices continuously updated and disseminated by the Exchange. Advice F–18 establishes criteria to determine for each FCO series whether its bid/ask quotation is eligible for processing through the Options Price Reporting Authority (''OPRA'') for off-floor dissemination to vendors. The Exchange proposes to eliminate updating and disseminating strike prices in FCO series of no immediate investment interest to customers.

Currently, the SQF, which is a feature of the Exchange's Auto-Quote system, categorizes certain FCO strikes as ''non-update'' or ''inactive'' strikes, which are disseminated with the OPRA indicator ''I'' and zeroes (*e.g.*, 000–000) in lieu of a market. In contrast, ''update'' or ''active'' strikes include at a minimum: (1) Around-the-money strikes in near-term American-style options; and (2) strikes with open interest. Update series may also be added at the initiative of the Exchange or in response to a request by the specialist or an FCO floor official.

When a series is added to the inactive category, those bids and offers are no longer updated in the Exchange's Auto-Quote system for dissemination; however, if interest is voiced in any such series, it can be activated immediately upon establishment of a quote in that series. Because inactive series are not continuously updated and disseminated, quotation processing times are shortened so that quotes of interest are updated and disseminated to customers much more quickly. According to the PHLX, approximately 40% of the Exchange's 10,000 FCO strike prices are currently inactive.

At this time, the Exchange proposes to amend the SQF to recategorize certain active strikes as inactive. Specifically, the PHLX proposes to categorize as non-update FCO strikes with open interest that have not traded within the previous five days. The PHLX believes that this should reduce the number of strikes continuously updated and disseminated and thereby further expedite the processing and dissemination times of those strike prices in which there is apparent customer interest. In addition to being disseminated with zeroes and an ''I'' intra-day, these strikes with open interest will also be quoted once at the close of trading each day for purposes of mark-to-market of positions and general day-end valuations for the benefit of the position holders.

Further, instead of defining around-the-money strikes as those four above and four below the spot price, the proposal provides that the five options with an approximate 10, 20, 30, 40 and 50 delta will be considered around-the-money. The PHLX notes that because deltas change, the designation of active strikes will also be changed automatically throughout the trade day. Thus, the requirement that active strikes remain active throughout the trade day will also be eliminated.

According to the PHLX, recent volatility in the foreign currency markets has caused fluctuating and dramatic movements in foreign currency exchange rates. This, in turn, has created the addition of considerably more strike prices as the spot price moves to accommodate the new trading ranges of the underlying currencies. The PHLX notes that these conditions have been particularly pronounced for Japanese yen options.[6] The Exchange believes that these market conditions now impose an onerous burden on FCO specialists to maintain updated markets in strike prices for which, on occasion, there is little or no customer interest. The purpose of the proposal is to alleviate this burden and, thus, to improve the timeliness and accuracy of FCO quotes.

According to the PHLX, the SQF was adopted in 1994 with the goal, similar to that of the current proposal, of reducing the number of strike prices for which markets are continuously updated and disseminated.[7] In adopting the SQF, the PHLX established criteria to provide more timely and accurate FCO quote displays by eliminating quote change disseminations in series with no probable public investor interest. The PHLX states that eliminating such quote changes reduces dissemination delays caused by thousands of quote changes in volatile trading periods.

In analyzing different approaches to alleviating this burden, the PHLX considered the impact on customers, floor traders, Exchange staff, and vendors, among others, to achieve a solution. For instance, the PHLX states that simply deleting strikes with no open interest creates confusion for customers when gaps in the sequential orders of strike prices result.[8] Further, the PHLX notes that delisting and re-listing strikes as the spot price fluctuates imposes administrative and systems burdens on both the Options Clearing Corporation (''OCC'') and vendors displaying FCO quotes.

Therefore, the PHLX proposes to make certain changes to the SQF, which are intended to reduce the number of FCO series subject to continuous quote change dissemination. First, under the proposal, update series will no longer include series with open interest if such series did not trade within the previous five trading days; a closing quotation will nevertheless be disseminated in such series. The Exchange believes this change will eliminate a significant number of quote changes, because in many series a small number of FCO positions create open interest, which remains without fluctuation or additional trading volume. The PHLX notes that public customers, like all market participants, continue to be protected by the SQF feature which requires a quotation to be disseminated before a trade can be entered.[9] In addition, the PHLX believes that the proposal protects public investors because one quote will be disseminated at the end of the trading day for any inactive series with open interest. The purpose of this quote is to provide option holders with an indication of the market for that option as well as to provide OCC with a closing value to mark the market for margin and capital purposes.[10]

Second, the proposal redefines active strikes as those with an approximate 10, 20, 30, 40, or 50 delta around the underlying price. According to the PHLX, the purpose of this change is to categorize strike prices in the terminology used by FCO market participants. The PHLX notes that, in some instances, the fourth strike price below the spot price could be a 30 delta option, so that the activated around-the-money series do not include a 40 or 50 delta option. The Exchange believes that it is important to include strike prices with a delta up to 50 because these represent the most active, volatile

[6] *See* Securities Exchange Act Release No. 36239 (September 15, 1995), 60 FR 49032 (September 21, 1995) (File No. SR–PHLX–95–47) (notice of filing of proposal to widen the quote spread parameters for Japanese yen options).

[7] *See* Securities Exchange Act Release No. 33067 (October 19, 1993), 58 FR 57658 (October 26, 1993) (order approving File No. SR–PHLX–92–23) (''SQF Approval Order'').

[8] Thus, although the Exchange is committed to delisting unnecessary strike prices, the effectiveness of this policy is limited by the potential for customers confusion and inconsistency among series.

[9] *See* SQF Approval Order, *supra* note 7. In the SQF Approval Order, the Commission noted that public customers are protected by the feature of the SQF which requires a quotation to be disseminated after an options series is activated but before a trade can be entered.

[10] *See* PHLX Rule 722(e)(i). *See also* SEC Rule 15c3–1.

options, for which the dissemination of quotes is meaningful.

The PHLX recognizes that redefining active strikes in terms of a delta figure may result in a greater number of strikes as well. Further, the Exchange notes that the delta associated with a strike changes as the spot price changes, so that different strikes become the 10–50 delta strikes, and, thus, the active series. Therefore, the PHLX proposes to amend the SQF to ''deactivate'' strikes intra-day that no longer fit the definition of active. For instance, those series which are no longer around-the-money based on a delta change would be de-activated. New around-the-money strikes, in response to market changes, will be updated and disseminated. However, a former update strike may qualify as an update strike due to, for example, open interest and trading volume.[11]

Thus, the Exchange believes that enhancing the SQF should address the strike price and quote change situation in a volatile FCO market. As an estimate, the PHLX anticipates these steps will reduce the number of strike prices currently disseminated each day by approximately 15%, or 1,000 strikes, which will improve the Exchange's ability to provide timely and accurate quotes, including quotes in new FCO products that may be traded on the Exchange in the future.

The Exchange believes that the proposal is consistent with Section 6 of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, as well as to protect investors and the public interest. Specifically, the Exchange believes that the proposal should promote just and equitable principles of trade by facilitating speedier dissemination of FCO markets. The PHLX states that the proposal is also designed to facilitate coordination between the Exchange and OCC, OPRA, and securities information vendors. The PHLX notes that the protections of the SQF will include an end-of-day quote for inactive series with open interest, consistent with the protection of investors and the public interest. In sum, the PHLX believes that the proposed changes to the SQF should facilitate the specialists' ability to focus on active series, which should, in turn, result in tighter, more liquid markets, consistent with Section 6(b)(5).

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 15, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28619 Filed 11–22–95; 8:45 am]

BILLING CODE 8010–01–M

[11] Under the proposal, update strikes are defined to include not only the 10, 20, 30, 40, and 50 delta strikes, but also any other series where there is open interest at the commencement of the day, if that series has traded within the previous five trade dates.

[12] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36369A; File No. SR–Phlx–95–22]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Accelerated Approval of Amendment Nos. 1, 2, 3, 4, and 5 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Listing and Trading of Options on the Phlx Super Cap Index; Correction

November 13, 1995.

In notice document 95–26004 beginning on page 54274 in the issue of Friday, October 20, 1995, make the following correction:

On page 54276, in footnote number 25, in the third column, the first sentence should read as follows:

[25] Pursuant to proposed amendment to Phlx Rule 1047A, the opening rotation for Super Cap Index options *may* be held after underlying securities representing 75% of the current index value of all the securities underlying the index have opened for trading on the primary market.

In footnote number 25 of the initial approval order for this proposed rule change, the Commission inadvertently stated that opening rotations for industry index options also require that 75% of the securities underlying the index have opened for trading on the primary market. In all other respects, the approval order is unchanged.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28620 Filed 11–22–95; 8:45 am]

BILLING CODE 8010–01–M

[1] 17 CFR 200.30–3(a)(12) (1994).

[Release No. 34–36482; File No. SR–PHLX–95–73]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to New Organizational Structures for Members

November 14, 1995.

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 October 4, 1995, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On October 11, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change,[1] and on November 1, 1995, the Exchange submitted Amendment No. 2 to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange hereby proposes to amend the definition of ''member firm'' found in Article I, Section 1–1(c) of its By-Laws and Rule 3 of the Rules of the Board of Governors to include within such definition newly recognized business entities which are essentially similar to those forms of business concerns (*i.e.*, partnerships and corporations) already allowed to become member organizations. The Exchange also proposes to amend Article I, Section 1–1(c) and Rule 3 to make the provisions in its By-Laws and Rules that pertain to partners of partnership member firms applicable to those persons performing similar functions in non-partnership member firms.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Recently, Pennsylvania law and the laws of 46 other jurisdictions have recognized the existence of new legal entities such as limited liability companies (''LLCs''),[3] limited liability partnerships (''LLPs''),[4] and business trusts.[5] As of February 5, 1995, Pennsylvania has authorized the existence of LLCs and LLPs. Presently, the Exchange's By-Laws and Rules recognize two types of member organizations: partnerships under the term ''member firm'' and corporations under the term ''member corporation.''

The proposed rule change would allow the Exchange to recognize these new legal entities as Phlx member firms by amending the definitions of ''member firm'' found in Article I, Section 1–1(c) of the By-Laws and Rule 3 to encompass organizations that are essentially similar to member firms including, but not limited to, LLCs, LLPs, and business trusts.[6]

The Exchange also proposes to amend Article I, Section 1–1(c) and Rule 3 to make provisions in the Phlx By-Laws and Rules which pertain to general, special or limited partners in partnership member firms applicable, as appropriate, to those persons who perform essentially similar functions as such partners in non-partnership member firms.[7]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act[8] in that it is designed to promote just and equitable principals of trade, to remove impediments to and perfect the mechanism of a free and open market, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange solicited comment from its membership for the proposed change to its By-Laws in Phlx Circular 120–95 (July 20, 1995). No written comments were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent

[1] *See* Letter from Murray L. Ross, Secretary, Phlx, to Glen Barrentine, Senior Counsel, SEC, dated October 2, 1995. Amendment No. 1 renumbered the rule filing.

[2] *See* Letter from Murray L. Ross, Secretary, Phlx, to Glen Barrentine, Senior Counsel, SEC, dated October 25, 1995. *See infra* notes 6 and 7 for a description of Amendment No. 2.

[3] An LLC combines various characteristics of both corporations and partnerships. For example, an LLC is a non-corporate entity under which neither the owners nor those managing the business are personally liable for the entity's obligations, however, the LLC is treated as a pass-through entity for federal income tax purposes. *See* Robert R. Keatinge et al., *The Limited Liability Company: A Study of the Emerging Entity*, 47 Bus. Law. 378 (1992).

[4] An LLP differs from a traditional partnership entity in two significant ways. First, in an LLP the liability of a partner or the partnership is no longer joint and several among the partners; instead, a partner generally will be personally liable only for his or her own conduct and that of those under his or her direct supervision. Second, an LLP is treated as a pass-through entity for federal income tax purposes. *See* Sharon Kanovsky, *LLPs: A New Form of Organization*, 25 Tax Advisor 409 (1994).

[5] The term ''business trust'' is generally used to describe a trust in which the managers are principals and the shareholders are cestuis que trust. Its essential attribute is that property is placed in the hands of trustees who manage and deal with it for the use and benefit of beneficiaries. *Black's Law Dictionary* 180 (5th ed. 1979).

[6] In Amendment No. 2 other Exchange stated that Phlx staff will review each exchange member firm application of any entity, such as an LLC, LLP, or business trust on a case by case basis, and prior to approving such entity for membership, the staff will satisfy itself that: (a) Such entity would be structured in such a format that would qualify as a broker or dealer registered with the SEC pursuant to the Act; (b) the Phlx would legally have appropriate jurisdiction over such entity; and (c) the permanency of such entity's capital is consistent with that required of other member firms.

[7] Amendment No. 2 added this provision to the proposed rule change. Amendment No. 2 also withdrew a proposed change to Rule 902 that would have required a member intending to form a non-partnership member firm to submit certain specified documentation to the Exchange, as the proposed change to Rule 3 gives the Exchange the authority to require the submission of such documentation under the current Rule 902.

[8] 15 U.S.C. 78f(b)(5).

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washigton, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Phlx-95–73 and should be submitted by December 15, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–28622 Filed 11–22–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2820]

Maryland; Declaration of Disaster Loan Area

The City of Baltimore and the contiguous counties of Baltimore and Anne Arundel in the State of Maryland constitute a disaster area as a result of damages caused by a fire at the Holland Street Exchange which occurred on November 10, 1995. Applications for loans for physical damage may be filed until the close of business on January 16, 1996 and for economic injury until the close of business on August 16, 1996 at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Floor, Niagara Falls, NY 14303 or other locally announced locations.

The interest rates are:

For Physical Damage:	
Homeowners with credit available elsewhere	8.000%
Homeowners without credit available elsewhere	4.000%
Businesses with credit available elsewhere	8.000%
Businesses and non-profit organizations without credit available elsewhere	4.000%
Others (including non-profit organizations) with credit available elsewhere	7.125%
For Economic Injury	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000%

The numbers assigned to this disaster are: for physical damage, 282005 and for economic injury the number is 868600.

Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 16, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–28745 Filed 11–22–95; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice No. 2279]

United States International Telecommunications Advisory Committee (ITAC), Standardization Sector, ITAC Ad Hoc Committee—Rights and Obligations; Meeting Notice

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC) ad hoc Committee for Rights and Obligations will meet on December 4, 1995 at 9:30 a.m. to 3:00 p.m. in Room 1408 at the U.S. Department of State, 2201 C Street, NW. Washington, D.C. 20520.

This announcement cancels the ITAC Ad Hoc Committee for Rights and Obligations meeting previously scheduled for November 28, 1995, 9:30 a.m. to 3:00 p.m., Room 1205 at the Department of State. It is necessary to make this change because those individuals needed to conduct the business of the meeting will not be available on November 28, 1995.

This U.S. ITAC ad hoc committee for Rights and Obligations will finalize U.S. preparations for the upcoming Geneva December 11–15 meeting of the ITU Review Committee (Rev/Con) after a review of the comments already received by the Committee.

Members of the General Public may attend the meetings and join in the discussions, subject to the instructions of the chair. Admittance of public members will be limited to the seating available. In this regard, entrance to the Department of State is controlled. If you wish to attend please send a fax to 202–647–7407 not later than 5 days before the scheduled meetings. One of the following valid photo ID's will be required for admittance: U.S. driver's license with picture, U.S. passport, U.S. government ID (company ID's are no longer accepted by Diplomatic Security). Enter from the ''C'' Street Main Lobby.

Dated: November 7, 1995.

Earl S. Barbely,

Chairman, U.S. ITAC for Telecommunication Standardization.

[FR Doc. 95–28693 Filed 11–22–95; 8:45 am]

BILLING CODE 4710–45–M

[Public Notice No. 2285]

Advisory Committee on International Law; Notice of Meeting

A meeting of the Advisory Committee on International Law will take place on Wednesday, December 13, 1995, from 2:00 to approximately 5:00 p.m., as necessary, in Room 1408 of the United States Department of State, 2201 C Street, NW., Washington, DC. The meeting will be chaired by the Legal Adviser of the Department of State, Conrad K. Harper, and will be open to the public up to the capacity of the meeting room. The meeting will focus on a review of current International Court of Justice litigation, current legislative developments bearing on international law, International Court of Justice and International Law Commission elections during 1996, and other current developments.

Entry to the building is controlled and will be facilitated by advance arrangements. Members of the public desiring access to the session should, by December 11, 1995, notify the Office of the Assistant Legal Adviser for United Nations Affairs (telephone (202) 647–2767) of their name, Social Security number, date of birth, professional affiliation, address and telephone number in order to arrange admittance. The above includes government and non-government attendees. All attendees must use the ''C'' Street entrance. One of the following valid IDs will be required for admittance: any U.S. driver's license with photo, a passport, or a U.S. Government agency ID.

Dated: November 3, 1995.

John R. Crook,

Assistant Legal Adviser for United Nations Affairs; Executive Director, Advisory Committee on International Law.

[FR Doc. 95–28692 Filed 11–22–95; 8:45 am]

BILLING CODE 4710–08–M

[Public Notice No. 2288]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on Safety of Navigation; Notice of Meeting

The Working Group on Safety of Navigation of the Subcommittee on Safety of Life at Sea (SOLAS) will

conduct an open meeting at 9:30 a.m. on Thursday, December 14, 1995, in room 4315, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, DC.

The purpose of the meeting is to report on the outcome of the 41st session of the Subcommittee on Safety of Navigation (NAV) of the International Maritime Organization (IMO) and prepare for the 42nd session which is scheduled for July 15–19, 1996, at the IMO Headquarters in London.

Items of principal interest on the agenda are:

—Role of the human element in maritime casualties

—Routing of ships, ship reporting and related matters

—Navigational aids and related matters

—Revision of SOLAS chapter V

—Electronic chart display and information systems

—Performance standards for navigational equipment

—Roll-on roll-off (Ro-Ro) ferry safety

—Prevention of strandings at sea

—International Code of Signals

—Automatic ship identification transponder systems

—Worldwide navigation system

—Review of World Meteorological Organization (WMO) handbooks on navigation in areas affected by sea-ice

—IMO Standard maritime communication phrases

—Removal of wrecks and towage of offshore installations, structures, and platforms

—Development of complementary measures to the Code for Safe Carriage of Irradiated Nuclear Fuel (INF Code)

—Operational aspects of Wing in Ground (WIG) craft

—Safety of passenger submersible craft

—Code for safe navigation and watchkeeping

—Review of reporting requirements in IMO instruments

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Edward J. LaRue, Jr., U.S. Coast Guard (G–NVT–3), Room 1409, 2100 Second Street SW, Washington, DC 20593–0001 or by calling: (202) 267–0416.

Dated: November 13, 1995.

Charles A. Mast,

Chairman, Shipping Coordinating Committee.

[FR Doc. 95–28660 Filed 11–22–95; 8:45 am]

BILLING CODE 4710–07–M

Office of the Secretary

[Public Notice 2293]

Extension of the Restriction on the Use of the United States Passport for Travel To, In, or Through Libya

On December 11, 1981, pursuant to the authority of 22 U.S.C. 211a and Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.73(a)(3), all United States passports were declared invalid for travel to, in, or through Libya unless specifically validated for such travel. This restriction has been renewed yearly because of the unsettled relations between the United States and the Government of Libya and the possibility of hostile acts against Americans in Libya.

The Government of Libya still maintains a decidedly anti-American stance and continues to emphasize its willingness to direct hostile acts against the United States and its nationals. The American Embassy in Tripoli remains closed, thus preventing the United States from providing routine diplomatic protection or consular assistance to Americans who may travel to Libya.

In light of these events and circumstances, I have determined that Libya continues to be an area ''. . . where there is imminent danger to the public health or physical safety of United States travelers.''

Accordingly, all United States passports shall remain invalid for use in travel to, in, or through Libya unless specifically validated for such travel under the authority of the Secretary of State.

The Public Notice shall be effective upon publication in the Federal Register and shall expire at the end of one year unless sooner extended or revoked by Public Notice.

Dated: November 13, 1995.

Warren M. Christopher,

Secretary of State.

[FR Doc. 95–28749 Filed 11–21–95; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending 11/11/95

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–95–800.

Date filed: November 7, 1995.

Parties: Members of the International Air Transport Association.

Subject: TC31 Reso/P 1076 dated October 3, 1995, TC3 (exc. Japan)—N. America/Caribbean r-1 to r-18, TC31 Reso/P 1077 dated October 3, 1995, TC3—Central/South America, r-19 to r-31, TC31 Reso/P 1078 dated October 3, 1995, Areawide Resos r-32 to r-36, Intended effective date: April 1, 1996.

Docket Number: OST–95–801.

Date filed: November 7, 1995.

Parties: Members of the International Air Transport Association.

Subject: TC12 Reso/P 1701 dated November 3, 1995, North/Mid/South Atlantic-Africa Reso 002a R–1, TC12 Reso/P 1702 dated November 3, 1995, North Atlantic-Africa Expedited Reso 002t R–2, Intended effective date: expedited January 1, 1996.

Docket Number: OST–95–802.

Date filed: November 7, 1995.

Parties: Members of the International Air Transport Association.

Subject: TC12 Reso/P 1696 dated October 27, 1995, North Atlantic-Middle East Resos R–1 to R–16, TC12 Meet/P 0565 dated November 3, 1995—Minutes, TC12 Fares 0489 dated October 31, 1995—Table, TC12 Reso/P 1700 dated November 3, 1995—Correction, Intended effective date: April 1, 1996.

Docket Number: OST–95–810.

Date filed: November 9, 1995.

Parties: Members of the International Air Transport Association.

Subject: TC2 Reso/P 1813 dated November 3, 1995 r-1—r-4, TC2 Reso/P 1814 dated November 3, 1995 r-5-r-7, TC2 Reso/P 1815 dated November 3, 1995 r-8-r-10, TC2 Reso/P 1816 dated November 3, 1995 r-11-r-22, TC2 Reso/P 1817 dated November 3, 1995 r-23-r-24, TC2 Reso/P 1818 dated November 3, 1995 r-25-r-28, TC2 Reso/P 1819 dated November 3, 1995 r-29–R–30, TC2 Reso/P 1820 dated November 3, 1995 r-31-r-33, TC2 Reso/P 1821 dated November 3, 1995 r-34-r-39, TC2 Reso/P 1822 dated November 3, 1995 r-40, TC2 Reso/P 1823 dated November 3, 1995 r-41-r-42, TC2 Reso/P 1824 dated November 3, 1995 r-43-r-44, TC2 Reso/P 1825 dated November 3, 1995 r-45-r-46, Within Europe Expedited Resolutions, Intended effective date: various dates in January 1996.

Myrna F. Adams,

Acting Chief, Documentary Services Division.

[FR Doc. 95–28541 Filed 11–22–95; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending November 11, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–95–796.

Date filed: November 6, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 4, 1995.

Description: Application of Delta Air Lines, Inc., pursuant to 49 U.S.C. Sections 41101 and 41108, applies for a new or amended certificate of public convenience and necessity to provide scheduled foreign air transportation between Cincinnati, Ohio and Montreal, Quebec, Canada.

Docket Number: OST–95–797.

Date filed: November 6, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 4, 1995.

Description: Application of Target Airways Ltd. d/b/a Great American Airways, pursuant to 49 U.S.C. Section 41102, and Subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing it to engage in scheduled interstate and overseas air transportation of persons, property and mail.

Myrna F. Adams,

Acting Chief, Documentary Services Division.

[FR Doc. 95–28540 Filed 11–22–95; 8:45 am]

BILLING CODE 4910–62–P

Office of the Secretary

[Notice of Order to Show Cause (Order 95–11–30); Docket OST–95–403]

Application of Eagle Jet Charter, Inc., d/b/a Eagle Jet for Certificate Authority

AGENCY: Department of Transportation.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Eagle Jet Charter, Inc. d/b/a Eagle Jet fit, willing, and able and awarding it a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than December 4, 1995.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–95–403 and addressed to the Documentary Services Division (C–55, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Lusby Cooperstein, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366–2337.

Dated: November 17, 1995.

Patrick V. Murphy,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 95–28726 Filed 11–22–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue from a Passenger Facility Charge (PFC) at Jacksonville International Airport, Jacksonville, Florida, and Impose a Passenger Facility Charge (PFC) at Craig Municipal Airport, Jacksonville, Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Jacksonville International Airport, and impose a PFC at Craig Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before December 26, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Herbert Godfrey, Director of Aviation of the Jacksonville Port Authority at the following address: Jacksonville International Airport, 2400 Yankee Clipper Drive, Jacksonville, Florida 32226.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Jacksonville Port Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Richard M. Owen, Program Manager, 9677 Tradeport Drive, Suite 130, Orlando, Florida, 32827–5397, 407–648–6586. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Jacksonville International Airport, and impose a PFC at Craig Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 16, 1995, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Jacksonville Port Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 15, 1995.

The following is a brief overview of the PFC Application No. 96–02–C–00–JAX.

Level of the proposed PFC: $3.00.

Proposed charge effective date: April 1, 1996.

Proposed charge expiration date: March 31, 2000.

Total estimated PFC revenue: $25,199,225.

Brief description of proposed projects:

1. Install Runway 25 Glideslope/MALSR
2. Airfield Pavement Reconstruction—Phases I&J
3. Install Taxiway Guidance Signs (Part 139)
4. Runway 13/31 Lighting Improvements
5. Construct Aircraft Rescue and Fire Fighting (ARFF) Facility
6. Federal Inspection Station Facility Improvements
7. Planning for Terminal Facilities Improvements

8. Purchase of 3000 gallon ARFF Vehicle
9. Airfield Pavement Reconstruction—Phase II
10. Airfield Drainage Improvements
11. Obstruction Removal for Runways 7/25 & 13/31
12. Construct Inner Taxiway System for Runways 14/32 & 5/23 at Craig Municipal

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Jacksonville Port Authority.

Issued in Orlando, Florida on November 16, 1995.

Charles E. Blair,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 95–28742 Filed 11–22–95; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent to Rule on Application (#96–02–C–00–HDN) to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Yampa Valley Regional Airport, Submitted by Routt County, Hayden, Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Yampa County Regional Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before December 26, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan Wiechmann, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 5440 Roslyn, Suite 300; Denver, CO 80216–6026.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Nancy J. Stahoviak, Chairperson, Routt County Board of Commissioners at the following address: Routt County, P.O. Box N, Hayden, CO 81639.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Yampa Valley Regional Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Schaffer, (303) 286–5525; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 5440 Roslyn, Suite 300; Denver, CO 80216–6026. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#96–02–C–00–HDN) to impose and use PFC revenue at Yampa Valley Regional Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 14, 1995, the FAA determined that the application to impose and use the revenue from a PFC submitted by Routt County, Colorado, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 22, 1996.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Actual charge effective date: May 1, 1996.

Proposed charge expiration date: November 30, 1999.

Total estimated PFC revenues: $685,544.00.

Brief description of proposed project: Terminal building capacity improvements; Runway safety improvements—overlay and groove Runway 10/28; Airfield capacity and safety improvements—rehabilitate the aircraft parking apron and construct the west portion of parallel Taxiway ''A''; and Acquire new snow removal equipment.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Yampa Valley Regional Airport.

Issued in Renton, Washington on November 14, 1995.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 95–28743 Filed 11–22–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–58; OTS No. 5141]

Broadway Federal Savings and Loan Association, Los Angeles, California; Approval of Conversion Application

Notice is hereby given that on November 13, 1995, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Broadway Federal Savings and Loan Association, Los Angeles, California, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the West Regional Office, Office of Thrift Supervision, 1 Montgomery Street, Suite 400, San Francisco, California 94104.

Dated: November 17, 1995.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–28647 Filed 11–22–95; 8:45 am]

BILLING CODE 6720–01–P

[AC–59; OTS No. 5080]

First Federal Savings and Loan Association of Peekskill, Peekskill, New York; Approval of Conversion Application

Notice is hereby given that on November 13, 1995, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Peekskill, Peekskill, New York, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: November 17, 1995.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 95–28648 Filed 11–22–95; 8:45 am]

BILLING CODE 6720–01–P

Sunshine Act Meetings

Federal Register

Vol. 60, No. 226

Friday, November 24, 1995

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

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. § 552b), notice is hereby given of the Board's meeting described below.

TIME AND DATE: 9:00 a.m., December 6, 1995.

PLACE: Holiday Inn, Livermore, Knight Room, 720 Las Flores Road, Livermore, CA 94550.

STATUS: Open.

MATTERS TO BE CONSIDERED: Board members will review with Department of Energy and its contractors the status of public health and safety issues pertaining to safety in defense nuclear research and development activities at the Lawrence Livermore National Laboratory.

CONTACT PERSON FOR MORE INFORMATION: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, N.W., Suite 700, Washington, D.C. 20004, (800) 788–4016. This is a toll free number.

SUPPLEMENTARY INFORMATION: The Board reserves its right to further schedule and otherwise regulate the course of this meeting, to recess, reconvene, postpone or adjourn the meeting, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

Dated: November 20, 1995.

John T. Conway,

Chairman.

[FR Doc. 95–28805 Filed 11–21–95; 3:12 pm]

BILLING CODE 3670–01–M

FEDERAL ELECTION COMMISSION

''FEDERAL REGISTER'' NUMBER: 95–27973.

PREVIOUSLY ANNOUNCED DATES AND TIMES:

Tuesday, November 14, 1995 at 10:00 a.m. Meeting Closed to the Public.

Thursday, November 16, 1995 at 10:00 a.m. Meeting Open to the Public.

Due to extraordinary circumstances, Government Shut-Down, these meetings were cancelled.

DATE AND TIME: Tuesday, November 28, 1995 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration

Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, November 30, 1995 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor.)

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 1995–38: Jeffrey C. Smith on behalf of the Washington Policy Associates, Inc.

Additional Information—Petition of the Bush-Quayle '92 Primary Committee, Inc., the Bush-Quayle '92 General Committee, Inc. and the Bush-Quayle '92 Compliance Committee, Inc. to Stay Repayment Pending Appeal (LRA #425).

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 95–28903 Filed 11–21–95; 3:15 pm]

BILLING CODE 6715–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 1:00 p.m. on Monday, December 4, 1995, and at 8:30 a.m. on Tuesday, December 5, 1995, in Washington, DC.

The December 4 meeting is closed to the public. (See 60 FR 57271, November 14, 1995) The December 5 meeting is open to the public and will be held at U.S. Postal Service Headquarters, 475 L'Enfant Plaza SW., in the Benjamin Franklin Room. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary for the Board, David F. Harris, at (202) 268–4800.

Agenda

Monday Session

December 4—1:00 p.m. (Closed)

1. Consideration of a Funding Request for Truck Tractors and Spotters. (Allen R. Kane, Vice President, Operations Support)

Tuesday Session

December 5—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, November 6–7, 1995.
2. Remarks of the Postmaster General/Chief Executive Officer. (Marvin Runyon)
3. Postal Inspection Service Semiannual Report. (Kenneth J. Hunter, Chief Postal Inspector)
4. Consideration of FY 1995 Audited Financial Statements. (Vice Chairman del Junco and Michael J. Riley, Chief Financial Officer)
5. Final FY 1997 Appropriation Request. (Mr. Riley)
6. Capital Investments.
   a. Issaquah, Washington, Main Post Office [final consideration]. (Rudolph K. Umscheid, Vice President, Facilities)
   b. Jacksonville, Florida, BMC Expansion [informational briefing]. (David C. Bakke, Vice President, Southeast Area Operations)
   c. Associate Office Infrastructure, R&D [informational briefing]. (Richard D. Weirich, Vice President, Information Systems)
7. Tentative Agenda for the January 8–9, 1996, meeting in Washington, DC.

David F. Harris,

Secretary.

[FR Doc. 95–28872 Filed 11–21–95; 3:14 pm]

BILLING CODE 7710–12–M

Corrections

Federal Register
Vol. 60, No. 226
Friday, November 24, 1995

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 EDUCATION

Office of Special Education and Rehabilitative Services; Proposed Priorities

Correction

In notice document 95–27508 beginning on page 56192 in the issue of November 7, 1995, make the following correction:

On page 56192, in the first column, in the DATES section, in the sixth line, ''December 7, 1996'' should read ''December 7, 1995''.

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96-17-000]

Florida Gas Transmission Company; Notice of Transition Cost Recovery Report

Correction

In notice document 95–27179 appearing on page 55712 in the issue of Thursday, November 2, 1995, the Docket number should appear as set forth above.

BILLING CODE 1505–01–D

federal register

Friday
November 24, 1995

Part II

Department of Education

34 CFR Part 371

Vocational Rehabilitation Service Projects for American Indians With Disabilities; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 371

RIN 1820–AB32

Vocational Rehabilitation Service Projects for American Indians With Disabilities

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations implementing the Vocational Rehabilitation Service Projects for American Indians with Disabilities program authorized under Title I, Part D, section 130 of the Rehabilitation Act of 1973, as amended (Act). Changes are needed to implement section 130(b)(3) of the Act to provide greater funding continuity for tribal projects that are performing effectively by extending the normal 36-month project period for up to 24 additional months. Changes are also needed to conform the purpose and outcome of the program, consistent with section 100(a)(2) of the Act as revised by the 1992 Amendments, from placement in suitable employment to placement in gainful employment consistent with individual strengths, resources, priorities, concerns, abilities, capabilities, and informed choice.

EFFECTIVE DATE: These regulations take effect December 26, 1995.

FOR FURTHER INFORMATION CONTACT: Barbara M. Sweeney, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3225, Mary E. Switzer Building, Washington, D.C. 20202–2575. Telephone: (202) 205–9544. 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: These regulations implement, in part, section 130(b)(3) of the Act, which authorizes the Secretary to prescribe regulations that would extend the project period for certain tribal projects beyond the maximum 36 months specified in the Act. The Secretary may grant, on a case-by-case basis, extensions of up to 24 months to tribal projects that meet the requirements established in a new § 371.5. In order to receive an extension of its project period, a tribal grantee must submit a written request for extension that contains an assurance of compliance with all program requirements and that provides satisfactory evidence that there is a continuing need for the project and that the project has been effective in meeting the rehabilitation needs of the American Indians it has served, including achieving employment outcomes that are consistent with individual strengths, resources, priorities, concerns, abilities, capabilities, and informed choice.

The program supports the National Education Goal that, by the year 2000, every adult American, including individuals with disabilities, will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

On July 27, 1995, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the Federal Register (60 FR 38608). Except for minor editorial and technical revisions, there are no differences between the NPRM and these final regulations.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 26 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows. The comments have been grouped according to subject, with appropriate sections of the regulations referenced in parentheses.

Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Gainful Employment (Section 371.1)

Comments: Twelve parties commented on the proposed change of the purpose and outcome of the program from placement in suitable employment to placement in gainful employment consistent with individual strengths, resources, priorities, concerns, abilities, capabilities, and informed choice. All twelve parties requested that the term ''suitable employment'' be retained. Some of these commenters were concerned that ''gainful employment'' was synonymous with competitive employment and would require that individuals be placed in jobs paying at least the minimum wage. Competitive employment opportunities, according to these commenters, might not be available on many reservations, thus forcing some individuals to leave the reservation to achieve this kind of employment goal. Other commenters were concerned that this change would lessen individual choice in the selection of a vocational goal and would preclude certain kinds of employment outcomes, such as subsistence employment or placement in a small family-operated business, that are available on reservations, culturally appropriate, and meet individual needs.

Discussion: This change in the regulations is necessary to conform the purpose and outcome of the program with new legislative language in section 100(a)(2) of the Act. This change does not restrict the range of employment outcomes that are permissible under the program, which continue to include, as appropriate to the needs of the individual, outcomes such as supported employment, self-employment, extended employment, homemaker, or farm or family work for which payment may be in kind rather than cash. The Secretary interprets the term ''gainful employment'' to be any employment outcome that is consistent with individual strengths, resources, priorities, concerns, abilities, capabilities, and informed choice. ''Gainful employment'' is not synonymous with competitive employment; the term includes, but is not limited to, competitive employment. The Secretary believes that the new legislative language, as reflected in the regulations, strengthens consumer choice of a vocational goal under the program rather than diminishing it as some commenters feared.

Changes: None.

Length of the Project Period (Section 371.5)

Comments: There were thirteen comments received on the proposed extension of the normal 36-month project period for up to 24 additional months and on the requirements for submitting an extension request. All commenters supported the proposal to extend the project period. There were no comments proposing any changes to the content requirements of an extension request.

Discussion: None.

Changes: None.

Intergovernmental Review

This program is not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79.

List of Subjects in 34 CFR Part 371

Education, Grant programs—education, Vocational rehabilitation, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.250 Vocational Rehabilitation Service Projects for American Indians With Disabilities)

Dated: November 20, 1995.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

The Secretary amends Part 371 of Title 34 of the Code of Federal Regulations as follows:

PART 371—VOCATIONAL REHABILITATION SERVICE PROJECTS FOR AMERICAN INDIANS WITH DISABILITIES

1. The authority citation for Part 371 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 750, unless otherwise noted.

2. Section 371.1 is revised to read as follows:

§ 371.1 What is the Vocational Rehabilitation Services Program for American Indians with Disabilities?

This program is designed to provide vocational rehabilitation services to American Indians with disabilities who reside on Federal or State reservations, consistent with their individual strengths, resources, priorities, concerns, abilities, capabilities, and informed choice, so that they may prepare for and engage in gainful employment.

(Authority: Secs. 100(a)(2) and 130(a) of the Act; 29 U.S.C. 720(a)(2) and 750(a))

3. A new § 371.5 is added to Subpart A to read as follows:

§ 371.5 What is the length of the project period under this program?

(a) The Secretary approves a project period of up to three years.

(b) The Secretary may extend a grant for up to two additional years if the grantee includes in its extension request—

(1) An assurance that the project is in compliance with all applicable program requirements; and

(2) Satisfactory evidence that—

(i) The project has made substantial and measurable progress in meeting the needs of American Indians with disabilities on the reservation or reservations it serves;

(ii) American Indians with disabilities who have received project services have achieved employment outcomes consistent with their strengths, resources, priorities, concerns, abilities, capabilities, and informed choice; and

(iii) There is a continuing need for the project.

(Approved by the Office of Management and Budget under control number 1820–0018.)

(Authority: Section 130(b)(3) of the Act; 29 U.S.C. 750(b)(3))

[FR Doc. 95–28744 Filed 11–22–95; 8:45 am]

BILLING CODE 4000–01–P

federal register

Friday
November 24, 1995

Part III

Department of Transportation

Federal Transit Administration

Fiscal Year 1996 Apportionments and Allocations; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FTA Fiscal Year 1996 Apportionments and Allocations

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation (DOT) and Related Agencies Appropriations Act, 1996 (Pub. L. 104–50), signed into law by President Clinton on November 15, 1995, provides fiscal year 1996 appropriations for the Federal Transit Administration transit assistance programs. Based upon this Act, this Notice contains a comprehensive list of apportionments/allocations of the various transit programs.

This Notice includes the apportionment of fiscal year 1996 funds for the Urbanized Area Formula Program, the Nonurbanized Area Formula Program, the Elderly and Persons with Disabilities Program, the Capital Program for Fixed Guideway Modernization, the Metropolitan Planning Program and the State Planning and Research Program, based on the 1996 DOT Appropriations Act and Federal transit laws. This Notice also contains the allocations of funds for the New Starts and Bus categories under the Capital Program. Statutory limitations on the use of operating assistance are also included in this Notice. For the first time, this Notice also includes the funding level authorized by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) for each program.

In addition, the FTA policy regarding pre-award authority to incur project costs, as well as other pertinent information, is included in this Notice.

Public Law 103–272, signed by President Clinton on July 5, 1994, codifies Federal transit laws under title 49, chapter 53, of the United States Code. This Notice uses the codified citations.

FOR FURTHER INFORMATION CONTACT: The appropriate FTA Regional Administrator for grant specific information and issues; Janet Lynn Sahaj, Director, Office of Resource Management and State Programs, (202) 366–2053, for general information about the Urbanized Area Formula Program (49 U.S.C. 5307), the Nonurbanized Area Formula Program (49 U.S.C. 5311), the Elderly and Persons with Disabilities Program (49 U.S.C. 5310), or the Capital Program (49 U.S.C. 5309); or Sam Zimmerman, Director, Office of Planning Operations, (202) 366–2360, for general information concerning the Metropolitan Planning Program (49 U.S.C. 5303) and State Planning and Research Program (49 U.S.C. 5313(b)).

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I. Codification of Federal Transit Laws

On July 5, 1994, President Clinton signed Public Law 103–272, which codifies Federal transit laws at title 49, chapter 53 of the United States Code. The enactment of Public Law 103–272 repeals the FT Act of 1992, as amended (the Act), without substantive changes to programs. The original meaning of the Act's provisions are unchanged by this codification, even though the new Public Law 103–272 language, in some instances, differs from that of the Act. The codification now includes laws enacted through July 5, 1994.

Additional provisions enacted after that date, and revisions to title 49, chapter 53, will be reflected in subsequent legislation now being drafted in Congress. This Notice accordingly uses the new form of citation. Listed below are the most commonly used citations:

Subject	49 U.S.C. section	Former Federal Transit Act citation
Capital Program	5309	Section 3
Metropolitan Planning Program	5303	Section 8
Urbanized Area Formula Program	5307	Section 9
Transit Employee Protective Certification	5333(b)	Section 13(c)
National Transit Database*	5335	Section 15
Elderly and Persons with Disabilities Program	5310	Section 16
Nonurbanized Area Formula Program	5311	Section 18
Rural Transit Assistance Program (RTAP)	5311(b)(2)	Section 18(h)
State Planning and Research Program	5313(b)	Section 26(a)(2)

II. Background

Urbanized Area Formula Program funds are apportioned by statutory formula to urbanized areas and to the Governors to provide capital, operating and planning assistance in urbanized areas. Nonurbanized Area Formula Program funds are apportioned by statutory formula to the Governors for capital and operating assistance in nonurbanized areas. The Elderly and Persons with Disabilities Program funds are apportioned by statutory formula to the Governors to provide capital assistance to organizations providing transportation service for the elderly and persons with disabilities. Fixed Guideway Modernization Formula funds are apportioned by statutory formula to specified urbanized areas for capital improvements in rail and other fixed guideways. Funds appropriated for the Metropolitan Planning Program are apportioned by a statutory formula to the Governors for allocation by them to Metropolitan Planning Organizations (MPOs) in urbanized areas or portions thereof. Appropriated funds for the State Planning and Research Program also are apportioned to States by a statutory formula. New Start funds identified for specific projects in the 1996 DOT Appropriations Act and all Bus fund allocations in its accompanying Conference Report are also included in this Notice.

III. Overview of Appropriations for Grant Programs

A. General

In fiscal year 1996, the appropriation for the Urbanized Area Formula Program and the Nonurbanized Area Formula Programs is $2,001,315,905. Of this amount, 94.50 percent ($1,891,243,530) is made available to the Urbanized Area Formula Program, and 5.50 percent ($110,072,375) is made available to the Nonurbanized Area Formula Program. The other program appropriations contained in this Notice are as follows: $4,500,000 for the Rural Transit Assistance Program (RTAP); $51,609,095 for the Elderly and Persons with Disabilities Program; $39,500,000 for the Metropolitan Planning Program; $8,250,000 for the State Planning and Research Program; and $1,665,000,000 for the Capital Program. Of the Capital Program amount, $666,000,000 is for Fixed Guideway Modernization, $666,000,000 is for New Starts, and $333,000,000 is for Bus.

Table 1 displays the amounts appropriated for these programs, including adjustments and final apportionment/allocation amounts. The text following this table provides a narrative explanation for the funding levels and other factors affecting these apportionments/allocations.

B. ISTEA Authorized Program Levels

For the first time, FTA is publishing the formula apportionment and allocation tables that compare the maximum program level proposed in the ISTEA authorization law for fiscal year 1996 and the actual program funds appropriated by Congress for fiscal year 1996. The first set of columns shows the actual appropriation as apportioned for this fiscal year, and the second set of columns shows the authorization level. The funding level available to an urbanized area or State for obligation is the appropriated amount as apportioned to the area. The authorized level does not represent funds that are actually available during the fiscal year. Rather, it reflects the maximum dollar amount authorized in ISTEA for which funds can be appropriated by Congress for a particular fiscal year.

C. Project Management Oversight

49 U.S.C. 5327 allows the Secretary of Transportation to use not more than one-half of one percent of the funds made available under the Capital Program, the Urbanized Area Formula Program, the Nonurbanized Area Formula Program, the National Capital Transportation Act, as amended, and an additional one-quarter of one percent of Capital Program funds, to contract with any person to oversee the construction of any major project under these statutory programs and to conduct safety, procurement, management and financial reviews and audits. Therefore, one-half of one percent of the funds appropriated for the Urbanized Area Formula Program, the Nonurbanized Area Formula Programs and the National Capital Transportation Act, as amended, for fiscal year 1996, and three-quarters of one percent of Capital Program funds have been reserved for these purposes before apportionment of the funds.

IV. Departmental Initiatives

A. Livable Communities Initiative

The FTA developed the Livable Communities Initiative to encourage a stronger link between transit and communities. FTA is promoting the development of community-sensitive transit facilities and services in order to increase transit ridership, improve personal mobility and enhance the quality of life in communities. Active community involvement in the planning and design process is essential in developing more community-sensitive transit, and planning methods need to be more responsive to community concerns.

Community-sensitive transit is customer-friendly, community-oriented and designed to function effectively within the community. Customer-friendly transit provides readily available information, safety and security measures. Real time customer information, monitoring devices, help zones and improved lighting are illustrative characteristics. Community-oriented transit makes its transfer points both origins and destinations of trips through the provision of on-site services such as child care, public safety, health care and retail conveniences. Well

designed transit, from the perspective of more livable communities, improves pedestrian access, increases the person-carrying capacity of local transportation networks, and reflects the aesthetic and historic character of communities. More community-sensitive transit may result in increased transit ridership, reduced single occupant vehicle trips and improved air quality. In fiscal year 1995, FTA awarded a number of capital grants to implement projects which reflected the characteristics of community-sensitive transit.

The Livable Communities Initiative recognizes the important role that local land use and transportation policy can play in improving the effectiveness of transit. These are important tools in promoting transit facilities and services which help to make communities more livable. Mixed use development around transportation nodes combined with parking management, priority access for transit vehicles and transit pass programs can significantly reduce auto trips and increase transit ridership. FTA is asking transit agencies to work with local governments, employers and the business community in implementing transit supportive land use and transportation strategies through the metropolitan planning process.

FTA urges grantees to incorporate the concepts of the Livable Communities Initiative into the planning and capital projects financed with Federal assistance identified in this Notice and funds transferred as permitted by the flexible funding provisions of ISTEA. In addition, FTA urges grantees to consider incorporating quality design and art into transit projects funded with FTA assistance. FTA Circular C9400.1A, Design and Art and Transit Projects, June 9, 1995 provides more detail on this matter.

B. Intelligent Transportation Systems

The Department of Transportation is actively promoting the development of Intelligent Transportation Systems (ITS) which apply advanced computer, communication, information and navigation technologies to surface transportation systems. ITS technologies improve customer service and make accurate information available to the traveling public, thus enabling travelers to make more informed transportation decisions, thereby improving the operational efficiency of transit services.

Customer services are improved through real-time information on bus and train arrival, reducing the stress of waiting for vehicles to arrive; in-vehicle signs and enunciator systems which inform passengers of upcoming stops and other relevant information; hold notification to vehicles at change-mode points; emergency response systems which decrease delays in responding to problems; and easier access through the use of electronic fare cards which eliminate specialized passes, cash fares or tokens. For example, the Milwaukee County Transit Authority reports on-time schedule adherence improved from 90 percent to 94 percent, thus increasing customer service reliability.

Operational efficiency of transit operations can also be improved using these technologies. Automatic Vehicle Location technology has helped the Kansas City Area Transit Authority decrease capital costs by approximately $1.8 million and operating costs by $400,000 annually. The planned introduction of Smart Cards in the Metropolitan Atlanta Rapid Transit Authority rail stations as estimated will save approximately $2.4 million in annual cash handling costs.

It is important that transit agencies consider the application of these more advanced technologies as current planning and capital programs are developed. Authorities planning to purchase equipment such as radios, in-vehicle signs, etc. should consider the inclusion of state-of-the-art technologies in their programs.

Applications of these technologies are fully enhanced if the transit systems are compatible with similar technologies introduced in traffic management systems being acquired by city traffic departments. Traveler information systems for all customers are enhanced by providing both transit and highway information. Such systems include data which is readily and freely shared between the transit and highway ITS systems.

By integrating these systems, a ‘‘Core Infrastructure’’ of technology will be created providing maximum benefits to all travelers, and specifically to those who use transit within metropolitan areas. Elements of these systems are currently being purchased.

As requests for funding assistance are received by the FTA and other USDOT modal administrations, they will be reviewed with an intent toward ensuring that all surface transportation modes using or planning ITS systems share data to realize the fullest advantages of these systems. Metropolitan Planning Organizations, state Departments of Transportation, and transit authorities are encouraged to cooperate in the planning of ITS systems to ensure that they are able to share data and are expandable to accept new applications with minimal additional cost. It is important that decision makers keep their options open in specifying and procuring ITS systems so future enhancements may be readily added onto systems without costly conversion or modification.

To achieve the full benefits of ITS in metropolitan areas, it is important that the component elements be able to ‘‘talk’’ with each other and thereby share data.

In specifying and procuring ITS systems FTA urges grantees to incorporate the ability to share data between highway and transit elements and to keep future expansion options open.

For further information, please contact the appropriate FTA Regional Administrator.

C. Expanded Capital Eligibility

Bus Overhaul: Effective March 31, 1996, bus overhauls will be eligible for capital assistance. At FTA’s request, the 1996 DOT Appropriations Act amended 49 U.S.C 5302(a)(1)(B) and (C) to remove the requirement that bus rehabilitation or bus remanufacturing must extend the economic life of the bus. This change is intended to encourage the maintenance and improvement of bus rolling stock assets. Such overhaul work can be contracted out or performed directly by transit personnel, and will apply to all revenue service buses. FTA intends to issue guidance regarding the implementation of bus overhauls as a capital expenditure.

Associated Capital Maintenance Items: FTA has revised the procedure for determining whether spare parts to be acquired under the Urbanized Area Formula Program and the Capital Program are eligible for capital funding. Under 49 U.S.C. 5307(b)(4), certain spare parts are considered an eligible capital expense if these items cost at least one-half of one percent of the current fair market value of the rolling stock on which the items are to be used. Previously, FTA required that the current fair market value of rolling stock for which the equipment is to be used was the cost of new rolling stock. Consistent with the statute, FTA has revised the method of determining the current fair market value of rolling stock that serves as the basis for the spare parts eligibility calculation. It is now based on the current average vehicle value of a recipient’s fleet of vehicles. Spare parts to be purchased for a bus fleet are eligible for capital funding if they cost at least one-half of one percent of the straight line depreciated value of the average fleet vehicle or the depreciated value of a comparable bus of the same age and type.

D. FTA Home Page on the Internet

FTA in its efforts to provide better customer service and broaden the availability of FTA information has established an FTA Home Page on the Internet. This apportionment Notice as well as recently issued FTA circulars (Section 5309 Capital Program: Grant Application Instructions—C9300.1, September 29, 1995; Grant Management Guidelines, C5010.1B, September 7, 1995; and Third Party Contracting Requirements, C4220.1C, October 1, 1995) will be contained therein.

The FTA Home Page may be reached through the DOT Home Page at the following address: http://www.dot.gov. Once in the DOT Home Page, click on the ''Browse the DOT Administrations'' button and then scroll down to FTA and click. The FTA Home Page may also be accessed by using the worldwide web (www). The FTA direct www address is: http://www.dot.gov/dotinfo/fta/index.html.

V. Urbanized Area Formula Program (49 U.S.C. 5307)

A. Total Urbanized Area Formula Apportionments

In addition to the appropriated fiscal year 1996 Urbanized Area Formula funds of $1,891,243,530, the apportionment also includes $1,030,920 in deobligated funds authorized by 49 U.S.C. 5308 which have become available for reapportionment for the Urbanized Area Formula Program as provided by 49 U.S.C. 5336(i).

Table 2 displays the amount apportioned for the Urbanized Area Formula Program. After the one-half percent for oversight is reserved ($9,456,218), the amount appropriated for this program is $1,881,787,312. The funds to be reapportioned, described in the previous paragraph, were then added. Thus, the total amount apportioned for this program is $1,882,818,232.

B. Data Used for Urbanized Area Formula Apportionments, and Fiscal Year 1995 Apportionment Adjustment

Data from the 1994 National Transit Database (49 U.S.C. 5335) Report Year submitted in late 1994 and early 1995 have been used to calculate the fiscal year 1996 Urbanized Area Formula apportionments for urbanized areas 200,000 in population and over. The population and population density figures used in calculating the Urbanized Area Formula are from the 1990 Census.

An adjustment has been made to the apportionment for one urbanized area because of a correction to data from the 1993 National Transit Database that were used to compute the fiscal year 1995 Urbanized Area Formula apportionments published in the Federal Register of October 12, 1994 (59 FR 51758). The difference between the corrected apportionment and the previously published apportionment resulted in a decrease, and the necessary adjustment has been made to the area's apportionment for fiscal year 1996.

C. Adjustments for Energy and Operating Efficiencies

49 U.S.C. 5336(b)(2)(E) provides that, if a recipient of Urbanized Area Formula Program funds demonstrates to the satisfaction of the Secretary that energy or operating efficiencies would be achieved by actions that reduce revenue vehicle miles but provide the same frequency of revenue service to the same number of riders, the recipient's apportionment under 49 U.S.C. 5336(b)(2)(A)(i) shall not be reduced as a result of such actions. One recipient has submitted data acceptable to FTA in accordance with this provision. Accordingly, the revenue vehicle miles used in the Urbanized Area Formula database to calculate the fiscal year 1996 Urbanized Area Formula apportionment reflect the amount the recipient would have received without the reductions in mileage.

D. Repayment of Temporary Matching Fund Waivers

In accordance with the Temporary Matching Fund Waiver provision authorized by 49 U.S.C. 5307(i)(3) grantees were able to request a Federal share of 100 percent up to the area's total apportionment. Four grants or amendments were awarded which employed the temporary waiver of local matching funds for Urbanized Area Formula grants approved in fiscal years 1992 and 1993. The local share amounts for these grants were to be repaid by March 30, 1994. If not repaid, the amount owed would be deducted from the area's fiscal years 1995 and 1996 Urbanized Area Formula apportionments.

All affected grantees opted to have their future apportionments reduced rather than repay funds. The local share payment amount for each project was determined by dividing the project's total disbursement amount through September 30, 1994, by the project's total Federal capital obligations. The calculated percentage was then applied to the amount of the project's original local share that was waived. Of the calculated amount determined for repayment, 50 percent was deducted from the fiscal year 1995 Urbanized Area Formula apportionment. The remaining 50 percent is deducted from fiscal year 1996. The dollar amounts published in this Notice reflect these fiscal year 1996 adjustments, and the affected areas have been so advised.

E. Urbanized Area Formula Fiscal Year 1996 Apportionments to Governors

The total Urbanized Area Formula apportionment to the Governor for use in areas under 200,000 in population for each State is shown on Table 2. Table 2 also contains the total apportionment amount attributable to each of the urbanized areas within the State. The Governor may determine the allocation of funds among the urbanized areas under 200,000 in population with one exception. As further discussed below in Section H, funds attributed to an urbanized area under 200,000 in population, located within the planning boundaries of a transportation management area, must be obligated in that area.

F. Urbanized Area Formula Operating Assistance Limitations

The fiscal year 1996 limitations on the amount of Urbanized Area Formula funds that may be used for operating assistance are shown on Table 2 with the fiscal year 1996 apportionment.

The operating assistance limitations for all urbanized areas have been adjusted by 49 U.S.C. 5336(d)(2) to reflect the increase in the Consumer Price Index (CPI) for all urban consumers during the most recent calendar years. *The CPI Detailed Report,* December 1994, published by the Department of Labor (DOL), establishes that the calendar year 1994 CPI increase for all urban consumers is 2.7 percent. This increase was applied against the base operating assistance limitation calculated in accordance with 49 U.S.C. 5336(d)(2).

This adjustment results in an overall national fiscal year 1996 authorized operating assistance limitation level of $1,112,922,445. However, the 1996 DOT Appropriations Act limits the nationwide availability for operating assistance to a maximum of $400,000,000. Further, it maintains the level of transit operating assistance to urbanized areas of less than 200,000 in population at seventy-five percent of the amount of operating assistance such areas received in fiscal year 1995. Accordingly, the operating assistance limitation published in this Notice takes into account both the 1996 DOT Appropriations Act and Federal transit laws. Therefore, the higher operating assistance limitation as authorized under Federal transit laws

($1,112,922,445) was reduced to the $400,000,000 required by the 1996 DOT Appropriations Act by taking a pro rata reduction across all categories of grantees. Further, the operating assistance limitation to urbanized areas less than 200,000 in population was adjusted to $92,949,803 or seventy-five percent of the amount of their fiscal year 1995 level of $123,933,070. The remaining $307,050,197 of the $400,000,000 was prorated to urbanized areas above 200,000 in population, as authorized by the 1996 DOT Appropriations Act.

Consistent with the 1996 Conference Report, the Secretary hereby directs each area of 1,000,000 or more in population to give priority consideration to the impact of reductions in operating assistance on smaller transit authorities operating within the area, and to consider the needs and resources of such transit authorities when the limitation is distributed among all transit authorities operating in the area.

G. Statewide Operating Assistance Limitations

49 U.S.C. 5307(f) specifies that in any case in which a statewide agency or instrumentality is responsible under State laws for the financing, construction and operation, directly, by lease, contract or otherwise, of public transportation services, and when such statewide agency or instrumentality is the designated recipient of FTA funds, and when the statewide agency or instrumentality provides service among two or more urbanized areas, the statewide agency or instrumentality shall be allowed to apply for operating assistance up to the combined total permissible amount of all urbanized areas in which it provides service, regardless of whether the amount for any particular urbanized area is exceeded. However, the amount of operating assistance provided for another State or local transportation agency within the affected urbanized areas may not be reduced.

H. Designated Transportation Management Areas

All urbanized areas over 200,000 in population have been designated as transportation management areas (TMAs), in accordance with 49 U.S.C. 5305. These designations were formally made in a Federal Register Notice dated May 18, 1992 (57 FR 21160), signed by the Federal Highway Administrator and the Federal Transit Administrator. Additional areas may be designated as TMAs upon the request of the Governor and the MPO designated for such area or the affected local officials. As of October 1, 1995, two additional TMAs have been formally designated: Petersburg, Virginia, comprised solely of the Petersburg, Virginia, urbanized area; and Santa Barbara, Santa Maria, and Lompoc, California, which were combined and designated as one TMA.

Guidance for setting the boundaries of TMAs is contained in the joint transportation planning regulations codified at 23 CFR part 450 and 49 CFR part 613. In some cases, the TMA boundaries which have been established by the MPO for the designated TMA also include one or more urbanized areas with less than 200,000 in population. Where this situation exists, the discretion of the Governor to allocate urbanized area formula program ''Governor's Apportionment'' funds for urbanized areas with less than 200,000 in population is restricted.

As required by 49 U.S.C. 5307(a)(2), a recipient(s) must be designated to dispense the Urbanized Area Formula funds attributable to TMAs. Those urbanized areas that do not already have a designated recipient must name one and notify the appropriate FTA regional office of the designation. This would include those urbanized areas with less than 200,000 in population that may receive TMA designation independently, or those with less than 200,000 in population which are currently included within the boundaries of a larger designated TMA. In both cases, the Governor would only have discretion to allocate Governor's Apportionment funds attributable to areas which are outside of designated TMA boundaries. In order for the FTA and Governors to know which urbanized areas under 200,000 in population are included within the boundaries of an existing TMA, and so that they can be identified in future Federal Register notices, each MPO whose TMA planning boundaries include these smaller urbanized areas is asked to identify such areas to the FTA. This notification should be made in writing to the Associate Administrator for Program Management, Federal Transit Administration, 400 7th Street, SW., Washington, DC 20590, no later than July 1 of each fiscal year. To date, FTA has been notified of the following urbanized areas with less than 200,000 in population that are included within the planning boundaries of designated TMAs:

Designated TMA	Small urbanized area included in TMA boundaries
Baltimore, Maryland	Annapolis, Maryland.
Dallas-Fort Worth, Texas	Denton, Texas; Lewisville, Texas.
Houston, Texas	Galveston, Texas; Texas City, Texas.
Philadelphia, Pennsylvania	Pottstown, Pennsylvania.
Pittsburgh, Pennsylvania	Monessen, Pennsylvania; Steubenville-Weirton, OH-WV-PA (PA portion).
Seattle, Washington	Bremerton, Washington.
Washington, DC-MD-VA	Frederick, Maryland (MD portion).

I. Urbanized Area Formula Funds Used for Highway Purposes

Urbanized Area Formula funds apportioned to a TMA, except for those amounts which can be used for the payment of operating expenses, are also available for highway projects if the following three conditions are met: (1) such use must be approved by the MPO after appropriate notice and opportunity for comment and appeal are provided to affected transit providers; (2) in the determination of the Secretary, such funds are not needed for investments required by the Americans with Disabilities Act (ADA) of 1990; and (3) funds may be available for highway projects under title 23, U.S.C., only if funds used for the State or local share of such highway projects are eligible to fund either highway or transit projects.

Urbanized Area Formula funds which are designated for highway projects will be transferred to and administered by the Federal Highway Administration (FHWA). The MPO should notify FTA of its intent to program FTA funds for highway purposes.

VI. Nonurbanized Area Formula Program (49 U.S.C. 5311) and Rural Transit Assistance Program (RTAP) (49 U.S.C. 5311(b)(2))

A. Nonurbanized Area Formula Program

The fiscal year 1996 Nonurbanized Area Formula apportionments total $111,152,194. The Governor's apportionments are displayed on Table 3. A total of $110,072,375 is appropriated for the Nonurbanized Area Formula Program. After deducting the one-half percent for oversight ($550,362), the fiscal year 1996 apportionment also includes $1,630,181 in prior year deobligated funds which have become available for reapportionment under this program. These funds provide capital, operating and administrative assistance for areas less than 50,000 in population.

The population figures used in calculating these apportionments are from the 1990 Census. The apportionments for the States of Illinois and Oklahoma have been adjusted to compensate for incorrect population figures used in the fiscal year 1995 apportionments.

Each State must spend no less than 15 percent of its fiscal year 1996 Nonurbanized Area Formula apportionment for the development and support of intercity bus transportation, unless the Governor certifies to the Secretary that the intercity bus service needs of the State are being adequately met. Fiscal year 1996 Nonurbanized Area Formula grant applications must reflect this level of programming for intercity bus or include a certification from the Governor.

B. RTAP Program

The fiscal year 1996 RTAP allocations to the States totaling $4,571,903 are also displayed on Table 3. This amount includes $4,500,000 in fiscal year 1996 appropriated funds, and $71,903 in prior year deobligated funds which have become available for reallocation for this program. The funds are allocated to the States to undertake research, training, technical assistance, and other support services to meet the needs of transit operators in nonurbanized areas. These funds are to be used in conjunction with the States' administration of the Nonurbanized Area Formula Program.

VII. Section 5310 Elderly and Persons With Disabilities Program

A total of $51,703,234 is apportioned to the States for fiscal year 1996 for the Elderly and Persons with Disabilities Program. In addition to the fiscal year 1996 appropriation of $51,609,095, the fiscal year 1996 apportionment also includes $94,139 in prior year unobligated funds which have become available for reapportionment for the Elderly and Persons with Disabilities Program. The apportionment for Connecticut is adjusted to restore fiscal year 1995 funds which were not obligated due to an administrative error. Table 4 shows each State's apportionment.

The formula for apportioning these funds uses 1990 Census population data for persons aged sixty-five and over and for persons with disabilities.

The funds provide capital assistance for transportation for elderly persons and persons with disabilities. Eligible capital expenses may include, at the option of the recipient, the acquisition of transportation services by a contract, lease, or other arrangement.

While the assistance is intended primarily for private non-profit organizations, public bodies that coordinate services for the elderly and persons with disabilities, or any public body that certifies to the State that non-profit organizations in the area are not readily available to carry out the service, may receive these funds.

These funds may be transferred by the Governor to supplement the Urbanized Area Formula or Nonurbanized Area Formula capital funds during the last 90 days of the fiscal year. 3

VIII. Surface Transportation Program ''Flexible'' Funds Used for Transit Purposes (Title 23, U.S.C.)

A. Transfer Process

''Flexible'' DOT funds, such as Surface Transportation Program (STP) funds, Congestion Mitigation and Air Quality (CMAQ) funds, or others, which are designated for use in transit projects, are transferred from the FHWA to FTA after which FTA approves the project and awards a grant. Flexible funds designated for transit projects must result from the local and state planning and programming process, and must be included in an approved State Transportation Improvement Program (STIP) before the funds can be transferred. In order to initiate the transfer process, the grantee must submit a completed application to the FTA Regional Office, and must notify the state highway/transportation agency that it has submitted an application which requires a transfer of funds. Once the state highway/transportation agency determines that the state has sufficient obligation authority, the State agency notifies FHWA that the funds are to be used for transit purposes and requests that the funds be obligated by FHWA as a transfer project to FTA. The flexible funds transferred to FTA will be placed in an urbanized area or state account for one of the three existing formula programs—Urbanized Area, Elderly and Persons with Disabilities, or Nonurbanized Area.

The flexible funds are then treated as FTA formula funds, although they retain a special identifying code. They may be used for any purpose eligible under these FTA programs except for operating expenses. All FTA requirements are applicable to transferred funds. Flexible funds should be combined with regular FTA formula funds in a single annual grant application.

B. Matching Share for Flexible Funds

The provisions of Title 23, U.S.C. regarding the non-Federal share apply to Title 23 funds used for transit projects. Thus, flexible funds transferred to FTA retain the same matching share that the funds would have if used for highway purposes and administered by the FHWA.

There are three instances in which a higher than 80 percent Federal share would be maintained. First, in States with large areas of Indian and certain public domain lands, and National Forests, parks and monuments, the local share for highway projects is determined by a sliding scale rate, calculated based on the percentage of public lands within that state. This sliding scale, which permits a greater Federal share, but not to exceed 95 percent, is applicable to transit projects funded with flexible funds in these public land states. FHWA develops the sliding scale matching ratios for the increased Federal share.

Secondly, commuter carpooling and vanpooling projects and transit safety projects using flexible funds administered by FTA may retain the same 100 percent Federal share that would be allowed for ride-sharing or safety projects administered by the FHWA. The third instance includes the 100 percent Federal safety projects; however, these are subject to a nationwide ten percent program limitation.

C. Other Funds Transferred to FTA

Certain demonstration projects authorized in Title 23 are specified to be used for transit projects and are more appropriately administered by FTA. In such cases, FHWA has transferred the funds to FTA for administration. Since these funds are not STP flexible funds, they are transferred into the appropriate Capital Program category (Bus, New

Starts, or Fixed Guideway Modernization) for obligation and are administered as Capital projects.

IX. Capital Program (49 U.S.C. 5309)

A. Fixed Guideway Modernization

Fixed Guideway Modernization funds are allocated by formula. Statutory percentages were established to allocate the first $497,700,000 to 11 fixed guideway areas. The next $70,000,000 is allocated one-half to these 11 urbanized areas and one-half to other urbanized areas with fixed guideways which are at least seven years old on the basis of the Urbanized Area Formula Program fixed guideway tier formula factors. The remaining funds are allocated to all of these urbanized areas as one universe. For fiscal year 1996, $666,000,000 was appropriated for fixed guideway modernization. After deducting the three-quarter percent for oversight ($4,995,000), $661,005,000 is available for apportionment to the specified urbanized areas for Fixed Guideway Modernization funding.

Table 5 displays these apportionments. Fixed Guideway Modernization funds apportioned for this section must be used for capital projects to modernize or improve fixed guideway systems.

All urbanized areas with fixed guideway systems that are at least seven years old are eligible to receive Fixed Guideway Modernization funds. A request for the start-up service dates for fixed guideways has been incorporated into the National Transit Database reporting system to ensure that all eligible fixed guideway data is included in the calculation of these apportionments. A threshold level of more than one mile of fixed guideway is required to receive Fixed Guideway Modernization funds. Therefore, urbanized areas reporting one mile or less of fixed guideway mileage under the National Transit Database are not included.

B. New Starts

The fiscal year 1996 appropriation for New Starts is $666,000,000. In addition, Congress reprogrammed $21,361,250 in unobligated New Start funds originally provided in fiscal year 1993, for a total of $687,361,250. The entire amount was allocated to projects specified within the 1996 DOT Appropriations Act. The actual amount of unobligated fiscal year 1993 New Start funds available for reprogramming is only $18,361,250, thereby reducing the total amount available in fiscal year 1996 to $684,361,250. This amount is further reduced by $4,995,000 (three quarter percent of $666,000,000 for oversight), leaving $679,366,250 available for allocation to areas. The reductions were prorated against all projects. Table 6 displays the allocations by area and also shows prior year unobligated allocations for New Starts.

C. Bus

a. Fiscal Year 1996 Allocations

The fiscal year 1996 appropriation for Bus is $333,000,000 for the purchase of buses, bus-related equipment and paratransit vehicles, and for the construction of bus-related facilities. After deducting the three-quarter percent for oversight ($2,497,500), $330,502,500 remains available for projects. The Conference Report accompanying the 1996 DOT Appropriations Act earmarked all of the fiscal year 1996 Bus funds to specified states or localities for bus and bus-related projects. In three instances where funds were earmarked to States, the funds were further suballocated to local entities within these states. The Conference Report also includes the multi-year ISTEA earmarks. In addition, the conferees direct those transit systems in the State of New York receiving Bus discretionary allocations in areas over 200,000 population for the express purpose of providing fixed-route transit services, to purchase alternative fueled buses.

Because the three-quarter percent for oversight was subtracted from the amount appropriated, each bus project identified in the Conference Report receives three-quarter percent less than the funding level contained in the report. No funds remain available for discretionary allocation by the Federal Transit Administrator. Table 7 displays the allocations of the fiscal year 1996 Bus funds by area and also shows prior year unobligated earmarks for the Bus Program.

b. Fiscal Year 1997 FTA Priorities for Allocation of Discretionary Bus Funds

FTA is opposed to the congressional earmarking of the discretionary bus program because it tends to favor certain areas year after year and limits the ability of the Administration to focus these resources to address critical national bus needs, including a backlog of grant applications to the FTA for discretionary bus funding totalling over $488 million. The FTA has established two priority areas for the use of capital bus funds, and as future funds are available for allocation, the FTA Administrator will follow these priorities: (1) Bus replacement for transit systems with significantly overaged transit fleets; and (2) projects that would assist areas in meeting the fixed route bus and paratransit requirements under the ADA.

Overaged Bus Transit fleets. The Federal useful life standard for full sized transit buses is 12 years, meaning that the FTA will not participate in the replacement of a standard transit bus that has not met its 12 year useful life. The national average age for bus fleets is 8.3 years, which is well above the six year national average required to maintain the national transit bus fleet at 12 years. Some individual transit systems are operating bus fleets significantly above the national average. It is an Administration priority to use discretionary resources to assist such areas where formula capital resources available are also being used for bus replacement purposes but are insufficient to meet all of the bus replacement needs.

ADA Requirements for Bus Systems. It is also an Administration priority to assist public transit systems to come into full compliance with the ADA. This means using bus capital funds to purchase accessible fixed-route buses as well as paratransit vehicles. This emphasis is particularly important in light of the January 26, 1997, deadline for full compliance with the ADA paratransit service requirements.

Other Considerations. In the allocation of funding according to the priorities discussed above, consideration will be given to applications which are complete and have met all Federal requirements and to areas that have programmed all of their formula resources. Consideration will also be given to an equitable distribution of funds among areas of different sizes, as well as to a geographic distribution of funding.

Fiscal Year 1997 Capital Bus Funding Requests. FTA invites transit authorities to submit applications for fiscal year 1997 capital bus funding during fiscal year 1996, with the realization that funds appropriated by Congress in FY 1997 may again be fully earmarked. The information acquired by FTA in this application process will be fully shared with appropriations committees during the fiscal year 1997 appropriations process to assist them in their decision-making.

D. Capital Program Circular

FTA has issued a new circular (Section 5309 Capital Program Grant Application Instructions, C9300.1, September 29, 1995) to provide program information and guidance in the preparation of grant applications for the Capital Program.

X. Unit Values of Data for the Section 5307 Urbanized Area Formula and Section 5311 Nonurbanized Area Formula Programs, and Section 5309(m)(1)(A) Fixed Guideway Modernization Formula

For technical assistance purposes, the dollar unit values of data derived from the computations of the Urbanized Area Formula and Nonurbanized Area Formula Programs, and the Fixed Guideway Modernization Formula apportionments are included in this Notice on Table 9. To determine how a particular apportionment amount was developed, areas may multiply their population, population density, and data from the National Transit Database by these unit values.

XI. Metropolitan Planning Program (49 U.S.C. 5303) and State Planning and Research Program (49 U.S.C. 5313(b))

A. Metropolitan Planning Urbanized Area Program

The fiscal year 1996 Metropolitan Planning apportionments to States for MPOs to be used in urbanized areas total $39,500,000. A basic allocation of 80 percent of this amount ($31,600,000) is distributed to the States based on the State's urbanized area population for subsequent State distribution to each urbanized area, or parts thereof, within each State. A supplemental allocation of the remaining 20 percent ($7,900,000) is also provided to the States based on an FTA administrative formula to address planning needs in the larger, more complex urbanized areas. Table 8 contains the final State apportionments for the combined basic and supplemental allocations. Each State, in cooperation with the MPOs, must develop an allocation formula for the combined apportionment which distributes these funds to MPOs representing urbanized areas, or parts thereof, within the State. This formula, which must be approved by the FTA, must ensure to the maximum extent practicable that no MPO is allocated less than the amount it received by administrative formula under the Metropolitan Planning Program in fiscal year 1991 (minimum MPO allocation). Each State formula must include a provision for the minimum MPO allocation. Where the State and MPOs desire to use a new formula not previously approved by FTA, it must be submitted to the appropriate FTA Regional Office for prior approval.

B. State Planning and Research Program

The fiscal year 1996 apportionments for the State Planning and Research Program total $8,250,000. Final State apportionments for this program are also contained on Table 8. This is the fifth year of a consolidated program which is apportioned to the States for the purpose of such activities as planning, technical studies and assistance, demonstrations, management training and cooperative research. In addition, a State may authorize a portion of these funds to be used to supplement planning funds allocated by the State to its urbanized areas as the State deems appropriate.

C. Data Used for Metropolitan Planning and State Planning and Research Apportionments

Population data from the 1990 Census is used in calculating these apportionments. The Metropolitan Planning funding provided to urbanized areas in each State by administrative formula in fiscal year 1991 was used as a ''hold harmless'' base in calculating funding to each State.

D. Planning Emphasis Areas (PEAs)

The PEAs are aids to the States and MPOs in the development of planning work programs. They are advisory and are intended to serve FTA, FHWA, and the rest of the Department as a means of helping to meet national transportation needs and implementing national transportation policy. The last PEAs were issued by the FTA and the FHWA on July 11, 1994, for Federal fiscal years 1994 and 1995. These remain in effect until changed, which is expected some time during the first quarter of fiscal year 1996.

The PEAs currently under development will address common problems that have been identified during ongoing reviews of metropolitan (and State) planning processes and will also highlight program objectives identified in FTA and FHWA strategic plans. These include, but are not limited to, financial planning/innovative financing, public participation/environmental justice, transportation data/modeling, Intelligent Transportation Systems, multimodalism, and the need for community sensitive transportation that considers social, environmental, economic, land-use and other quality of life factors early in the transportation planning and development process.

XII. Period of Availability of Funds

The funds apportioned under the Urbanized Area Formula Program, Fixed Guideway Modernization Formula, Metropolitan Planning and State Planning and Research Programs in this Notice will remain available to be obligated by FTA to recipients for three (3) fiscal years following fiscal year 1996. Any of these apportioned funds unobligated at the close of business on September 30, 1999, will revert to FTA for reapportionment under these respective programs. Funds apportioned to nonurbanized areas under the Nonurbanized Area Formula Program, including RTAP funds, will remain available for two (2) fiscal years following fiscal year 1996. Any such funds remaining unobligated at the close of business on September 30, 1998, will revert to FTA for reapportionment among the States under the Nonurbanized Area Formula Program. Funds allocated to States under the Elderly and Persons with Disabilities Program in this Notice must be obligated by September 30, 1996. Any such funds remaining unobligated as of this date will revert to FTA for reapportionment among the States under the Elderly and Persons with Disabilities Program. The 1996 DOT Appropriations Act includes a provision requiring that fiscal year 1996 New Starts and Bus funds not obligated for their original purpose as of September 30, 1998, shall be made available for other discretionary projects within the respective categories of the Capital Program. Similar provisions in the 1994 and 1995 DOT Appropriations Acts required that fiscal year 1994 Bus and New Start funds that are not obligated by September 30, 1996, shall also be made available for other discretionary Bus or New Start projects, respectively, and fiscal year 1995 Bus and New Start funds unobligated by September 30, 1997, shall be made available for other discretionary Bus or New Start projects, respectively.

XIII. Notice of Pre-Award Authority to Incur Project Costs

A. Background

FTA is engaged in an ongoing effort to streamline and simplify the administration of its programs. To this end, the agency has expanded the authority extended to grantees to incur costs for operating assistance projects prior to grant award to cover planning and capital costs as well. In fiscal year 1994 FTA extended this authority to non-operating projects funded with current year apportioned formula funds. This automatic pre-award spending authority permitted a grantee to incur costs on an eligible transit capital or planning project without prejudice to possible future Federal participation in the cost of the project or projects. Because this provision worked so well to reduce the paperwork burden on both the grantee and FTA regional offices in

fiscal year 1995, FTA further broadened this authority.

B. Current Coverage

In fiscal year 1996, authority to incur costs for Fixed Guideway Modernization Formula, Metropolitan Planning, Urbanized Area Formula, Elderly and Persons with Disabilities, Nonurbanized Area Formula, and State Planning and Research in advance of possible future Federal participation applies to fiscal year 1996 FTA funds apportioned in this Notice for the programs listed above, as well as funds to be apportioned in fiscal year 1997. Carryover amounts for these programs are also included in this authority. This pre-award authority is also extended to projects intended to be funded with STP or CMAQ funds transferred to FTA in fiscal years 1996 and 1997, provided that the projects are included in a Federally approved STIP. The flexible funds do not have to be transferred to FTA before the authority can be used. This pre-award authority also applies to Bus funds identified in this Notice. The pre-award authority does not apply to Capital New Start funds.

C. Conditions

Similar to the FTA Letter of No Prejudice (LONP) authority, the conditions under which this authority may be utilized are specified below:

(1). This pre-award authority is not a legal or moral commitment that the project(s) will be approved for FTA assistance or that the FTA will obligate Federal funds. Furthermore, it is not a legal or moral commitment that all items undertaken by the applicant will be eligible for inclusion in the project(s).

(2). All FTA statutory, procedural, and contractual requirements must be met.

(3). No action will be taken by the grantee which prejudices the legal and administrative findings which the Federal Transit Administrator must make in order to approve a project.

(4). Local funds expended by the grantee pursuant to and after the date of this authority will be eligible for credit toward local match or reimbursement if the FTA later makes a grant for the project(s) or project amendment(s).

(5). The Federal amount of any future FTA assistance to the grantee for the project will be determined on the basis of the overall scope of activities and the prevailing statutory provisions with respect to the Federal-local match ratio at the time the funds are obligated.

(6). For funds to which this authority applies, the authority expires with the lapsing of fiscal year 1997 funds.

D. Environmental and Other Requirements

FTA emphasizes that all of the Federal grant requirements must be met for the project to remain eligible for Federal funding. Some of these requirements must be met before pre-award costs are incurred, notably the requirements of the National Environmental Policy Act (NEPA). Compliance with NEPA and other environmental laws or executive orders (e.g., protection of parklands, wetlands, historic properties) must be completed *before* state or local funds are advanced for a project expected to be subsequently funded with FTA funds. Depending on which class the project is included under in FTA's environmental regulations (23 CFR part 771) the grantee may not advance the project beyond planning and preliminary engineering before FTA has approved either a categorical exclusion (refer to 23 CFR part 771.117(d)), a finding of no significant impact, or a final environmental impact statement. The conformity requirements of the Clean Air Act (40 CFR part 51) also must be fully met before the project may be advanced with non-Federal funds.

Similarly, the requirement that a project be included in a transportation improvement program, Federal procurement procedures, as well as the whole range of Federal requirements, must be followed for projects in which Federal funding will be sought in the future. Failure to follow any such requirements could make the project ineligible for Federal funding. In short, this increased administrative flexibility requires a grantee to make certain that no Federal requirements are circumvented thereby. If a grantee has questions or concerns regarding the environmental requirements, or any other Federal requirements that must be met before incurring costs, it should contact the appropriate regional office.

Before an applicant may incur costs either for activities expected to be funded by New Start funds, or for activities requiring funding beyond fiscal year 1997, it must first obtain a written LONP from the FTA. To obtain an LONP, a grantee must submit a written request accompanied by adequate information and justification to the appropriate FTA regional office.

XIV. Electronic Grant Making and Management Initiatives: Fiscal Year 1996 and Beyond

A. Background

As a result of the National Performance Review and the FTA strategic planning process, the FTA is implementing a series of automation improvements in the grant making and management process which are designed to improve customer service and efficiency of program delivery. Known as the Electronic Grant Making and Management (EGMM) initiative, steps are underway to provide a streamlined electronic interface between grantees and FTA which will allow complete electronic application submission, review, approval, and management of all grants. The ultimate goal is to have in place a fully electronic, paperless process for awarding and managing Federal transit assistance programs involving grants and cooperative agreements.

B. On-Line Grantee Program

The On-Line Grantee Program is now available to all grantee agencies to enable them to access the FTA Grants Management Information System (GMIS) data base via a toll free telephone connection. This program was initially designed to permit grantees to inquire about the status of grants only, but has now been expanded to all registered grantees for filing their required quarterly financial status and narrative progress reports and to make annual certifications and assurances through GMIS. Over 470 of FTA's approximately 700 grantees are currently ''on line''.

C. Electronic Grant Making and Management (EGMM)

This initiative streamlines the entire FTA grant making and management process through a paperless electronic grant application, review, approval, acceptance and management process. The Department of Labor has agreed to participate in the program and receive requests for Transit Employee Protective Certification of projects, as well as issue the Transit Employee Protective Certifications electronically for the EGMM pilot program participants.

During fiscal year 1995, 22 grantee agencies participated in the FTA EGMM pilot program. The pilot grantees successfully tested and utilized the EGMM system to electronically develop, submit, and manage their grants during the full life cycle of the grant via grantee computer station connections to the FTA GMIS computer using a modem and toll free telephone connection. FTA is continuing to implement the EGMM system during fiscal year 1996 through the inclusion of additional grantee agencies. Any transit agency interested in participating in any aspect of the EGMM program should contact the appropriate FTA Regional Office.

D. Electronic Signature of Certifications and Assurances

The FTA is required by 49 U.S.C. 5307 as well as other laws and regulations to obtain specific certifications and assurances for its programs. In fiscal year 1995, FTA compiled the certifications and assurances applicable to the FTA programs into one document published in the Federal Register. Grantees are now able to sign one document annually certifying to all the certifications and assurances applicable to FTA grants. During fiscal year 1996, all EGMM grantee participants and on-line grantee participants will be able to provide this certification electronically, completely eliminating paper certification.

E. Future EGMM Expansion

FTA has several activities under consideration to expand the functional content of EGMM, including the following: an enhanced distributive PC-based system, a mechanism to facilitate electronic submission, review, approval and management of statewide transportation improvement programs; electronic development, review, approval and management of unified planning work programs; and a more comprehensive electronic library system.

Through these initiatives, FTA hopes to more effectively and efficiently serve our customers. We appreciate and look forward to the continued support of our grantee agencies as we look for additional ways to improve delivery of the mass transit program.

XV. Quarterly Approval of Grants

The FTA has established a quarterly approval and release cycle for processing grants. All Urbanized Area Formula, Nonurbanized Area Formula, Elderly and Persons with Disabilities, Capital, Metropolitan Planning, and State Planning and Research grants are processed on a quarterly basis. This includes grants using STP or CMAQ funds.

If completed applications are submitted to the appropriate FTA Regional Office no later than the first business day of the quarter, FTA will award grants by the last business day of the quarter.

In order to expedite the grant approval process within the quarterly approval structure, grants which are complete and have received the required Transit Employee Protective Certification will be approved before the end of the quarter. There are only two factors which would delay FTA approval of the project beyond the end of a quarter. First is a failure by DOL to issue a Transit Employee Protective Certification where such certification is a prerequisite to a grant approval, and second is the failure of FHWA to actually transfer flexible funds.

For an application to be considered complete, all required activities such as inclusion of the project in a locally approved Transportation Improvement Program (TIP), a Federally approved State Transportation Improvement Program (STIP), intergovernmental reviews, environmental reviews, all applicable civil rights, anti-drug, clean air requirements and submission of all requisite certifications and documentation must be completed. The application must be in approvable form with all required documentation and submissions on hand, except for the labor protection certification which is issued by DOL. Incomplete applications will not be processed, but if the missing components are supplied, applications will be considered in the next quarter.

It is the policy of FTA to expedite grant application reviews and speed program delivery by reducing the number of grant applications. To this end, FTA strongly encourages grant applicants to submit only one application per fiscal year for each formula program. The single application should contain the fiscal year's capital (including flexible funds), planning and operating elements.

Applications for the first quarter should be submitted to the FTA Regional Office within five business days of this Notice. The first-quarter grants will be released on or before December 30, 1995.

XVI. Grant Application Procedures

All applications for FTA funds should be submitted to the appropriate FTA Regional Office. Formula grant applications should be prepared in conformance with the following FTA Circulars: Urbanized Area Formula—C9030.1A, September 18, 1987; Nonurbanized Area Formula—C9040.1C, November 3, 1992; Elderly and Persons with Disabilities—C9070.1C, December 23, 1992; and Section 5309 Capital Program: Grant Application Instructions—C9300.1, September 29, 1995. Applications for STP ''flexible'' fund grants should be prepared in the same manner as the apportioned funds under the Urbanized Area Formula, Nonurbanized Area Formula, or Elderly and Persons with Disabilities Programs. Guidance on preparation of applications for Metropolitan Planning, and State Planning and Research funds may be obtained from each FTA Regional Office. Also available are newly revised editions of the Grant Management Guidelines, C5010.1B, September 7, 1995; and Third Party Contracting Requirements, C4220.1C, October 1, 1995. Copies of circulars are available from FTA Regional Offices, and revised circulars are also available on the FTA Home Page on the Internet.

Issued on November 17, 1995.

Gordon J. Linton,

Administrator.

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TABLE 1

FEDERAL TRANSIT ADMINISTRATION

FY 1996 APPROPRIATIONS AND ISTEA AUTHORIZATIONS FOR GRANT PROGRAMS

SOURCES OF FUNDS	FY 1996 APPROPRIATIONS	*AUTHORIZED LEVELS*
SECTION 5307 URBANIZED AREA FORMULA PROGRAM AND SECTION 5311 NONURBANIZED AREA FORMULA PROGRAM	$2,001,315,905	$2,796,375,000
SECTION 5307 URBANIZED AREA FORMULA PROGRAM	$1,891,243,530	*$2,642,574,375*
94.5% of Total Available for Urbanized Area Formula and Nonurbanized Area Formula Programs		
Less Oversight (1/2%)	(9,456,218)	
Reapportioned Funds Added	1,030,920	
Total Apportioned	$1,882,818,232	
Operating Assistance Limitation	$400,000,000	*$1,112,922,445*
SECTION 5311 NONURBANIZED AREA FORMULA PROGRAM	$110,072,375	*$153,800,625*
5.5% of Total Available for Urbanized Area Formula and Nonurbanized Area Formula Programs		
Less Oversight (1/2%)	(550,362)	
Reapportioned Funds Added	1,630,181	
Total Apportioned	$111,152,194	
SECTION 5311(b) RTAP PROGRAM	$4,500,000	*$7,687,500*
Reapportioned Funds Added	71,903	
Total Apportioned	$4,571,903	
SECTION 5310 ELDERLY AND PERSONS WITH DISABILITIES PROGRAM	$51,609,095	*$68,675,000*
Reapportioned Funds Added	94,139	
Total Apportioned	$51,703,234	
SECTION 5309 CAPITAL PROGRAM	$1,665,000,000	*$2,050,000,000*
SECTION 5309(m)(1)(A) FIXED GUIDEWAY MODERNIZATION	$666,000,000	*$820,000,000*
Less Oversight (3/4%)	(4,995,000)	
Total Apportioned	$661,005,000	
SECTION 5309(m)(1)(B) NEW STARTS	$666,000,000	*$820,000,000*
Less Oversight (3/4%)	(4,995,000)	
Reprogrammed Funds	18,361,250	
Total Allocated	$679,366,250	
SECTION 5309(m)(1)(C) BUS	$333,000,000	*$410,000,000*
Less Oversight (3/4%)	(2,497,500)	
Total Allocated	$330,502,500	
SECTION 5303 METROPOLITAN PLANNING PROGRAM	$39,500,000	*$69,187,500*
SECTION 5313(b) STATE PLANNING AND RESEARCH PROGRAM	$8,250,000	$14,625,000
TOTAL (Above Grant Programs)	$3,770,175,000	$5,006,550,000

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS AND ISTEA AUTHORIZED LEVELS

URBANIZED AREA SIZE	FY 1996 SECTION 5307 APPORTIONMENT	FY 1996 OPERATING ASSISTANCE LIMITATION	*ISTEA FY 1996 AUTHORIZED LEVELS*	
			SECTION 5307	*OPER. ASSIST. LIMITATION*
OVER 1,000,000 IN POPULATION	$1,384,566,927	$239,872,374	*$1,943,169,586*	*717,669,717*
200,000-1,000,000 IN POPULATION	317,068,794	67,177,823	*445,112,204*	*200,988,088*
50,000-200,000 IN POPULATION	181,182,511	92,949,803	*254,292,585*	*194,264,640*
NATIONAL TOTAL	$1,882,818,232	$400,000,000	*$2,642,574,375*	*$1,112,922,445*

URBANIZED AREA/STATE	FY 1996 SECTION 5307 APPORTIONMENT	FY 1996 OPERATING ASSISTANCE LIMITATION	*ISTEA FY 1996 AUTHORIZED LEVELS*	
			SECTION 5307	*OPER. ASSIST. LIMITATION*
Amounts Apportioned and Authorized to Urbanized Areas Over 1,000,000 in Population:				
Atlanta, GA	$26,839,796	$2,817,569	*$37,659,460*	*$8,429,834*
Baltimore, MD	23,224,123	4,509,748	*32,586,040*	*13,492,632*
Boston, MA	50,684,051	8,467,028	*71,119,774*	*25,332,346*
Chicago, IL-Northwestern IN	127,782,235	23,457,893	*179,385,792*	*70,183,237*
Cincinnati, OH-KY	9,072,460	2,442,814	*12,728,284*	*7,308,611*
Cleveland, OH	16,046,638	4,469,540	*22,513,571*	*13,372,334*
Dallas-Fort Worth, TX	24,363,705	4,008,037	*34,180,861*	*11,991,571*
Denver, CO	14,536,961	2,736,257	*20,394,878*	*8,186,555*
Detroit, MI	24,001,631	9,922,644	*33,673,043*	*29,687,373*
Ft Lauderdale-Hollywood-Pompano Bch, FL.	13,996,500	3,403,116	*19,638,115*	*10,181,720*
Houston, TX	28,784,046	4,211,604	*40,385,072*	*12,600,620*
Kansas City, MO-KS	6,512,147	2,069,850	*9,136,002*	*6,192,747*
Los Angeles, CA	124,287,559	26,465,555	*174,376,805*	*79,181,805*
Miami-Hialeah, FL	25,707,774	3,887,455	*36,068,679*	*11,630,806*
Milwaukee, WI	11,829,319	2,532,863	*16,595,934*	*7,578,026*
Minneapolis-St. Paul, MN	16,652,932	3,377,190	*23,364,328*	*10,104,152*
New Orleans, LA	10,810,730	3,063,597	*15,167,698*	*9,165,919*
New York, NY-Northeastern NJ	407,163,089	61,292,372	*571,334,032*	*183,379,517*
Norfolk-Virginia Beach-Newport News, VA	7,898,757	1,946,012	*11,454,972*	*5,822,236*
Philadelphia, PA-NJ	73,238,333	14,754,704	*102,764,882*	*44,144,326*
Phoenix, AZ	14,050,740	2,182,056	*19,712,901*	*6,528,452*
Pittsburgh, PA	20,396,244	4,404,289	*28,616,176*	*13,177,022*
Portland-Vancouver, OR-WA	14,759,223	2,040,724	*20,707,309*	*6,105,605*
Riverside-San Bernardino, CA	11,159,496	1,166,383	*15,657,893*	*3,489,679*
Sacramento, CA	8,573,242	1,613,097	*12,028,302*	*4,826,195*
San Antonio, TX	13,055,968	2,122,548	*18,317,041*	*6,350,412*
San Diego, CA	23,453,384	3,386,799	*32,905,869*	*10,132,901*
San Francisco-Oakland, CA	74,755,286	9,017,750	*104,894,091*	*26,980,038*
San Jose, CA	19,034,030	3,063,813	*26,706,442*	*9,166,564*
San Juan, PR	18,655,885	3,482,258	*26,174,834*	*10,418,502*
Seattle, WA	32,689,692	2,861,557	*45,867,318*	*8,561,438*
St. Louis, MO-IL	15,896,099	4,446,206	*22,301,936*	*13,302,520*
Tampa-St. Petersburg-Clearwater, FL	10,841,506	2,420,798	*15,209,825*	*7,242,742*
Washington, DC-MD-VA	63,813,346	7,828,278	*89,541,427*	*23,421,282*
TOTAL	$1,384,566,927	$239,872,374	*$1,943,169,586*	*$717,669,717*

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS AND ISTEA AUTHORIZED LEVELS

URBANIZED AREA/STATE	FY 1996 SECTION 5307 APPORTIONMENT	FY 1996 OPERATING ASSISTANCE LIMITATION	ISTEA FY 1996 AUTHORIZED LEVELS	
			SECTION 5307	OPER. ASSIST. LIMITATION
Amounts Apportioned and Authorized to Urbanized Areas 200,000 to 1,000,000 in Population :				
Akron, OH	$3,739,754	$1,068,223	$5,246,517	$3,195,998
Albany-Schenectady-Troy, NY	4,869,154	1,036,060	6,831,213	3,099,768
Albuquerque, NM	3,696,147	715,983	5,185,359	2,142,135
Allentown-Bethlehem-Easton, PA-NJ	2,934,020	1,083,235	4,116,172	3,240,910
Anchorage, AK	1,513,460	353,514	2,123,266	1,057,671
Ann Arbor, MI	2,389,025	454,205	3,351,583	1,358,927
Augusta, GA-SC	1,311,735	361,822	1,840,243	1,082,528
Austin, TX	7,400,768	681,375	10,382,794	2,038,593
Bakersfield, CA	2,387,166	444,280	3,349,018	1,329,233
Baton Rouge, LA	1,926,005	593,692	2,702,028	1,776,257
Birmingham, AL	3,328,335	1,090,569	4,669,430	3,262,854
Bridgeport-Milford, CT	4,044,066	946,815	5,674,112	2,832,758
Buffalo-Niagara Falls, NY	8,289,472	2,779,198	11,629,745	8,315,030
Canton, OH	1,321,944	523,119	1,854,554	1,565,111
Charleston, SC	2,000,854	495,970	2,807,111	1,483,884
Charlotte, NC	4,026,919	597,902	5,649,625	1,788,851
Chattanooga, TN-GA	1,643,938	450,735	2,306,325	1,348,546
Colorado Springs, CO	2,401,466	447,449	3,369,077	1,338,714
Columbia, SC	1,900,596	506,333	2,666,382	1,514,889
Columbus, GA-AL	1,225,022	379,379	1,718,591	1,135,057
Columbus, OH	7,513,761	2,015,697	10,541,344	6,030,728
Corpus Christi, TX	2,374,232	398,138	3,330,884	1,191,182
Davenport-Rock Island-Moline, IA-IL	1,942,898	518,039	2,725,708	1,549,913
Dayton, OH	8,176,922	1,341,289	11,472,822	4,012,977
Daytona Beach, FL	1,452,502	359,735	2,037,747	1,076,285
Des Moines, IA	1,781,444	504,542	2,499,267	1,509,529
Durham, NC	1,814,220	370,789	2,545,215	1,109,355
El Paso, TX-NM	5,843,067	825,225	8,197,797	2,468,977
Fayetteville, NC	1,007,412	341,222	1,413,313	1,020,897
Flint, MI	2,832,232	701,838	3,973,425	2,099,817
Fort Myers-Cape Coral, FL	1,493,715	262,047	2,095,575	784,015
Fort Wayne, IN	1,285,722	500,447	1,803,737	1,497,278
Fresno, CA	3,467,394	673,470	4,864,463	2,014,943
Grand Rapids, MI	2,767,813	711,831	3,883,002	2,129,714
Greenville, SC	1,456,978	344,063	2,044,023	1,029,397
Harrisburg, PA	1,525,415	519,625	2,140,034	1,554,657
Hartford-Middletown, CT	6,146,451	1,054,496	8,623,501	3,154,927
Honolulu, HI	15,040,461	1,305,970	21,102,923	3,907,308
Indianapolis, IN	5,712,839	1,754,741	8,014,723	5,249,977
Jackson, MS	1,274,183	414,816	1,787,549	1,241,080
Jacksonville, FL	5,314,070	929,739	7,455,330	2,781,669
Knoxville, TN	1,493,973	413,520	2,095,901	1,237,204
Lansing-East Lansing, MI	2,192,584	533,804	3,075,997	1,597,078
Las Vegas, NV	7,508,897	633,660	10,534,707	1,895,834
Lawrence-Haverhill, MA-NH	2,320,366	392,260	3,255,656	1,173,595
Lexington-Fayette, KY	1,316,539	595,036	1,846,979	1,780,276
Little Rock-North Little Rock, AR	1,775,840	475,798	2,491,350	1,423,532

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS AND ISTEA AUTHORIZED LEVELS

URBANIZED AREA/STATE	FY 1996 SECTION 5307 APPORTIONMENT	FY 1996 OPERATING ASSISTANCE LIMITATION	*ISTEA FY 1996 AUTHORIZED LEVELS*	
			SECTION 5307	*OPER. ASSIST. LIMITATION*
Amounts Apportioned and Authorized to Urbanized Areas 200,000 to 1,000,000 in Population (continued):				
Lorain-Elyria, OH	$861,005	$358,920	$1,207,899	$1,073,846
Louisville, KY-IN	7,321,902	1,792,128	10,272,196	5,361,835
Madison, WI	3,345,638	457,794	4,693,870	1,369,666
McAllen-Edinburg-Mission, TX	915,901	380,331	1,284,911	1,137,906
Melbourne-Palm Bay, FL	2,333,000	323,361	3,273,082	967,456
Memphis, TN-AR-MS	6,173,037	1,660,925	8,660,467	4,969,290
Mobile, AL	1,578,497	462,840	2,214,498	1,384,762
Modesto, CA	1,963,767	455,526	2,754,997	1,362,880
Montgomery, AL	1,031,791	470,960	1,447,506	1,409,056
Nashville, TN	3,592,225	770,071	5,039,626	2,303,961
New Haven-Meriden, CT	6,228,653	1,063,941	8,739,705	3,183,185
Ogden, UT	1,982,134	321,567	2,780,789	962,090
Oklahoma City, OK	3,422,333	1,065,815	4,801,241	3,188,792
Omaha, NE-IA	3,874,785	1,093,065	5,435,970	3,270,320
Orlando, FL	8,193,216	804,301	11,494,612	2,406,374
Oxnard-Ventura, CA	3,705,962	623,767	5,199,617	1,866,236
Pensacola, FL	1,277,158	348,591	1,791,743	1,042,942
Peoria, IL	1,507,444	485,694	2,114,804	1,453,139
Providence-Pawtucket, RI-MA	10,583,742	2,183,415	15,125,851	6,532,519
Provo-Orem, UT	1,714,979	374,328	2,405,971	1,119,946
Raleigh, NC	1,821,556	335,902	2,555,543	1,004,980
Reno, NV	2,555,303	387,233	3,584,907	1,158,555
Richmond, VA	4,059,523	889,706	5,695,206	2,661,896
Rochester, NY	4,915,213	1,426,222	6,895,637	4,267,087
Rockford, IL	1,307,952	446,955	1,834,945	1,337,236
Salt Lake City, UT	8,702,591	1,128,032	12,209,205	3,374,937
Sarasota-Bradenton, FL	2,512,287	582,302	3,524,501	1,742,178
Scranton-Wilkes-Barre, PA	2,091,063	800,237	2,933,565	2,394,214
Shreveport, LA	1,846,482	484,985	2,590,538	1,451,018
South Bend-Mishawaka, IN-MI	1,602,438	529,802	2,248,102	1,585,105
Spokane, WA	3,898,958	514,098	5,469,922	1,538,120
Springfield, MA-CT	4,009,137	934,026	5,624,496	2,794,494
Stockton, CA	2,045,651	616,738	2,869,852	1,845,208
Syracuse, NY	3,462,323	875,658	4,857,382	2,619,865
Tacoma, WA	6,834,378	715,757	9,588,373	2,141,460
Toledo, OH-MI	3,752,175	1,034,105	5,263,977	3,093,920
Trenton, NJ-PA	3,287,120	913,035	4,611,950	2,731,693
Tucson, AZ	5,725,089	764,985	8,031,994	2,288,745
Tulsa, OK	3,074,489	724,300	4,313,254	2,167,019
West Palm Bch-Boca Raton-Delray Bch, FL	8,709,875	762,335	12,221,104	2,280,817
Wichita, KS	2,127,154	626,604	2,984,214	1,874,726
Wilmington, DE-NJ-MD-PA	4,017,483	926,743	5,636,438	2,772,705
Worcester, MA-CT	2,239,136	534,935	3,141,292	1,600,463
Youngstown-Warren, OH	1,682,473	824,093	2,360,335	2,465,588
TOTAL	$317,068,794	$67,177,823	$445,112,204	$200,988,088

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS AND ISTEA AUTHORIZED LEVELS

URBANIZED AREA/STATE	FY 1996 SECTION 5307 APPORTIONMENT	FY 1996 OPERATING ASSISTANCE LIMITATION	ISTEA FY 1996 AUTHORIZED LEVELS	
			SECTION 5307	OPER. ASSIST. LIMITATION
Amounts Apportioned and Authorized to State Governors for Urbanized Areas 50,000 to 200,000 in Population:				
ALABAMA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$3,403,269	$1,970,561	$4,776,314	$4,118,462
Anniston, AL	328,268	231,980	460,708	484,838
Auburn-Opelika, AL	263,370	129,622	369,626	270,908
Decatur, AL	300,586	152,422	421,857	318,561
Dothan, AL	252,468	133,304	354,326	278,604
Florence, AL	351,728	235,002	493,633	491,153
Gadsden, AL	310,868	233,057	436,287	487,089
Huntsville	986,837	504,984	1,384,975	1,055,414
Tuscaloosa, AL	609,144	350,190	854,902	731,895
ALASKA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$0	$0	$0	$0
ARIZONA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$540,377	$206,966	$758,391	$432,557
Yuma, AZ-CA (AZ)	540,377	206,966	758,391	432,557
ARKANSAS:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,300,294	$798,674	$1,824,896	$1,669,225
Fayetteville-Springdale, AR	358,858	168,344	503,638	351,838
Fort Smith, AR-OK (AR)	488,504	275,251	685,591	575,274
Pine Bluff, AR	330,121	269,436	463,308	563,120
Texarkana, TX-AR (AR)	122,811	85,643	172,359	178,992
CALIFORNIA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$19,917,670	$6,801,253	$27,953,433	$14,214,586
Antioch-Pittsburg, CA	1,126,392	345,636	1,580,833	722,378
Chico, CA	491,805	185,098	690,224	386,855
Davis, CA	597,024	213,010	837,893	445,190
Fairfield, CA	725,103	255,671	1,017,646	534,351
Hemet-San Jacinto, CA	604,950	195,698	849,016	409,007
Hesperia-Apple Valley-Victorville, CA	771,736	265,938	1,083,092	555,810
Indio-Coachella, CA	365,797	126,070	513,377	263,485
Lancaster-Palmdale, CA	1,298,088	162,437	1,821,800	339,492
Lodi, CA	508,197	175,169	713,228	366,103

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS AND ISTEA AUTHORIZED LEVELS

URBANIZED AREA/STATE	FY 1996 SECTION 5307 APPORTIONMENT	FY 1996 OPERATING ASSISTANCE LIMITATION	*ISTEA FY 1996 AUTHORIZED LEVELS*	
			SECTION 5307	*OPER. ASSIST. LIMITATION*
CALIFORNIA (Continued):				
Lompoc, CA	$312,109	$107,558	$438,029	$224,795
Merced, CA	554,873	188,067	778,736	393,059
Napa, CA	579,782	266,728	813,694	557,460
Palm Springs, CA	722,306	180,689	1,013,720	377,639
Redding, CA	417,649	149,645	586,149	312,757
Salinas, CA	1,099,062	423,192	1,542,477	884,469
San Luis Obispo, CA	520,478	179,409	730,464	374,964
Santa Barbara, CA	1,700,301	700,123	2,386,286	1,463,254
Santa Cruz, CA	879,200	376,707	1,233,912	787,316
Santa Maria, CA	799,910	227,014	1,122,633	474,457
Santa Rosa, CA	1,550,935	449,066	2,176,658	938,546
Seaside-Monterey, CA	1,042,196	521,884	1,462,669	1,090,736
Simi Valley, CA	986,513	306,429	1,384,520	640,434
Vacaville, CA	598,886	206,423	840,506	431,423
Visalia	684,059	225,542	960,042	471,382
Watsonville, CA	376,859	129,889	528,903	271,467
Yuba City, CA	601,319	236,597	843,921	494,486
Yuma, AZ-CA (CA)	2,141	1,564	3,005	3,269
COLORADO:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$3,670,024	$1,839,230	$5,150,691	$3,843,983
Boulder, CO	816,637	412,508	1,146,108	862,140
Fort Collins, CO	680,178	294,588	954,595	615,688
Grand Junction, CO	387,265	189,506	543,507	396,068
Greeley, CO	544,019	283,630	763,503	592,785
Longmont, CO	495,760	170,885	695,774	357,148
Pueblo, CO	746,165	488,113	1,047,204	1,020,155
CONNECTICUT:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$12,192,072	$4,543,229	$17,110,538	$9,495,326
Bristol, CT	578,451	297,793	811,826	622,385
Danbury, CT-NY (CT)	2,052,677	492,302	2,880,724	1,028,909
New Britain, CT	1,083,147	626,111	1,520,141	1,308,568
New London-Norwich, CT	871,611	533,937	1,223,262	1,115,926
Norwalk, CT	2,173,486	676,464	3,050,274	1,413,806
Stamford, CT-NY (CT)	2,755,374	1,016,038	3,866,924	2,123,514
Waterbury, CT	2,677,326	900,584	3,757,387	1,882,217

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS AND ISTEA AUTHORIZED LEVELS

URBANIZED AREA/STATE	FY 1996 SECTION 5307 APPORTIONMENT	FY 1996 OPERATING ASSISTANCE LIMITATION	*ISTEA FY 1996 AUTHORIZED LEVELS*	
			SECTION 5307	*OPER. ASSIST. LIMITATION*
DELAWARE:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$276,875	$95,414	*$388,580*	*$199,416*
Dover, DE	276,875	95,414	*388,580*	*199,416*
FLORIDA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$8,438,549	$3,152,975	*$11,843,073*	*$6,589,702*
Deltona, FL	280,578	96,684	*393,776*	*202,069*
Fort Pierce, F	672,119	205,216	*943,284*	*428,900*
Fort Walton Beach, FL	651,532	258,405	*914,392*	*540,065*
Gainesville, FL	834,982	351,847	*1,171,855*	*735,358*
Kissimmee, FL	388,909	134,039	*545,814*	*280,142*
Lakeland, FL	853,604	345,542	*1,197,990*	*722,181*
Naples, FL	561,788	146,868	*788,440*	*306,954*
Ocala, FL	377,378	147,105	*529,631*	*307,449*
Panama City, FL	566,341	234,999	*794,831*	*491,148*
Punta Gorda, FL	370,353	127,629	*519,772*	*266,745*
Spring Hill, FL	283,115	97,565	*397,338*	*203,911*
Stuart, FL	493,989	170,246	*693,288*	*355,813*
Tallahassee, FL	951,837	393,861	*1,335,854*	*823,167*
Titusville, FL.	272,470	93,895	*382,398*	*196,240*
Vero Beach, FL	345,073	118,916	*484,293*	*248,533*
Winter Haven, FL.	534,481	230,158	*750,117*	*481,028*
GEORGIA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$3,694,609	$2,169,758	*$5,185,196*	*$4,534,784*
Albany, GA.	457,623	316,131	*642,251*	*660,712*
Athens, GA.	438,756	197,454	*615,772*	*412,678*
Brunswick, GA	252,489	87,007	*354,355*	*181,844*
Macon, GA.	820,221	542,798	*1,151,138*	*1,134,446*
Rome, GA.	257,398	149,674	*361,245*	*312,819*
Savannah, GA	1,073,169	689,903	*1,506,138*	*1,441,893*
Warner Robins, GA	394,953	186,791	*554,297*	*390,393*
HAWAII:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$981,936	$475,852	*$1,378,096*	*$994,529*
Kailua, HI	981,936	475,852	*1,378,096*	*994,529*

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS AND ISTEA AUTHORIZED LEVELS

URBANIZED AREA/STATE	FY 1996 SECTION 5307 APPORTIONMENT	FY 1996 OPERATING ASSISTANCE LIMITATION	*ISTEA FY 1996 AUTHORIZED LEVELS*	
			SECTION 5307	*OPER. ASSIST. LIMITATION*
IDAHO:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,943,421	$809,759	*$2,727,492*	*1,692,392*
Boise City, ID	1,189,207	469,898	*1,668,991*	*982,083*
Idaho Falls, ID	426,308	146,933	*598,301*	*307,090*
Pocatello, ID	327,906	192,928	*460,200*	*403,219*
ILLINOIS:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$8,901,852	$5,371,412	*$12,493,289*	*11,226,225*
Alton, IL	481,081	372,784	*675,172*	*779,118*
Aurora, IL	1,347,372	723,464	*1,890,967*	*1,512,035*
Beloit, WI-IL (IL)	61,486	25,498	*86,292*	*53,290*
Bloomington-Normal, IL	775,027	382,645	*1,087,711*	*799,726*
Champaign-Urbana, IL	1,093,716	616,763	*1,534,974*	*1,289,032*
Crystal Lake, IL	439,137	151,340	*616,306*	*316,301*
Decatur, IL	615,654	446,782	*864,038*	*933,771*
Dubuque, IA-IL (IL)	14,341	8,765	*20,127*	*18,319*
Elgin, IL	971,930	636,793	*1,364,054*	*1,330,894*
Joliet, IL	1,123,830	953,579	*1,577,238*	*1,992,976*
Kankakee, IL.	441,072	262,596	*619,021*	*548,825*
Round Lake Beach-McHenry, IL-WI (IL)	640,034	209,575	*898,254*	*438,011*
Springfield, IL.	897,172	580,828	*1,259,135*	*1,213,927*
INDIANA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$5,191,946	$3,063,742	*$7,286,630*	*$6,403,206*
Anderson, IN	419,655	303,284	*588,965*	*633,863*
Bloomington, IN	626,233	287,968	*878,886*	*601,851*
Elkhart-GosheN, IN	627,641	288,505	*880,862*	*602,973*
Evansville, IN-KY (IN)	1,162,703	712,185	*1,631,794*	*1,488,464*
Kokomo, IN	422,610	265,091	*593,111*	*554,040*
Lafayette-West Lafayette, IN	840,174	439,016	*1,179,141*	*917,542*
Muncie, IN	617,633	435,588	*866,816*	*910,377*
Terre Haute, IN	475,297	332,105	*667,055*	*694,097*
IOWA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$2,826,428	$1,777,815	*$3,966,747*	*$3,715,625*
Cedar Rapids, IA	878,360	542,576	*1,232,733*	*1,133,981*
Dubuque, IA-IL (IA)	427,531	302,695	*600,018*	*632,631*
Iowa City, IA	506,089	207,305	*710,271*	*433,267*
Sioux City, IA-NE-SD (IA)	467,423	311,588	*656,004*	*651,218*
Waterloo-Cedar Falls, IA	547,025	413,651	*767,721*	*864,528*

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS AND ISTEA AUTHORIZED LEVELS

URBANIZED AREA/STATE	FY 1996 SECTION 5307 APPORTIONMENT	FY 1996 OPERATING ASSISTANCE LIMITATION	*ISTEA FY 1996 AUTHORIZED LEVELS*	
			SECTION 5307	*OPER. ASSIST. LIMITATION*
KANSAS:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,372,321	$759,970	*$1,925,983*	*$1,588,334*
Lawrence, KS	519,670	217,653	*729,331*	*454,895*
St. Joseph, MO-KS (KS)	4,290	3,866	*6,020*	*8,081*
Topeka, KS	848,361	538,451	*1,190,632*	*1,125,359*
KENTUCKY:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,081,613	$635,567	*$1,517,989*	*$1,328,331*
Clarksville, TN-KY (KY)	131,978	73,054	*185,225*	*152,683*
Evansville, IN-KY (KY)	162,067	45,056	*227,453*	*94,166*
Huntington-Ashland, WV-KY-OH ((KY)	323,189	218,446	*453,579*	*456,550*
Owensboro, KY	464,379	299,011	*651,732*	*624,931*
LOUISIANA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$3,203,290	$1,868,922	*$4,495,650*	*$3,906,039*
Alexandria, LA	467,451	326,140	*656,043*	*681,632*
Houma, LA	328,804	192,233	*461,459*	*401,767*
Lafayette, LA	808,805	428,989	*1,135,116*	*896,585*
Lake Charles, LA	649,698	413,989	*911,817*	*865,235*
Monroe, LA	617,764	393,577	*866,999*	*822,574*
Slidell, LA	330,768	113,994	*464,216*	*238,246*
MAINE:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,394,127	$808,464	*$1,956,587*	*$1,689,686*
Bangor, ME	286,469	152,758	*402,045*	*319,264*
Lewiston-Auburn, ME	332,873	215,633	*467,170*	*450,672*
Portland, ME	711,761	409,648	*998,921*	*856,162*
Portsmouth-Dover-Rochester, NH-ME (ME)	63,024	30,425	*88,451*	*63,589*
MARYLAND:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,550,341	$751,514	*$2,175,825*	*$1,570,661*
Annapolis, MD	504,949	228,635	*708,670*	*477,846*
Cumberland, MD-WV (MD)	268,559	180,307	*376,908*	*376,842*
Frederick, MD	364,345	125,567	*511,340*	*262,434*
Hagerstown, MD-PA-WV (MD)	412,488	217,005	*578,907*	*453,540*

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS AND ISTEA AUTHORIZED LEVELS

URBANIZED AREA/STATE	FY 1996 SECTION 5307 APPORTIONMENT	FY 1996 OPERATING ASSISTANCE LIMITATION	*ISTEA FY 1996 AUTHORIZED LEVELS*	
			SECTION 5307	*OPER. ASSIST. LIMITATION*
KANSAS:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,372,321	$759,970	*$1,925,983*	*$1,588,334*
Lawrence, KS	519,670	217,653	*729,331*	*454,895*
St. Joseph, MO-KS (KS)	4,290	3,866	*6,020*	*8,081*
Topeka, KS	848,361	538,451	*1,190,632*	*1,125,359*
KENTUCKY:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,081,613	$635,567	*$1,517,989*	*$1,328,331*
Clarksville, TN-KY (KY)	131,978	73,054	*185,225*	*152,683*
Evansville, IN-KY (KY)	162,067	45,056	*227,453*	*94,166*
Huntington-Ashland, WV-KY-OH ((KY)	323,189	218,446	*453,579*	*456,550*
Owensboro, KY	464,379	299,011	*651,732*	*624,931*
LOUISIANA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$3,203,290	$1,868,922	*$4,495,650*	*$3,906,039*
Alexandria, LA	467,451	326,140	*656,043*	*681,632*
Houma, LA	328,804	192,233	*461,459*	*401,767*
Lafayette, LA	808,805	428,989	*1,135,116*	*896,585*
Lake Charles, LA	649,698	413,989	*911,817*	*865,235*
Monroe, LA	617,764	393,577	*866,999*	*822,574*
Slidell, LA	330,768	113,994	*464,216*	*238,246*
MAINE:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,394,127	$808,464	*$1,956,587*	*$1,689,686*
Bangor, ME	286,469	152,758	*402,045*	*319,264*
Lewiston-Auburn, ME	332,873	215,633	*467,170*	*450,672*
Portland, ME	711,761	409,648	*998,921*	*856,162*
Portsmouth-Dover-Rochester, NH-ME (ME)	63,024	30,425	*88,451*	*63,589*
MARYLAND:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,550,341	$751,514	*$2,175,825*	*$1,570,661*
Annapolis, MD	504,949	228,635	*708,670*	*477,846*
Cumberland, MD-WV (MD)	268,559	180,307	*376,908*	*376,842*
Frederick, MD	364,345	125,567	*511,340*	*262,434*
Hagerstown, MD-PA-WV (MD)	412,488	217,005	*578,907*	*453,540*

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS AND ISTEA AUTHORIZED LEVELS

URBANIZED AREA/STATE	FY 1996 SECTION 5307 APPORTIONMENT	FY 1996 OPERATING ASSISTANCE LIMITATION	*ISTEA FY 1996 AUTHORIZED LEVELS*	
			SECTION 5307	*OPER. ASSIST. LIMITATION*
MISSOURI:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$2,209,077	$1,205,239	*$3,100,327*	*$2,518,944*
Columbia, MO	436,128	222,473	*612,083*	*464,968*
Joplin, MO	306,282	158,607	*429,851*	*331,488*
Springfield, MO	1,028,877	512,465	*1,443,976*	*1,071,049*
St. Joseph, MO-KS (MO)	437,790	311,694	*614,417*	*651,439*
MONTANA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,470,589	$865,821	*$2,063,897*	*$1,809,562*
Billings, MT	567,146	332,854	*795,961*	*695,665*
Great Falls, MT	528,877	324,442	*742,252*	*678,081*
Missoula, MT	374,566	208,525	*525,684*	*435,816*
NEBRASKA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,634,847	$783,608	*$2,294,424*	*1,637,737*
Lincoln, NE	1,564,126	747,115	*2,195,171*	*1,561,466*
Sioux City, IA-NE-SD (NE)	70,721	36,493	*99,253*	*76,270*
NEVADA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$0	$0	*$0*	*$0*
NEW HAMPSHIRE:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,976,286	$930,889	*$2,786,248*	*1,945,554*
Lowell, MA-NH (NH)	4,063	1,136	*5,703*	*2,375*
Manchester, NH	832,265	425,529	*1,168,041*	*889,354*
Nashua, NH	656,535	270,768	*934,044*	*565,903*
Portsmouth-Dover-Rochester, NH-ME (NH)	483,423	233,456	*678,460*	*487,922*
NEW JERSEY:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,504,218	$1,162,152	*$2,111,093*	*$2,428,892*
Atlantic City, NJ	1,084,198	913,408	*1,521,616*	*1,909,019*
Vineland-Millville, NJ	420,020	248,744	*589,477*	*519,874*
NEW MEXICO:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$819,128	$346,371	*$1,149,605*	*723,913*
Las Cruces, NM	455,029	185,079	*638,610*	*386,814*

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS AND ISTEA AUTHORIZED LEVELS

URBANIZED AREA/STATE	FY 1996 SECTION 5307 APPORTIONMENT	FY 1996 OPERATING ASSISTANCE LIMITATION	ISTEA FY 1996 AUTHORIZED LEVELS	
			SECTION 5307	OPER. ASSIST. LIMITATION
NEW MEXICO (Continued):				
Santa Fe, NM	$364,099	$161,292	$510,995	$337,099
NEW YORK:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$4,544,794	$2,887,397	$6,378,383	$6,034,647
Binghamton, NY	1,140,763	753,963	1,601,002	1,575,780
Danbury, CT-NY (NY)	15,462	4,225	21,700	8,830
Elmira, NY	468,433	328,474	657,422	686,509
Glens Falls, NY	322,133	163,510	452,097	341,736
Ithaca, NY	325,123	112,051	456,293	234,186
Newburgh, NY	422,181	203,473	592,509	425,258
Poughkeepsie, NY	886,848	630,599	1,244,645	1,317,950
Stamford, CT-NY (NY)	105	109	147	227
Utica-Rome, NY	963,746	690,993	1,352,568	1,444,171
NORTH CAROLINA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$7,378,023	$3,807,386	$10,354,680	$7,957,418
Asheville, NC	569,489	313,739	799,248	655,713
Burlington, NC	413,116	238,562	579,787	498,594
Gastonia, NC	604,900	363,032	848,947	758,736
Goldsboro, NC	314,139	162,993	440,878	340,654
Greensboro, NC	1,301,026	686,529	1,825,923	1,434,845
Greenville, NC	361,699	124,657	507,625	260,532
Hickory, NC	344,959	173,702	484,133	363,036
High Point, NC	581,730	357,277	816,429	746,708
Jacksonville, NC	561,638	205,012	788,231	428,475
Kannapolis, NC	405,454	207,368	569,034	433,397
Rocky Mount, NC	324,112	111,702	454,875	233,456
Wilmington, NC	530,128	259,914	744,008	543,219
Winston-Salem, NC	1,065,633	602,897	1,495,562	1,260,053
NORTH DAKOTA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,433,544	$694,941	$2,011,905	$1,452,424
Bismarck, ND	413,373	217,303	580,147	454,162
Fargo-Moorhead, ND-MN (ND)	597,844	285,401	839,044	596,487
Grand Forks, ND-MN (ND)	422,327	192,237	592,714	401,775
OHIO:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$3,941,572	$2,454,959	$5,531,795	$5,130,852
Hamilton, OH	814,689	413,830	1,143,375	864,904
Huntington-Ashland, WV-KY-OH (OH)	207,463	123,238	291,164	257,566
Lima, OH	445,253	296,760	624,890	620,226

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS AND ISTEA AUTHORIZED LEVELS

URBANIZED AREA/STATE	FY 1996 SECTION 5307 APPORTIONMENT	FY 1996 OPERATING ASSISTANCE LIMITATION	ISTEA FY 1996 AUTHORIZED LEVELS	
			SECTION 5307	OPER. ASSIST. LIMITATION
OHIO (Continued):				
Mansfield, OH	$429,874	$297,105	$603,306	$620,948
Middletown, OH	560,141	286,086	786,129	597,918
Newark, OH	341,288	171,899	478,980	359,268
Parkersburg, WV-OH (OH)	50,537	31,162	70,926	65,129
Sharon, PA-OH (OH)	33,325	20,995	46,770	43,880
Springfield, OH	647,935	453,628	909,343	948,079
Steubenville-Weirton, OH-WV-PA (OH)	233,102	194,158	327,147	405,789
Wheeling, WV-OH (OH)	177,965	166,098	249,765	347,145
OKLAHOMA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$613,484	$386,416	$860,994	$807,607
Fort Smith, AR-OK (OK)	10,762	6,655	15,104	13,908
Lawton, OK	602,722	379,761	845,890	793,699
OREGON:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$3,199,315	$1,425,107	$4,490,075	$2,978,467
Eugene-Springfield, OR	1,505,988	725,646	2,113,577	1,516,596
Longview, WA-OR (OR)	10,015	5,369	14,056	11,221
Medford, OR	465,419	194,556	653,192	406,622
Salem, OR	1,217,893	499,536	1,709,250	1,044,028
PENNSYLVANIA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$8,363,573	$5,129,718	$11,737,846	10,721,085
Altoona, PA	571,348	408,051	801,858	852,824
Erie, PA	1,469,783	929,251	2,062,766	1,942,131
Hagerstown, MD-PA-WV (PA)	5,035	3,855	7,066	8,057
Johnstown, PA	526,872	437,207	739,438	913,760
Lancaster, PA	1,328,871	607,678	1,865,002	1,270,044
Monessen, PA	361,637	211,581	507,539	442,204
Pottstown, PA	343,175	118,272	481,628	247,188
Reading, PA	1,551,229	1,108,504	2,177,070	2,316,765
Sharon, PA-OH (PA)	240,254	184,335	337,184	385,259
State College, PA	500,029	250,976	701,765	524,539
Steubenville-Weirton, OH-WV-PA (PA)	1,746	681	2,451	1,424
Williamsport, PA	419,158	277,812	588,267	580,626
York, PA	1,044,436	591,515	1,465,812	1,236,263
PUERTO RICO:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$7,726,196	$3,312,130	$10,843,303	$6,922,336
Aguadilla, PR	675,935	245,837	948,641	513,799
Arecibo, PR	631,577	284,696	886,386	595,014

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS AND ISTEA AUTHORIZED LEVELS

URBANIZED AREA/STATE	FY 1996 SECTION 5307 APPORTIONMENT	FY 1996 OPERATING ASSISTANCE LIMITATION	*ISTEA FY 1996 AUTHORIZED LEVELS*	
			SECTION 5307	*OPER. ASSIST. LIMITATION*
PUERTO RICO (Continued):				
Caguas, PR	$1,654,016	$615,765	$2,321,327	$1,286,946
Cayey, PR	489,031	168,563	686,331	352,295
Humacao, PR	423,246	145,877	594,004	304,882
Mayaguez, PR	909,345	453,778	1,276,219	948,394
Ponce, PR	2,023,581	1,056,142	2,839,973	2,207,331
Vega Baja-Manati, PR	919,465	341,472	1,290,422	713,675
RHODE ISLAND:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$491,793	$246,288	$690,206	514,740
Fall River, MA-RI (RI)	112,740	54,179	158,225	113,234
Newport, RI	379,053	192,109	531,981	401,506
SOUTH CAROLINA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$2,082,677	$1,013,149	$2,922,932	$2,117,477
Anderson, SC	280,103	158,795	393,111	331,881
Florence, SC	288,108	166,525	404,345	348,036
Myrtle Beach, SC	302,135	104,116	424,031	217,603
Rock Hill, SC	320,803	149,201	450,231	311,829
Spartanburg, SC	559,230	319,995	784,851	668,787
Sumter, SC	332,298	114,517	466,363	239,341
SOUTH DAKOTA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,034,113	$523,345	$1,451,325	$1,093,789
Rapid City, SD	329,349	177,805	462,224	371,611
Sioux City, IA-NE-SD (SD)	9,234	4,219	12,960	8,817
Sioux Falls, SD	695,530	341,321	976,141	713,361
TENNESSEE:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$1,600,470	$887,865	$2,246,176	$1,855,633
Bristol, TN-Bristol, VA (TN)	149,596	90,241	209,950	188,602
Clarksville, TN-KY (TN)	364,740	167,264	511,894	349,581
Jackson, TN	276,074	148,661	387,455	310,701
Johnson City, TN	420,826	228,788	590,607	478,166
Kingsport, TN-VA (TN)	389,234	252,911	546,270	528,583
TEXAS:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$14,818,915	$7,687,065	$20,797,591	$16,065,929
Abilene, TX	525,749	322,174	737,862	673,342
Amarillo, TX	975,152	544,163	1,368,575	1,137,297

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS AND ISTEA AUTHORIZED LEVELS

URBANIZED AREA/STATE	FY 1996 SECTION 5307 APPORTIONMENT	FY 1996 OPERATING ASSISTANCE LIMITATION	*ISTEA FY 1996 AUTHORIZED LEVELS*	
			SECTION 5307	*OPER. ASSIST. LIMITATION*
TEXAS (Continued):				
Beaumont, TX	$670,691	$436,937	$941,280	$913,196
Brownsville, TX	974,832	343,413	1,368,127	717,732
Bryan-College Station, TX	652,977	248,808	916,420	520,007
Denton, TX	352,719	121,558	495,024	254,039
Galveston, TX	374,156	263,556	525,109	550,830
Harlingen, TX	479,101	213,740	672,394	446,716
Killeen, TX	916,390	322,616	1,286,107	674,267
Laredo, TX	1,157,373	440,079	1,624,314	919,762
Lewisville, TX	407,184	140,316	571,462	293,260
Longview, TX	400,618	205,890	562,247	430,310
Lubbock, TX	1,140,942	634,745	1,601,253	1,326,614
Midland, TX	499,903	258,553	701,588	540,374
Odessa, TX	554,572	408,081	778,314	852,888
Port Arthur, TX	604,956	418,221	849,024	874,080
San Angelo, TX	519,838	269,195	729,566	562,616
Sherman-Denison, TX	260,211	197,337	365,193	412,433
Temple, TX	295,412	147,551	414,596	308,381
Texarkana, TX-AR (TX)	238,374	142,859	334,546	298,574
Texas City, TX	633,643	308,822	889,286	645,437
Tyler, TX	495,493	272,311	695,400	569,129
Victoria, TX	343,487	202,360	482,066	422,931
Waco, TX	748,295	436,203	1,050,194	911,662
Wichita Falls, TX	596,847	387,585	837,644	810,051
UTAH:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$296,183	$102,073	$415,678	$213,332
Logan, UT	296,183	102,073	415,678	213,332
VERMONT:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$519,715	$244,385	$729,393	$510,764
Burlington, VT	519,715	244,385	729,393	510,764
VIRGINIA:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$3,449,838	$2,010,460	$4,841,670	$4,201,851
Bristol, TN-Bristol, VA (VA)	106,501	54,597	149,469	114,108
Charlottesville, VA	496,053	258,207	696,186	539,650
Danville, VA	281,697	182,428	395,347	381,273
Fredericksburg, VA	330,721	113,974	464,149	238,206
Kingsport, TN-VA (VA)	20,107	15,609	28,219	32,622
Lynchburg, VA	471,917	290,441	662,312	607,020
Petersburg, VA	598,264	414,079	839,632	865,423
Roanoke, VA	1,144,578	681,125	1,606,356	1,423,548

TABLE 2

FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS AND ISTEA AUTHORIZED LEVELS

URBANIZED AREA/STATE	FY 1996 SECTION 5307 APPORTIONMENT	FY 1996 OPERATING ASSISTANCE LIMITATION	*ISTEA FY 1996 AUTHORIZED LEVELS*	
			SECTION 5307	*OPER. ASSIST. LIMITATION*
WASHINGTON:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$3,260,161	$1,441,915	*$4,575,468*	*3,013,595*
Bellingham, WA	384,111	178,042	*539,080*	*372,107*
Bremerton, WA	744,095	218,876	*1,044,300*	*457,450*
Longview, WA-OR (WA)	325,020	172,874	*456,148*	*361,304*
Olympia, WA	578,911	220,296	*812,472*	*460,417*
Richland-Kennewick-Pasco, WA	603,931	328,900	*847,586*	*687,400*
Yakima, WA	624,093	322,927	*875,882*	*674,917*
WEST VIRGINIA				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$2,505,599	$1,811,406	*$3,516,480*	*$3,785,830*
Charleston, WV	1,007,960	668,361	*1,414,621*	*1,396,872*
Cumberland, MD-WV (WV)	12,055	10,483	*16,919*	*21,909*
Hagerstown, MD-PA-WV (WV)	3,045	2,443	*4,273*	*5,106*
Huntington-Ashland, WV-KY-OH (WV)	565,909	434,965	*794,224*	*909,075*
Parkersburg, WV-OH (WV)	363,952	275,348	*510,789*	*575,476*
Steubenville-Weirton, OH-WV-PA (WV)	156,588	128,467	*219,763*	*268,495*
Wheeling, WV-OH (WV)	396,090	291,339	*555,891*	*608,897*
WISCONSIN:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$6,859,182	$3,935,089	*$9,626,514*	*8,224,316*
Appleton-Neenah, WI	1,256,040	655,709	*1,762,788*	*1,370,429*
Beloit, WI-IL (WI)	269,233	155,628	*377,856*	*325,262*
Duluth, MN-WI (WI)	117,931	94,707	*165,510*	*197,938*
Eau Claire, WI	491,973	237,885	*690,459*	*497,178*
Green Bay, WI	953,966	506,229	*1,338,843*	*1,058,016*
Janesville, WI	362,064	194,329	*508,139*	*406,146*
Kenosha, WI	659,249	483,440	*925,223*	*1,010,386*
La Crosse, WI-MN (WI)	523,367	276,146	*734,519*	*577,144*
Oshkosh, WI	456,753	282,563	*641,030*	*590,554*
Racine, WI	1,018,213	621,866	*1,429,010*	*1,299,697*
Round Lake Beach-McHenry, IL-WI (WI)	382	99	*536*	*206*
Sheboygan, WI	430,344	238,772	*603,965*	*499,033*
Wausau, WI	319,667	187,716	*448,636*	*392,326*
WYOMING:				
State apportionment and limitation for areas 50,000 to 200,000 in population:	$718,088	461,199	*$1,007,800*	*$963,904*
Casper, WY	329,405	247,399	*462,303*	*517,063*
Cheyenne, WY	388,683	213,800	*545,497*	*446,841*
TOTAL	$181,182,511	$92,949,803	*$254,292,585*	*$194,264,640*

TABLE 3

FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5311 NONURBANIZED AREA FORMULA APPORTIONMENTS, SECTION 5311(b) RURAL TRANSIT ASSISTANCE PROGRAM (RTAP) ALLOCATIONS, AND ISTEA AUTHORIZED LEVELS

STATE	FY 1996 SECTION 5311 APPORTIONMENT	FY 1996 RTAP ALLOCATION	ISTEA FY 1996 AUTHORIZED LEVELS SECTION 5311 APPORTIONMENT	ISTEA FY 1996 AUTHORIZED LEVELS RTAP ALLOCATION
Alabama	$2,652,238	$97,295	$3,671,980	$171,702
Alaska	395,506	57,053	547,571	68,148
America Samoa	56,372	11,005	78,046	12,587
Arizona	1,216,348	71,690	1,684,014	105,814
Arkansas	2,120,354	87,810	2,935,595	147,296
California	5,175,093	142,282	7,164,831	287,468
Colorado	1,104,676	69,699	1,529,405	100,690
Connecticut	1,002,045	67,868	1,387,315	95,981
Delaware	249,986	54,458	346,102	61,471
Florida	3,326,778	109,323	4,605,870	202,655
Georgia	3,877,855	119,150	5,368,825	227,942
Guam	160,478	12,862	222,179	17,364
Hawaii	435,230	57,761	602,569	69,971
Idaho	878,064	65,658	1,215,665	90,291
Illinois	3,589,344	113,923	4,925,597	213,252
Indiana	3,436,672	111,283	4,758,015	207,698
Iowa	2,210,501	89,418	3,060,402	151,433
Kansas	1,758,384	81,356	2,434,453	130,686
Kentucky	2,902,708	101,761	4,018,751	183,196
Louisiana	2,400,749	92,810	3,323,798	160,162
Maine	1,158,455	70,658	1,603,862	103,158
Maryland	1,446,276	75,790	2,002,345	116,365
Massachusetts	1,549,968	77,639	2,145,905	121,123
Michigan	4,197,578	124,851	5,811,478	242,613
Minnesota	2,415,464	93,073	3,344,170	160,838
Mississippi	2,357,179	92,033	3,263,476	158,163
Missouri	2,813,393	100,168	3,895,097	179,097
Montana	711,301	62,684	984,784	82,639
Nebraska	1,073,263	69,138	1,485,915	99,248
Nevada	350,404	56,248	485,129	66,079
New Hampshire	927,778	66,544	1,284,493	92,573
New Jersey	1,326,526	73,655	1,836,553	110,870
New Mexico	1,042,850	68,596	1,443,809	97,853
New York	4,669,530	133,267	6,464,887	264,269
North Carolina	4,960,420	138,454	6,867,620	277,617
North Dakota	526,039	59,380	728,292	74,138
Northern Marianas	52,240	10,932	72,326	12,397
Ohio	5,050,053	140,053	6,991,715	281,730
Oklahoma	2,190,596	88,980	2,988,886	149,062
Oregon	1,714,142	80,567	2,373,202	128,656
Pennsylvania	5,633,387	150,455	7,799,331	308,498
Puerto Rico	1,683,433	80,019	2,330,686	127,247
Rhode Island	215,650	53,845	298,565	59,895
South Carolina	2,482,715	94,272	3,437,278	163,924
South Dakota	641,200	61,434	887,731	79,423
Tennessee	3,204,902	107,150	4,437,133	197,062
Texas	6,766,441	170,658	9,368,019	360,492
Utah	486,065	58,668	672,949	72,304
Vermont	573,288	60,223	793,708	76,306
Virgin Islands	122,703	12,188	169,880	15,630
Virginia	2,841,456	100,669	3,933,949	180,385
Washington	1,990,972	85,503	2,756,468	141,359
West Virginia	1,692,900	80,188	2,343,792	127,682
Wisconsin	2,925,133	102,161	4,049,799	184,225
Wyoming	409,113	57,295	566,410	68,773
TOTAL	$111,152,194	$4,571,903	$153,800,625	$7,687,500

TABLE 4

FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5310 ELDERLY AND PERSONS WITH DISABILITIES APPORTIONMENTS AND ISTEA AUTHORIZED LEVELS

STATE	FY 1996 SECTION 5310 APPORTIONMENT	ISTEA FY 1996 AUTHORIZED LEVELS SECTION 5310
Alabama	$895,886	$1,188,857
Alaska	170,310	187,529
America Samoa	51,784	52,462
Arizona	793,996	1,048,244
Arkansas	636,433	830,799
California	4,699,994	6,438,691
Colorado	623,654	813,164
Connecticut	763,496	931,731
Delaware	239,377	282,845
District of Columbia	237,859	280,750
Florida	3,182,846	4,344,961
Georgia	1,151,384	1,541,455
Guam	130,934	133,189
Hawaii	295,052	359,680
Idaho	301,135	368,074
Illinois	2,069,766	2,808,862
Indiana	1,102,462	1,473,940
Iowa	681,581	893,107
Kansas	577,019	748,806
Kentucky	860,030	1,139,374
Louisiana	862,700	1,143,058
Maine	367,816	460,097
Maryland	866,616	1,148,462
Massachusetts	1,232,927	1,653,988
Michigan	1,775,854	2,403,250
Minnesota	878,344	1,164,648
Mississippi	619,295	807,149
Missouri	1,117,527	1,494,731
Montana	279,152	337,737
Nebraska	417,081	528,084
Nevada	319,191	392,992
New Hampshire	303,464	371,288
New Jersey	1,473,234	1,985,622
New Mexico	371,002	464,494
New York	3,367,982	4,600,457
North Carolina	1,304,673	1,753,000
North Dakota	242,798	287,567
Northern Marianas	51,629	52,249
Ohio	2,158,526	2,931,355
Oklahoma	746,937	983,300
Oregon	696,866	914,200
Pennsylvania	2,581,056	3,514,464
Puerto Rico	662,858	867,267
Rhode Island	331,207	409,574
South Carolina	723,158	950,484
South Dakota	259,417	310,501
Tennessee	1,051,541	1,403,667
Texas	2,664,541	3,629,678
Utah	348,101	432,889
Vermont	220,476	256,762
Virgin Islands	132,534	135,397
Virginia	1,092,517	1,460,215
Washington	983,413	1,309,647
West Virginia	537,787	694,663
Wisconsin	1,003,285	1,337,072
Wyoming	192,733	218,474
TOTAL	$51,703,234	$68,675,000

TABLE 5

FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5309(m)(1)(A) FIXED GUIDEWAY MODERNIZATION APPORTIONMENTS AND ISTEA AUTHORIZED LEVELS

AREA	FY 1996 SECTION 5309 (m) (1) (A) APPORTIONMENT	*ISTEA FY 1996 AUTHORIZED LEVELS SECTION 5309(m)(1)(A)*
AZ Phoenix	$430,648	*$737,988*
CA Los Angeles	6,615,338	*10,884,462*
CA Sacramento	767,811	*1,226,898*
CA San Diego	1,593,503	*2,507,902*
CA San Francisco	43,212,203	*53,887,831*
CA San Jose	3,065,766	*5,117,792*
CO Denver	348,697	*564,945*
CT Hartford	394,463	*668,180*
CT Southwestern Connecticut	30,625,453	*33,909,183*
DE Wilmington	249,238	*415,917*
DC Washington	13,984,659	*21,759,041*
FL Ft. Lauderdale	904,437	*1,507,903*
FL Jacksonville	28,705	*45,514*
FL Miami	2,536,010	*3,999,325*
FL West Palm Beach	693,955	*1,149,236*
GA Atlanta	5,798,258	*8,821,106*
HI Honolulu	198,564	*344,614*
IL Chicago/Northwestern Indiana	93,730,447	*111,641,249*
LA New Orleans	1,970,462	*2,245,579*
MD Baltimore	2,199,246	*3,464,153*
MD Baltimore Commuter Rail	11,265,859	*14,538,404*
MA Boston	46,806,426	*55,848,740*
MA Lawrence-Haverhill	379,171	*632,251*
MI Detroit	146,476	*224,810*
MN Minneapolis	1,038,597	*1,703,063*
MO Kansas City	15,859	*26,846*
MO St. Louis	779,988	*1,241,800*
NJ Northeastern New Jersey	59,571,625	*69,837,170*
NJ Trenton	444,762	*679,835*
NY Buffalo	333,695	*525,524*
NY New York	226,842,214	*286,244,341*
OH Cleveland	10,195,655	*10,980,941*
OH Dayton	1,302,116	*2,189,873*
PA Philadelphia/Southern New Jersey	68,178,208	*78,754,380*
PA Pittsburgh	14,520,301	*15,502,563*
PR San Juan	672,231	*1,077,415*
OR Portland	817,199	*1,289,131*
RI Providence	779,570	*1,267,260*
TN Chattanooga	16,174	*27,093*
TX Dallas	231,097	*385,211*
TX Houston	1,752,065	*2,892,435*
VA Norfolk	357,986	*610,399*
WA Seattle	4,868,138	*8,050,515*
WA Tacoma	149,557	*256,172*
WI Madison	192,168	*315,010*
TOTAL	$661,005,000	*$820,000,000*

TABLE 6

FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5309(m)(1)(B) NEW START ALLOCATIONS

	PROJECT LOCATION AND DESCRIPTION	FY 1996 SECTION 5309(m)(1)(B) ALLOCATION	PRIOR YEAR UNOBLIGATED ALLOCATION	TOTAL AVAILABLE
CA	Los Angeles- Metrorail- MOS-3	$83,978,341	$0	$83,978,341
CA	Los Angeles - San Diego (LOSSAN)	8,397,834	0	8,397,834
CA	Orange County Transitway	0	20,346,250	20,346,250
CA	Sacramento- LRT Extension	1,975,961	0	1,975,961
CA	San Diego Mid-Coast Extension	0	948,000	948,000
CA	San Francisco- BART Extension to SFO/Tasman	9,879,805	33,235,246	43,115,051
CA	San Jose to Gilroy Commuter Rail	0	4,000,000	4,000,000
FL	Fort Lauderdale- Tri-County Commuter Rail	9,879,805	0	9,879,805
FL	Jacksonville- Automated Skyway Express	9,603,788	0	9,603,788
FL	Miami- North 27th Avenue	1,975,961	0	1,975,961
FL	Tampa-Lakeland Commuter Rail	493,990	496,250	990,240
GA	Atlanta- North Springs	41,900,252	0	41,900,252
IL	Chicago- Wisconsin Central Commuter Rail	14,226,919	0	14,226,919
LA	New Orleans- Canal Street Corridor	4,939,902	7,734,800	12,674,702
MA	Boston- South Boston Piers (MOS-2) Transitway	19,818,888	0	19,818,888
MA	New Bedford-Fall River Commuter Rail	0	744,375	744,375
MD	Baltimore- Central Corridor Extensions	15,130,921	0	15,130,921
MD	MARC- Commuter Rail	9,879,805	0	9,879,805
MI	Detroit LRT Project	0	5,110,000	5,110,000
MN	Twin Cities Central Corridor	0	4,962,500	4,962,500
MO	St. Louis- Metrolink LRT Project	12,349,756	5,955,000	18,304,756
NJ	Urban Core (Secaucus)	79,285,433	0	79,285,433
NJ	Burlington-Gloucester Line	0	1,488,750	1,488,750
NJ	Hawthorne-Warwick Commuter Rail	0	21,559,000	21,559,000
NY	New York- Queens Connection	125,201,949	0	125,201,949
NY	New York- Staten Island-Midtown Ferry	0	375,000	375,000
NY	New York- Whitehall Ferry Terminal	2,469,951	2,481,250	4,951,201
OH	Cincinnati- Northeast/Northern Kentucky Rail	987,981	0	987,981
OH	Cleveland- Dual Hub	0	4,023,030	4,023,030
OH	Canton-Akron-Cleveland [Northeast Ohio] Com	4,198,917	0	4,198,917
OR	Portland- Westside LRT	128,575,779	0	128,575,779
PA	Pittsburgh- Busway	22,357,998	0	22,357,998
PR	San Juan- Tren Urbano	7,409,854	0	7,409,854
TN	Memphis- Regional Rail Plan	1,234,976	0	1,234,976
TX	Dallas- Ft. Worth RAILTRAN	5,927,883	2,977,500	8,905,383
TX	Dallas- North Central LRT Ext.	2,963,941	1,281,250	4,245,191
TX	Dallas- South Oak Cliff Line	16,737,377	0	16,737,377
TX	Houston- Regional Bus Plan	22,357,998	0	22,357,998
UT	Salt Lake City- South LRT	9,642,195	0	9,642,195
VT	Burlington-Charlotte Commuter Rail	5,582,090	0	5,582,090
WI	Milwaukee- East-West Corridor	0	3,000,000	3,000,000
WA	Seattle-Tacoma Commuter Rail	0	3,952,375	3,952,375
WA	Seattle-Tacoma Commuter Rail	0	0	0
	TOTAL	$679,366,250	$124,670,576	$804,036,826

TABLE 7

FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5309(m)(1)(C) BUS ALLOCATIONS

STATE/AREA	PURPOSE	SUB-ALLOCATION	FY 1996 SECTION 5309(m)(1)(C) ALLOCATION
AR Statewide	Buses and intermodal and bus related facilities		$6,153,500
Arkansas Hwy. & Transp. Dept.		$496,250	
Central Arkansas Transit		794,000	
Hot Springs Transit		397,000	
Pine Bluff Transit		198,500	
South Central Arkansas		297,750	
Southeast Arkansas Transit		794,000	
University of Arkansas		3,176,000	
CA Coachella Valley	Sunline bus facility		496,250
CA Long Beach	Bus replacement and parts		1,488,850
CA Los Angeles	Gateway intermodal center		7,940,000
CA San Diego	San Ysidro intermodal center		4,962,500
CA San Francisco	Buses		6,689,450
CA San Francisco	Bart ADA compliance/paratransit		2,213,375
CA San Gabriel Valley	Foothill bus facilities		9,676,875
CA San Joaquin	RTD bus replacement		5,240,400
CA Santa Cruz	Bus facility		1,488,750
CA Sonoma County	Park and ride facility		1,240,625
CA Ventura County	Bus facility		595,500
CA Yolo County	Buses		1,488,750
CO Fort Collins and Greeley	Buses		1,240,625
CT Norwich	Intermodal center		1,488,750
DE State	Buses		1,339,875
FL Metropolitan Dade County	Buses		9,925,000
FL Orlando Lynx	Buses and bus operating facility		4,218,125
FL Palm Beach County	Bus facilities		1,985,000
FL Volusia County	Buses and park and ride facility		1,240,625
GA Atlanta	Buses		3,721,875
HI Honolulu, Oahu	Kuakini medical center parking facility		3,970,000
IL Statewide*	Replacement buses and transit facilities		16,723,625 *
Champaign-Urbana	Replacement buses	1,573,113	
Chicago Transit Authority	New bus communications system	5,955,000	
Decatur	Replacement buses	524,040	
Madison County	Replacement buses	2,272,825	
Pace	Replacement buses	1,652,513	
Peoria	Transfer facility	714,600	
Quincy	Replacement buses	524,040	
Rockford	Replacement buses	524,040	
Rock Island	Replacement buses	873,400	
South Central MTD	Bus facilities	794,000	
Springfield	Replacement buses	1,064,953	
IN State	Buses and bus facilities		6,451,250
IN Gary and Hammond	Buses		258,050
IN South Bend	Intermodal facility		2,481,250
IA State	Buses, equipment and facilities		4,247,900
IA Ames, Marshalltown, Ottumwa	Bus and bus facilities		2,332,375
IA Cedar Rapids	Hybrid electric bus consortium		1,191,000
IA Waterloo	Intermodal bus facility		664,975
KY Lexington	Buses		992,500
LA New Orleans	Buses		5,955,000
LA New Orleans	Bus facility		2,977,500
LA Saint Bernard Parish	Intermodal facility		1,488,750
MD MTA	Buses		12,902,500
MA Worchester	Intermodal Center		1,985,000

TABLE 7

FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5309(m)(1)(C) BUS ALLOCATIONS

STATE/AREA	PURPOSE	SUB-ALLOCATION	FY 1996 SECTION 5309(m)(1)(C) ALLOCATION
MI Statewide	ISTEA set-aside requirement		9,925,000
Flint	Buses and bus facilities	2,999,831	
Grand Rapids	Buses and bus facilities	2,999,831	
Lansing	Intermodal facility	925,507	
Suburban Mobility Auth. for Reg. Transp		2,999,831	
MI Lansing	Intermodal transportation center		2,074,325
MN MTC Minnesota	Articulated buses		7,443,750
MO State	Buses and bus facilities		6,947,500
MO Kansas City	Union Station intermodal		6,451,250
MO St. Louis	Metrolink bus purchase		3,473,750
NV Clark County	Buses and bus facility		16,872,500
NJ Garden State Parkway	Park-n-ride at Interchange 165		1,141,375
NJ Hamilton Township	Intermodal facility/bus maintenance		12,406,250
NY Albany	Buses		4,962,500
NY Buffalo	Transit station		496,250
NY Long Island	Buses, paratransit, and equipment		1,488,750
NY New Rochelle	Intermodal facility		744,375
NY New York City	Natural gas buses/fueling station		4,962,500
NY Rensselaer	Intermodal station		7,443,750
NY Rochester-Genessee	Buses		$694,750
NY Syracuse	Buses		992,500
NY Syracuse	Intermodal terminal		992,500
NY Utica	Buses		2,977,500
NY Westchester County	Bus facility		2,233,125
NC State	Buses and bus facilities		4,962,500
OH State	Buses		14,887,500
OH Cleveland	Triskett bus facility		1,240,625
OR Eugene Lane Transit District	Radio system		645,125
OR Wilsonville	Transit vehicles		248,125
PA Allegheny County	Busway system		8,932,500
PA Altoona	ISTEA set-aside requirement		992,500
PA Beaver County	Bus facility		2,431,625
PA Erie	Intermodal complex		3,970,000
PA North Philadelphia	Intermodal center		2,977,500
PA Philadelphia	Buses		1,488,750
PA Philadelphia	Chestnut Street/alternative fueled vehicles		992,500
PA Philadelphia	Lift equipped buses		7,443,750
TN Nashville	Electric buses		297,750
TX Corpus Christi	Buses, dispatching system and facilities		2,431,625
TX El Paso	Bus equipment		5,161,000
UT Utah Transit Authority	Buses		1,736,875
VA Richmond	Downtown intermodal station		4,962,500
VT State	Buses and bus facilities		2,977,500
VT Marble Valley	Bus upgrades		992,500
WA Everett	Intermodal center		3,473,750
WA Pierce County	Tacoma Dome station		4,962,500
WA King County/Seattle	Seattle metro bus purchase		6,203,125
WA Seattle	Metro/King County multimodal		1,985,000
WI State	Buses		9,925,000
TOTAL			$330,502,500

* Of the total amount allocated to the State of Illinois, $251,101 is not included in the suballocations.

TABLE 7A

FEDERAL TRANSIT ADMINISTRATION

PRIOR YEAR UNOBLIGATED SECTION 5309 (m) (1) (C) BUS ALLOCATIONS

	STATE/AREA	PRIOR YEAR SECTION 5309(m)(1)(C) UNOBLIGATED ALLOCATION
FY 1995		
	AK Marine Highway System	$2,000,000
	AR Little Rock	1,000,000
	CA San Francisco	3,878,288
	CA Santa Cruz	1,000,000
	CO Eagle County	1,000,000
	CT Norwich	2,000,000
	FL Orlando	828,400
	HI Kauai	1,500,000
	IL Statewide	4,724,000
	IA Cedar Rapids	3,000,000
	LA New Orleans	2,000,000
	MI Detroit	4,000,000
	MI Southeast (SMART)	9,000,000
	MO Kansas City	5,000,000
	NJ Camden	150,000
	NM Albuquerque	3,750,000
	NY Bronx	1,000,000
	NY Buffalo	800,000
	NC State	3,600,000
	OR Albany	306,000
	OR Salem	1,000,000
	PA Philadelphia	2,500,000
	TX El Paso	9,000,000
	VA Northern Virginia-Dulles	950,000
	WA Edmonds	400,000
	WI Milwaukee	1,000,000
FY 1994		
	AR Little Rock	2,100,000
	CA Lake Tahoe	1,944,000
	CA San Francisco	956,400
	CA Santa Barbara	3,000,000
	HI Kauai	1,510,000
	IL Statewide	1,857,600
	IN South Bend	3,428
	KS Topeka	768,000
	ME Statewide	433,612
	MD Silver Spring	1,500,000
	NJ Camden	800,000
	NM Albuquerque	1,750,000
	OR Salem	3,800,000
	PA Philadelphia	1,000,000
	PR San Juan	2,500,000
	TX El Paso	3,057,902
FY 1992		
	AR Eureka Springs	32,100
	CA San Francisco	1,250,000
	TOTAL	$93,649,730

TABLE 8

FEDERAL TRANSIT ADMINISTRATION

FY 1996 SECTION 5303 METROPOLITAN PLANNING PROGRAM AND SECTION 5313(b) STATE PLANNING AND RESEARCH PROGRAM APPORTIONMENTS, AND ISTEA AUTHORIZED LEVELS

STATE	FY 1996 SECTION 5303 APPORTIONMENT	FY 1996 SECTION 5313(b) APPORTIONMENT	*ISTEA FY 1996 AUTHORIZED LEVELS*	
			SECTION 5303	*SECTION 5313(b)*
Alabama	$343,637	$90,327	*$606,010*	*$160,124*
Alaska	158,000	41,250	*276,750*	*73,125*
Arizona	615,559	130,387	*1,102,152*	*231,140*
Arkansas	158,000	41,250	*276,750*	*73,125*
California	6,632,289	1,250,167	*11,795,754*	*2,216,212*
Colorado	512,345	116,731	*900,201*	*206,932*
Connecticut	451,330	120,554	*808,806*	*213,709*
Delaware	158,000	41,250	*276,750*	*73,125*
District/Col	211,644	41,250	*373,110*	*73,125*
Florida	2,101,510	499,635	*3,772,728*	*885,716*
Georgia	751,237	160,071	*1,335,556*	*283,763*
Hawaii	158,000	41,250	*276,750*	*73,125*
Idaho	158,000	41,250	*276,750*	*73,125*
Illinois	2,305,044	416,231	*4,042,806*	*737,864*
Indiana	564,428	132,187	*981,466*	*234,332*
Iowa	175,738	46,276	*310,471*	*82,035*
Kansas	202,032	50,005	*358,914*	*88,645*
Kentucky	245,039	62,683	*429,910*	*111,119*
Louisiana	438,000	109,377	*742,908*	*193,895*
Maine	158,000	41,250	*276,750*	*73,125*
Maryland	920,920	175,819	*1,606,285*	*311,679*
Massachusetts	1,115,798	232,221	*1,959,166*	*411,665*
Michigan	1,470,219	285,343	*2,523,938*	*505,835*
Minnesota	584,145	116,393	*1,024,858*	*206,332*
Mississippi	158,000	41,250	*276,750*	*73,125*
Missouri	695,407	136,609	*1,133,113*	*242,170*
Montana	158,000	41,250	*276,750*	*73,125*
Nebraska	158,000	41,250	*276,750*	*73,125*
Nevada	170,271	44,727	*300,077*	*79,289*
New Hampshire	158,000	41,250	*276,750*	*73,125*
New Jersey	1,949,100	325,454	*3,429,974*	*576,941*
New Mexico	158,000	41,250	*276,750*	*73,125*
New York	3,962,781	692,977	*6,965,133*	*1,228,460*
North Carolina	461,482	123,360	*827,635*	*218,684*
North Dakota	158,000	41,250	*276,750*	*73,125*
Ohio	1,371,909	326,801	*2,384,316*	*579,328*
Oklahoma	251,281	66,487	*446,065*	*117,863*
Oregon	285,601	69,713	*501,053*	*123,582*
Pennsylvania	1,909,473	353,827	*3,092,394*	*627,238*
Rhode Island	165,658	41,250	*276,750*	*73,125*
South Carolina	261,905	70,041	*469,910*	*124,163*
South Dakota	158,000	41,250	*276,750*	*73,125*
Tennessee	412,851	108,885	*730,521*	*193,024*
Texas	2,652,169	558,280	*4,701,219*	*989,679*
Utah	241,365	64,779	*434,606*	*114,835*
Vermont	158,000	41,250	*276,750*	*73,125*
Virginia	864,477	188,008	*1,546,353*	*333,286*
Washington	695,722	157,816	*1,232,499*	*279,765*
West Virginia	158,000	41,250	*276,750*	*73,125*
Wisconsin	557,792	120,997	*862,913*	*214,494*
Wyoming	158,000	41,250	*276,750*	*73,125*
Puerto Rico	421,842	104,332	*749,930*	*184,952*
TOTAL	$39,500,000	$8,250,000	*$69,187,500*	*$14,625,000*

TABLE 9

Federal Transit Administration - Unit Values of Data
Fiscal Year 1996 Formula Grant Apportionments

Section 5307 Urbanized Area Formula Program - Bus Tier

Urbanized Areas Over 1,000,000:

Population	$1.99324342
Population x Density	$0.00051123
Bus Revenue Vehicle Mile	$0.28862414

Urbanized Areas Under 1,000,000:

Population	$1.80134018
Population x Density	$0.00079330
Bus Revenue Vehicle Mile	$0.37097557

Bus Incentive (PM denotes Passenger Mile):

Bus PM x Bus PM = Operating Cost	$0.00320813

Section 5307 Urbanized Area Formula Program - Fixed Guideway Tier

Fixed Guideway Revenue Vehicle Mile	$0.39174360
Fixed Guideway Route Mile	$23,272
- Commuter Rail Floor	$4,075,663

Fixed Guideway Incentive:

Fixed Guideway PM x Fixed Guideway PM= Operating Cost	$0.00040064
- Commuter Rail Incentive Floor	$187,137

Section 5307 Urbanized Area Formula Program - Areas Under 200,000

Population	$3.25726661
Population x Density	$0.00162770

Section 5311 Nonurbanized Area Formula Program

Areas Under 50,000

Population	$1.20591027

Section 5309(m)(1)(A) Capital Program - Fixed Guideway Modernization

	Tier 3	Tier 4
Legislatively Specified Areas:		All Areas:
Revenue Vehicle Mile	$0.0306232	$0.0692831
Route Mile	$2,120.67	$4,042.86
Other Areas:		
Revenue Vehicle Mile	$0.17216962	
Route Mile	$5,323.40	

[FR Doc. 95–28803 Filed 11–21–95; 11:07 am]

BILLING CODE 4910–57–C

federal register

Friday
November 24, 1995

Part IV

Department of Transportation

Federal Transit Administration

Grants and Cooperative Agreements; Fiscal Year 1996 Annual List of Certifications and Assurances; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Fiscal Year 1996 Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: This Notice contains FTA's comprehensive compilation of the fiscal year 1996 certifications and assurances to be used in connection with all Federal assistance programs administered by FTA during fiscal year 1996. (See Appendix A.) These certifications and assurances include all annual certifications required by 49 U.S.C. 5307(d)(1) for FTA's Urbanized Area Formula Program as well as other certifications and assurances needed for compliance with various other Federal statutes and regulations affecting FTA's assistance programs.

EFFECTIVE DATE: November 24, 1995.

FOR FURTHER INFORMATION CONTACT: Linda Watkins Sorkin, Office of the Chief Counsel, Federal Transit Administration, (202) 366–1936; or contact FTA staff in the appropriate Regional Office listed below.

Region 1: Boston

States served: Maine, New Hampshire, Vermont, Connecticut, Rhode Island, and Massachusetts. Telephone # 617–494–2055

Region 2: New York

States served: New York, New Jersey, and Virgin Islands. Telephone # 212–264–8162

Region 3: Philadelphia

States served: Pennsylvania, Delaware, Maryland, Virginia, West Virginia, and District of Columbia. Telephone # 215–656–6900

Region 4: Atlanta

States served: Kentucky, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, and Puerto Rico. Telephone # 404–347–3948

Region 5: Chicago

States served: Minnesota, Wisconsin, Michigan, Illinois, Indiana, and Ohio. Telephone # 312–353–2789

Region 6: Dallas/Ft.Worth

States served: Arkansas, Louisiana, Oklahoma, Texas, and New Mexico. Telephone # 817–860–9663

Region 7: Kansas City

States served: Missouri, Iowa, Kansas, and Nebraska. Telephone # 816–523–0204

Region 8: Denver

States served: Colorado, Utah, Wyoming, Montana, North Dakota, South Dakota, Arizona [1], and Nevada [1]. Telephone # 303–844–3242

Region 9: San Francisco

States served: California, Hawaii, Guam, American Samoa, and the Northern Mariana Islands. Telephone # 415–744–3133

Region 10: Seattle

States served: Idaho, Oregon, Washington, and Alaska. Telephone # 206–220–7954

SUPPLEMENTARY INFORMATION: Before FTA may award a Federal grant or cooperative agreement, the applicant must provide to FTA all certifications and assurances required by Federal laws and regulations for the applicant or its project.

This Notice provides the text of certifications and assurances that may be required by law for the various Federal assistance programs administered by FTA including the Capital Program, the Urbanized Area Formula Program; the Nonurbanized Area Formula Program, the Metropolitan Planning Program, the Rural Transit Assistance Program, the Elderly and Persons With Disabilities Program, the Human Resource Program, the National Training Institute Program, the State Planning and Research Program, and the National Planning and Research Program, all codified at 49 U.S.C. chapter 53. When administering Federal assistance programs authorized by other Federal statutes, such as Title 23, United States Code, FTA uses these same certifications and assurances during Federal fiscal year 1996.

This Notice also provides the applicant with a single Signature Page on which the applicant and its attorney certifies compliance with all certifications and assurances applicable to each grant or cooperative agreement for which the applicant wishes to apply in Federal Fiscal Year 1996. (See Appendix B.)

FTA is expanding the use of the two electronic programs for applicants introduced last year. The On-Line Program is offered to applicants through the Grant Management Information System (GMIS). This is a computerized system designed to assist the FTA grantee or recipient of a cooperative agreement in managing its FTA assisted projects and their budgets. All applicants are encouraged to participate in the On-Line Program, which includes the opportunity to certify compliance electronically for all certifications and assurances selected among those in Appendix A. The Electronic Grant Making and Management initiative (EGMM) pilot program initiated in Federal Fiscal Year - 1995 has proved so successful in reducing time and paper that EGMM will continue to be offered to more applicants. Applicants may contact their Regional Office shown above for more information.

This 1996 Annual Certifications and Assurances document contains changes to the previous year's Federal Register publication. Specifically, the separate Category selection for Procurement has been eliminated. In its place, paragraph ''H'' has been added to Category I. This affects each applicant which is now required by FTA Circular 4220.1C, ''Third Party Contracting Requirements'' dated October 1, 1995, to self-certify its procurement system's compliance. Three additional changes have been made to the Annual Certifications and Assurances. One is the Urbanized Area Formula Program certification requirement for sole source purchases of associated capital maintenance items, which has been added as paragraph C. in Category XI. FTA has also redrafted the previous transit security and intercity bus expenditure requirements to remove the need for the Applicant to indicate whether or not it will expend the percentage of funds at issue, with the result that the applicant is no longer required to indicate which option it has selected. This decision can be made at a later date and documentation may then be made available to FTA when requested. See paragraph A(10) of Category XI and paragraph P of Category XIII. These changes eliminate previous options under Categories XI and XIII, now permitting the applicant to signify compliance with all Categories by placing a single ''X'' in the appropriate space at the top of the Signature Selection Page in Appendix A.

FTA directs your attention to FTA Circular 9300.1, ''Capital Program Grant Application Instructions,'' which was published on September 29, 1995. That circular contains a previous draft version of the Annual Certifications and Assurances which includes some but not all of the most current and valid changes. Therefore the provisions of this Notice supersede conflicting statements in that circular. Note especially that the Applicant must use the most current

[1] Transportation projects for these states are administered by Region 8 but are geographically in Region 9.

Signature Pages shown in this Federal Register document or provided concurrently through the EGMM initiative discussed above.

Background

Last year, with the publication of the Federal fiscal year 1995 counterpart of this Notice, certifications and assurances for Federal assistance programs administered by FTA were for the first time consolidated into one document. This marked the beginning of an effort to assist applicants in reducing time and paper work in certifying compliance with various Federal laws and regulations. It coincided with the On-Line Program and the EGMM initiative described above, which also reduced the time and paper required to process an application.

This publication of certifications and assurances therefore continues to supersede the requirements of FTA Circular 9100.1B, dated July 1, 1988, ''Standard Assurances for Urban Mass Transportation Administration Applications,'' which was rescinded. Other FTA circulars affected by this Notice will be revised accordingly. These annual certifications and assurances with the Signature Page also continue to supersede a Statement of Continued Validity now no longer required. However, the applicant's Attorney Affirmation continues to be required as indicated on the Signature Page at the end of Appendix B.

FTA intends to continue publishing this document annually with any changes or additions specifically highlighted, in conjunction with its publication of the FTA annual apportionment Notice, which allocates funds in accordance with the latest U.S. Department of Transportation (U.S. DOT) annual appropriations act.

Procedures

Following is a detailed compilation of Certifications and Assurances (Appendix A), followed by a Signature Page (Appendix B). The Signature Page is to be signed by the applicant's authorized representative and its attorney (the attorney's current affirmation may be on file in some instances), and sent to the appropriate FTA Regional office by: (1) the first-quarter application submission date published in FTA's Federal fiscal year 1996 apportionment announcement; or (2) with the applicant's first Federal assistance application in Federal fiscal year 1996.

The Signature Page, when properly signed and submitted to FTA, assures FTA that the applicant intends to comply with the requirements for the specific program involved. Both sides of the Signature Page must be completed, first by marking where appropriate with an ''X'' on the category selection side, and then signifying compliance by signing the signature side. (See Appendix B.)

An applicant participating in the On-Line Program or the EGMM Program described above, may submit its Signature Page (both the selection side and the signature side) electronically. The applicant should not hesitate to consult with the appropriate Regional Office or Headquarters Office before submitting its certifications and assurances.

References

49 U.S.C. chapter 53, Title 23 U.S.C., 42 U.S.C. 4151, Title VI and Title VII of the Civil Rights Act, FTA regulations under 49 CFR, and FTA Circulars.

Issued: November 17, 1995.

Gordon J. Linton,

Administrator.

BILLING CODE 4910–57–P

Appendix A

FEDERAL FISCAL YEAR 1996 CERTIFICATIONS AND ASSURANCES FOR FEDERAL TRANSIT ADMINISTRATION ASSISTANCE PROGRAMS

Each Applicant is requested to provide as many of the following certifications and assurances as possible to cover the various types of Federal assistance programs for which the Applicant intends to seek Federal assistance from FTA in Federal Fiscal Year 1996. A state making certifications and assurances on behalf of its prospective subrecipients is expected to obtain sufficient documentation from those subrecipients as necessary for the state to make informed certifications and assurances. The thirteen categories of certifications and assurances are listed by Roman numerals I through XIII on the other side of the Signature Page document. Categories II through XIII will apply to some, but not all applicants. The categories correspond to the following descriptions of circumstances mandating submission of specific certifications, assurances, or agreements:

I. CERTIFICATIONS AND ASSURANCES REQUIRED OF EACH APPLICANT

Each Applicant for Federal assistance awarded by FTA must make all certifications and assurances in this Category I. Accordingly, FTA may not award any Federal assistance until the Applicant provides assurance of compliance by selecting Category I on the Signature Page at the end of this document.

A. Authority of Applicant and Its Representative

The authorized representative of the Applicant and legal counsel who sign these certifications, assurances, and agreements attest that both the Applicant and its authorized representative have adequate authority under state and local law and the by-laws or internal rules of the Applicant organization to:
(1) Execute and file the application for Federal assistance on behalf of the Applicant,
(2) Execute and file the required certifications, assurances, and agreements on behalf of the Applicant binding the Applicant, and
(3) Execute grant and cooperative agreements with FTA on behalf of the Applicant.

B. Standard Assurances

The Applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal administrative requirements in carrying out any grant or cooperative agreement awarded by FTA. The Applicant acknowledges that it is under a continuing obligation to comply with the terms and conditions of the grant or cooperative agreement issued for its approved project with FTA. The Applicant understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and affect the implementation of the project. The Applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise.

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C. Debarment, Suspension, and Other Responsibility Matters -- Primary Covered Transactions

As required by U.S. DOT regulations on Governmentwide Debarment and Suspension (Nonprocurement) at 49 CFR 29.510:

(1) The Applicant (Primary Participant) certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) transaction or contract under a public transaction; violation of Federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, state, or local) with commission of any of the offenses listed in paragraph (2) of this certification; and

(d) Have not within a three-year period preceding this certification had one or more public transactions (Federal, state, or local) terminated for cause or default.

(2) The Applicant also certifies that if, later, it becomes aware of any information contradicting the statements of paragraphs (a) through (d) above, it will promptly provide that information to FTA.

(3) If the Applicant (Primary Participant) is unable to certify to the statements within paragraphs (1) and (2) above, it shall indicate so on its Signature Page and provide a written explanation to FTA.

D. Drug-Free Workplace Certification

As required by U.S. DOT regulations on Drug-Free Workplace Requirements (Grants) at 49 CFR 29.630, the Applicant certifies that it will provide a drug-free workplace by:

(1) Publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Applicant's workplace and specifying the actions that will be taken against its employees for violation of that prohibition;

(2) Establishing an ongoing drug-free awareness program to inform its employees about: (a) the dangers of drug abuse in the workplace; (b) the Applicant's policy of maintaining a drug-free workplace; (c) any available drug counseling, rehabilitation, and employee assistance programs; and (d) the penalties that may be imposed upon its employees for drug abuse violations occurring in the workplace;

(3) Making it a requirement that each of its employees to be engaged in the performance of the grant or cooperative agreement be given a copy of the statement required by paragraph (1);

(4) Notifying each of its employees in the statement required by paragraph (1) that, as a condition of employment financed with Federal assistance provided by the grant or cooperative agreement, the employee will: (a) abide by the terms of the statement, and (b) notify the employer (Applicant)

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in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than 5 calendar days after that conviction;
(5) Notifying FTA in writing, within 10 calendar days after receiving notice required by paragraph (4)(b) above from an employee or otherwise receiving actual notice of that conviction. The Applicant, which is the employer of any convicted employee must provide notice, including position title, to every project officer or other designee on whose project activity the Applicant's convicted employee was working. Notice shall include the identification number(s) of each affected grant or cooperative agreement.
(6) Taking one of the following actions within 30 calendar days of receiving notice under paragraph (4)(b) above with respect to any employee who is so convicted: (a) by taking appropriate personnel action against that employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended, or (b) by requiring that employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, state, or local health, law enforcement, or other appropriate agency;
(7) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), (5), and (6) above.
The Applicant has or will provide to FTA a list identifying its headquarters location and each workplace it maintains in which project activities supported by FTA are conducted.

E. Intergovernmental Review Assurance

The Applicant assures that each application for Federal assistance submitted to FTA has been or will be submitted, as required by each state, for intergovernmental review to the appropriate state and local agencies. Specifically, the Applicant assures that it has fulfilled or will fulfill the obligations imposed on FTA by U.S. DOT regulations, "Intergovernmental Review of Department of Transportation Programs and Activities," 49 CFR part 17.

F. Nondiscrimination Assurance

As required by 49 U.S.C. 5332, Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, and U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act," 49 CFR part 21 at 21.7, the Applicant assures that it will comply with all requirements of 49 CFR part 21; FTA Circular 4702.1, "Title VI Program Guidelines for Federal Transit Administration Recipients"; and other applicable directives, so that no person in the United States, on the basis of race, color, national origin, creed, sex, or age will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of transportation services and transportation-related benefits) for which the Applicant receives Federal assistance awarded by the U.S. DOT or FTA as follows:
(1) The Applicant assures that each project will be conducted, property acquisitions will be undertaken, and project facilities will be operated in accordance with all applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21, and understands that this assurance extends to its entire facility and to facilities operated in connection with the project.

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(2) The Applicant assures that it will take appropriate action to ensure that any transferee receiving property financed with Federal assistance derived from FTA will comply with the applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21.
(3) The Applicant assures that it will promptly take the necessary actions to effectuate this assurance, including notifying the public that complaints of discrimination in the provision of transportation-related services or benefits may be filed with U.S. DOT or FTA. Upon request by U.S. DOT or FTA, the Applicant assures that it will submit the required information pertaining to its compliance with these requirements.
(4) The Applicant assures that it will make any changes in its 49 U.S.C. 5332 and Title VI implementing procedures as U.S. DOT or FTA may request.
(5) As required by 49 CFR 21.7(a)(2), the Applicant will include appropriate clauses in each third party contract or subagreement to impose the requirements of 49 CFR part 21 and 49 U.S.C. 5332, and include appropriate provisions imposing those requirements in deeds and instruments recording the transfer of real property, structures, improvements.

G. Assurance of Nondiscrimination on the Basis of Disability

As required by U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," at 49 CFR 27.9, implementing the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, the Applicant assures that, as a condition to the approval or extension of any Federal assistance awarded by FTA to construct any facility, obtain any rolling stock or other equipment, undertake studies, conduct research, or to participate in or obtain any benefit from any program administered by FTA, no otherwise qualified person with a disability shall be, solely by reason of that disability, excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any program or activity receiving or benefiting from Federal assistance administered by the FTA or any entity within U.S. DOT. The Applicant assures that project implementation and operations so assisted will comply with all applicable requirements of U.S. DOT regulations implementing the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, and any later amendments thereto, at 49 CFR parts 27, 37, and 38, and any applicable regulations and directives issued by other Federal departments or agencies.

H. Procurement Compliance

The Applicant certifies that its procurements and procurement system will comply with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1C, "Third Party Contracting Requirements," and other implementing guidance or manuals FTA may issue. The Applicant certifies that it will include in its contracts financed in whole or in part with FTA assistance all clauses required by Federal laws, executive orders, or regulations, and will ensure that each subrecipient and contractor will also include in its subagreements and contracts financed in whole or in part with FTA assistance all applicable clauses required by Federal laws, executive orders, or regulations.

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II. LOBBYING CERTIFICATION REQUIRED FOR EACH APPLICATION EXCEEDING $100,000

An Applicant that submits, or intends to submit this fiscal year, an application for Federal assistance exceeding $100,000 must provide the following certification. FTA may not provide Federal assistance for an application exceeding $100,000 until the Applicant provides this certification by selecting Category II on the Signature Page.

A. As required by U.S. DOT regulations, "New Restrictions on Lobbying," at 49 CFR 20.110, the Applicant's authorized representative certifies to the best of his or her knowledge and belief that for each application for a Federal assistance exceeding $100,000: (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Applicant, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress pertaining to the award of any Federal assistance, or the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement; and (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application to FTA for Federal assistance, the Applicant assures that it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," including the information required by the form's instructions.

B. The Applicant understands that this certification is a material representation of fact upon which reliance is placed and that submission of this certification is a prerequisite for providing Federal assistance for a transaction covered by 31 U.S.C. 1352. The Applicant also understands that any person who fails to file a required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

III. PUBLIC HEARING CERTIFICATION REQUIRED FOR EACH PROJECT (EXCEPT URBANIZED AREA FORMULA PROJECTS) THAT WILL SUBSTANTIALLY AFFECT A COMMUNITY OR ITS TRANSIT SERVICE

An Applicant for Capital Program assistance or other Federal assistance (except Urbanized Area Formula Program assistance), that will substantially affect a community or its transit service must provide the following certification. FTA may not award that Federal assistance until the Applicant provides this certification by selecting Category III on the Signature Page.

As required by 49 U.S.C. 5323(b), the Applicant certifies that it has, or before submitting its application, will have:

A. Provided an adequate opportunity for a public hearing with adequate prior notice of the proposed project published in a newspaper of general circulation in the geographic area to be served;

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B. Held that hearing and provided FTA a transcript or detailed report summarizing the issues and responses, unless no one with a significant economic, social, or environmental interest requests a hearing;
C. Considered the economic, social, and environmental effects of the project; and
D. Determined the project to be consistent with official plans for developing the urban area.

IV. CERTIFICATION OF PRE-AWARD AND POST-DELIVERY ROLLING STOCK REVIEWS REQUIRED FOR EACH APPLICANT SEEKING TO PURCHASE ROLLING STOCK FINANCED WITH FEDERAL ASSISTANCE AWARDED BY FTA

An Applicant seeking FTA assistance to purchase rolling stock must make the following certification. FTA may not provide assistance for any rolling stock acquisition until the Applicant provides this certification by selecting Category IV on the Signature Page.

As required by 49 U.S.C. 5323(l), and implementing FTA regulations at 49 CFR 663.7, the Applicant certifies that it will comply with the requirements of 49 CFR part 663, in the course of purchasing revenue service rolling stock. Among other things, the Applicant will conduct or cause to be conducted the prescribed pre-award and post-delivery reviews, and will maintain on file the certifications required by 49 CFR part 663, subparts B, C, and D.

V. BUS TESTING CERTIFICATION REQUIRED FOR NEW BUSES

An Applicant seeking FTA assistance to acquire new buses must make the following certification. FTA may not provide assistance for the acquisition of new buses until the Applicant provides this certification by selecting Category V on the Signature Page.

As required by FTA regulations, "Bus Testing," at 49 CFR 665.7, the Applicant certifies that before expending any Federal assistance to acquire the first bus of any new bus model or any bus model with a new major change in configuration or components or authorizing final acceptance of that bus (as described in 49 CFR part 665):
A. The model of the bus will have been tested at a bus testing facility approved by FTA; and
B. It will have received a copy of the test report prepared on the bus model.

VI. CHARTER BUS AGREEMENT

An Applicant seeking FTA assistance to acquire buses must enter into the following charter bus agreement. FTA may not provide assistance for bus projects until the Applicant enters into this agreement by selecting Category VI on the Signature Page.

A. As required by 49 U.S.C. 5323(d) and FTA regulations, "Charter Service," at 49 CFR 604.7, the Applicant agrees that it and its recipients will: (1) provide charter service that uses equipment

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or facilities acquired with Federal assistance authorized for 49 U.S.C. 5307, 5309, or 5311 or Title 23 U.S.C., only to the extent that there are no private charter service operators willing and able to provide the charter service that it or its recipients desire to provide, unless one or more of the exceptions in 49 CFR 604.9 applies, and (2) comply with the provisions of 49 CFR part 604 before they provide any charter service using equipment or facilities acquired with Federal assistance authorized for the above statutes.

B. The Applicant understands that the requirements of 49 CFR part 604 will apply to any charter service provided, the definitions in 49 CFR part 604 apply to this agreement, and violation of this agreement may require corrective measures and the imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

VII. SCHOOL BUS AGREEMENT

An Applicant seeking FTA assistance to acquire transportation facilities and equipment must agree as follows. FTA may not provide assistance for transportation facilities until the Applicant enters into this Agreement by selecting Category VII on the Signature Page.

A. As required by 49 U.S.C. 5323(f) and FTA regulations, "School Bus Operations," at 49 CFR 605.14, the Applicant agrees that it and all its recipients will: (1) engage in school bus operations in competition with private school bus operators only to the extent permitted by an exception provided by 49 U.S.C. 5323(f), and implementing regulations, and (2) comply with the requirements of 49 CFR part 605 before providing any school bus service using equipment or facilities acquired with Federal assistance authorized by 49 U.S.C. chapter 53 or Title 23 U.S.C. awarded by FTA for transportation projects.

B. The Applicant understands that the requirements of 49 CFR part 605 will apply to any school bus service it provides, the definitions of 49 CFR part 605 apply to this school bus agreement, and a violation of this agreement may require corrective measures and the imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

VIII. CERTIFICATION REQUIRED FOR THE DIRECT AWARD OF FTA ASSISTANCE TO AN APPLICANT FOR ITS DEMAND RESPONSIVE SERVICE

An Applicant seeking Federal assistance directly to support its demand responsive service must provide the following certification. FTA may not award Federal assistance directly to an Applicant to support its demand responsive service until the Applicant provides this certification by selecting Category VIII on the Signature Page.

As required by U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," at 49 CFR 37.77, the Applicant certifies that its demand responsive service offered to persons with disabilities, including persons who use wheelchairs, is equivalent to the level and quality of service offered to persons without disabilities. When viewed in its entirety, its service for persons with disabilities is provided in the most integrated setting feasible and is equivalent

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with respect to: (1) response time, (2) fares, (3) geographic service area, (4) hours and days of service, (5) restrictions on trip purpose, (6) availability of information and reservation capability, and (7) constraints on capacity or service availability.

IX. SUBSTANCE ABUSE CERTIFICATIONS REQUIRED BY JANUARY 1, 1996

An Applicant required by Federal regulations to provide the following substance abuse certifications, must do so by January 1, 1996. FTA may not provide Federal assistance until an Applicant required to provide the following certifications by January 1, 1996 has selected Category IX on the Signature Page.

A. Alcohol Testing Certification

As required by FTA regulations, "Prevention of Alcohol Misuse in Transit Operations," at 49 CFR 654.83, the Applicant certifies that it has or will have, before January 1, 1996, established and implemented an alcohol misuse prevention program complying with the requirements of 49 CFR part 654; and if the Applicant has employees regulated by the Federal Railroad Administration (FRA), the Applicant also certifies that it has for those employees an alcohol misuse prevention program complying with the requirements of FRA's regulations, "Control of Alcohol and Drug Use," 49 CFR part 219.

B. Anti-Drug Program Certification

As required by FTA regulations, "Prevention of Prohibited Drug Use in Transit Operations," at 49 CFR 653.83, the Applicant certifies that it has or will have, before January 1, 1996, established and implemented an anti-drug program and has conducted employee training complying with the requirements of 49 CFR part 653; and if the Applicant has employees regulated by FRA, the Applicant also certifies that it has for those employees an anti-drug program complying with the requirements of FRA's regulations, "Control of Alcohol and Drug Use," 49 CFR part 219.

X. ASSURANCES REQUIRED FOR PROJECTS INVOLVING REAL PROPERTY

The Applicant must provide the following assurances in connection with each application for Federal assistance to acquire (purchase or lease) real property. FTA may not award Federal assistance for a project involving real property until the Applicant provides these assurances shown by selecting Category X on the Signature Page.

A. Relocation and Real Property Acquisition Assurance

As required by U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," at 49 CFR 24.4, and sections 210

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and 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Relocation Act), 42 U.S.C. 4630 and 4655, the Applicant assures that it has the requisite authority under applicable state and local law and will comply with the requirements of the Uniform Relocation Act, 42 U.S.C. 4601 et seq., and U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR part 24 including, but not limited to the following:

(1) The Applicant will adequately inform each affected person of the benefits, policies, and procedures provided for in 49 CFR part 24;

(2) The Applicant will provide fair and reasonable relocation payments and assistance required by 42 U.S.C. 4622, 4623, and 4624; 49 CFR part 24; and any applicable FTA procedures, to or for families, individuals, partnerships, corporations or associations displaced as a result of any project financed with FTA assistance;

(3) The Applicant will provide relocation assistance programs offering the services described in 42 U.S.C. 4625 to such displaced families, individuals, partnerships, corporations or associations in the manner provided in 49 CFR part 24 and FTA procedures;

(4) Within a reasonable time before displacement, the Applicant will make available comparable replacement dwellings to displaced families and individuals as required by 42 U.S.C. 4625(c)(3);

(5) The Applicant will carry out the relocation process in such a manner as to provide displaced persons with uniform and consistent services, and will make available replacement housing in the same range of choices with respect to such housing to all displaced persons regardless of race, color, religion, or national origin; and

(6) In acquiring real property, the Applicant will be guided to the greatest extent practicable under state law, by the real property acquisition policies of 42 U.S.C. 4651 and 4652;

(7) The Applicant will pay or reimburse property owners for necessary expenses as specified in 42 U.S.C. 4653 and 4654, understanding that FTA will participate in the Applicant's costs of providing those payments and that assistance for the project as required by 42 U.S.C. 4631;

(8) The Applicant will execute such amendments to third party contracts and subagreements financed with FTA assistance and execute, furnish, and be bound by such additional documents as FTA may determine necessary to effectuate or implement the assurances provided herein; and

(9) The Applicant agrees to make this document part of and incorporate it by reference in any third party contract or subagreement, or any supplements and amendments thereto, relating to any project financed by FTA involving relocation or land acquisition and provide in any affected document that these relocation and land acquisition provisions shall supersede any conflicting provisions.

B. Flood Insurance Coverage

As required by section 102(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4012a(a), the Applicant assures that in the course of implementing each project financed with Federal assistance, the Applicant will obtain appropriate insurance for any real estate acquired or construction undertaken thereon within any special flood hazard area as identified by the Federal Insurance Administrator. The Applicant understands that such insurance is available in the participating area through the U.S. Federal Emergency Management Agency's National Flood Insurance Program.

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C. Seismic Assurance

As required by U.S. DOT regulations, "Seismic Safety," 49 CFR 41.117(d), the Applicant assures that before it accepts delivery of any building financed with Federal assistance provided by FTA, the Applicant will obtain a certificate of compliance with the seismic design and construction requirements of 49 CFR part 41.

XI. CERTIFICATIONS REQUIRED FOR THE URBANIZED AREA FORMULA PROGRAM

Each Applicant to FTA for Urbanized Area Formula Program assistance authorized for 49 U.S.C. 5307 must provide the following certifications in connection with its application. FTA may not award Urbanized Area Formula Program assistance to the Applicant until the Applicant provides these certifications and assurances shown by selecting Category XI on the Signature Page.

A. Certifications Required by Statute

As required by 49 U.S.C. 5307(d)(1)(A) through (J), the Applicant certifies that:
(1) It has or will have the legal, financial, and technical capacity to carry out the proposed program of projects;
(2) It has or will have satisfactory continuing control over the use of the equipment and facilities;
(3) It will adequately maintain the equipment and facilities;
(4) It will ensure that the elderly and handicapped persons, or any person presenting a Medicare card issued to himself or herself under title II or title XVIII of the Social Security Act (42 U.S.C. 401 et seq. or 42 U.S.C. 1395 et seq.), will be charged during non-peak hours for transportation using or involving a facility or equipment of a project financed with Federal assistance authorized for 49 U.S.C. 5307 not more than 50 percent of the peak hour fare;
(5) In carrying out a procurement financed with Federal assistance authorized for the Urbanized Area Formula Program at 49 U.S.C. 5307, it will use competitive procurement (as defined or approved by the Secretary), it will not use a procurement using exclusionary or discriminatory specifications, and it will comply with applicable Buy America laws in carrying out a procurement;
(6) It has complied or will comply with the requirements of 49 U.S.C. 5307(c); specifically, it has or before submitting its application it will: (a) make available to the public information on amounts available for the Urbanized Area Formula Program at 49 U.S.C. 5307 and the program of projects it proposes to undertake with those funds; (b) develop, in consultation with interested parties, including private transportation providers, a proposed program of projects for activities to be financed; (c) publish a proposed program of projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed program and submit comments on the proposed program and the performance of the Applicant; (d) provide an opportunity for a public hearing to obtain the views of citizens on the proposed program of projects; and (e) ensure that the proposed program of projects provides for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services

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assisted by another Federal Government source; (f) consider comments and views received, especially those of private transportation providers, in preparing the final program of projects; and (g) make the final program of projects available to the public;

(7) It has or will have available and will provide the amount of funds required by 49 U.S.C. 5307(e) and applicable FTA policy (specifying Federal and local shares of project costs);

(8) It will comply with: (a) 49 U.S.C. 5301(a) (requirements to develop transportation systems that maximize mobility and minimize fuel consumption and air pollution); (b) 49 U.S.C. 5301(d) (requirements for transportation of the elderly and persons with disabilities); (c) 49 U.S.C. 5303 through 5306 (planning requirements); and (d) 49 U.S.C. 5310(a) through (d) (programs for the elderly and persons with disabilities);

(9) It has a locally developed process to solicit and consider public comment before raising fares or implementing a major reduction of transportation; and

(10) As required by 49 U.S.C. 5307(d)(1)(J), it will expend at least one percent of the amount of Federal assistance it receives for this fiscal year apportioned by 49 U.S.C. 5336 for transit security projects, including increased lighting in or adjacent to a transit system (including bus stops, subway stations, parking lots, and garages), increased camera surveillance of an area in or adjacent to that system, providing an emergency telephone line to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of an existing or planned transit system; unless it has decided that it is not necessary to expend one percent of that Federal assistance this fiscal year for transit security projects.

B. Certification Required for Capital Leasing

As required by FTA regulations, "Capital Leases," 49 CFR at 639.15(b)(1) and 639.21, to the extent that the Applicant uses Federal assistance authorized for 49 U.S.C. 5307 to acquire any capital asset by lease, the Applicant certifies that:

(1) It will not use Federal assistance authorized for 49 U.S.C. 5307 to finance the cost of leasing any capital asset until it undertakes calculations demonstrating that it is more cost-effective to lease the capital asset than to purchase or construct similar assets;

(2) It will complete these calculations before entering into the lease or before receiving a capital grant for the asset, whichever is later; and

(3) It will not enter into a capital lease for which FTA can only provide incremental funding unless it has the financial capacity to meet its future obligations under the lease in the event Federal assistance is not available for capital projects in subsequent years.

C. Certification Required for Sole Source Purchase of Associated Capital Maintenance Item

As required by 49 U.S.C. 5325(c), to the extent that the Applicant procures an associated capital maintenance item under the authority of 49 U.S.C. 5307(b)(1), the Applicant certifies that it will use competition to procure an associated capital maintenance item unless the manufacturer or supplier of that item is the only source for the item and the price of the item is no more than the price similar customers pay for the item, and maintain sufficient records pertaining to each such procurement on file easily retrievable for FTA inspection.

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XII. CERTIFICATIONS AND ASSURANCES FOR THE ELDERLY AND PERSONS WITH DISABILITIES PROGRAM

An Applicant that intends to administer, on behalf of the state, the Elderly and Persons with Disabilities Program must provide the following certifications. FTA may not award assistance for this program until the Applicant provides these certifications and assurances by selecting Category XII on the Signature Page.

Based on its own knowledge and, as necessary, on information submitted by the subrecipient, the Applicant administering on behalf of the state the Elderly and Persons with Disabilities Program authorized by 49 U.S.C. 5310 certifies and assures that the following requirements and conditions will be fulfilled:

A. The state organization serving as the Applicant and each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized for 49 U.S.C. 5310; and to implement and manage the project.

B. The state assures that each subrecipient either is recognized under state law as a private nonprofit organization with the legal capability to contract with the state to carry out the proposed project, or is a public body that has met the statutory requirements to receive Federal assistance authorized for 49 U.S.C. 5310.

C. The subrecipient's application for 49 U.S.C. 5310 assistance contains information from which the state concludes that the transit service provided or offered to be provided by existing public or private transit operators is unavailable, insufficient, or inappropriate to meet the special needs of the elderly and persons with disabilities.

D. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.

E. The subrecipient has, or will have by the time of delivery, sufficient funds to operate and maintain the vehicles and equipment purchased with Federal assistance awarded for this project.

F. The state assures that its Elderly and Persons with Disabilities Formula Program is included in the Statewide Transportation Improvement Program as required by 23 U.S.C. 135; and all projects in urbanized areas recommended for approval are included in the annual element of the metropolitan Transportation Improvement Program in which the subrecipient is located.

G. The subrecipient has, to the maximum extent feasible, coordinated with other transportation providers and users, including social service agencies authorized to purchase transit service.

H. The subrecipient is in compliance with all applicable civil rights requirements, and has signed the Nondiscrimination Assurance. (Category I, G. "Certifications and Assurances Required of Each Applicant.")

I. The subrecipient will comply with applicable requirements of U.S. DOT regulations on participation of disadvantaged business enterprises in U.S. DOT programs.

J. The state will comply with all existing Federal requirements regarding transportation of the elderly and persons with disabilities. The subrecipient has provided to the state an Assurance of Nondiscrimination on the Basis of Disability, as set forth in the Certifications and Assurances required of each Applicant for FTA assistance. (Category I, F "Certifications and Assurances Required of Each Applicant.") If non-accessible vehicles are being purchased for use by a public entity in demand responsive service for the general public, the state will obtain from the

subrecipient a "Certification of Equivalent Service," which states that the public entity's demand responsive service offered to persons with disabilities, including persons who use wheelchairs, is equivalent to the level and quality of service the public entity offers to persons without disabilities. (See Category VIII "Certifications Required for the Direct Award of FTA Assistance to an Applicant for its Demand Responsive Service.") This "Certification of Equivalent Service" must also state that the public entity's demand responsive service, when viewed in its entirety, is provided in the most integrated setting feasible and has equivalent: (1) response time, (2) fares, (3) geographic service area, (4) hours and days of service, (5) restrictions or restraints on trip purpose, (6) availability of information and reservation capability, and (7) constraints on capacity or service availability.

K. The subrecipient has certified to the state that it will comply with applicable provisions of 49 CFR part 605 pertaining to school bus operations. (See Category VII, "School Bus Agreement.")

L. Unless otherwise noted, each of the subrecipient's projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in the joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," at 23 CFR 771.117(c). The state certifies that financial assistance will not be provided for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c) until FTA has made the required environmental finding. The state further certifies that no financial assistance will be provided for a project requiring a conformity finding in accordance with the Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93, until FTA makes the required conformity finding.

M. The subrecipient has submitted (or will submit) all certifications and assurances currently required, including, but not limited to: a nonprocurement suspension and debarment certification; a bus testing certification for new models; a pre-award and post-delivery review certification; and a lobbying certification for each application exceeding $100,000.

N. The state will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed.

O. The state recognizes FTA's authority to conduct audits to verify compliance with the foregoing requirements and stipulations.

XIII. CERTIFICATIONS AND ASSURANCES FOR THE NONURBANIZED AREA FORMULA PROGRAM

An Applicant that intends to administer, on behalf of the state, the Nonurbanized Area Formula Program must submit the following certifications and assurances. FTA may not award Nonurbanized Area Formula Program assistance to the Applicant until the Applicant provides these certifications and assurances shown by selecting Category XIII on the Signature Page.

Based on its own knowledge and, as necessary, on information submitted by the subrecipient, the Applicant administering on behalf of the state the Nonurbanized Area Formula Program

Appendix A

authorized by 49 U.S.C. 5311 certifies and assures that the following requirements and conditions will be fulfilled:

A. The state organization serving as the Applicant and each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive and disburse Federal assistance authorized for 49 U.S.C. 5311; and to implement and manage the project.

B. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.

C. The subrecipient has, or will have by the time of delivery, sufficient funds to operate and maintain the vehicles and equipment purchased with Federal assistance authorized for this project.

D. The state assures that its Nonurbanized Area Formula Program is included in the Statewide Transportation Improvement Program as required by 23 U.S.C. 135; and to the extent applicable, projects are included in a metropolitan Transportation Improvement Program.

E. The state has provided for a fair and equitable distribution of Federal assistance authorized for 49 U.S.C. 5311 within the state, including Indian reservations within the state.

F. The subrecipient has, to the maximum extent feasible, coordinated with other transportation providers and users, including social service agencies authorized to purchase transit service.

G. The subrecipient is in compliance with all applicable civil rights requirements, and has signed the Nondiscrimination Assurance. (See Category I, G, "Certifications and Assurances Required of Each Applicant.")

H. The subrecipient will comply with applicable requirements of U.S. DOT regulations on participation of disadvantaged business enterprise in U.S. DOT programs.

I. The state will comply with all existing Federal requirements regarding transportation of elderly persons and persons with disabilities. The subrecipient has provided to the state an Assurance of Nondiscrimination on the Basis of Disability, as set forth in the Certifications and Assurances required of each Applicant for FTA assistance in Category I of this document. If non-accessible vehicles are being purchased for use by a public entity in demand responsive service for the general public, the state will obtain from the subrecipient a "Certification of Equivalent Service," which states that the public entity's demand responsive service offered to persons with disabilities, including persons who use wheelchairs, is equivalent to the level and quality of service the public entity offers to persons without disabilities. (See Category I, F , "Certifications and Assurances Required of Each Applicant.") This "Certification of Equivalent Service" must also state that the public entity's demand responsive service, when viewed in its entirety, is provided in the most integrated setting feasible and has equivalent: (1) response time, (2) fares, (3) geographic service area, (4) hours and days of service, (5) restrictions and restraints on trip purpose, (6) availability of information and reservation capability, and (7) constraints on capacity or service availability. (See Category VIII, "Certifications Required for the Direct Award of FTA Assistance to an Applicant for its Demand Responsive Service.")

J. The subrecipient has complied with the transit employee protective provisions of 49 U.S.C. 5333(b), by one of the following actions: (1) signing the Special Warranty for the Nonurbanized Area Formula Program, (2) agreeing to alternative comparable arrangements approved by the Department of Labor (DOL), or (3) obtaining a waiver from DOL; and the state has certified the subrecipient's compliance to DOL.

K. The subrecipient has certified to the state that it will comply with 49 CFR part 604 in the provision of any charter service provided with equipment or facilities acquired with FTA

Appendix A

assistance, and will also comply with applicable provisions of 49 CFR part 605 pertaining to school bus operations. (See Category VI, "Charter Bus Agreement," and Category VII, "School Bus Agreement.")

L. Unless otherwise noted, each of the subrecipient's projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in the joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," at 23 CFR 771.117(c). The state certifies that financial assistance will not be provided for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c) until FTA has made the required environmental finding. The state further certifies that no financial assistance will be provided for a project requiring a conformity finding in accordance with the Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93, until FTA makes the required conformity finding.

M. The subrecipient has submitted (or will submit) all certifications and assurances currently required, including but not limited to: a nonprocurement suspension and debarment certification; a bus testing certification for new bus models; a pre-award and post-delivery review certification; a lobbying certification for each application exceeding $100,000; and if required by FTA, an anti-drug program certification and an alcohol testing certification.

N. The state will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed.

O. The state recognizes FTA's authority to conduct audits to verify compliance with the foregoing requirements and stipulations.

P. As required by 49 U.S.C. 5311(f), it will expend not less than fifteen percent of the Federal assistance authorized for 49 U.S.C. 5311(f) it receives during this fiscal year to carry out a program to develop and support intercity bus transportation, unless the chief executive officer of the state or his or her duly authorized designee certifies that the intercity bus service needs of the state are being adequately met.

##

Selection and Signature Pages follow

Appendix A

FEDERAL FY 1996 CERTIFICATIONS AND ASSURANCES FOR FTA ASSISTANCE

Name of Applicant: _____

The Applicant agrees to comply with applicable requirements of Categories I - XIII. ____
(The Applicant may make this selection in lieu of individual selections below.)

OR

The Applicant agrees to comply with the applicable requirements of the following categories it has selected:

I. Certifications and Assurances Required of Each Applicant. ____
(Previous Category II, Procurement, is now Category I, paragraph H.)

II. Lobbying Certification. ____

III. Public Hearing Certification for Major Projects with Substantial Impacts. ____

IV. Certification for the Purchase of Rolling Stock. ____

V. Bus Testing Certification. ____

VI. Charter Bus Agreement. ____

VII. School Bus Agreement. ____

VIII. Certification for Demand Responsive Service. ____

IX. Substance Abuse Certifications Required by January 1, 1996. ____

X. Assurances Projects Involving Real Property. ____

XI. Certifications for the Urbanized Area Formula Program. ____

XII. Certifications for the Elderly and Persons with Disabilities Program. ____

XIII. Certifications for the Nonurbanized Area Formula Program. ____

(Both sides of this Signature Page must be appropriately completed and signed where indicated.)

Appendix A

FTA CERTIFICATIONS AND ASSURANCES FOR FEDERAL FISCAL YEAR 1996

Name of Applicant: _____

Name and Relationship of Authorized Representative: _____

BY SIGNING BELOW I, _____ (name), declare that I the Applicant has duly authorized me to make these certifications and assurances on the Applicant's behalf and bind the Applicant's compliance. Thus, the Applicant agrees to comply with all Federal statutes, regulations, executive orders, and administrative guidance required for each application it makes to the Federal Transit Administration (FTA) in Federal Fiscal Year 1996.

FTA intends that the certifications and assurances the Applicant selects on the other side of this form, as representative of the certifications and assurances in Appendix A, should apply, as required, to each project for which the Applicant seeks now, or may later, seek FTA assistance during Federal Fiscal Year 1996.

The Applicant affirms the truthfulness and accuracy of the certifications and assurances it has made in the statements submitted herein with this document and any other submission made to FTA, and acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801 et seq., as implemented by U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31 apply to any certification, assurance or submission made to FTA. The criminal fraud provisions of 18 U.S.C. 1001 apply to any certification, assurance, or submission made in connection with the Urbanized Area Formula Program, 49 U.S.C. 5307, and may apply to any other certification, assurance, or submission made in connection with any other program administered by FTA.

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Applicant are true and correct.

Date: _____ a. _____
Authorized Representative of Applicant

AFFIRMATION OF APPLICANT'S ATTORNEY

for _____ (Name of Applicant)

As the undersigned legal counsel for the above named Applicant I hereby affirm that the Applicant has authority under state and local law to make and comply with the certifications and assurances as indicated on the foregoing pages. I further affirm that, in my opinion, the certifications and assurances have been legally made and constitute legal and binding obligations on the Applicant.

I further affirm that, to the best of my knowledge, there is no legislation or litigation pending or threatened that might adversely affect the validity of these certifications and assurances, or of the performance of the project. Furthermore, if I become aware of circumstances that change the accuracy of the foregoing statements, I will notify the Applicant and FTA.

Date: _____. b. _____
Applicant's Attorney

Date: _____ c. _____

The Applicant's legal counsel is required to affirm the legal capacity of the Applicant, except that an Applicant seeking only an FTA university and research training grant authorized by 49 U.S.C. 5312(b) need not submit an Attorney's Affirmation. The Attorney's Affirmation used for a previous FTA project generally may be used in Fiscal Year 1996, provided the Applicant's circumstances have not changed in a way that makes the certifications invalid and the Attorney's Affirmations remains on file in the Applicant's offices readily available to FTA. In that case, line "b" should remain blank, and the same Authorized Representative signs "a." and "c." See Procedures in introduction section.
Note: FTA, however, reserves the right to require an Attorney's signature on line "b."

[FR Doc. 95–28804 Filed 11–21–95; 11:07 am]
BILLING CODE 4910–57–C

federal register

Friday
November 24, 1995

Part V

Federal Emergency Management Agency

Privacy Act of 1974; Computer Matching Program; Notice

FEDERAL EMERGENCY MANAGEMENT AGENCY

Privacy Act of 1974; Notice of a Computer Matching Program

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency gives notice that FEMA and the United States Postal Service (USPS) propose to conduct a computer matching program with FEMA as the source agency and USPS as the recipient agency. The matching program will compare FEMA debtor and USPS payroll records to identify postal employees delinquently indebted to the Federal Government under the Disaster Relief Program, the National Flood Insurance Program, and any employee programs administered by FEMA.

DATES: We invite comments on this notice, which must be received no later than 30 days from November 24, 1995.

ADDRESSES: Please send any comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, (facsimile) 202–646–4536.

FOR FURTHER INFORMATION CONTACT: Richard S. Buck, Recorder, FEMA Data Integrity Board, (202) 646–4091.

SUPPLEMENTARY INFORMATION: Section 552a(e) of the Privacy Act, as amended by the Computer Matching & Privacy Protection Act of 1988, as amended, by § 3(a) of Pub. L. 100–503, 5 U.S.C. 552(e)(12), requires agencies to publish advance notice of computer matching programs as a means of informing benefit recipients/employees of plans to conduct computer matches. FEMA and USPS propose to conduct a computer matching program with FEMA as the source agency and USPS as the recipient agency. The matching program will compare FEMA debtor and USPS payroll records to identify postal employees delinquently indebted to the Federal Government under the Disaster Relief Program, the National Flood Insurance Program, and any employee programs administered by FEMA. When voluntary repayment is not forthcoming, FEMA will request offset of those debts under the salary offset provisions of the Debt Collection Act of 1982, 5 U.S.C. 5514 note.

This is the first year that FEMA has had a debt collection computer match. Prior experience with manual matches shows that approximately 1.5 percent of FEMA's delinquent debtors that the Agency referred to the Internal Revenue Service (IRS) for Federal income tax refund offset were either Federal employees/retirees, uniformed services active duty members/retirees, or Postal Service employees. The proposed match for 1995 will compare approximately 5,500 debtor records, representing approximately $14 million in outstanding debt and is expected to show a similar number of matches (1.5 percent).

FEMA estimates that in the 1996 tax year debt collections will be approximately $207,500 by taking salary and retirement offsets from debtors whose records have been identified by computer matching. Set forth below is a description of the computer matching program proposed by this notice in compliance with OMB Bulletin No. 89–22, ''Instructions on Reporting Computer Matching Programs to the Office of Management & Budget (OMB), Congress and the Public.''

Report of Computer Matching Program—United States Postal Service and the Federal Emergency Management Agency (Comparing USPS Payroll and FEMA Debt Collection Records)

A. Participating Agencies

The United States Postal Service (USPS) is the recipient agency and will perform the computer match with debt collection records provided by the Federal Emergency Management Agency, the source agency in this matching program.

B. Purpose of the Matching Program

This matching program will compare USPS payroll and the FEMA delinquent debtor files to identify postal employees who may owe delinquent debts to the Federal Government under programs administered by FEMA. The pay of an employee identified and verified as a delinquent debtor may be offset under the provisions of the Debt Collection Act of 1982 if voluntary payment is not made.

C. Legal Authorities Authorizing Operation of the Match

This matching program will be undertaken under the authority of the Debt Collection Act of 1982, 5 U.S.C. 5514 note; 31 U.S.C. 3711, Collection and Compromise, and § 3716, Administrative Offset; 5 U.S.C. 5514, Installment Deduction for Indebtedness; 4 CFR Ch. II, Federal Claims Collection Standards (General Accounting Office—Department of Justice), 5 CFR §§ 550.1101—550.1108, Collection by Offset from Indebted Government Employees; 44 CFR 11.45, Collection by Salary Offset, which authorizes federal agencies to offset a federal employee's salary as a means of satisfying delinquent debts owed to the United States.

D. Categories of Individuals Matched and Identification of Records Used

The systems of records maintained by the participant agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a note, from which records will be disclosed for this matching program are:

1. USPS will disclose records from its system ''Finance Records—Payroll System, USPS 050.020'' containing payroll records for approximately 800,000 current employees. Disclosure will be made pursuant to routine use no. 24 of USPS 050.020, which last appeared at 57 FR 57515, dated December 4, 1992.

2. Federal Emergency Management Agency will provide extracts from a Privacy Act system of records (FEMA Debt Collection Files (FEMA/OC–2) containing records on approximately 5,500 debtors. A full description of these files was last published in the Federal Register (58 FR 63986–63988) on December 3, 1993. Disclosures will be made from FEMA Debt Collection Files (OC–2/FEMA) pursuant to the first and third listed but unnumbered routine uses.

E. Description of the Matching Program

Federal Emergency Management Agency will provide to USPS a computer disk containing the names and social security numbers (SSN) of FEMA's debtors. By computer, the USPS will compare that information with its payroll file, establishing matched individuals (i.e., ''hits'') on the basis of like SSN's. For each matched individual the USPS will provide to FEMA the name, SSN, home address, date of birth, work location, and employee type (permanent or temporary). The identity and debtor status of an individual will be verified by FEMA by manually comparing the ''hit'' file with FEMA's debtor files, by conducting independent inquiries when necessary to resolve questionable identities, and by reviewing records of the suspected debtor's account to confirm that the debt is still in a non-pay status without resolution.

Due process procedures will be provided by FEMA to matched individuals consisting of: (1) verification of the debt; (2) 30-day written notice to the debtor explaining the debtor's rights; (3) provision for the debtor to examine and copy FEMA's documentation of the debt; (4) provision

for the debtor to seek FEMA's review of the debt; (5) opportunity for a hearing before an individual who is not under the supervision or control of the Director of FEMA; and (6) opportunity for the debtor to enter into a written agreement satisfactory to FEMA for repayment. Only after FEMA has afforded the debtor these opportunities and certified over the signature of an authorized agency official that all due process procedures have been followed will steps be taken to effect involuntary salary offset.

F. Beginning and Ending Dates of the Matching Program

The matching program is expected to begin in December 1995 and continue in effect for a period not to exceed 18 months. The agreement may be extended for one additional year beyond that period if, within three months prior to the actual expiration date of the matching agreement, the Data Integrity Boards of both the USPS and FEMA find that the computer matching program can be conducted without change and each party certifies that the matching program has been conducted in compliance with the matching agreement.

Dated: November 22, 1995.

Gary D. Johnson,

Chief Financial Officer and Member, FEMA Data Integrity Board.

[FR Doc. 95–28951 Filed 11–22–95; 9:55 am]

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