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Federal Register

Friday
November 8, 1996

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WASHINGTON, DC

WHEN: November 19, 1996 at 9:00 a.m.

WHERE: Office of the Federal Register
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Electronic Bulletin Board
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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Federal Register
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Presidential Documents

Title 3—

The President

Executive Order 13023 of November 6, 1996

Amendments to Executive Order 12992, Expanding and Changing the Name of the President's Council on Counter-Narcotics

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and in order to change the name of the ''President's Council on Counter-Narcotics'' to the ''President's Drug Policy Council'' and to make the Secretaries of the Interior, Agriculture, Health and Human Services, Housing and Urban Development, Education, Veterans Affairs, and the Assistant to the President for Domestic Policy, permanent members of the Council, it is hereby ordered as follows:

Section 1. The Council established by Executive Order 12992 shall henceforth be called the ''President's Drug Policy Council.''

Sec. 2. Section 1 of Executive Order 12992 is amended by deleting ''President's Council on Counter-Narcotics'' and inserting ''President's Drug Policy Council'' in lieu thereof.

Sec. 3. Section 2 of Executive Order 12992 is amended to read as follows:

''Sec. 2. *Membership*. The Council shall comprise the:

(a) President, who shall serve as Chairman of the Council;

(b) Vice President;

(c) Secretary of State;

(d) Secretary of the Treasury;

(e) Secretary of Defense;

(f) Attorney General;

(g) Secretary of the Interior;

(h) Secretary of Agriculture;

(i) Secretary of Health and Human Services;

(j) Secretary of Housing and Urban Development;

(k) Secretary of Transportation;

(l) Secretary of Education;

(m) Secretary of Veterans Affairs;

(n) Representative of the United States of America to the United Nations;

(o) Director of the Office of Management and Budget;

(p) Chief of Staff to the President;

(q) Director of National Drug Control Policy;

(r) Director of Central Intelligence;

(s) Assistant to the President for National Security Affairs;

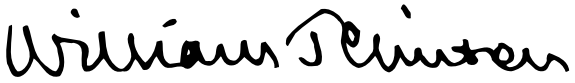
(t) Counsel to the President;

(u) Chairman, Joint Chiefs of Staff;

(v) National Security Advisor to the Vice President; and

(w) Assistant to the President for Domestic Policy.

As applicable, the Council shall also comprise such other officials of the departments and agencies as the President may, from time to time, designate.''



THE WHITE HOUSE,
November 6, 1996.

[FR Doc. 96–28938
Filed 11–7–96; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 61, No. 218
Friday, November 8, 1996

FEDERAL RESERVE SYSTEM

12 CFR Part 215

[Regulation O; Docket No. R–0939]

Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks; Loans to Holding Companies and Affiliates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending its Regulation O, which limits how much and on what terms a bank may lend to its own insiders and insiders of its affiliates, in order to permit insiders of a bank and of the bank's affiliates to obtain loans under company-wide employee benefit plans. This amendment conforms the regulation to the Economic Growth and Regulatory Paperwork Reduction Act of 1996, which was recently passed by Congress. Currently, participation in such plans is prohibited when loans under such plans are on terms not available to the general public.

The Board also is amending Regulation O to simplify the procedure for a bank's board of directors to exclude executive officers and directors of an affiliate from policymaking functions of the bank, and thereby from the restrictions of Regulation O.

EFFECTIVE DATE: November 4, 1996.

FOR FURTHER INFORMATION CONTACT: Gregory Baer, Managing Senior Counsel (202/452–3236), or Gordon Miller, Attorney (202/452–2534), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

Background

Section 22(h) of the Federal Reserve Act restricts insider lending by banks, and Regulation O implements section 22(h). 12 U.S.C. 375b; 12 CFR Part 215. Regulation O imposes quantitative limits on loans to insiders and requires that such loans not be on ''preferential'' terms—that is, on the same terms a person not affiliated with the bank would receive. 12 CFR 215.4(a). For this purpose, an ''insider'' means an executive officer, director, or principal shareholder, and loans to an insider include loans to any ''related interest'' of the insider, including any company controlled by the insider. 12 CFR 215.2(h). Section 22(h) also restricts lending to insiders of a bank's parent bank holding company and any other subsidiary of that bank holding company. 12 U.S.C. 22(h)(8).

Widely Available Benefit Plans

On September 30, 1996, in the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA),[1] Congress amended the preferential lending prohibition of section 22(h)(2) by adding an exception for extensions of credit made pursuant to a program that is widely available to all employees of the lending bank and does not give preference to insiders over other employees. The amendment to section 22(h) was effective September 30, 1996.

Previously, section 22(h)(2) prohibited insiders from participating in programs available to all other employees of a lending bank, such as a reduction or waiver of closing costs for home mortgage loans, because members of the general public were not entitled to obtain credit on the same terms. The legislative history of EGRPRA indicates that Congress amended section 22(h) because participation by insiders in programs as described above would not affect any of the core restrictions on insider lending under the statute.[2] In other words, participation by an insider in a plan that is widely available to employees of a bank would not constitute abuse of the insider's position and would not substantially contribute to a concentration of credit among insiders.

The Board is amending Regulation O to conform to the amendment in EGRPRA. Consistent with section 22(h)(8), the amendment also expressly includes loans to insiders of an affiliate in the new exception.[3]

Exclusion of Insiders of Affiliates From Policymaking at a Bank

The Board previously published for public comment a proposal to simplify the requirements for board of directors action to exclude an executive officer of an affiliate from participating in major policymaking functions of the lending bank.[4] Currently, in order to be exempt from Regulation O, an executive officer must be excluded by resolution of the board of directors of both the lending bank and the affiliate for which the executive officer works. 12 CFR 215.2(e)(2)(i). Because a bank has full control over who participates in its policymaking, however, the Board proposed that requiring a board resolution of the affiliate in addition to a board resolution of the lending bank was superfluous and unduly burdensome. Forty-four public comments were received on the proposal, of which 18 generally supported the simplification of the resolution requirements, with no comments opposed. Accordingly, the Board is deleting this requirement from the existing exception for executive officers of affiliates.

Four commenters on the proposal also recommended that the resolution requirements be further simplified by permitting a bank to adopt a resolution listing by name or title only the insiders of the bank and its affiliates who are authorized to participate in major policymaking functions of the bank and generally excluding all other persons from participation. Currently, the regulation requires the executive officer to be excluded by name or title from participating in such functions. 12 CFR 215.2(e)(2)(i). Because a bank's board of

[1] Pub. L. 194–208, section 2211 (1996).

[2] *See* S. Rep. No. 104–185, 104th Cong., 1st Sess. 25 (1995).

[3] Insiders of affiliates are eligible because they are deemed to be insiders of member banks for all purposes under the statute. *See* 12 U.S.C. 375b(8). Thus, an insider of an affiliate would be eligible for a benefit or compensation program if the bank made the benefit or compensation widely available to employees of that affiliate, and did not give preference to insiders over other employees of that affiliate.

[4] 61 FR 19683 (May 3, 1996).

directors has formal control over who participates in the bank's policymaking, the Board believes that an affirmative resolution of the board should accurately identify all persons participating. Accordingly, the Board is amending the resolution requirement to provide for such a resolution.

Some commenters also proposed that the board of directors of a bank holding company be permitted to adopt a resolution on behalf of its subsidiaries. The Board does not consider this procedure to be appropriate, however, in view of the formal responsibility of a bank's own board of directors to set the bank's policy and the variations that exist among bank holding companies in the degree of influence they exercise over internal policymaking at their subsidiary banks. Another commenter suggested that the requirement for a board of directors resolution be dropped entirely. The Board believes that the resolution requirement should be retained, in order to ensure that a bank's major policymakers are identified at a level within the bank that is qualified to address the issue authoritatively.

Simultaneously with this notice, as a result of a change in the exemptive authority of the Board under EGRPRA, the Board also is proposing an amendment to Regulation O to permit a bank to exempt directors of an affiliate from the restrictions of Regulation O. The amended procedures described above concerning the resolution requirements to exempt executive officers of an affiliate also are included in the proposed amendment to exempt directors of an affiliate. Public comment on the amended procedures is requested as part of that proposed rulemaking.

Determination of Effective Date

Because the final rule is a substantive rule that grants an exemption or relieves a restriction, and the final rule concerning participation by insiders and insiders of affiliates in employee benefit plans is intended solely to conform the regulation to section 22(h), as amended effective September 30, 1996, the Board has determined, for good cause, that the final rule will become effective immediately upon the date of Board action adopting the amendment. *See* 5 U.S.C. 553(d). The final rule imposes no additional reporting, disclosure, or other new requirements on insured depository institutions. *See* 12 U.S.C. 4802(b).

Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to publish a final regulatory flexibility analysis when the agency publishes a final rule. Two of the requirements of a final regulatory flexibility analysis (5 U.S.C. 604(b))—a succinct statement of the need for, and the objectives of, the rule, and a summary of the issues raised by the public comments received, the agency assessment thereof, and any changes made in response thereto—are contained in the supplementary information above. No significant alternatives to the final rule were considered by the agency.

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the amendment to Regulation O will not have a significant economic impact on a substantial number of small entities, and that any impact on those entities should be positive. The amendment will reduce the regulatory burden for most banks by permitting insiders of banks and insiders of their affiliates to participate in lending programs generally available to employees and by simplifying the procedures for exempting insiders of affiliates from the insider lending restrictions in general.

Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1980 (44 U.S.C. Ch. 35; 5 CFR Part 1320, Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget.

The recordkeeping requirements are authorized by 12 U.S.C. 375b(10). This information is required to evidence compliance with the requirements of section 22(h) of the Federal Reserve Act. The amendment is estimated to result in some reduction in the annual burden of recordkeeping associated with Regulation O for state member banks.

The Federal Reserve System may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0036.

List of Subjects in 12 CFR Part 215

Credit, Federal Reserve System, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, and pursuant to the Board's authority under section 22(h) of the Federal Reserve Act (12 U.S.C. 375b), the Board is amending 12 CFR Part 215, subpart A, as follows:

PART 215—LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS (REGULATION O)

1. The authority citation for part 215 continues to read as follows:

Authority: 12 U.S.C. 248(i), 375a(10), 375b (9) and (10), 1817(k)(3) and 1972(2)(G)(ii); Pub. L. 102–242, 105 Stat. 2236.

2. Section 215.2 is amended by revising paragraph (e)(2)(i) to read as follows:

§ 215.2 Definitions.

* * * * *

(e) * * *

(2) * * *

(i) The board of directors of the member bank adopts a resolution identifying (by name or by title) all persons authorized to participate in major policymaking functions of the member bank, and the executive officer of the affiliate is not included in the resolution and does not actually participate in such major policymaking functions; and

* * * * *

3. Section 215.4 is amended as follows:

a. Paragraphs (a) introductory text, (a)(1) and (a)(2) are redesignated as paragraphs (a)(1) introductory text, (a)(1)(i) and (a)(1)(ii), respectively;

b. A heading is added to newly designated paragraph (a)(1); and

c. A new paragraph (a)(2) is added.

The additions read as follows:

§ 215.4 General prohibitions.

(a) *Terms and creditworthiness*—(1) *In general.* * * *

(2) *Exception.* Nothing in this paragraph (a) shall prohibit any extension of credit made pursuant to a benefit or compensation program—

(i) That is widely available to employees of the member bank and, in the case of extensions of credit to an insider of its affiliates, is widely available to employees of the affiliates at which that person is an insider; and

(ii) That does not give preference to any insider of the member bank over other employees of the member bank and, in the case of extensions of credit to an insider of its affiliates, does not give preference to any insider of its affiliates over other employees of the affiliates at which that person is an insider.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 4, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–28720 Filed 11–7–96; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ASO–26]

Removal of Class E5 Airspace; Hemingway, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment removes Class E5 airspace at Hemingway, SC. There are no longer any Instrument Approach Procedures (IAP's) at the Hemingway-Stuckey Airport. Therefore, there is no longer a requirement for Class E5 airspace for the airport.

EFFECTIVE DATE: 0901 UTC, January 30, 1997.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, Operations Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

History

There are no longer any IAP's at the Hemingway-Stuckey Airport. Consequently, the airport no longer meets the criteria for Class E5 airspace. This action will eliminate the impact that Class E5 airspace has placed on users of the airspace in the vicinity of the airport. This rule will become effective on the date specified in the **DATES** section. Since this action removes the Class E5 airspace, which eliminates the impact of Class E5 airspace on users of the airspace in the vicinity of the Hemingway-Stuckey Airport, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) removes Class E5 airspace at Hemingway, SC. There are no longer any IAP's at the Hemingway-Stuckey Airport. Therefore, there is no longer a requirement for Class E5 airspace for the airport.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 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 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

ASO SC E5 Hemingway, SC [Removed]

* * * * *

Issued in College Park, Georgia, on October 31, 1996.

Benny L. McGlamery,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 96–28795 Filed 11–7–96; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–ASO–14]

Amendment to Class E2 Airspace; London, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E2 airspace area at London, KY. An automated weather observing system has been installed at the London-Corbin Airport-Magee Field. This system transmits the required weather observations continuously to the Indianapolis Air Route Traffic Control Center, which is the controlling facility for the airport. Therefore, the Class E2 surface area is amended from part time to continuous.

EFFECTIVE DATE: 0901 UTC, January 30, 1997.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, Operations Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

History

On July 10, 1996, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying Class E airspace at London, KY (61 FR 36313). This action would provide adequate Class E2 airspace for IFR operations at the London-Corbin Airport-Magee Field.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One letter objecting to the proposal was received. The commenter questioned the need for controlled airspace in the absence of air carrier operations, the reliability of the automated weather observing system, the certification date, and other airports with automated weather observing systems and communications with air traffic control. Controlled airspace does not exist as a result of air carrier operations, but rather to accommodate instrument procedures at an airport. The automated weather observing system operating at London, KY, is an Automated Surface Observation System (ASOS), not an Automated Weather Observation System (AWOS) as the commenter stated. The ASOS is the official certified government system, while the AWOS is not. The ASOS was commissioned as an ''operational'' system at London, KY, on September 18, 1996, and is maintained by dedicated National Weather Service (NWS) technicians, who are on call and operate in accordance with strict time parameters. Other airports that meet the FAA requirements for weather observations and reporting, as well as communications are being, or will be, processed for appropriate airspace action. Class E airspace areas designated as a surface area for an airport are published in Paragraph 6002 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies Class E2 airspace at London, KY. An automated weather observing system has been installed at the London-Corbin Airport—Magee Field. This system transmits the required weather observations continuously to the Indianapolis Air Route Traffic Control Center, which is the controlling facility for the airport. Therefore, the Class E2 surface area is amended from part time to continuous.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 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 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

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

* * * * *

ASO KY E2 London, KY [Revised]

London-Corbin Airport-Magee Field, KY
(Lat. 37°05′14″ N., long. 84°04′37″ W.)

Within a 6-mile radius of London-Corbin Airport-Magee Field.

* * * * *

Issued in College Park, Georgia, on October 31, 1996.

Benny L. McGlamery,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 96–28794 Filed 11–7–96; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Docket No. 96–ACE–17]

Amendment to Class E Airspace, Knob Noster, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action amends the Class E airspace area at Whiteman AFB, Knob Noster, MO. A review of military instrument approach procedures found that there is not sufficient Class E airspace and requires an increase of 0.5 mile extension to the north in order to protect the point at which arrivals leave 1,000 feet AGL. The effect of this rule is to provide additional controlled airspace for aircraft executing the SIAPs at Whiteman AFB.

DATES: *Effective Date:* March 27, 1997.

Comment Date: Comments must be received on or before December 31, 1996.

ADDRESSES: Send comments in triplicate to: Manager, Operations Branch, Air Traffic Division, ACE–530, Federal Aviation Administration, Docket Number 96–ACE–17, 601 East 12th St. Kansas City, MO 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Operations Branch, ACE–530C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106: telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has reviewed the controlled airspace at Whiteman AFB, Knob Noster, MO. The existing Class E airspace does not protect the point at which arrivals leave 1,000 feet AGL. Therefore, we have added a 0.5 mile extension to the north. The amendment to Class E airspace at Knob Noster, MO, will provide additional controlled airspace to segregate aircraft operating under Visual Flight Rules (VFR) from aircraft operating under Instrument Flight Rules (IFR) procedures while arriving or departing the airport. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to either circumnavigate the area, continue to operate under VFR to and from the airport, or otherwise comply with IFR procedures. Class E airspace areas extending from surface of the earth are published in paragraph 6000 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the Federal Register indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the Federal Register, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications

should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–ACE–17.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not as a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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 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 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 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 incorporated by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6000 Class E airspace areas extending upward from the surface of the earth.

* * * * *

ACE NE E2 Knob Noster, MO. [Revised]

Knob Noster, MO.
(Lat. 38°43′49″ N., long. 93°32′53″ W.)
Whiteman TACAN
(Lat. 38°44′09″ N., long. 93°33′02″ W.)

Within a 4.6-mile radius of Whiteman AFB and within 1.8 miles each side of the Whiteman TACAN 185° radial extending from the 4.6-mile radius to 6.1 miles south of the TACAN and within 1 mile each side of the Whiteman TACAN 008° radial extending from the 4.6-mile radius to 5.1 miles north of the TACAN. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airman. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Kansas City, MO, on October 17, 1996.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 96–28793 Filed 11–7–96; 8:45 am]

BILLING CODE 4910–17–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 201

[Release Nos. 33–7361; 34–37912; IC–22310; IA–1596]

Adjustments to Civil Monetary Penalty Amounts

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: This rule implements the Debt Collection Improvement Act of 1996, which requires that the Commission adopt a regulation adjusting for inflation the maximum amount of civil monetary penalties under the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940 and the Investment Advisers Act of 1940.

EFFECTIVE DATE: December 9, 1996.

FOR FURTHER INFORMATION CONTACT: Richard A. Levine, Senior Special Counsel, or Laura Leedy Gansler, Senior Counsel, Office of the General Counsel, at (202) 942–0900.

SUPPLEMENTARY INFORMATION: This regulation implements the Debt Collection Improvement Act of 1996 (''DCIA'').[1] The DCIA amended the Federal Civil Penalties Inflation Adjustment Act (''FCPIAA'')[2] to require that the Commission adopt regulations no later than 180 days after the enactment of the statute and at least once every four years thereafter adjusting for inflation the maximum amount of the civil monetary penalties under the statutes administered by the Commission.

A civil monetary penalty is defined in relevant part as any penalty, fine, or other sanction that: (1) is for a specific amount, or has a maximum amount, as provided by federal law; and (2) is assessed or enforced by an agency in an administrative proceeding or by federal court pursuant to federal law.[3] This definition covers the monetary penalty provisions contained in the statutes administered by the Commission.

The DCIA requires that the penalties be adjusted by the cost-of-living adjustment set forth in section 5 of the FCPIAA.[4] The cost-of-living adjustment is defined as the percentage by which the U.S. Department of Labor's Consumer Price Index (''CPI'') for the month of June of the year preceding the adjustment exceeds the CPI for the

[1] P.L. 104–134, section 31001(s) (April 26, 1996)
[2] 28 U.S.C. 2461 (1990).
[3] *Id.* at § 3(2).
[4] P.L. 104–134.

month of June for the year in which the amount of the penalty was last set or adjusted pursuant to law. The adjusted amounts are then rounded in accordance with the rounding formula set forth in section 5 of the FCPIAA. However, the DCIA imposes a 10% maximum increase for each penalty for the first adjustment pursuant thereto.

The Commission administers four statutes which provide for civil monetary penalties: the Securities Act of 1933; the Securities Exchange Act of 1934; the Investment Company Act of 1940; and the Investment Advisers Act of 1940. The last years in which the penalties administered by the Commission were adjusted or set were 1936,[5] 1988,[6] and 1990.[7] For each of these years, the required CPI adjustment exceeds 10%. Therefore, for this first increase pursuant to the DCIA, the Commission is directed by the statute to increase the maximum amount of each penalty by 10%.

Accordingly, the Commission is adopting an amendment to 17 CFR 201 to add a new Subpart E increasing by 10% the amount of each civil monetary penalty authorized by Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940 and the Investment Advisers Act of 1940. The adjustments set forth in the amendment apply to violations occurring after the effective date of the amendment.

Because the Commission is required by statute to adjust the civil monetary penalties within its jurisdiction by 10%, the Commission finds that good cause exists to dispense with public notice and comment pursuant to the notice and comment provisions of the Administrative Procedure Act (''APA'').[8] Specifically, the Commission finds that, because the adjustment is mandated by Congress and does not involve the exercise of Commission discretion or any policy judgments, public notice and comment is unnecessary. Therefore, the provisions of the Regulatory Flexibility Act, which apply only when notice and comments are required by the APA or other laws, are also not applicable.[9]

This rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995 as amended.[10] Therefore, Office of Management and Budget review is not required.

List of Subjects in 17 CFR Part 201

Administrative practice and procedure, Claims, Confidential business information, Equal access to justice, Lawyers, Securities.

For the reasons set forth in the preamble, part 201, title 17, chapter II of the Code of Federal Regulations is amended to read as follows:

PART 201—RULES OF PRACTICE

Subpart E—Adjustment of Civil Monetary Penalties

Sec.

201.1001 Adjustment of civil monetary penalties.

Table I to Subpart E—Civil Monetary Penalty Inflation Adjustments

Subpart E—Adjustment of Civil Monetary Penalties

Authority: Pub. L. 104–134, 110 Stat. 1321.

§ 201.1001 Adjustment of civil monetary penalties.

As required by the Debt Collection Improvement Act of 1996, the maximum amounts of all civil monetary penalties under the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, and the Investment Advisers Act of 1940 are adjusted for inflation in accordance with Table I to this subpart. The adjustments set forth in Table I apply to violations occurring after December 9, 1996.

TABLE 1 TO SUBPART E.—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

U.S. code citation	Civil monetary penalty description	Year penalty amount was last set by law	Original statutory maximum penalty amount	Adjusted maximum penalty amount
SECURITIES AND EXCHANGE COMMISSION:				
15 USC 77t(d)	FOR NATURAL PERSON	1990	$5,000	$5,500
	FOR ANY OTHER PERSON	1990	50,000	55,000
	FOR NATURAL PERSON/FRAUD	1990	50,000	55,000
	FOR ANY OTHER PERSON/FRAUD	1990	250,000	275,000
	FOR NATURAL PERSON/SUBSTANTIAL LOSSES OR RISK OF LOSSES TO OTHERS.	1990	100,000	110,000
	FOR ANY OTHER PERSON/SUBSTANTIAL LOSSES OR RISK OF LOSSES TO OTHERS.	1990	500,000	550,000
15 USC 78ff(b)	EXCHANGE ACT/FAILURE TO FILE INFORMATION DOCUMENTS, REPORTS.	1936	100	110
15 USC 78ff(c)(1)(B).	FOREIGN CORRUPT PRACTICES—ANY ISSUER	1988	10,000	11,000
15 USC 78ff(c)(2)(C).	FOREIGN CORRUPT PRACTICES—ANY AGENT OR STOCKHOLDER ACTING ON BEHALF OF ISSUER.	1988	10,000	11,000
15 USC 78u–1(a)(3).	INSIDER TRADING—CONTROLLING PERSONS	1988	1,000,000	1,100,000
15 USC 78u–2	FOR NATURAL PERSON	1990	5,000	5,500
	FOR ANY OTHER PERSON	1990	50,000	55,000
	FOR NATURAL PERSON/FRAUD	1990	50,000	55,000

[5] *See* 15 U.S.C. 78ff(b)). The CPI for June 1936 was 41.4. The CPI for June 1995 was 456.7. Therefore, the cost-of-living adjustment factor for penalties set or last amended in 1936 is 11.031.

[6] *See* 15 U.S.C. 78ff(c)(1)(B), 78ffc(2)(C), 78u–1(a)(3). The CPI for June 1988 was 353.5. The CPI for June 1995 was 456.7. Therefore, the cost-of-living adjustment factor for penalties set or last amended in 1988 is 1.29.

[7] *See* 15 U.S.C. 77t(d); 15 U.S.C. 78u–2, 78u(d)(3); 15 USC 80a–9(d), 80a–41(e), 80b–3(i), 80b–9(e). The CPI for June 1990 was 389.1. The CPI for June 1995 was 456.7. Therefore, the cost-of-living adjustment factor for penalties set or last amended in 1990 is 1.17.

[8] 5 U.S.C. 553(b)(3)(B).

[9] *See* 5 U.S.C. 601–612.

[10] 44 U.S.C. 3501 *et. seq.*

TABLE 1 TO SUBPART E.—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

U.S. code citation	Civil monetary penalty description	Year penalty amount was last set by law	Original statutory maximum penalty amount	Adjusted maximum penalty amount
	FOR ANY OTHER PERSON/FRAUD	1990	250,000	275,000
	FOR NATURAL PERSON/SUBSTANTIAL LOSSES TO OTHERS/GAINS TO SELF.	1990	100,000	110,000
	FOR ANY OTHER PERSONS/SUBSTANTIAL LOSSES TO OTHERS/GAIN TO SELF.	1990	500,000	550,000
15 USC 78u(d)(3)	FOR NATURAL PERSON	1990	5,000	5,000
	FOR ANY OTHER PERSON	1990	50,000	55,000
	FOR NATURAL PERSON/FRAUD	1990	50,000	55,000
	FOR ANY OTHER PERSON/FRAUD	1990	250,000	275,000
	FOR NATURAL PERSON/SUBSTANTIAL LOSSES OR RISK OF LOSSES TO OTHERS.	1990	100,000	110,000
	FOR ANY OTHER PERSON/SUBSTANTIAL LOSSES OR RISK OF LOSSES TO OTHERS.	1990	500,000	550,000
15 USC 80a–9(d)	FOR NATURAL PERSON	1990	5,000	5,500
	FOR ANY OTHER PERSON	1990	50,000	55,000
	FOR NATURAL PERSON/FRAUD	1990	50,000	55,000
	FOR ANY OTHER PERSON/FRAUD	1990	250,000	275,000
	FOR NATURAL PERSON/SUBSTANTIAL LOSSES TO OTHERS/GAINS TO SELF.	1990	100,000	110,000
	FOR ANY OTHER PERSON/SUBSTANTIAL LOSSES TO OTHER/GAINS TO SELF.	1990	500,000	550,000
15 USC 80a–41(e)	FOR NATURAL PERSON	1990	5,000	5,500
	FOR ANY OTHER PERSON	1990	50,000	55,000
	FOR NATURAL PERSON/FRAUD	1990	50,000	55,000
	FOR ANY OTHER PERSON/FRAUD	1990	250,000	275,000
	FOR NATURAL PERSON/SUBSTANTIAL LOSSES OR RISK OF LOSSES TO OTHERS.	1990	100,000	110,000
	FOR ANY OTHER PERSON/SUBSTANTIAL LOSSES OR RISK OF LOSSES TO OTHERS.	1990	500,000	550,000
15 USC 80b–3(i)	FOR NATURAL PERSON	1990	5,000	5,500
	FOR ANY OTHER PERSON	1990	50,000	55,000
	FOR NATURAL PERSON/FRAUD	1990	50,000	55,000
	FOR ANY OTHER PERSON/FRAUD	1990	250,000	275,000
	FOR NATURAL PERSON/SUBSTANTIAL LOSSES TO OTHERS/GAIN TO SELF.	1990	100,000	110,000
	FOR ANY OTHER PERSON/SUBSTANTIAL LOSSES TO OTHERS/GAIN TO SELF.	1990	500,000	550,000
15 USC 80b–9(e)	FOR NATURAL PERSON	1990	5,000	5,500
	FOR ANY OTHER PERSON	1990	50,000	55,000
	FOR NATURAL PERSON/FRAUD	1990	50,000	55,000
	FOR ANY OTHER PERSON/FRAUD	1990	250,000	275,000
	FOR NATURAL PERSON/SUBSTANTIAL LOSSES OR RISK OF LOSSES TO OTHERS.	1990	100,000	110,000
	FOR ANY OTHER PERSON/SUBSTANTIAL LOSSES OR RISK OF LOSSES TO OTHERS.	1990	500,000	550,000

Dated: November 1, 1996.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–28596 Filed 11–7–96; 8:45 am]

BILLING CODE 8010–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 078–2–0016; FRL–5642–8]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval and a limited disapproval of revisions to the California State Implementation Plan (SIP) proposed in the Federal Register on February 28, 1995. The revisions concern rules from the South Coast Air Quality Management District (SCAQMD). This final action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of oxides of nitrogen (NO_X) and oxides of sulfur (SO_X) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The rules concern the control of NO_X emissions from facilities in the SCAQMD with four or more tons of NO_X or SO_X emissions per year from permitted equipment. The subject facilities, in order to meet annual emission reduction requirements, will participate in an economic incentive program (EIP) in order to reduce emissions at a significantly lower cost. This document also serves to respond to comments received from the public on the February 28, 1995 notice of proposed rulemaking (NPRM).

EFFECTIVE DATE: This action is effective on December 9, 1996.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.
Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460.
California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 92123–1095.
South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT:

Kenneth Israels, Rulemaking Section, (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1194.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 1995 in 60 FR 10819, EPA proposed granting limited approval and limited disapproval of the following rules into the California SIP: South Coast Air Quality Management District, Regulation XX, NO_X and SO_X Regional Clean Air Incentives Market (RECLAIM). Regulation XX was adopted by SCAQMD on October 13, 1993. This rule was submitted by the California Air Resources Board to EPA on March 21, 1994. These rules were adopted as part of South Coast Air Quality Management District's efforts to achieve the National Ambient Air Quality Standards (NAAQS) for ozone and in response to section 182(f) NO_X reasonably available control technology (RACT) requirements of the Clean Air Act (CAA). A detailed discussion of the background for each of the above rules and nonattainment areas is provided in the NPRM cited above.

In the NPRM, EPA proposed conditionally approving RECLAIM provided that the SCAQMD submitted an enforceable commitment within one year of publication of the NPRM to correct the deficiencies cited. EPA did not receive an enforceable commitment from SCAQMD within one year of the publication of the NPRM, therefore EPA is finalizing, as proposed in the alternative in the NPRM, a simultaneous limited approval and limited disapproval under CAA provisions regarding plan submissions and requirements for nonattainment areas. As a result of this limited disapproval EPA will be required to impose highway funding or emission offset sanctions under the CAA unless the State submits and EPA approves corrections to the identified deficiencies within 18 months of the effective date of this disapproval. Moreover, EPA will be required to promulgate a Federal implementation plan (FIP) unless the deficiencies are corrected within 24 months of the effective date of this disapproval.

On August 28, 1996 the State of California submitted revisions to EPA which EPA believes address all of the deficiencies cited in the February 28, 1995 NPRM. Therefore, EPA is proposing elsewhere in the Federal Register today to approve into the SIP the August 28, 1996 submittal which addresses the cited deficiencies. The final approval of the August 28, 1996 submittal will supersede the limited disapproval of the March 21, 1994 submittal and remove the possibility of sanctions associated with this limited approval/limited disapproval noted above.

EPA has evaluated the above rule for consistency with the requirements of the CAA and EPA regulations and EPA's interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the NPRM. EPA is finalizing the limited approval of these rules in order to strengthen the SIP and finalizing the limited disapproval requiring the correction of the remaining deficiencies. The NO_X and SO_X RECLAIM program contains the following deficiencies:

- the program allows the use of variances to avoid compliance with program requirements; this results in the program failing to meet the requirements of section 110(i) of the Act,
- the program does not meet certain new source review (NSR) requirements of the Act and Part D,
- the program allows the use of Executive Officer discretion in the implementation of certain emissions monitoring provisions; this results in the program failing to meet the requirements of section 110(i) of the Act,
- the program's references to other programs, notably those involving the use of mobile source emission reduction credits (MERCs) is inconsistent with section 110(i) of the Act, and
- the submittal does not provide all of the necessary demonstrations to ensure that the requirements of EPA's EIP rules are being met.

A detailed discussion of the rule provisions and evaluations has been provided in the NPRM and in the technical support document (TSD) available at EPA's Region IX office (TSD dated February, 1995). On August 28, 1996 the State of California submitted revisions to EPA which EPA believes address all of the deficiencies cited in the February 28, 1995 NPRM. Therefore, EPA is proposing elsewhere in the Federal Register today to approve into the SIP the August 28, 1996 submittal which addresses the cited deficiencies.

Response to Public Comments

A 30-day public comment period was provided in 60 FR 10819. EPA received comments on a wide range of issues including the approval of the overall program. Four industry commentors supported full approval of the program, one environmental group opposed approval of the program, and one regulatory agency supported resolving program issues identified by EPA in the conditional approval and approving the program. EPA agrees with the commentors supporting approval of a federally enforceable RECLAIM program and is optimistic that such a program will lead to emission reductions necessary to achieve attainment of the ozone national ambient air quality standard (NAAQS) in the SCAQMD.

EPA also received specific comments from the public on the following issues: (1) program definitions, (2) NSR, (3) the use of variances in the program, (4) the use of MERCs in the program, (5) EIP rule demonstrations, (6) monitoring requirements, (7) environmental justice, (8) planning requirements, (9) public participation, (10) the program's penalty structure, and (11) RACT. Following are EPA's responses to these more specific comments:

1. Program Definitions

Comments: Two industry groups disagreed with EPA's request to modify or add definitions to RECLAIM to ensure that federal requirements relating primarily to NSR were being met.

Response: EPA believes that the definitions cited are necessary to demonstrate that the fundamental requirements of NSR programs are being met. For example, the construction-related definitions cited as deficiencies in the NPRM are necessary to ensure that the statutory offset provisions found in Section 182 of the CAA are being met. Throughout the TSD, EPA cited the appropriate federal requirements to ensure that the rationale for requiring modification or addition of key definitions was clear.

With respect to specific comments made regarding construction definitions, EPA believes that there is a fundamental need to address such definitions, via rule language or legal interpretation, in programs like RECLAIM which implement NSR requirements via trading mechanisms.

2. NSR Issues

a. Offset Ratios and Tracking System:

Comments: One environmental group commented that the NSR offset ratio for South Coast sources should be greater than 1:1. Two industry commentors commented that a tracking system is not necessary to ensure that the statutory offset ratio is being met by sources in South Coast in the aggregate.

Response: EPA believes that the statutory offset ratios (1.5:1 or 1.2:1 if all major sources apply best available control technology—BACT) in an extreme ozone nonattainment area should be maintained. EPA believes that this requirement can be met on an aggregate basis. [See discussion in EIP preamble at 59 FR 16696, dated April 7, 1994] In order to meet this requirement, as EPA noted in its NPRM, a tracking system is necessary to demonstrate that the statutory offset ratios are met. The purpose of the tracking system would be to demonstrate that a balance of reductions between non-major and major sources both in RECLAIM and outside of RECLAIM achieved the statutory NSR offset ratio (considering factors such as the RECLAIM declining mass emissions cap).

b. NSR Analysis on a Trade-by-trade Basis:

Comment: One industry commentor stated that EPA's proposed approval would lead to a NSR analysis on a trade-by-trade basis in RECLAIM.

Response: EPA's understanding of RECLAIM NSR is that NSR requirements do not, with respect to the need to purchase offsetting emissions, need to be examined on a trade-by-trade basis. The NSR offset requirements would only be triggered if a particular facility exceeded its initial RECLAIM allocation plus nontradeable emission allocation. However, the NSR lowest achievable emission rate (LAER) requirement is one which needs to be examined on a trade-by-trade basis when such trades increase emissions at an emissions unit. In these instances, while NSR offsets may not be necessary, LAER must still be applied to the emissions unit.

c. Incorporation of the Requirements of 40 CFR 51.164 into RECLAIM:

Comment: One industry commentor did not believe that the Stack height procedures found in 40 CFR 51.164 needed to be incorporated into the RECLAIM rules.

Response: NSR regulations must state that sources may not affect their emissions by erecting a stack that does not meet the Stack height requirements found in Section 123 of the CAA and in 40 CFR 51.164. EPA disagrees with the commentor.

3. The Use of Variances in the RECLAIM Program

Comment: Two industry commentors want the use of variances from program requirements in the program while one environmental group wants the use of variances out of the program.

Response: Section 110(i) of the Clean Air Act prohibits the use of variances to change the federally-enforceable SIP. EPA agrees with the environmental group commentor in that the use of such mechanisms in a market system may be detrimental to the system's achievement of clean air goals.

4. The Use of Mobile Source Emission Reduction Credits (MERCs) in the Program

Comment: One industry group does not believe MERC rules need to be SIP approved prior to being used in RECLAIM while one environmental group believes that MERCs can not be used in RECLAIM regardless of SIP approval.

Response: EPA believes that MERCs can be used in the RECLAIM program as a means of compliance with the RECLAIM mass emissions cap. However, the use of MERCs generated using rules which have not been SIP approved raises an issue of whether such uses are consistent with the federally-enforceable SIP. EPA believes that if the underlying rules used to generate MERCs for RECLAIM compliance purposes have not been SIP-approved, the credits are not federally-enforceable. EPA believes that the District and EPA can work out a satisfactory solution on this issue which provides facilities using such unapproved MERCs notice that such credits are not federally enforceable (until the particular MERC-generating rule(s) are approved into the SIP) and consequently users of such credits may be subject to federal enforcement action.

5. EIP Rule Demonstrations

Comment: One industry group does not believe that the environmental benefit demonstration found at 40 CFR 51.493(e)(1)(ii) is needed as other program elements address this issue while one environmental group does not believe that the program as a whole meets the EIP requirements.

Response: With respect to the environmental benefit demonstration, the package EPA proposed for action on February 28, 1995 did not address this issue and therefore did not meet the EIP requirements. However, EPA believes that, given the RECLAIM declining caps' rate of reduction goes beyond existing RACT requirements, the environmental benefit provision in the EIP can be met as a result of the program's design.

With respect to the program as a whole meeting the EIP demonstration requirements, EPA agrees that some of the requirements were not met and therefore cited these demonstrations in the NPRM and February, 1995 TSD as deficiencies.

6. Monitoring Requirements

Comment: One industry commentor did not support using the SIP-approval mechanism to incorporate changes to RECLAIM monitoring requirements into the federally-approved SIP.

Response: EPA intends to use the SIP-approval mechanism to incorporate changes to monitoring requirements in RECLAIM into the federally-enforceable SIP. In the future, if a generic set of criteria to determine the approvability of monitoring changes is developed, EPA may reconsider its position, provided such criteria are SIP-approved. Section 110(i) of the Clean Air Act does not allow such changes to become federally-enforceable without a SIP revision.

7. Environmental Justice

Comment: One environmental group does not believe that EPA considered RECLAIM's environmental justice impacts in its proposed action.

Response: RECLAIM is a program designed to reduce ozone precursor emissions from stationary sources. As such, it is designed to address the area-wide ozone issue in the Los Angeles area, not the localized toxics impacts issue. As the SCAQMD develops regulations which regulate toxic emissions, EPA will review those regulations under section 112 of the Clean Air Act. With respect to the concern that RECLAIM may incidentally increase toxic emissions as a result of trading, the RECLAIM program, as noted in the NPRM, meets the requirements of Section 182(e)(3) of the CAA which requires clean fuels or advanced controls for boilers which emit greater than 25 tons per year of NO_X (see the February, 1995 TSD). The majority of emissions which can potentially be traded in RECLAIM are covered by this clean fuels/advanced controls requirement (see RECLAIM supporting documentation). As a result, the bulk of RECLAIM emissions (including toxic emissions) will be controlled to a high degree through compliance with Section 182(e)(3) of the CAA, which can not be met through trading. Further, SCAQMD examined the toxic impacts of RECLAIM (see pages EX–14 and 15 and EX–29 and 5–31 of Volume 1 of the RECLAIM documentation); this analysis

shows that there will be no increase in toxic air pollutants as a result of the trading of NO_X and SO_X under the RECLAIM program. EPA has reviewed the SCAQMD analysis and agrees with its conclusions that there will be little, if any, impact on local communities as a result of trading in RECLAIM as most of the products of incomplete combustion (combustion is the primary source of NO_X emissions in RECLAIM) are not classified as hazardous air pollutants (HAPs). For those incomplete combustion products which are classified as HAPs, their impact on local communities will be addressed in the SCAQMD's and EPA's toxic control strategies (see Section 112 of the CAA). EPA believes that, as a result of each of these factors (Section 182(e)(3) of the CAA controls and State, local, and federal measures to control toxics) in the program design, EPA's approval of RECLAIM is consistent with the goals set out in Executive Order 12898, which provides the framework for federal agencies to address environmental justice issues.

8. Planning Requirements

a. RECLAIM and the 1991 Air Quality Management Plan (AQMP) and reasonable further progress (RFP):

Comment: One environmental group believes that the program is less effective than the 1991 AQMP and that it will not show RFP.

Response: EPA's decision to approve NO_X/SO_X RECLAIM is based on the District's lack of federally approved rules regulating these source categories, not on the 1991 AQMP which had, at the time of submittal, not been approved. The RECLAIM program, from this perspective, strengthens the federally enforceable SIP and is more effective than measures in an unapproved attainment plan. Further, the test for the effectiveness of an attainment plan under Section 182(c)(2) does not rely on a single measure to demonstrate attainment, but relies on all of the measures in the plan used to achieve attainment. As with the comment regarding RECLAIM and the 1991 AQMP, the RECLAIM program alone does not have to demonstrate compliance with the CAA's RFP requirements. In Section 182(c)(2)(B) of the CAA, RFP is defined over the period of 1990 to 1996 in terms of VOC emission reductions; after 1996, NO_X emission reductions may be substituted for VOC emission reductions. EPA disagrees with the commentor that RECLAIM does not meet RFP requirements as individual measures do not shoulder the burden of meeting requirements taken on by an entire progress showing.

b. Baselines:

Comment: One environmental group believes that the baselines have been inflated causing the program to fail to meet planning requirements.

Response: EPA recognizes the need for EIPs to address economic inequities in the design of such programs. In the case of RECLAIM, as the commentor has pointed out, baselines for some facilities may have been established in recognition of such inequities. Provided that increases in emissions resulting from the recognition of these inequities are addressed, then there should be no failure of the SCAQMD to meet the CAA planning requirements. As noted elsewhere in this notice, individual measures in an attainment plan need not meet specific CAA planning requirements as long as the plan as a whole demonstrates attainment.

9. Public Participation

Comment: One environmental group believes that the program does not provide enough public participation.

Response: EPA believes that RECLAIM afforded the public ample opportunity to comment during the design of the program and affords the public ample opportunity to participate during the implementation of the program via the permitting and auditing processes. The development of RECLAIM used a public process almost unprecedented in the history of air quality regulatory development. Over a three year period a steering committee, an advisory committee, and a myriad of workgroups dealing with such issues as socio-economic impacts, allocations (baselines), and energy impacts met on a regular basis. RECLAIM was adopted by the SCAQMD Governing Board after a two-session hearing, during which issues such as the baseline-setting procedures, environmental justice, NSR, public participation, and enforcement were discussed. In addition, the RECLAIM permitting process conforms to the CAA's NSR and Title V permitting requirements for public review.

10. Penalty Structure

Comment: One environmental group believes that the penalty structure is too lenient.

Response: In crafting the RECLAIM emission violation penalty structure, EPA, the SCAQMD, and members of the RECLAIM Steering Committee conducted a thorough analysis of what penalties for such violations are appropriate. In this analysis, the group sought to define appropriate penalties by examining the level of deterrence necessary to discourage noncompliance with applicable emission limits. EPA examined the history of enforcement of a variety of federal CAA programs to discover what level of deterrence has been historically effective. The group also linked the market mechanism to the amount of statutory maximum penalties in the RECLAIM program. EPA believes that a penalty structure which is based on the mass exceedance of the emission cap like the one in RECLAIM is suitable for this particular type of program. The results of this analysis led to the RECLAIM penalty scheme.

11. RACT

a. RACT aggregation:

Comment: One environmental group believes that RACT aggregation violates the Act.

Response: EPA disagrees with the commentor. This issue was thoroughly explored in the final EIP rule. In the preamble to the final EIP rule EPA states:

> ''An EIP may allow sources subject to the RACT requirement to attain RACT-level emissions reductions in the aggregate, * * *'' [See 59 FR 16695, dated April 7, 1994]

Further, the EIP preamble states:

> ''Under the EPA's interpretation, the application of the requirement to impose RACT upon ''existing sources'' meant that RACT applied in the aggregate, as opposed to source by source. This interpretation, which is reflected in the Emissions Trading Policy Statement [51 FR 43814 (December 4, 1986), the ''Bubble Policy''], was upheld in *NRDC* v. *EPA*, 33 ERC 1657 (4th Cir. 1991), an unpublished decision.'' [See 59 FR 16703, dated April 7, 1994]

Finally, the final EIP rule preamble states:

> ''Under the 1990 Act, the EPA continues to take the position established under the 1977 Act that RACT applies in the aggregate because the RACT requirement of section 172(c)(1) of the Act is phrased identically to the RACT requirement of the 1977 Act (vis., ''existing sources''). EPA does not read section 182(b)(2) to indicate to the contrary. Rather, the cross-reference to section 172(c)(1) contained in section 182(b)(2) indicates that RACT is to be interpreted in the same manner under section 182(b)(2) as under section 172(c)(1).'' [See 59 FR 16703–16704, dated April 7, 1994]

b. Long term averaging to meet RACT:

Comment: One environmental group believes that long term averaging to meet RACT violates the Act.

Response: EPA disagrees with the commentor. In the preamble to the final EIP rule EPA states:

''The final rules retain the proposed allowance for long-term emissions

averaging, as well as requirements that States make statistical showings that any such emissions averaging is consistent with applicable RACT, RFP, and short-term NAAQS. These statistical showings are necessary to show equivalency to, or noninterference with, each of these statutory requirements, although as a practical matter the same showing may suffice to assure consistency with more than one of the requirements. The statistical showings should take into account the extent to which emissions variations from an individual source or from all sources are random or systematic and, thus, the extent to which the variations can be considered to be independent. The showings must demonstrate that the pattern of emissions resulting from relaxed averaging periods would approximate the pattern of emissions that would occur without relaxed averaging periods to an extent sufficient to reasonably conclude that the relaxed averaging periods would not interfere with the statutory requirements.'' [See 59 FR 16706, dated April 7, 1994]

EPA Action

EPA is finalizing a limited approval and a limited disapproval of the above-referenced rule. The limited approval of these rules is being finalized under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited in the sense that the rules strengthen the SIP. However, the rules do not meet the section 182(a)(2)(A) CAA requirement because of the rule deficiencies which were discussed in the NPRM. Thus, in order to strengthen the SIP, EPA is granting limited approval of these rules under sections 110(k)(3) and 301(a) of the CAA. This action approves the rules into the SIP as federally enforceable rules.

At the same time, EPA is finalizing the limited disapproval of these rules because they contain deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rules do not fully meet the requirements of Part D of the Act. As stated in the NPR, upon the effective date of this NFR, the 18 month clock for sanctions and the 24 month FIP clock will begin. Sections 179(a) and 110(c). If the State does not submit the required corrections and EPA does not approve the submittal within 18 months of the NFR, either the highway sanction or the offset sanction will be imposed at the 18 month mark. It should be noted that the rule covered by this NFRM has been adopted by the SCAQMD and is currently in effect in the SCAQMD. EPA's limited disapproval action will not prevent SCAQMD or EPA from enforcing this rule.

On August 28, 1996 the State of California submitted revisions to EPA which EPA believes address all of the deficiencies cited in the February 28, 1995 NPRM. Therefore, EPA is proposing elsewhere in the Federal Register today to approve into the SIP the August 28, 1996 submittal which addresses the cited deficiencies. The final approval of the August 28, 1996 submittal will supersede the limited disapproval of the March 21, 1994 submittal and remove the possibility of sanctions associated with this limited approval/limited disapproval noted above.

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

Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

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

SIP approvals under sections 110 and 301, and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. 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 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 approval action promulgated 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, will result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States

Court of Appeals for the appropriate circuit by January 7, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: October 6, 1996.

Felicia Marcus,

Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(232) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(232) New regulations for the following APCD were submitted on March 21, 1994, by the Governor's designee:

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(*1*) Regulation XX, adopted October 15, 1993.

* * * * *

[FR Doc. 96–28594 Filed 11–7–96; 8:45 am]

BILLING CODE 6560–50–W

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 960129019–6019–01; I.D. 110196A]

Fisheries of the Exclusive Economic Zone Off Alaska; Tanner Crab Bycatch Allowances for Vessels Using Trawl Gear in Zone 1 of the Bering Sea and Aleutian Islands

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

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS has determined that the current bycatch allowances of the *Chionoecetes bairdi* (*C. bairdi*) Tanner crab prohibited species catch (PSC) limit allocated to the yellowfin sole and rock sole/flathead sole/''other flatfish'' trawl fishery categories in Zone 1 of the Bering Sea and Aleutian Islands management area (BSAI) are incorrect. NMFS is respecifying the PSC limit apportioned to these categories. These actions are necessary to achieve the optimum yield from the groundfish fisheries. They are intended to promote the goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP).

DATES: 1200 hrs, Alaska local time (A.l.t.), November 4, 1996, until 2400 hrs, A.l.t., December 31, 1996. Comments must be received at the following address no later than 4:30 p.m., A.l.t., November 19, 1996.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Attn: Lori Gravel, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, or be delivered to Room 457, Federal Building, 709 West 9th Street, Juneau, AK.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907-486-6919.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the FMP prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

Pursuant to § 679.21(e)(1)(ii) the PSC limit of *C. bairdi* Tanner crab caught while conducting any trawl fishery for groundfish in Zone 1 of the BSAI during any fishing year is 1 million animals. In accordance with § 679.21(e)(3)(i) the Final 1996 Harvest Specifications of Groundfish (61 FR 4311, February 5, 1996) apportioned this PSC limit among the trawl gear fishery categories defined at § 679.21(e)(3)(iv) as follows: (1) Yellowfin sole, 250,000 animals; (2) rock sole/flathead sole/''other flatfish'', 425,000 animals; (3) Pacific cod, 250,000 animals; and (4) pollock/Atka mackerel/other species, 75,000 animals.

As of October 12, 1996, 80,000 animals remain of the *C. bairdi* Tanner crab PSC limit to be taken in the trawl rock sole/flathead sole/''other flatfish'' category in Zone 1. This fishery category will not reopen during 1996. The yellowfin sole fishery category has no *C. bairdi* Tanner crab PSC limit apportionment remaining in Zone 1 and cannot harvest the 45,000 mt of yellowfin sole remaining in that species total allowable catch (TAC) in Zone 1. NMFS has determined that the Zone 1 PSC limit for *C. bairdi* Tanner crab apportioned to the yellowfin sole and rock sole/flathead sole/''other flatfish'' fishery categories is incorrectly specified based on the best available scientific information pertaining to bycatch rates reported by NMFS-certified observers. The *C. bairdi* Tanner crab PSC limit apportioned to the yellowfin sole fishery category needs to be augmented to promote achieving the optimum yield from the yellowfin sole fishery.

Under § 679.25(a)(1)(iii), the Administrator, Alaska Region, NMFS, is adjusting the *C. bairdi* Tanner crab PSC limit by (1) increasing the apportionment specified for the yellowfin sole fishery category in Zone 1 by 80,000 animals, resulting in an adjusted apportionment of 330,000 animals for this fishery, and (2) decreasing the apportionment specified for the rock sole/flathead sole/''other flatfish'' fishery category in Zone 1 by 80,000 animals, resulting in an adjusted apportionment of 345,000 animals for this fishery. This adjustment is necessary to prevent the underharvest of the BSAI yellowfin sole TAC and is authorized pursuant to § 679.25(a)(2)(i)(C).

As required by § 679.25(b), all information relevant to this inseason adjustment, including the effect of overall fishing effort within the statistical area and economic impacts on affected fishing businesses, was considered. Current *C. bairdi* Tanner crab bycatch allowances in Zone 1 will prevent harvest of the remaining 45,000 mt of yellowfin sole remaining in that

species TAC and will not promote optimum yield of groundfish and will result in economic harm to fishermen and processors who would otherwise participate in that fishery. Interested persons are invited to submit comment in writing (see **ADDRESSES**).

Classification

This action is taken under § 679.25 and § 679.20.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior public notice and comment on the inseason adjustment. Immediate effectiveness is necessary to prevent foregone revenue to the yellowfin sole fishery, which would otherwise be prevented from conducting operations in Zone 1.

This action is exempt from review under E.O. 12866.

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

Dated: November 1, 1996.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–28717 Filed 11–04–96; 5:00 pm]

BILLING CODE 3510–22–F

50 CFR Part 679

[Docket No. 960129019–6019–01; I.D. 110496B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Using Hook-and-Line Gear in the Bering Sea and Aleutian Islands

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

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for Pacific cod by vessels using hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the 1996 Pacific halibut bycatch mortality allowance apportioned to the Pacific cod hook-and-line fishery in the BSAI has been reached.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), November 5, 1996, until 2400 hrs, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 1996 Pacific halibut bycatch mortality allowance for the hook-and-line Pacific cod fishery, which is defined at § 679.21(e)(4)(ii)(A), is 800 mt (61 FR 4311, February 5, 1996).

The Administrator (formerly ''Director''), Alaska Region, NMFS, has determined, in accordance with § 679.21(e)(8), that U.S. fishing vessels participating in the Pacific cod hook-and-line fishery in the BSAI have caught the 1966 Pacific halibut bycatch mortality allowance. Therefore, NMFS is closing directed fishing for Pacific cod by vessels using hook-and-line gear in the BSAI.

This action is taken under § 679.20 and is exempt from review under E.O. 12866.

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

Dated: November 4, 1996.

Gary Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–28808 Filed 11–05–96; 3:53 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 218
Friday, November 8, 1996

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 Parts 932 and 944

[Docket No. FV–96–932–2–PR]

Olives Grown in California and Imported Olives; Establishment of Minimum Quality Requirements for California and Imported Olives, and Revision of Outgoing Inspection Requirements and Procedures for California Olives

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on the establishment of minimum quality requirements for California olives under Marketing Order 932 and imported olives to replace grade requirements currently in effect which are based on the U.S. Standards for Grades of Canned Ripe Olives (standards). This proposal would also revise outgoing inspection requirements and procedures for California olives. This action is expected to result in reduced handling costs, especially inspection costs, and improved consumer satisfaction.

DATES: Comments must be received by November 25, 1996.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456, 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: Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone (209) 487–5901; Fax # (209) 487–5906; or Caroline Thorpe, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, D.C. 20090–6456; telephone (202) 720–8139; Fax # (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, P.O. Box 96456, room 2523–S, Washington, D.C. 20090–6456; telephone (202) 720–2491; Fax # (202) 720–5698.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Order No. 932 (7 CFR Part 932), as amended, regulating the handling of olives grown in California, 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.''

This proposed rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including olives, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

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

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal 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 to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

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

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

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

There are 5 handlers of olives who are subject to regulation under the order, and approximately 1,350 producers of olives in the regulated area. There are approximately 25 importers of olives subject to the olive import regulation. Small agricultural service firms, which includes handlers and importers, have been 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 having annual receipts of less than $500,000. None of the handlers is considered a small entity, but the majority of olive producers and importers may be classified as small entities.

The California Olive Committee (committee) met on March 27, 1996, and unanimously recommended establishing minimum quality requirements to be incorporated within the rules and regulations of the order and revising

outgoing inspection requirements and procedures. At a meeting on July 10, 1996, the committee recommended a change in their recommendations of March 27, 1996, with regard to an outgoing inspection requirement.

Currently under the marketing order, incoming inspection requirements at § 932.51 require handlers to weigh and size-grade olives prior to processing, and dispose of non-canning size (undersized) olives into appropriate non-canning outlets. Such weighing and size-grading is done under the supervision of the Federal or Federal-State Inspection Service. These requirements provide the basis for handler payments to producers, and ensure that olives are properly sized into the various canning and non-canning size categories.

Once the olives have been size-graded, they are stored in tanks, ensuring that the various sizes of olives remain segregated. Non-canning size olives are disposed of into appropriate outlets, such as in frozen or acidified forms, or crushed for oil.

Outgoing inspection requirements at § 932.52 and § 932.149 specify the minimum quality of canned ripe olives as a modified U.S. Grade C as certified by inspectors of the USDA, Processed Products Branch (PPB). Certification as to grade provides handlers and their customers with a uniform level of quality familiar to both parties. The outgoing inspection requirements also ensure that canned ripe olives meet applicable size designations prior to shipment. Two methods of outgoing inspection are authorized: a Quality Assurance Program (QAP) approved by the PPB or in-line inspection.

This rule adds the option of lot inspection to assist handlers in reducing inspection costs. Currently, during in-line inspection, an inspector is required to be present any time olives are in the final stage of processing prior to packaging. The current cost for an inspector ranges from $34.00 to $42.00 per hour. For an 8-hour day the cost of one inspector ranges from $272.00 to $328.00. Because of this, handlers may benefit from economies of scale: the more olives produced, the less cost per can of olives.

In 1994, QAPs were added as an option to reduce inspection costs. Under QAPs, savings are more likely to accrue to larger-volume handlers, who are more likely to have sufficient olives to operate year-round and realize savings by employing trained quality-control personnel. When there is a large crop, more handlers may benefit from QAPs for similar reasons.

Adding lot inspection will offer handlers a less-costly inspection option. During lot inspection, an inspector does not need to be present during the final processing, unlike in-line inspection. However, an inspector will inspect a statistical percentage of a lot of olives whether the lot is large or small. Thus, there is less benefit of economies of scale because for large lots more olives will be inspected and for small lots fewer olives will be inspected.

The committee recommended changes in some of the inspection requirements to reduce handlers' costs, especially the costs of inspection, and to address the concerns of consumers of canned ripe olives. The changes would simplify the inspection process by eliminating steps which have been made unnecessary by modern olive processing and pitting equipment. This would reduce handling costs, including inspection costs, thereby improving returns to California producers and handlers. Similar cost savings should accrue to importers because of simplified inspection procedures.

The changes would also address consumer concerns, as identified through a 1995 consumer survey which the committee undertook. Surveyed consumers indicated that flavor, color, and character (softness) are quality criteria most important to them. The changes would address consumer concerns by evaluating quality based upon those criteria. This would ensure that consumer satisfaction is met, benefitting the California olive industry, importers, and consumers.

Therefore, the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

Establishment of Minimum Quality Requirements

Currently, § 932.149 specifies that canned olives meet a minimum grade requirement of a modified U.S. Grade C. Additional specific requirements are established for the various styles of canned ripe olives, including whole, pitted, broken pitted, halved, segmented (wedged), sliced, and chopped styles. Section 932.149 references various definitions from the standards.

In place of these grades and definitions, the committee has proposed a set of minimum quality requirements for four styles of canned olives: (1) Whole and pitted style olives; (2) sliced, segmented (wedged), and halved style olives; (3) chopped style olives; and (4) broken pitted olives. These quality requirements include criteria pertaining to flavor, saltiness, color, character (softness), uniformity of size and freedom from defects. These factors are similar to those currently specified in the standards and handling regulations, and have been determined to be of importance to consumers through the committee's consumer survey.

Olives are currently graded based upon five factors: flavor, saltiness, color, character (softness), and defects. Currently, Table I in § 932.149 only sets limits for defects of canned ripe olives. Limits for the other four factors, flavor, saltiness, color, and character, are defined in the standards. In place of Table I, based upon information from the 1995 consumer survey, the committee has proposed establishing four new tables which would specify the limits for defects for each of the canned ripe olive styles (whole and pitted styles; sliced, segmented (wedged), and halved styles; chopped style; and broken pitted style). The new tables would also define the limits of the four characteristics (flavor, saltiness, color, and character) currently defined in the standards. The four new tables would provide all the definitions and tolerances necessary to establish minimum quality requirements in place of grade requirements.

To effectuate the proposed establishment of minimum quality requirements, references to ''grade'' in § 932.149 would be replaced with ''quality'', canned broken pitted olives would be defined separately in a new paragraph designated as (a)(4), and four new tables depicting minimum quality requirements for (1) canned whole and pitted olives; (2) canned sliced, segmented (wedged), and halved olives; (3) canned chopped style olives; and (4) canned broken pitted style olives would be added to § 932.149, replacing the current Table 1.

In conforming changes, the word ''grade'' would be replaced with the words ''minimum quality'' or ''minimum quality requirements,'' as necessary, in § 932.150, § 932.153, and § 932.155.

Section 932.149(a)(2) currently sets the tolerance for identifiable pieces of pit caps, end slices, and slices at 5 percent, by weight, for canned chopped style olives. The committee recommended a relaxed tolerance of 10 percent, by weight, in an effort to encourage handlers to cut olives of the chopped style in larger pieces. The committee was concerned that canned chopped style olives are currently chopped too finely, rendering the product nearly an olive ''flour'' rather

than identifiable pieces of olives consumers indicated they preferred. This change would reduce the costs of packing canned chopped style olives.

The committee recommended that the definition of ''broken pitted'' olives be modified from the definition provided in the standards. To accomplish this, the committee proposed a modified definition in § 932.149 of the regulations. The current definition is considered too restrictive by the committee. Under the current definition, broken pitted olives are defined as ''olives [which] consist substantially of large pieces that may have been broken in pitting but have not been sliced or cut.'' Currently, each handler packing broken pitted olives is prohibited from using olives which have been improperly pitted but unbroken because the olives have not been ''broken'' in the pitting process. (Improperly pitted olives do not contain pits or pit fragments.) Each such handler, therefore, pays an employee to ''break'' the unbroken, improperly pitted olives so that such olives meet the requirement for broken pitted olives. As recommended by the committee, the proposed definition for broken pitted olives would delete the word ''substantially,'' thereby permitting a greater percentage of unbroken, improperly pitted olives to be included in the broken pitted style category. Such change is intended to reduce the costs of packing broken pitted olives while maintaining the quality of the product.

The committee further recommended basing outgoing inspections on a pass-fail basis, eliminating the requirement that the inspection service certify that canned ripe olives are either Grade A, Grade B, or Grade C. Under a pass-fail outgoing inspection, canned ripe olives would either meet the minimum quality requirements and pass inspection, or fail to meet the minimum quality requirements and not pass inspection. There would be no need to calculate the grade of each sample in order to assign Grade A, Grade B, or Grade C. Elimination of the requirement to certify to a grade would simplify the inspection of such olives, thereby reducing inspection time and overall inspection costs.

Authorized Methods of Outgoing Inspection

Pursuant to § 932.52 of the order and § 932.152 of the current outgoing regulations, handlers are required to maintain continuous in-line outgoing inspection or a certified QAP. Under continuous in-line outgoing inspection, at least one inspector must be present at all times when a plant is in operation to make in-process checks on the preparation, processing, packing, and warehousing of all products. The current cost for an inspector ranges from $34.00 to $42.00 per hour. For an 8-hour day the cost of one inspector ranges from $272.00 to $328.00.

By contrast, under a QAP, each certified plant has trained quality-control personnel who perform most of the same functions as a PPB inspector. The PPB inspectors continue to issue certificates of inspection based upon the outgoing inspection records maintained by the certified quality-control personnel. These records are verified through spot-checks and samples taken by PPB inspectors.

A QAP may decrease outgoing inspection costs for a handler compared to inspection costs under continuous in-line outgoing inspection. However, cost savings under a QAP accrue more to larger-volume handlers, who are more likely to have sufficient olives to operate year-round and realize savings by employing trained quality-control personnel. When there is a large crop, more handlers may benefit from a QAP for similar reasons. However, olive crop sizes may vary substantially from one year to the next due to the alternate-bearing characteristics. This variability further reduces the efficiency of operations at most of the olive processing plants and the cost-savings of QAP, since handlers' fixed costs must be paid independent of the size of the crop.

To enable handlers to minimize their inspection costs, the committee recommended that handlers be allowed to utilize any inspection method permitted by PPB, so that each may choose the method most economical for their operations. Thus, in addition to a QAP and in-line inspection, lot inspection would also be authorized for meeting outgoing inspection requirements. Under lot inspection, a specified number of containers of the same size and type, containing olives of the same type and style, at the same location, are inspected. Lot inspection occurs after processing, rather than during processing. Inspecting by lot has the potential to reduce costs for handlers because lot inspection does not require the presence of an inspector at all times while olives are being processed.

To effectuate this change, paragraphs (a) and (b)(1) of § 932.152, Outgoing regulations, would be revised to add authority for handlers to use either continuous in-line outgoing inspection, QAP, or lot inspection. Because lot inspection does not require the presence of an inspector at all times during the processing of olives, paragraph (b)(1) would also be revised by deleting the final sentence, thereby removing the requirement that an inspector be present when olives are processed. This change is expected to reduce overall inspection costs by eliminating overtime hours which accrue when an inspector is required to remain in an olive processing plant at all times while processing is underway. Under this proposal, for example, an inspector could work a fixed shift, first providing lot inspection on olives processed during the previous night, then converting to in-line outgoing inspection for the remainder of the shift.

Outgoing Inspection for Size of Canning-Size Olives

The committee also recommended revising the current requirements that canning-size olives, which have been sized and stored in tanks prior to pitting, be inspected for size prior to packaging. Currently, such olives are required under incoming inspection requirements to be weighed and size-graded. Olives are then stored in tanks prior to processing. The outgoing requirements mandate that such olives be submitted for size inspection prior to packaging. However, handlers size olives upon receipt and keep the sizes separate throughout the packaging process because doing so facilitates more efficient operation of modern processing and pitting equipment. Eliminating the requirement for inspection for size prior to packaging would simplify the inspection process and reduce overall inspection costs while maintaining the integrity and quality of canned ripe olives.

To effectuate this change, paragraph (b)(2) of § 932.152 would be deleted. This deletion would necessitate the redesignation of paragraph (b)(1) as (b).

However, olives which are smaller than authorized for use as canned ripe olives (undersized olives) would still be held under surveillance by the inspection service, as required in the incoming inspection requirements and specified in paragraph (e)(2) of § 932.151, since handlers must dispose of such olives into appropriate outlets, such as in frozen or acidified forms, or crushed for oil.

Outgoing Inspection for Size of Limited-Use Olives

Section 932.152, paragraphs (g)(1) and (g)(2), of the current outgoing regulations specify that olives used in the production of limited-use styles are not required to be submitted for an outgoing inspection for size prior to packaging if they were size-graded by

the inspection service during the incoming inspection process. Limited-use styles include halved, segmented (wedged), sliced, or chopped styles. Typically, smaller olives may be used for limited-use styles than for whole styles.

According to the requirements of § 932.51(a)(ii) of the order, canning size olives are sized by the inspection service during the incoming inspection process. The olives are then either placed in storage tanks or sent immediately to processing.

Olives process more efficiently when all the olives in the processing tank are uniform in size. Modern, high-speed pitting equipment produces higher yields and inflicts less damage to olives when the sizes being pitted are uniform. This is especially true for the smaller canning sizes. Currently, over 95 percent of all olives are pitted prior to packaging.

Olive handlers have an additional incentive to maintain strict control over various sizes of olives—retail customers' demands for uniform size and quality.

For those reasons, the committee recommended changes in § 932.152, paragraphs (g)(1) and (g)(2) to eliminate the requirement for inspection for size prior to packaging.

To effectuate the change, the words ''without an outgoing inspection for size designation'' would be deleted from § 932.152, paragraphs (g)(1) and (g)(2).

These changes would establish minimum quality requirements of flavor, saltiness, color, character, and defects for whole and pitted style olives; sliced, segmented (wedged), and halved style olives; chopped style olives; and broken pitted style olives. They would also revise outgoing inspection requirements and procedures under the marketing order by eliminating requirements that sized and stored olives be submitted for sizing prior to packaging, and permitting lot inspection. These revisions would eliminate requirements no longer deemed necessary, thereby reducing handling costs, while maintaining quality and size requirements needed to ensure customer satisfaction.

This rule also would make changes to § 932.153 (as amended in the Federal Register on August 5, 1996, 61 FR 40507), which specifies current minimum grade and size requirements for limited use olives. All references to ''grade'' in that section would be replaced by the words ''minimum quality'' or ''minimum quality requirements,'' as necessary.

Olive Import Requirements

Section 8e of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for olives under a domestic marketing order, imported olives must meet the same or comparable requirements. This rule proposes establishing minimum quality requirements to replace current minimum grade requirements for California olives under the marketing order. Therefore, a corresponding change is needed in the olive import regulation.

This rule proposes modifying paragraphs (a)(8), (b)(1), (g), and (j) of § 944.401 to delete certain references to the standards and add specific quality criteria for imported olives which are the same as those being proposed for California olives.

In accordance with section 8e of the Act, the U.S. Trade Representative has concurred with the issuance of this proposed rule.

This rule provides a 15-day comment period to allow interested persons to respond to this proposal. This period is deemed appropriate because the crop year began August 1, 1996, and this proposal needs to become effective as soon as possible. The proposal was recommended by the committee at a public meeting and all interested persons were invited to provide input. This proposal will also reduce handler costs and help ensure consumer satisfaction. All written comments timely received will be considered prior to finalization of this rule.

List of Subjects

7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

7 CFR Part 944

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

For the reasons set forth in the preamble, 7 CFR parts 932 and 944 are proposed to be amended as follows:

1. The authority citation for 7 CFR parts 932 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 932—OLIVES GROWN IN CALIFORNIA

2. Section 932.149 is revised to read as follows: § 932.149 Modified minimum quality requirements for specified styles of canned olives of the ripe type.

(a) Except as otherwise provided in this section, the minimum quality requirements prescribed in § 932.52(a)(1) are modified as follows, for specified styles of canned olives of the ripe type:

(1) Canned whole and pitted olives of the ripe type shall meet the minimum quality requirements as prescribed in Table 1 of this section;

(2) Canned sliced, segmented (wedged), and halved olives of the ripe type shall meet the minimum quality requirements as prescribed in Table 2 of this section;

(3) Canned chopped olives of the ripe type shall meet the minimum quality requirements as prescribed in Table 3 of this section; and shall be practically free from identifiable units of pit caps, end slices, and slices (''practically free from identifiable units'' means that not more than 10 percent, by weight, of the unit of chopped style olives may be identifiable pit caps, end slices, or slices); and

(4) Canned broken pitted olives of the ripe type shall meet the minimum quality requirements as prescribed in Table 4 of this section.

TABLE 1.—WHOLE AND PITTED STYLE

[Defects by count per 50 olives]

FLAVOR	Reasonably good; no ''off'' flavor.
FLAVOR (Green Ripe Type)	Free from objectionable flavors of any kind.
SALOMETER	Acceptable Range in degrees: 3.0 to 14.0.
COLOR	Reasonably uniform with not less than 60% having a color equal or darker than comparator for Ripe Type.
CHARACTER	Not more than 5 soft units or 2 excessively soft units.
UNIFORMITY OF SIZE	60%, by visual inspection, of the most uniform in size. The diameter of the largest does not exceed the smallest by more than 4mm.

TABLE 1.—WHOLE AND PITTED STYLE—Continued

[Defects by count per 50 olives]

DEFECTS:	
Pitter Damage (Pitted Style Only)	15.
Major Blemishes	5.
Major Wrinkles	5.
Pits and Pit Fragments (Pitted Style Only)	Not more than 1.3 average by count.
Major Stems	Not more than 3.
HEVM	Not more than 1 unit per sample.
Mutilated	Not more than 3.
Mechanical Damage	Not more than 5.
Split Pits or Misshapen	Not more than 5.

TABLE 2.—SLICED, SEGMENTED (WEDGED), AND HALVED STYLES

[Defects by count per 255 grams]

FLAVOR	Reasonably good; no ''off'' flavor.
SALOMETER	Acceptable Range in degrees: 3.0 to 14.0.
COLOR	Reasonably uniform with no units lighter than the comparator for Ripe Type.
CHARACTER	Not more than 13 grams excessively soft.
DEFECTS:	
Pits and Pit Fragments	Average of not more than 1 by count per 300 grams.
Major Stems	Not more than 3.
HEVM	Not more than 2 units per sample.
Broken Pieces and End Caps	Not more than 125 grams by weight.

TABLE 3.—CHOPPED STYLE

[Defects by count per 255 grams]

FLAVOR	Reasonably good; no ''off'' flavor.
SALOMETER	Acceptable Range in degrees: 3.0 to 14.0.
COLOR	Reasonably uniform with no units lighter than the comparator for Ripe Type.
DEFECTS:	
Pits and Pit Fragments	Average of not more than 1 by count per 300 grams.
Major Stems	Not more than 3.
HEVM	Not more than 2 units per sample.

TABLE 4.—BROKEN PITTED STYLE

[Defects by count per 255 grams]

FLAVOR	Reasonably good; no ''off'' flavor.
SALOMETER	Acceptable Range in degrees: 3.0 to 14.0.
COLOR	Reasonably uniform with no units lighter than the comparator for Ripe Type.
CHARACTER	Not more than 13 grams excessively soft.
DEFECTS:	
Pits and Pit Fragments	Average of not more than 1 by count per 300 grams.
Major Stems	Not more than 3.
HEVM	Not more than 2 units per sample.

(b) Terms used in this section shall have the same meaning as are given to the respective terms in the current U.S. Standards for Grades of Canned Ripe Olives (7 CFR part 52): Provided, That the definition of ''broken pitted olives'' is as follows: ''Broken pitted olives'' consist of large pieces that may have been broken in pitting but have not been sliced or cut.

3. Section 932.150 is revised to read as follows: § 932.150 Modified minimum quality requirements for canned green ripe olives.

The minimum quality requirements prescribed in § 932.52 (a)(1) are hereby modified with respect to canned green ripe olives so that no requirements shall be applicable with respect to color and blemishes of such olives.

4. In § 932.152, paragraphs (a), (b), (c)(2), the heading of (d), (d)(1), (g)(1) introductory text, and (g)(2) introductory text are revised to read as follows:

§ 932.152 Outgoing regulations.

(a) *Inspection stations.* Processed olives shall be sampled and graded only at an inspection station which shall be any olive processing plant having facilities for in-line or lot inspection which are satisfactory to the Inspection Service and the Committee; or an olive processing plant which has an approved Quality Assurance Program in effect.

(b) *Inspection—General.* Inspection of packaged olives for conformance with § 932.52 shall be by a Quality Assurance Program approved by the Processed Products Branch (PPB), USDA; or by in-line or lot inspection. A PPB approved Quality Assurance Program shall be pursuant to a Quality Assurance contract as referred to in § 52.2.

(c) * * *

(2) The Inspection Service shall issue for each day's pack a signed certificate covering the quantities of such packaged olives which meet all applicable minimum quality and size

requirements. Each such certificate shall contain at least the following:

(i) Date;
(ii) Place of inspection;
(iii) Name and address of handler;
(iv) Can code;
(v) Variety;
(vi) Fruit size;
(vii) Can size;
(viii) Style;
(ix) Total number of cases;
(x) Number of cans per case; and
(xi) Statement that packaged olives meet the effective minimum standards for canned ripe olives as warranted by the facts.

(d) *Olives which fail to meet minimum quality and size requirements.* (1) Whenever any portion of a handler's daily pack of packaged olives fails to meet all applicable minimum quality and size requirements, the Inspection Service shall issue a signed report covering such olives. Each such report shall contain at least the following:

(i) Date;
(ii) Place of inspection;
(iii) Name and address of handler;
(iv) Can code;
(v) Variety;
(vi) Fruit size;
(vii) Can size;
(viii) Style;
(ix) Total number of cases;
(x) Number of cans per case; and
(xi) Reason why the applicable requirements were not met.

* * * * *

(g) *Size certification.* (1) When limited-use size olives for limited-use styles are authorized during a crop year and a handler elects to have olives sized pursuant to § 932.51(a)(2)(i), any lot of limited-use size olives may be used in the production of packaged olives for limited-use styles if such olives are within the average count range in Table II contained herein for that variety group, and meet such further mid-point or acceptable count requirements for the average count range in each size as approved by the committee.

* * * * *

(2) When limited-use size olives are not authorized for limited-use styles during a crop year and a handler elects to have olives sized pursuant to § 932.51(a)(2)(ii), any lot of canning-sized olives may be used in the production of packaged olives for whole, pitted, or limited-use styles if such olives are within the average count range in Table III contained herein for that variety group, and meet such further mid-point or acceptable count requirements for the average count range in each size as approved by the committee.

* * * * *

5. In § 932.153, the section heading and paragraph (a) are revised to read as follows:

§ 932.153 Establishment of minimum quality and size requirements for processed olives for limited uses.

(a) *Minimum Quality Requirements.* On or after August 1, 1996, any handler may use processed olives of the respective variety group in the production of limited use styles of canned ripe olives if such olives were processed after July 31, 1996, and meet the minimum quality requirements specified in § 932.52(a)(1) as modified by § 932.149.

* * * * *

6. In § 932.155, paragraph (c) is revised to read as follows:

§ 932.155 Special purpose shipments.

* * * * *

(c) In accordance with the provisions of § 932.55(b), any handler may use processed olives in the production of packaged olives for repackaging, and ship packaged olives for repackaging, if the packaged olives meet the minimum quality requirements, except for the requirement that the packaged olives possess a normal flavor: *Provided,* That the failure to possess a normal flavor is due only to excessive sodium chloride.

PART 944—FRUITS; IMPORT REGULATIONS

7. In § 944.401, paragraphs (a)(8), (b)(1), (g), and (j) are revised to read as follows:

§ 944.401 Olive Regulation 1.

(a) * * *

(8) Terms used in this section shall have the same meaning as are given to the respective terms in the current U.S. Standards for Grades of Canned Ripe Olives (7 CFR part 52) including the terms ''size'', ''character'', ''defects'' and ''ripe type'': *Provided,* That the definition of ''broken pitted olives'' is as follows: ''Broken pitted olives'' consist of large pieces that may have been broken in pitting but have not been sliced or cut.

(b) * * *

(1) *Minimum quality requirements.* Canned ripe olives shall meet the following quality requirements, except that no requirements shall be applicable with respect to color and blemishes for canned green ripe olives:

(i) Canned whole and pitted olives of the ripe type shall meet the minimum quality requirements prescribed in Table 1 of this section;

(ii) Canned sliced, segmented (wedged), and halved olives of the ripe type shall meet the minimum quality requirements prescribed in Table 2 of this section;

(iii) Canned chopped olives of the ripe type shall meet the minimum quality requirements prescribed in Table 3 of this section and shall be practically free from identifiable units of pit caps, end slices, and slices (''practically free from identifiable units'' means that not more than 10 percent, by weight, of the unit of chopped style olives may be identifiable pit caps, end slices, or slices); and

(iv) Canned broken pitted olives of the ripe type shall meet the minimum quality requirements prescribed in Table 4 of this section, *Provided,* That broken pitted olives consist of large pieces that may have been broken in pitting but have not been sliced or cut.

TABLE 1.—WHOLE AND PITTED STYLE

[Defects by count per 50 olives]

FLAVOR	Reasonably good; no ''off'' flavor.
FLAVOR (GREEN RIPE TYPE)	Free from objectionable flavors of any kind.
SALOMETER	Acceptable Range in degrees: 3.0 to 14.0.
COLOR	Reasonably uniform with not less than 60% having a color equal or darker than comparator for Ripe Type.
CHARACTER	Not more than 5 soft units or 2 excessively soft units.
UNIFORMITY OF SIZE	60%, by visual inspection, of the most uniform in size. The diameter of the largest does not exceed the smallest by more than 4mm.
DEFECTS:	
Pitter Damage (Pitted Style Only)	15.
Major Blemishes	5.

TABLE 1.—WHOLE AND PITTED STYLE—Continued

[Defects by count per 50 olives]

Major Wrinkles	5.
Pits and Pit Fragments (Pitted Style Only)	Not more than 1.3 average by count.
Major Stems	Not more than 2.
HEVM	Not more than 1 unit per sample.
Mutilated	Not more than 3.
Mechanical Damage	Not more than 5.
Split Pits or Misshapen	Not more than 5.

TABLE 2.—SLICED, SEGMENTED (WEDGED), AND HALVED STYLES

[Defects by count per 255]

FLAVOR	Reasonably good; no ''off'' flavor.
SALOMETER	Acceptable Range in degrees: 3.0 to 14.0.
COLOR	Reasonably uniform with no units lighter than the comparator for Ripe Type.
CHARACTER	Not more than 13 grams excessively soft.
DEFECTS:	
Pits and Pit Fragments	Average of not more than 1 by count per 300 grams.
Major Stems	Not more than 3.
HEVM	Not more than 2 units per sample.
Broken Pieces and End Caps	Not more than 125 grams by weight.

TABLE 3.—CHOPPED STYLE

[Defects by count per 255 grams]

FLAVOR	Reasonably good; no ''off'' flavor.
SALOMETER	Acceptable Range in degrees: 3.0 to 14.0.
COLOR	Reasonably uniform with no units lighter than the comparator for Ripe Type.
DEFECTS:	
Pits and Pit Fragments	Average of not more than 1 by count per 300 grams.
Major Stems	Not more than 3.
HEVM	Not more than 2 units per sample.

TABLE 4.—BROKEN PITTED STYLE

[Defects by count per 255 grams]

FLAVOR	Reasonably good; no ''off'' flavor.
SALOMETER	Acceptable Range in degrees: 3.0 to 14.0.
COLOR	Reasonably uniform with no units lighter than the comparator for Ripe Type.
CHARACTER	Not more than 13 grams excessively soft.
DEFECTS:	
Pits and Pit Fragments	Average of not more than 1 by count per 300 grams.
Major Stems	Not more than 3.
HEVM	Not more than 2 units per sample.

* * * * *

(g) It is hereby determined, on the basis of the information currently available, that the minimum quality requirements and size requirements set forth in this regulation are comparable to those applicable to California canned ripe olives.

* * * * *

(j) The minimum quality, size, and maturity requirements of this section shall not be applicable to olives imported for charitable organizations or processing for oil, but shall be subject to the safeguard provisions contained in § 944.350.

Dated: November 1, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–28609 Filed 11–7–96; 8:45 am]

BILLING CODE 3410–02–P

Rural Utilities Service

7 CFR Part 1728

Electric Transmission Specifications and Drawings (34.5 kV to 69 kV and 115 kV to 230 kV) for Use on RUS Financed Electric Systems

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) proposes to revise its electric specifications and drawings for 34.5 kV to 230 kV transmission lines. These specifications and drawings are set forth in RUS Bulletins 50–1 and 50–2. These specifications and drawings are currently incorporated by reference. RUS is proposing editorial changes and changes to improve clarity of the bulletins. RUS borrowers and other users of RUS electric transmission line specifications have proposed corrections to several drawings. RUS and RUS borrowers have also suggested modifications to clarify and modify some of the drawings. RUS also proposes to renumber and reformat these bulletins in accordance with the Agency's publications and directives system.

DATES: Written comments must be received by RUS or bear a postmark or equivalent no later than January 7, 1997.

ADDRESSES: Submit written comments to Mr. Donald G. Heald, Transmission Engineer, Electric Staff Division, Rural Utilities Service, room 1246–S, Stop 1569 , 1400 Independence Ave. SW., Washington, DC 20250–1569. RUS requires an original and three copies of all comments (7 CFR 1700.30(e)). All comments received will be made available for inspection at room 2234–S, during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Mr. Donald G. Heald at the above address, or telephone (202) 720–9102.

SUPPLEMENTARY INFORMATION:

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation which may require consultation with State and local officials. A Notice of Final Rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS loans and loan guarantees from coverage under this order.

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in Sec. 3. of the Executive Order.

Regulatory Flexibility Act

The Administrator of RUS has determined that a rule relating the the RUS electric loan program is not a rule as defined in the Regulatory Flexibility Act (5 U.S.C. *et seq.*), and, therefore, the Regulatory Flexibility Act does not apply to this proposed rule.

Information Collection and Recordkeeping Requirements

This proposed rule contains no reporting or recordkeeping provisions requiring Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

National Environmental Policy Act Certification

The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402–9325.

Background

Pursuant to the Rural Electrification Administration Act of 1936 as amended (7 U.S.C. 901 *et seq.*), RUS proposes to amend 7 CFR Chapter XVII, Part 1728, Electric Standards and Specifications for Materials and Construction, by revising RUS Bulletin 50–1, Electric Transmission Specifications and Drawings, 115 kV to 230 kV, and RUS Bulletin 50–2, Electric Transmission Specifications and Drawings, 34.5 kV to 69 kV, and renumbering them as Bulletins 1728F–811 and 1728F–810, respectively.

The Rural Utilities Service (RUS) maintains bulletins that contain construction standards and specifications for materials and equipment. These standards and specifications apply to systems constructed by RUS electric and telecommunications borrowers in accordance with the RUS loan contract, and contain standard construction units, material, and equipment units used on RUS electric and telephone borrowers' systems. Bulletins 50–1 and 50–2 establish standard overhead electric transmission construction drawings and specifications for wood pole structures and assemblies for use by RUS borrowers on electric systems.

RUS proposes to change the bulletins numbers from Bulletins 50–1 and 50–2 to Bulletins 1728F–811 and 1728F–810, respectively. The changes in the bulletin number and reformatting of the specifications are necessary to conform to RUS' publications and directives system. In addition to reformatting, minor editorial changes and changes to improve clarity are being proposed. Changes are being proposed for some of the drawings that appear in the current bulletins. These proposed drawing changes are summarized below. Drawings for which changes are not being proposed will appear exactly as they appear in the current bulletins with the exception that the Final Rule effective date will be added to the drawings for publication and verification purposes. The Final Rule effective date will also be added to the drawings for which changes are being proposed.

Copies of the proposed bulletins along with copies of those drawings for which changes are being proposed may be obtained from Donald G. Heald, Electric Staff Division, at (202) 720–9102; FAX, (202) 720–7491; E-mail, dheald@rus.usda.gov.

Corrections are proposed to Crossarm Drilling Drawings TCD–11 and TCD–20 of bulletin currently designated as Bulletin 50–1 50–2, to be reissued as Bulletins 1728F–810 and 1728F–811. Corrections are proposed to Crossarm Drilling Drawings TCD–15 and TCD–32 of currently designated Bulletin 50–1. Several dimensions which are used to drill the crossarms are being corrected on the crossarm drilling drawings. Crossarm types 81 and 83 ($5\frac{1}{8}'' \times 7\frac{1}{2}''$) are being eliminated on drawing TCD–40, since laminated arms are readily available in standard $9\frac{3}{8}'' \times 3\frac{5}{8}''$ sizes.

Drawing TG–15 and TG–45 of current Bulletins 50–1 and 50–2 are revised to show the minimum thickness and width of the guying plate. Drawing TG–16 and TG–46 are revised to a better ground the connection between the guy wire and the pole ground wire. On drawing TG–17, a guying plate is added to TG–17D where the insulators attach to the pole and anchor shackles have been added to TG–17E. The anchor shackles are necessary to permit the attachment of light duty guy assemblies to the double eye pole eye plate. The capacity of the swing angle bracket shown on drawing TG–18 is being clarified to show both allowable and ultimate capacities. Washers are being added on the clevis side of the clevis bolts. These washers will provide a bearing surface when tightening the nut to the clevis bolt. The dimensions of the connecting links to the pole bands are being removed from drawing TG–26, Guy Attachments (Pole Bands) and TG–56, Pole Tie Assemblies (Pole Bands). The size of the link depends on the strength of the metal used by different manufacturers.

Drawings TG–28 and TG–29, Bracket and Guy Attachment, are being revised to show minimum sizes for the bracket and to clarify the notes by adding an allowable vertical load and defining the ultimate load to be compatible with the TH–10 series structures and TG–29. Antisplit bolts are being added to drawings TG–35D and TG–35E, Heavy Duty Guying Ties. Several notes have

been added to TG–36, Heavy Duty Pole Bands, so that problems associated with improper use of this unit are avoided. Since there are no suppliers for heavy duty pole eye plates, drawing TG–37 is being eliminated. The pole tie assemblies shown in drawing TG–47 are being modified to be similar to TG–45.

Units TM–1B and TM–2B of drawings TM–1 and TM–2, Insulator Assembly Units, are being modified in both bulletins to require the use of a Y-clevis ball instead of the anchor shackle and oval eye ball. The use of a Y-clevis ball will provide savings to the RUS borrower. It is a standard hardware item that has been used frequently on steel and concrete pole construction.

The Pole Stability, Bearing, and Uplift Foundations drawings (TM–101, 102, 103) are revised to eliminate the compacted backfill below the pole for TM–101 unit, to eliminate unit TM–102B, and to add a note to the engineer on TM–103. All three drawings will show the backfill at ground level in a more realistic manner. The reason for the proposed elimination of unit TM–102B is the difficulty in compacting the soil below the top pair of pole bearing plates. The crossarm splice (TM–114A) is being eliminated since laminated arms are readily available. Note 4 to Drawing TM–111 is revised for clarification. Drawing TM–115, Steel Upswept Arm Assembly, is revised to show Table 1, Required Dimensions and Swing Angle Clearances. A dimension for the 50,000 pound anchor shackle has been corrected on Drawing TM–120, Hardware.

RUS is recommending that the higher capacity log anchors (TA–3L, 3LC, 5L, and 5LC) be eliminated from the log anchor drawings of both bulletins. The size of the washer required in these construction units limits the safety factor below those designated for other assemblies. The other log anchor units will remain in both bulletins (TA–2L and TA–4L). On these drawings, as well as drawing TA–2P, average soil is redefined as class 5 soil to be consistent with other RUS publications.

The proposed modification to existing drawings TA–1S through TA–24S, Anchors (Power Screw), in both bulletins has been suggested by RUS borrowers and their consulting engineers. This revision will simplify defining unit costs for screw anchors. Screw anchor units will be composed of the basic helix section with a 5-foot extension. A bid unit will cover the number of extensions. The new drawing will be designated TA–2H to 4H.

Corrections to the list of materials for the TSS–9 structure in Bulletin 50–2 is being made to show a 12′0″ arm for the lower crossarm instead of 9′0″ arm. The pole ground wire is being relocated on the TS–1B, TS–1BX, TS–1C, TSZ–115B, TSZ–138B, TS–115B, and TS–138B in order to improve the BIL of the structure.

Drawings TPF–40 and TPF–50 are being revised to reflect the option of using adjustable spacers with gained poles. A corresponding change is included in the list of options in the construction specifications.

List of Subjects in 7 CFR Part 1728

Electric power, Incorporation by reference, Loan programs—energy, Rural areas.

For the reasons set out in the preamble, RUS proposes to amend 7 CFR Part 1728 as follows:

PART 1728—ELECTRIC STANDARDS AND SPECIFICATIONS FOR MATERIALS AND CONSTRUCTION

1. The authority citation for Part 1728 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*; 7 U.S.C. 1921 *et seq.*; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

2. Section 1728.97, (b) is amended by removing the entries for Bulletins 50–1 and 50–2, adding to the list of bulletins in numerical order the entries for Bulletins 1728F–811 and 1728F–810, respectively, to read as follows:

§ 1728.97 Incorporation by reference of electric standards and specifications.

* * * * *

(b) List of bulletins.

* * * * *

Bulletin 1728F–810, Electric Transmission Specifications and Drawings 34.5 to 69 kV, [*Month and year of publication of Final Rule*].

Bulletin 1728F–811, Electric Transmission Specifications and Drawings 115 kV to 230 kV, [*Month and year of publication of final rule*].

Dated: October 29, 1996.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 96–28695 Filed 11–5–96; 8:45 am]

BILLING CODE 3410–15–P

Food Safety and Inspection Service

9 CFR Parts 304, 308, 310, 320, 327, 381, 416, and 417

[Docket No. 93–016–10N]

Joint Food Safety and Inspection Service and Food and Drug Administration Conference on Time, Temperature, and Transportation

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of conference.

SUMMARY: The Food Safety and Inspection Service (FSIS) and the Food and Drug Administration (FDA) will hold a conference, ''Joint FSIS and FDA Conference on Time, Temperature and Transportation.'' The conference will focus on identifying desirable and feasible temperature control interventions and verification techniques to improve food safety.

DATES: The conference will be held on November 18–20, 1996, from 8:30 a.m. until 5:00 p.m. Registration will begin at 8:00 a.m.

ADDRESSES: The conference will be held at the U.S. Department of Agriculture, 1400 Independence Avenue, SW, Back of the South Building Cafeteria (between the 2nd and 3rd Wings).

FOR FURTHER INFORMATION CONTACT: To register for the conference, call (800) 485–4429, FAX (202) 501–7642, or E-mail usdafsis/s=confer@mhs.attmail.com. Participants who wish to make presentations or display devices should contact Craig Simmerman at (202) 501–7138 by November 12, 1996.

Participants who require a sign language interpreter or other special accommodations, contact Ms. Sheila Johnson at (202) 501–7138 by November 13, 1996. Contact Dr. Robert Hasiak at (202) 501–7319 to ask technical questions about the conference.

SUPPLEMENTARY INFORMATION: On July 25, 1996, FSIS published a final rule, ''Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems'' (61 FR 38805). This rule introduced sweeping changes to the meat and poultry inspection system. In the preamble of the rule, FSIS announced its collaboration with FDA to develop standards governing the safety of potentially hazardous foods, including meat and poultry, eggs, and seafood, during transportation and storage, with particular emphasis on proper cooling to minimize the growth of pathogenic microorganisms, and on disclosure of prior cargoes in transport vehicles. Also, FSIS and FDA are developing an advance notice of proposed rulemaking addressing these issues.

To discuss this initiative, FSIS and FDA will hold the conference, ''Joint FSIS and FDA Conference on Time, Temperature, and Transportation.'' The conference will focus on time and temperature risks associated with meat and poultry, seafood, and eggs; logistical considerations that affect time and temperature considerations associated with these products; the performance

characteristics of these products during refrigeration, transportation, and storage; and carcass cooling.

Interested persons may make presentations on these and related topics. Each presentation should be no longer than 15 minutes. FSIS will schedule about 15 to 20 presentations each day. Presentations will be scheduled on a first-come, first-served basis. Also, interested persons may display devices that are relevant to time and temperature control issues. Space for table-top displays is limited and will be allotted on a first-come, first-served basis. Contact Craig Zimmerman (see **FOR FURTHER INFORMATION CONTACT**) to make reservations for presentations or to display devices.

Done at Washington, DC, on: November 5, 1996.

Thomas J. Billy,

Administrator.

[FR Doc. 96–28743 Filed 11–5–96; 12:22 pm]

BILLING CODE 3410–DM–P

9 CFR Part 318

[Docket No. 96–027N]

Advanced Meat/Bone Separation Machinery and Meat Recovery Systems

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice; request for public comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is soliciting data and information, from the public and industry, concerning the compliance requirements of its regulation entitled ''Meat Produced by Advanced Meat/Bone Separation Machinery and Meat Recovery Systems.'' FSIS also requests information and data on other approaches that might be utilized to assure that product derived from advanced meat/bone recovery systems is ''meat.'' This action responds to concerns raised by consumer groups and industry members.

DATES: Comments must be received on or before January 7, 1997.

ADDRESSES: Send an original and two copies of written comments to: FSIS Docket Clerk, DOCKET #96–027N, Room 3806, 1400 Independence Avenue, SW., Washington, DC 20250–3700. Reference material cited in this notice and any comments received will be available for public inspection in the FSIS Docket Room from 8:30 a.m. to 1:00 p.m. and from 2:00 p.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Charles R. Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700, (202) 254–2565.

SUPPLEMENTARY INFORMATION:

Background

On December 6, 1994, FSIS published a final rule titled ''Meat Produced by Advanced Meat/Bone Separation and Meat Recovery Systems'' that was effective on January 5, 1995. The final rule amended the definition of ''meat'' (9 CFR 301.2(rr)) to include as ''meat'' product resulting from advanced meat/bone recovery (AMR) systems that do not crush, grind, or pulverize bones to remove adhering edible skeletal tissue. The final rule provides the criteria under which these systems must operate for finished product from the systems to be called ''meat.''

The first criterion is a calcium content limit. This criterion was established to ensure that the meat derived from AMR systems is both consistent with consumer expectations of ''meat'' and comparable to meat that is used to formulate further processed meat food products. This criterion was included to ensure that bones are not crushed, ground, or pulverized during processing, i.e., that the processes are operating in control. The regulation requires that product resulting from the separating process not exceed a calcium content of 0.15 percent or 150 mg/100 gm of product with a tolerance of 0.03 percent or 30 mg.

The second criterion relates to the mechanism of the machinery involved and the appearance of the bones emerging from the AMR systems. AMR systems must not crush, grind, or pulverize bones, and the bones must emerge from the machinery comparable to those resulting from hand-deboning (i.e., essentially intact and in natural physical conformation so that they are recognizable as, for example, loin bones or rib bones when they emerge from the machinery).

If statistical evidence indicates that a production lot is not in compliance with the limit established for calcium content, the lot of product must be labeled ''Mechanically Separated (Species) (i.e., Beef or Pork)'' (MS(S)) (9 CFR 319.5) and meet all the requirements for MS(S).

MS(S) is a meat food product that is derived by crushing and pulverizing bones from livestock with attached edible tissue under high pressure and screening out the bone particles which results in a paste-like material with a limited bone solids content. The machinery used to manufacture MS(S) causes bone and bone particles, including bone constituents such as bone marrow and certain minerals, to be incorporated into the finished product. A fundamental difference between the processed utilized for AMR systems and those utilized for making MS(S) is that the bones with attached meat that are the starting materials for deriving ''meat'' from AMR systems are essentially intact and recognizable when they exit the system crushed and pulverized during the process of making MS(S).

After the effective date of the final rule, consumer groups in meetings and correspondence alleged that the following occurs in the operation of certain AMR systems: (1) Bones are crushed, ground, or pulverized which violates the regulations, (2) bones are pre-sized to expose marrow which is being ''harvested'' as ''meat,'' (3) bones emerge from certain systems in a compressed ''cake,'' and, thus, are not essentially intact and recognizable, and (4) bone particles are screened out as a separate step after meat is separated from bone and before analysis to determine compliance with the calcium limit.

Responding to the consumer groups' contentions, FSIS surveyed a number of federally inspected meat establishments using AMR systems during October and November of 1995. Survey questions were distributed to inspection personnel at the establishments using the AMR systems. The following questions were asked:

(1) What type of machine is being used; how does it work?

(2) What are the starting materials; what bones with attached meat are used and are the bones split prior to processing, i.e., pre-sized, and to what size?

(3)(a) What is the calcium content of the ''meat'' that is derived from the first step of removing lean tissue from the bone, i.e., the material that is pressed off the bone prior to desinewing?

(3)(b) What is the calcium content of the ''meat'' that is derived at each of any subsequent deboning or desinewing steps?

(4) Are the bones recognizable after the lean tissue (''meat'') is recovered after the first step or any subsequent steps?

(5) What other comments can you offer on the AMR systems?

Inspection personnel reported results from 52 establishments using meat/bone separators and recovery systems. Of the 52, four represented establishments that

used AMR systems to remove the bone from bone-in hams or pork shoulders which were never considered to be operations that were covered by the final rule. In the remaining 48 establishments, there were a variety of bones used as starting materials and some inspection personnel reported that pre-sizing occurred for some of these bones and that the bones were presized to between 4 and 14 inches. The type of bones and the degree to which bones were pre-sized was not reported to affect the calcium content of the meat produced or the assessment of bone appearance. The calcium content results reported from the 48 establishments represented results of analysis of samples of finished product, i.e., ''meat'' that exited the AMR systems.

Of the 48 establishments surveyed, inspection personnel in 13 establishments reported results that were not in compliance with either the calcium or bone criteria in the final rule. Of these 13 establishments, two establishments had product samples that were not in compliance with the final rule because their calcium content exceeded the limit established. Both of these establishments used an AMR system that had a one-step process. Calcium was found to be as high as 220 mg/100 gm of product. Inspection personnel reported, however, that bones exiting these systems were recognizable. The remaining 11 establishments had results that were not in compliance with the final rule because the bones exiting the system were not recognizable. In these 11 instances, calcium content did not exceed the established limit. One of the 11 establishments was using an AMR system that had a one-step process; the others used multi-step processing systems. In some of these 11 establishments, inspection personnel reported that bones emerged in a ''cake'' and, therefore, were not recognizable. Upon review of these findings and in subsequent discussions with inspection personnel, it was determined that, in many instances, the bones could be recognizable when the ''cake'' was disassembled. This point is addressed further in this document.

Representatives of certain establishments that operate AMR systems also met with Agency staff in regard to the advanced meat/bone separation regulations. These representatives stated that (1) the regulations do not require that samples taken after ''intermediate'' separation stages conform to the calcium limit, and that there is compliance with the established calcium content limitation of the regulations if the finished product that will be called ''meat'' meets the regulation's calcium criterion, (2) FSIS was aware that multi-step systems were in use before the regulations were published and intended that their use be continued, (3) the regulations do not prohibit the bones from emerging from the machinery in a ''bone cake'' provided they are intact and recognizable when disassembled, and (4) continued use of AMR systems should be encouraged since they produce a safe product without the cumulative trauma disorders (e.g., carpal tunnel syndrome) experienced by establishment personnel whose work entails hand deboning.

The Agency has reviewed the issues raised by the consumer groups and the industry. The regulations were designed to allow manufacturers the flexibility to develop and use any technology that would remove meat from bones of livestock without crushing, grinding, or pulverizing the bone, and that would result in product that satisfied the established calcium content limit. Thus, an AMR system, regardless of whether it involves a one-step or multi-step process, can be used to produce product identified as ''meat,'' as long as the operations of these systems, and the product exiting the systems, meet the regulation's criteria.

The rule's flexibility is consistent with prior FSIS policies reflected in an ''Inspection Procedure'' and then in a Partial Quality Control (PQC) program (#812) requirement. As discussed below, the final rule involves two criterion that must be met, for the product that emerges from the AMR systems to be classified ''meat.''

First, as discussed earlier, the regulation requires that product exiting AMR systems meet a calcium limit of 150 mg/100 gm of product within a tolerance of 0.03 percent (30 mg). The compliance procedure provided in the regulation focuses on the finished product derived from the systems, and requires sampling for calcium of ''meat,'' from production lots. In this regard, noncompliance occurs when calcium analyses of the samples of meat from finished lots exceed the established calcium limit. When calcium results exceed the limit, the product must be called MS(S), e.g., mechanically separated beef or pork, and comply with the regulations on MS(S).

Second, the bones emerging from AMR systems must emerge comparable to those from hand deboning. Therefore, if pre-sizing of bones results in bones that are not recognizable, the product exiting the AMR systems could not be identified as ''meat.'' The rule clearly intends that establishments ensure that their systems are operating in control and in accordance with the regulations. Thus, establishments need to carry out procedures to ensure that bones exiting the AMR systems are comparable to those resulting from hand-deboning (i.e., essentially intact and in natural physical confirmation such that they are recognizable, such as loin bones and rib bones, when they emerge from the machinery. Establishments must also carry out the calcium content analysis procedures required, and, in turn, comply with the regulation's requirement in cases where compliance with the calcium content limit is not demonstrated. Although establishments are responsible for assuring that they comply with the regulations, FSIS inspectors will also verify establishment operations, which may include periodic examination of bones exiting AMR systems, to ensure that such systems operate in accordance with the regulations.

FSIS believes that the provisions in the AMR regulations must be consistently enforced. FSIS enforcement serves to ensure establishment compliance with the two criteria that must be met in order for product exiting from AMR systems to come within the definition of ''meat.'' FSIS has issued instructions to field personnel so that they will have a consistent understanding of their role and receive uniform guidance in ensuring that establishments comply with the regulations.

FSIS is reviewing all establishments which operate AMR systems at least once per week to ascertain if the establishments are operating in compliance with the regulations. Reviews are scheduled through the Agency's Performance Based Inspection System and are currently being conducted. FSIS Reviews examine available establishment records required to be maintained regarding the calcium content limit of product classified as ''meat'' and actions taken by the establishment if the calcium limit is exceeded. FSIS is also examining representative samples of bones before they enter and after they exit the AMR system to determine if the bones emerge from the AMR system essentially intact and in natural physical conformation.

Request for Data and Information

FSIS welcomes views and information on approaches, other than those set forth in the current rule that might be utilized to ensure that product derived from AMR systems is ''meat.'' FSIS also invites comments and data pertaining to several issues raised by interested parties.

The compliance requirement for calcium content limitation in the regulations applies only to the finished product (i.e., meat) exiting the AMR systems. The regulation does not require the calcium content limitation of the rule to be met regarding material from an interim phase of the continuous operation of the AMR systems (i.e., ''intermediate'' material). To implement a requirement that calcium analysis be made on ''intermediate'' material obtained after the first separation step of an AMR system which comes before subsequent desinewing or separation steps (as requested by consumer groups), and that for product to be identified as ''meat'' such analysis must indicate that product from the intermediate step met the calcium content limitation, FSIS would need to amend the regulations. Any such modification must be based on substantive data which supports the need for such a requirement. FSIS invites data and comments pertaining to this issue.

The Agency believes that establishments operating AMR systems recognize the need to have controls for their AMR systems which ensure that the condition of the bones exiting the systems conform to the regulations. However, there are no recordkeeping requirements imposed by the regulations. Records of the condition of bones before and after they exit the AMR system's machinery could facilitate FSIS' determination of whether bones exiting the systems are intact and recognizable. FSIS invites comments regarding the need to modify the compliance procedures to include recordkeeping requirements to show that bones that emerge from the systems are being monitored by the establishment.

FSIS is also interested in receiving data to assess certain issues raised by interested parties. FSIS is interested in data and comments on the following questions: (1) What practices are being conducted in regard to presizing and do these have any effect on bone recognition? Should presizing criteria be established that would establish the minimum dimensions a bone must be to be allowed to be used in the AMR systems? (2) If the calcium content of the material being separated in AMR systems is higher at an interim stage of the process than that established for the finished product (i.e., 150 mg/100 gm of product, within a tolerance of 30 mg), does this mean bones have been crushed, ground, or pulverized and is there data to support such a conclusion? (3) If the ''meat'' derived from the AMR system conforms to the definition of meat, i.e., it does not exceed the calcium limit and the bones are essentially intact and recognizable, are there other helpful compliance measures that should be examined, and, if so, why? (4) Should the current criteria requiring that bones emerge essentially intact and in natural physical conformation be further qualified to indicate that only minor abrasions of bone edges or removal of minute amounts of bone would be permitted in order to meet this criteria? What standards should be established as indicators that these standards have been met? The answers to these questions require data that are representative of the various AMR systems used. These data are currently unavailable to the Agency. FSIS is seeking comments from all interested parties on the issues raised in this notice and specifically encourages the submission of views and data by equipment manufacturers.

FSIS has also received letters from various consumer groups which assert that bones are being pre-sized, then crushed, ground, and pulverized in AMR systems to ''harvest'' marrow. The assertions focus on marrow allegedly ''harvested'' from beef neck bones due to the operation of two pieces of press-type meat/bone separation equipment. The document provided to FSIS to support these assertions was a University of Nebraska doctoral dissertation on ''mechanically recovered neck bone lean (MRNL).'' This dissertation, as well as peer-reviewed journal articles based on the research reported in the dissertation, have been reviewed by FSIS. The research focused on examining the characteristics of MRNL derived from beef neck bones processed using two types of meat/bone separators. The objective of the research was to investigate the functional characteristics of the material derived from the neck bones in order to provide information about how the material can be used to formulate other products. The objective of the research was not, however, to test how AMR systems operate or to make determinations in regard to what the composition is of the finished product derived from AMR systems. Therefore, FSIS does not believe that the research can be used to support a conclusion that bones are being presized then crushed, ground, and pulverized in AMR systems to ''harvest'' marrow. FSIS did consider the issues of bone residue and marrow during development of the AMR regulations. In both the proposal and final rule, FSIS stated that the contribution of bone content to meat resulting from AMR systems is minimal. It would be no greater than that which may occur if bone surfaces are abraised, pressed, or scraped to expose bone content as part of hand-deboning operations. Further, FSIS concluded the potential contribution of bone marrow, a portion of a bone's content, to meat from AMR systems poses no health or safety hazards nor would it be at a level which would make its inclusion an adulteration or misbranding issue.

The internal part of livestock bones is composed of the same constituents as ''meat,'' and consists of adipose (fat) tissue, connective tissue, and marrow. Bone marrow is a fraction of the internal bone content and also is part of the animal's vascular system. When an animal is slaughtered, most of the red (blood) marrow is lost. The remaining red marrow is mostly red blood cells. Red (blood) marrow is found in higher amounts in certain bones, e.g. the long bones of animals (i.e., the femur, shank, and patella, etc.). Long bones remain with primal and sub-primal cuts and eventually are cut into retail portions of ''meat'' or are used to make soups, stocks, and broth. Bones used in the AMR systems are typically the flat bones (e.g., vertebrae, sternum, ribs, and pelvis) with adhering tissue and contain relatively little marrow.

There are no standardized methods to determine marrow content because it is composed of the same constituents as ''meat'' and, therefore, it is difficult to analytically distinguish it.

There are some experimental approaches that attempt to quantify marrow based on a constituent of marrow, e.g., cholesterol, amino acid, fatty acid, nucleic acid, mineral, and vitamin content, or pH. However, there are many factors that relate to natural variations in marrow and meat composition that disqualify these methods from being relied upon as standardized methods. Therefore, the suggestion by various consumer groups that cholesterol and iron are unique markers for marrow is generally unsupported by the scientific literature. Similar to that expected in hand-deboning operations, it is conceivable that when a pre-sized bone is pressed, compressed, or scraped in an AMR system, it may express some bone content through cracks or openings at the ends of the bone that may be incorporated in product. This material would consist of the fluid portion of the bone content (e.g., red (blood) marrow and some fat). However, it is not necessarily marrow that is expressed into the meat from AMR systems, it could just as likely be blood and fat which are part of ''meat'' as defined in the regulations. This would account for

the minor color differences of neck bone meat from AMR systems and hand-deboned neck meat. However, because the connective tissue structure of the internal portion of bone maintains the integrity of most of the bone's semi-solid and solid content, and this remains intact in AMR systems, most of the bone's content is not expressed when AMR systems are utilized. In contrast to this, a more physically rigorous process, e.g., the mechanical separation process yielding MS(S) that crushes, grinds, and pulverizes bones would, of course, destroy the internal bone structure and evenly distribute all the contents of the bone in an amorphous tissue mass.

Although FSIS does not currently know of any standardized methods to determine the presence of bone marrow in meat products, FSIS would like data that can help establish what constituents are unique to marrow that can be relied upon to indicate the presence of bone marrow in meat products. If such a standardized method could be established, FSIS would like comments on whether a compliance criterion regarding marrow should be established in regard to product derived from AMR systems. In this regard FSIS would like comments on the following questions. (1) Should an acceptable level of marrow be established for meat and product derived from AMR systems? If such a level was established, should the presizing operations of AMR systems be examined to determine if they contribute to the marrow content of product derived from AMR systems? (2) If the product derived from the AMR systems is determined to have an amount of marrow higher than that found in hand deboned meat, should such products be designated as MS(S) rather than meat? (3) Is it possible to establish criteria on the amount of marrow in product from AMR systems based on the degree to which bones emerging from the AMR systems are hollow?

FSIS Studies

In addition to requesting comments and data from the public, FSIS itself will also collect information on how AMR systems are currently performing.

The Agency is interested in collecting information regarding the recovery of tissue from bones by use of AMR systems, especially the recovery of tissue from split neck bones of beef. Compliance procedures for the AMR systems were designed to assure that bone, as measured by calcium content, was not intentionally incorporated into product. FSIS was aware that desinewing equipment was being used in conjunction with the AMR systems to remove hard particle tissues (e.g., bone fragments, ligaments, tendons, cartilage) inherent to boning operations. FSIS believed that AMR systems which were not being operated in compliance (i.e., which crushed, ground or pulverized bones) would be identified through the calcium check of the finished product. This conclusion was based on the view that desinewing equipment would not remove a significant amount of the powdered bone which would result from crushing, grinding, or pulverizing, and consequently the finished product would exceed the calcium limit. In an effort to assure that the desinewing equipment is not being used to remove excess powdered bone resulting from bone breakage, FSIS is taking steps to better identify what the desinewing equipment is removing. A sampling plan is being devised which will statistically establish the expected calcium content of a product derived from a properly operating AMR system, prior to and after desinewing.

In another study, FSIS will be identifying the expected range of calcium, cholesterol and iron contents, the pH level, and the texture and appearance of various products which qualify as ''meat.'' The Agency intends to involve the Agricultural Research Service (ARS) in this activity. Representatives from ARS were involved in the initial steps leading up to the development of the regulation. This study will assist FSIS in learning more about the issues concerning marrow in AMR products that have been raised.

Done at Washington, DC, on November 4, 1996.

Thomas J. Billy,

Administrator.

[FR Doc. 96–28768 Filed 11–5–96; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM–94–230A]

Energy Conservation Program for Consumer Products: Test Procedure for Clothes Washers and Reporting Requirements for Clothes Washers, Clothes Dryers, and Dishwashers

AGENCY: Office of Energy Efficiency and Renewable Energy, DOE.

ACTION: Proposed rule; limited reopening of the comment period.

SUMMARY: Appendix J to subpart B of 10 CFR part 430 sets forth the test procedures required for testing whether clothes washers comply with the existing energy conservation standards. The Department of Energy (DOE or Department) has proposed to amend these test procedures. The purpose of this notice is to solicit comments on possible additional amendments which would require certain specific procedures for testing clothes washers with adaptive (machine controlled) water fill control capability, and clothes washers with non-traditional temperature selections.

DATES: Written comments in response to this notice must be received by November 25, 1996.

ADDRESSES: Written comments, 10 copies, are to be submitted to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–43, Room 1J–018, ''Test Procedure for Clothes Washers and Reporting Requirements for Clothes Washers, Clothes Dryers, and Dishwashers,'' Docket No. EE–RM–94–230A, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202)–586–7574.

Copies of the transcript of the public hearing and the public comments received on the proposed rule, may be read or photocopied at the Department of Energy Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–6020 between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

P. Marc LaFrance, U.S. Department of Energy, Energy Efficiency and Renewable Energy, Mail Station EE–43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–8423

Edward Levy, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507

SUPPLEMENTARY INFORMATION:

One and Two Temperature Combination Selections

I. Introduction

On March 23, 1995, the Department published a notice of proposed rulemaking to make several amendments to the clothes washer test procedure. 60 FR 15330 (hereafter referred to as the Notice of Proposed Rulemaking or NOPR). On July 12, 1995, a hearing on the proposed rule was held in Washington, DC.

The proposed amendments to the test procedure were based on the same factual foundation as the existing test procedure and energy conservation standards for clothes washers, so that the existing energy conservation standard would not have to be adjusted. The Department believes, however, that the existing test procedure currently overstates the average annual energy consumption for clothes washers because of changes in consumer habits since the current test procedure was adopted.[1] The Department had planned on initiating an additional clothes washer test procedure rulemaking, at a later date, which would take into account current consumer habits, and would be used as the basis for considering revision of the clothes washer energy conservation standards.[2]

In response to the NOPR, the Association of Home Appliance Manufacturers (AHAM) submitted comments asking DOE to adopt an additional new test procedure, based on current consumer habits, which would be used in considering revision of the clothes washer energy conservation standards, and would take effect when new standards take effect. On April 22, 1996, the Department proposed such a new clothes washer test procedure, Appendix J1, as well as certain additional revisions to the currently applicable test procedure in Appendix J to Subpart B of 10 CFR part 430. 61 FR 17589 (hereafter referred to as the Supplemental Notice of Proposed Rulemaking or Supplemental NOPR). The Department proposed to issue a final rule with two test procedures, to be codified in Appendices ''J'' and ''J1'' to subpart B of 10 CFR part 430. Appendix ''J'' would be a revision of the current test procedure, would be consistent with the existing standards, and would become effective 30 days after issuance of the final rule. Appendix ''J1'', generally based on AHAM's suggested test procedures, would be used in the analysis and review of possible revised efficiency standards, and would apply to any revised standards. Upon adoption of any revised standards, the Department would amend its regulations to replace Appendix ''J'' with Appendix ''J1.''

However, since the publication of the NOPR and the Supplemental NOPR, additional issues have arisen regarding the Appendix J test procedure. The purpose of today's notice is to obtain public comment on options the Department is considering for resolving these issues. These issues arose in the context of interim waivers from the DOE clothes washer test procedure granted by DOE with respect to clothes washer features that are not covered by the current test procedure. On April 6, 1996, the Department granted General Electric Appliances (GEA) an Interim Waiver (CW–004) for its[3] clothes washer that has multiple warm wash temperature selections, various temperature settings within each temperature selection, multiple adaptive water fill control settings, and a manual water fill control option. 61 FR 18129. On September 6, 1996, the Department granted GEA an Interim Waiver (CW–005) for its clothes washer that has only two wash/rinse temperature selections. 61 FR 47115. The Department is considering inclusion in the Appendix J test procedure of test provisions that address these features, and solicits comments only on the issues of whether and how such features should be addressed in Appendix J.

II. Discussion

A. Adaptive Water Fill Control

The amount of energy that a clothes washer consumes is almost entirely a function of whether it uses heated or unheated water, and of the temperature and amount of any heated water it uses. Adaptive water fill control in a clothes washer is a control scheme which automatically determines, without operator intervention, the amount of water used to wash a particular load of clothing, based on the size of that clothing load. In the NOPR, the Department proposed to amend Appendix J to include test provisions for adaptive water fill control[4] schemes, but proposed no alteration of the existing test procedures for manual water fill control.[5]

Manual and Adaptive Water Fill Control

The GEA clothes washer that is the subject of Interim Waiver CW–004, cited above, has both manual and adaptive water fill control capability. However, neither the current Appendix J test procedure, nor the proposed amendments to Appendix J, sets forth a procedure that applies to a clothes washer that has both of these features. In the Supplemental NOPR, the Department proposed that Appendix J1 provide that such machines be tested in both the manual and adaptive water fill modes, and that test results be prorated based on the assumption that each mode is used 50 percent of the time. This methodology is used in Interim Waiver CW–004 granted to GEA. The Department has not received any negative comment regarding this methodology, and is considering adoption of this approach for the Appendix J test procedure. The Department welcomes comments on this issue.

Multiple Adaptive Water Fill Control Settings

The GEA clothes washer covered by Interim Waiver CW–004, also permits adjustment of the ''sensitivity,'' or relative water fill amounts, for the adaptive water fill control feature. This feature allows a consumer to fine tune the adaptive water fill control system, and permits use of different amounts of water for a given amount of clothing being washed. The test method provided to GEA in Interim Waiver CW–004, requires the two extreme ''sensitivities,'' which provide the most and least energy intensive results, to be tested. Then these two results, or associated energy consumption values, are averaged to determine the adaptive water fill control energy consumption value. As mentioned above, the adaptive water fill control result is then prorated with the manual water fill control result. The Department has not received any negative comment regarding this methodology and is considering adoption of this approach for the Appendix J test procedure. The Department welcomes comments on this issue.

B. Temperature Selections

Currently, and as proposed, Appendix J allows for the testing of three basic wash temperatures, cold, warm, and hot, in several combinations with two

[1] Proctor & Gamble data indicates a decrease in the use of hot water and the number of cycles per year over time.

[2] The second round of clothes washer standards rulemaking was initiated by the publication of an Advance Notice of Proposed Rulemaking (ANOPR). (59 FR 56423, November 14, 1994.)

[3] GEA's clothes washer is actually manufactured by Fisher & Paykel Limited from New Zealand.

[4] In the NOPR, the terminology used was ''machine-controlled water fill,'' although the Department plans to adopt language used in the Supplemental NOPR ''adaptive water fill control.''

[5] In Appendix J, two types of manual fill control are defined, ''sensor filled'' and ''timed filled.''

rinse temperatures, cold and warm. The test procedures set forth percentages, called temperature use factors (TUFs), that represent the proportion of the time that each combination of wash and rinse temperatures is used. The test procedures have a set of TUFs that applies to each clothes washer that is equipped with either three, four, five or six discrete temperature combination selections (TCSs) (wash/rinse offering to a consumer). Clothes washers with these TCSs represent the majority of the market. However, new clothes washers, such as the GEA clothes washers, have new temperature combinations which are not explicitly covered by the Appendix J test procedure.

Multiple Warm Wash Temperature Combination Selections

The GEA clothes washer covered by Interim Waiver CW–004 has three different warm wash selections, each of which has a cold rinse. The warm wash temperatures of these three TCSs are equally spaced by temperature, so that the temperature of the median warm wash is at the mid-point between the temperatures of the warmest warm wash and the coolest warm wash. The test methodology provided to GEA in the Interim Waiver required that only the median warm wash TCS be tested. The above and below median warm wash TCSs were not to be tested. The Department did not receive any negative comment regarding this methodology.

The Department is considering adoption of a similar approach in Appendix J. In addition, the Department is also considering adoption of additional provisions to address two other situations where clothes washers have multiple warm wash TCSs. First, similar to the clothes washer covered by Interim Waiver CW–004, a clothes washer could have a median warm wash selection and two or more pairs (one selection above and the other below the median) of additional warm selections, with the two selections in each pair being an equal distance (by temperature) from the median. The Department contemplates that in such a situation, as under Interim Waiver CW–004, a manufacturer should have to test only the median warm wash TCS. Second, unlike the clothes washer covered by Interim Waiver CW–004, a clothes washer could have multiple warm wash TCSs that are not equidistant from a median warm wash TCS. The Department is considering incorporation into Appendix J of a requirement that, in such a situation, a manufacturer would test the TCS with the warm wash temperature that is the next higher selection above the actual mean selection, or above a theoretical mean warm wash TCS if an actual mean selection does not exist. The Department seeks comments regarding these issues.

Multiple Temperature Settings Within a Temperature Combination Selection

The GEA clothes washer covered by Interim Waiver CW–004 also has multiple temperature settings, i.e., a range of temperatures from which a consumer can make a setting within a specific TCS. Section 3.2.2.2 of the current test procedure requires that the ''hottest setting available'' be used for testing the hot wash TCS. In Interim Waiver CW–004, the Department provided a test methodology to GEA for its clothes washer which requires that the hottest temperature setting within a hot, warm or cold TCS be tested.

This approach is similar to the Department's proposal in the NOPR for addressing similar TCSs that are labeled so as to appear to the consumer to be virtually identical. In essence, the similarly labeled TCSs are two temperature settings for one basic TCS. For example on a single clothes washer, one cold wash/cold rinse TCS may be labeled ''cold/cold,'' with a wash temperature that is never heated, and another can be labeled ''auto cold/cold'' with a wash temperature that uses some hot water. The Department's NOPR proposes that the hottest of these two selections be used for test results. The Department believes this proposal is consistent with the industry's basic interpretation of the test procedure. The Department believes this issue is essentially the same as the multiple temperature setting issue regarding the GEA clothes washer. The Department did not receive any negative comment regarding the NOPR's provision for similarly labeled TCSs.

However, the Department did receive negative comment from Fisher & Paykel Limited (Fisher and Paykel)[6] in response to the Interim Waiver CW–004 granted to GEA. Fisher & Paykel is concerned that the test methodology that requires testing at the hottest temperature setting available within a TCS is inconsistent with the test methodology regarding multiple warm wash TCSs, discussed above. The two approaches may appear to be inconsistent, but the Department believes they would establish the best solution given the treatment of multiple warm TCSs in Interim Waiver CW–004 and the proposal in the NOPR for similarly labeled TCSs. One of the Department's goals in proposing to amend the Appendix J test procedure is to see that the test procedure does not affect the energy rating of any model that must meet the current minimum efficiency standard. In addition, to the extent possible, the Department wants to ensure that all models are tested and rated on a comparable basis. Therefore, the Department is considering adoption of provisions for Appendix J that would require, for each TCS tested, that the test be conducted at the hottest setting available for that TCS. The Department welcomes comments on this issue.

[6] Fisher & Paykel Limited is the manufacturer of the clothes washer that GEA is petitioning for a waiver.

One and Two Temperature Combination Selections

The GEA clothes washers that are the subject of Interim Waiver CW–005, cited above, have only two wash/rinse TCSs. One selection has a cold wash and a cold rinse, while the other has a heated wash and a cold rinse. In the Interim Waiver granted to GEA, the Department provided a TUF of 15 percent for the cold/cold selection in these clothes washers, which is the same TUF value as is contained in the current test procedure for the cold/cold selection for three, four, five, and six TCS clothes washers. The heated TCS addressed in Interim Waiver CW–005 had the remaining percentage, or a TUF of 85 percent. The Department did not receive any negative comments regarding these proration factors. The Department is considering adoption of the same TUF values for Appendix J.

In addition, the Department proposes to specify that a clothes washer with only one TCS would be tested at that TCS 100 percent of the time. The Department plans to adopt the following tables for Appendix J:

Wash/rinse temperature setting	Temperature use factor (TUF)
One Temperature Selection (n=1)	
Any	1.0
Two Temperature Selection (n=2)	
Heated/cold	0.85
Cold/cold	0.15

The Department welcomes comments regarding these issues.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, DC, November 4, 1996.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 96–28746 Filed 11–7–96; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 215

[Regulation O; Docket No. R–0940]

Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks; Loans to Holding Companies and Affiliates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The supplemental notice of proposed rulemaking (supplemental proposal) would amend the Board's Regulation O, which limits how much and on what terms a bank may lend to its own insiders and insiders of its affiliates. Under the supplemental proposal, the restrictions of Regulation O would not apply to extensions of credit by a bank to an executive officer or director of the bank's affiliate, provided that the executive officer or director was not engaged in major policymaking functions of the bank and the affiliate did not account for more than 10 percent of the consolidated assets of the bank's holding company.

The supplemental proposal supersedes a similar proposal included in a proposed rule published by the Board on May 3, 1996. The supplemental proposal results from a recent change in the exemptive authority of the Board under the Economic Growth and Regulatory Paperwork Reduction Act of 1996. Other provisions of the earlier proposal have been adopted by the Board as a final rule.

DATES: Comments must be received on or before December 9, 1996.

ADDRESSES: Comments should refer to Docket No. R–0940 and be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. They may also be delivered to the guard station in the Eccles Building Courtyard on 20th Street, NW. (between Constitution Avenue and C Street), between 8:45 a.m. and 5:15 p.m., weekdays. Except as provided in the Board's rules regarding the availability of information (12 CFR 261.8), comments will be available for inspection and copying by members of the public in the Freedom of Information Office, Room MP–500 of the Martin Building, between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Gregory Baer, Managing Senior Counsel (202/452–3236), or Gordon Miller, Attorney (202/452–2534), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

Introduction

Section 22(h) of the Federal Reserve Act restricts insider lending by banks, and Regulation O implements section 22(h). 12 U.S.C. 375b; 12 CFR Part 215. Regulation O limits total loans to any one insider and aggregate loans to all insiders to a percentage of the bank's capital and requires that such loans be on non-preferential terms—that is, on the same terms a person not affiliated with the bank would receive.[1] 12 CFR 215.4 (a), (c), and (d). For this purpose, an ''insider'' means an executive officer, director, or principal shareholder, and loans to an insider include loans to any ''related interest'' of the insider, including any company controlled by the insider. 12 CFR 215.2(h). Regulation O requires that banks maintain records to document compliance with all these restrictions. 12 CFR 215.8.

On May 3, 1996, the Board proposed amendments to Regulation O to conform its exceptions for executive officers and directors of affiliates of banks to the requirements of section 22(h), as amended by the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act).[2] 61 FR 19,683. On September 30, 1996, in the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA),[3] Congress further amended section 22(h)(8)(B) by expanding the number of restrictions from which the Board could exempt insiders of affiliates, but narrowing the number of insiders of affiliates eligible for such exemptions. In view of the changes in the Board's authority and the comments received from the public concerning the Board's original proposal, the Board is seeking comment on a new proposal to exempt certain insiders of affiliates from Regulation O.

Background

Section 22(h) restricts lending not only to insiders of the bank that is making the loan but also to insiders of the bank's parent bank holding company and any other subsidiary of that bank holding company.[4] Prior to FDICIA, the Board's rules exempted from all the provisions of Regulation O an executive officer of the bank's affiliates (other than the parent bank holding company) who did not participate in major policymaking functions at the bank.[5] 12 CFR 215.2(d) (1992). The Board considered this treatment appropriate for two reasons. First, such persons generally were not considered to be in a position to exert sufficient leverage on the lending bank to obtain a loan on anything but arm's length terms, in contrast to executive officers of the lending bank itself or its parent. Thus, the Board considered the benefits, in terms of protecting the safety and soundness of bank, of restricting loans to these insiders of affiliates to be small. Second, applying these restrictions to executive officers of affiliates would have required each bank to maintain an updated list of all its affiliates' executive officers and all related interests of these executive officers, and to check all loans against this list. Particularly for a bank in a large bank holding company structure, this effort would have constituted a significant burden not outweighed by any substantial benefit.

However, after the FDICIA amendment, the language of the statute no longer appeared to allow such an

[1] Regulation O also requires prior approval of the bank's board of directors for certain loans to insiders and prohibits overdrafts by executive officers and directors.

[2] Pub. L. 103–325, section 334 (1994).

[3] Pub. L. 104–208, section 2211 (1996).

[4] As amended by the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), section 22(h)(8) provides that ''any executive officer, director, or principal shareholder (as the case may be) of any company of which the member bank is a subsidiary, or of any other subsidiary of that company, shall be deemed to be an executive officer, director, or principal shareholder (as the case may be) of the member bank.'' 12 U.S.C. 375b(8)(A).

[5] Subsection (h) of section 22 was added in 1978. Financial Institutions Regulatory and Interest Rate Control Act of 1978, Pub. L. 95–630, § 104. At that time, subsection (h) was ambiguous about whether an executive officer of a bank's affiliate was required to be treated like an executive officer of the bank itself. The statute provided that an ''officer'' of a bank included officers of affiliates, but did not similarly address ''executive officers.'' The statute's restrictions on lending by a bank to ''executive officers'' of the bank therefore did not clearly apply to ''executive officers'' of affiliates. No such ambiguity existed with respect to directors and principal shareholders of affiliates, who were explicitly treated like their counterparts at the lending bank. In 1980, the Board amended Regulation O to cover insiders of affiliates, but included a regulatory exception for executive officers of affiliates who did not participate in major policymaking functions at the bank.

exception for executive officers of affiliates. Under the amendment, executive officers of affiliates were explicitly treated like executive officers of the bank itself. Still, nothing in the legislative history of FDICIA indicated that Congress intended to invalidate the Board's regulatory exception and extend coverage to all executive officers of affiliates.

In the Riegle Act, Congress addressed this issue by amending section 22(h)(8) again. Congress authorized the Board to make exceptions for executive officers and directors of affiliates, provided that the executive officer or director did not have the authority to participate, and did not participate in, major policymaking functions of the lending bank. The Board's exceptions, however, could not include the provisions of section 22(h)(2), which prohibited lending on preferential terms.[6] Although the legislative history of the provision indicates that it was intended to allow the Board to maintain its existing exception for executive officers, its language did not allow the Board to do so.[7] The Board suggested and supported an amendment to section 22(h) to make its language consistent with its apparent intent.

EGRPRA resolved the situation by dropping the requirement in section 22(h)(8) that the Board's exceptions not include the preferential lending provision. EGRPRA therefore restored the ability of the Board prior to FDICIA to exempt executive officers of a bank's affiliates from all the provisions of section 22(h), and reconfirmed the authority of the Board to make such an exception for directors of a bank's affiliates as well.

Congress further revised section 22(h)(8) in EGRPRA, however, to introduce an additional restriction on the Board's authority to make exceptions. Under the 1996 amendment, an executive officer or director of an affiliate is not eligible for an exception if the assets of the affiliate constitute more than 10 percent of the consolidated assets of the highest-tier holding company controlling the affiliate and the bank making the loan.

Proposal

Accordingly, the Board is proposing amendments to Regulation O that would eliminate its restrictions on a bank's lending to executive officers and directors of affiliates who are not involved in major policymaking functions of the lending bank, if the assets of the affiliate do not exceed 10 percent of the consolidated assets of a company that controls the member bank and such subsidiary and is not controlled by any other company.[8] For the same reasons that it originally exempted executive officers of affiliates, the Board believes that retaining the executive officer exception and expanding it to cover directors would relieve regulatory burden on bank holding companies without increasing the risk of excessive or preferential lending or resultant safety and soundness problems.

Simultaneously with this proposal, the Board has published a final rule elsewhere in today's Federal Register to simplify the requirements for board of directors action to exclude an executive officer of an affiliate from participating in major policymaking functions of the lending bank. Under the amended procedures, in order to be exempt from Regulation O, the board of directors of a bank must adopt a resolution listing by name or title the insiders of the bank and its affiliates who are authorized to participate in major policymaking functions of the bank and generally excluding all other persons from participation, and the executive officer must not be included in the resolution and must not actually participate in such major policymaking functions. Previously, the regulation required the executive officer to be excluded from major policymaking functions of the bank by name or title in a resolution of the bank and of the affiliated bank or company where the individual served as an executive officer. 12 CFR 215.2(e)(2)(i).

The supplemental proposal reflects this simplified procedure for excluding executive officers and extends it to directors. The Board adopted the simplified procedures for exempting an executive officer of an affiliate from Regulation O because the lending bank and its board of directors have full and formal control over who participates in the bank's policymaking. For the same reasons, the Board believes that simplifying the requirements to exempt a director of an affiliate would relieve regulatory burden without increasing the risk of evasion of Regulation O.

Regulatory Flexibility Analysis

The Board has concluded after reviewing the proposed regulation that, if adopted, it would not impose a significant economic hardship on small institutions. The proposal does not necessitate the development of sophisticated recordkeeping or reporting systems by small institutions; nor will small institutions need to seek out the expertise of specialized accountants, lawyers, or managers in order to comply with the regulation. The proposal is designed to reduce the burden of Regulation O consistent with the requirements of the underlying statute. The amendment would reduce the regulatory burden for most banks by increasing the number of insiders of affiliates who may be excepted from the insider lending restrictions of Regulation O and substantially eliminating recordkeeping with respect to such individuals. The amendment may increase the regulatory burden for some banks by excluding executive officers of larger affiliates who previously were eligible to be excepted. The Board therefore certifies pursuant to section 605b of the Regulatory Flexibility Act (5 U.S.C. 605b) that the proposal, if adopted, will not have a significantly adverse economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1980 (44 U.S.C. Ch. 35; 5 CFR Part 1320, Appendix A.1), the Board reviewed the supplemental notice of proposed rulemaking under the authority delegated to the Board by the Office of Management and Budget. Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0036), Washington, DC 20503,

[6] The provision extending the statute to executive officers and directors of affiliates was moved to a new paragraph (8)(A), and the authority of the Board to make exceptions was placed in a new paragraph (8)(B), which reads as follows: The Board may, by regulation, make exceptions to subparagraph (A), except as that subparagraph makes applicable paragraph (2), for an executive officer or director of a subsidiary of a company that controls the member bank, if that executive officer or director does not have authority to participate, and does not participate, in major policymaking functions of the member bank. 12 U.S.C. 375b(8)(B). ''Paragraph (2)'' is the prohibition against lending on preferential terms.

[7] The Conference Report stated, ''It is not the intent of the Conferees to affect the exemptions that the Federal Reserve Board has already extended to executive officers, but rather to allow the Board the authority to provide appropriate treatment for directors.'' House Report 103–652, 103d Cong., 2d Sess. at 180 (1994).

[8] The proposed amendment also would retain the current provision in Regulation O that excludes extensions of credit to exempt insiders of affiliates from the recordkeeping requirements of § 215.8 of Regulation O. 12 CFR 215.8. The Board in its original proposal retained the recordkeeping requirement because the lending bank was required to identify loans to exempted insiders of affiliates and their related interests in order to ensure that such loans were not made on preferential terms. Under the proposed amendment, however, the Board's exception would include all prohibitions under section 22(h), including the prohibition on preferential terms, and therefore make recordkeeping for loans to exempt borrowers unnecessary.

with copies of such comments to be sent to Mary M. McLaughlin, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The collection of information requirements in this proposed regulation are found in 12 CFR Part 215. This information is required to evidence compliance with the requirements of section 22(h) of the Federal Reserve Act. The respondents and recordkeepers are for-profit financial institutions, including small businesses. Records must be retained for two years.

The Federal Reserve System may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0036.

The proposed amendments are expected to provide for some reduction in the recordkeeping and disclosure practices of state member banks, and would not affect the banks' reporting requirements to the Federal Reserve System. The recordkeeping and disclosure requirements on extensions of credit by the reporting banks to insiders of the bank and its affiliates are contained in the information collection for the Consolidated Reports of Condition and Income (FFIEC 031–034; OMB No. 7100–0036).

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve System, no issue of confidentiality under the Freedom of Information Act arises.

Comments are invited on: (a) Whether the proposed revision to the collection of information is necessary for the proper performance of the Federal Reserve System's functions, including whether the information has practical utility; (b) ways to enhance the quality, utility, and clarity of the information to be collected; and (c) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

List of Subjects in 12 CFR Part 215

Credit, Federal Reserve System, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, and pursuant to the Board's authority under section 22(h) of the Federal Reserve Act (12 U.S.C. 375b), the Board is amending 12 CFR Part 215, subpart A, as follows:

PART 215—LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS (REGULATION O)

1. The authority citation for part 215 continues to read as follows:

Authority: 12 U.S.C. 248(i), 375a(10), 375b (9) and (10), 1817(k)(3) and 1972(2)(G)(ii); Pub. L. 102–242, 105 Stat. 2236.

2. Section 215.2 is amended as follows:

a. Paragraph (d) introductory text and paragraphs (d)(1) through (d)(3) are redesignated as paragraph (d)(1) introductory text and paragraphs (d)(1)(i) through (d)(1)(iii), respectively;

b. A new paragraph (d)(2) is added; and

c. Paragraph (e)(2) is revised.

The addition and revisions read as follows:

§ 215.2 Definitions.

* * * * *

(d)(1) * * *

(2) *Exception.* Extensions of credit to a director of an affiliate of a member bank (other than a company that controls the bank) shall not be subject to §§ 215.4, 215.6, and 215.8, provided that—

(i) The board of directors of the member bank adopts a resolution identifying (by name or by title) all persons authorized to participate in major policymaking functions of the member bank, and the director of the affiliate is not included in the resolution and does not actually participate in such major policymaking functions;

(ii) The assets of the affiliate do not constitute more than 10 percent of the consolidated assets of the company that controls the member bank and is not controlled by any other company; and

(iii) The director of the affiliate is not otherwise subject to §§ 215.4, 215.6, and 215.8.

(e) * * *

(2) Extensions of credit to an executive officer of an affiliate of a member bank (other than a company that controls the bank) shall not be subject to §§ 215.4, 215.6, and 215.8, provided that—

(i) The board of directors of the member bank adopts a resolution identifying (by name or by title) all persons authorized to participate in major policymaking functions of the member bank, and the executive officer of the affiliate is not included in the resolution and does not actually participate in such major policymaking functions;

(ii) The assets of the affiliate do not constitute more than 10 percent of the consolidated assets of the company that controls the member bank and is not controlled by any other company; and

(iii) The executive officer of the affiliate is not otherwise subject to §§ 215.4, 215.6, and 215.8.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 4, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–28719 Filed 11–7–96; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 960

[No. 96–72]

Amendment of Affordable Housing Program Regulation

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing to amend its regulation governing the operation of the Affordable Housing Program (AHP or Program). Among the significant changes made by the proposed rule are: Transfer of approval authority for AHP applications from the Finance Board to the Federal Home Loan Banks (Banks); modification of the competitive scoring process under which AHP subsidies are allocated among housing projects; establishment of specific standards and retention periods for monitoring of AHP-assisted housing projects; and clarification and expansion of the types of remedies available in the event of noncompliance with AHP requirements.

The proposed rule is in furtherance of the Finance Board's continuing effort to devolve management and governance authority to the Banks. It also is consistent with the goals of the Regulatory Reinvention Initiative of the National Performance Review.

DATES: Comments on this proposed rule must be received in writing on or before February 6, 1997.

ADDRESSES: Comments should be mailed to: Elaine L. Baker, Secretary to the Board, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Charles E. McLean, Deputy Director, Housing and Community Development, (202) 408–2537, Richard Tucker, Associate Director, Housing and Community Development, (202) 408–2848, or Diane E. Dorius, Associate

Director, Housing and Community Development, (202) 408–2576, Office of Policy; or Sharon B. Like, Senior Attorney-Advisor, (202) 408–2930, or Brandon B. Straus, Attorney-Advisor, (202) 408–2589, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Section 10(j)(1) of the Federal Home Loan Bank Act (Act) requires each Bank to establish a Program to subsidize the interest rate on advances to members of the Federal Home Loan Bank System (Bank System) engaged in lending for long-term, low and moderate-income, owner-occupied and affordable rental housing at subsidized interest rates. *See* 12 U.S.C. 1430(j)(1). The Finance Board is required to promulgate regulations governing the Program. *See id.* The Finance Board's existing regulation governing the operation of the Program is set forth in part 960 of the Finance Board's regulations. *See* 12 CFR part 960. The Program has been operating successfully for approximately six years.

As a result of the Finance Board's and the Banks' experience in administering the Program, on January 10, 1994, the Finance Board issued a notice of proposed rulemaking that proposed changes to improve operation of the Program. *See* 59 FR 1323 (Jan. 10, 1994). The Finance Board received over 100 comment letters. During the following 18-month period, the Finance Board was without a quorum and was unable to take action on the proposed rule. On November 1, 1995, the Finance Board published for comment a proposal to amend the existing AHP regulation to authorize the Banks, in their discretion, to establish limits on the maximum amount of AHP subsidy that may be requested per member, per project application, or per project unit, for a given funding period. *See* 60 FR 55487 (Nov. 1, 1995) (Subsidy Limits Proposal). The Finance Board received 25 comment letters on the Subsidy Limits Proposal.

Given the passage of time since the 1994 notice of proposed rulemaking, and the experience of the Finance Board and the Banks in overseeing and administering the Program, the Finance Board is issuing a new comprehensive proposal to revise the Program. The Finance Board will consider all comments it receives before taking final action, including comments received in response to the proposed rules published in January 1994 and November 1995 and this notice of proposed rulemaking. However, those who submitted comments in response to the previous proposed rules may wish to update their earlier submissions.

As further discussed below in the Analysis of Proposed Rule section, the proposed rule makes changes to a number of the existing regulatory provisions governing the Program, including: (1) scoring and approval of AHP applications for funding; (2) retention of AHP-assisted housing; (3) monitoring of AHP-assisted housing; (4) and remedies for noncompliance with AHP requirements. These changes are intended to provide clearer standards for operation of the Program and reduce regulatory burden, while continuing to identify and prevent misuse of AHP subsidies. Many of the changes codify successful practices developed by the Banks in implementing the Program.

The proposed amendments also should make the Program more responsive to low- and moderate-income housing needs in each of the twelve Bank Districts (Districts), increase efficiency in the administration of the Program, and enhance coordination of the Program with other housing programs whose funds are used in conjunction with AHP subsidies. The proposed rule also reorganizes and streamlines the text of the regulation.

The Finance Board is proposing these changes in the larger context of its proposal to decentralize the authority to make final funding decisions for AHP projects. While section 10(j) of the Act requires each Bank to establish a Program, and vests in the Finance Board broad authority to supervise the Banks' AHP activities through regulations implementing the Act, section 10(j) does not specifically assign the responsibility for operating the Program to the Finance Board. *See* 12 U.S.C. 1430(j). Under the existing regulation, each Bank is largely responsible for the administration of its Program, including the evaluation and processing of applications for AHP funding. *See* 12 CFR 960.5 (a) through (e). However, final funding decisions for AHP projects currently are made by the Finance Board. *See id.* § 960.5(f)(3). The proposed rule makes a fundamental change to the Program by vesting the Banks, instead of the Finance Board, with the authority to make final funding decisions for AHP projects, subject to regulatory limitations. *See* proposed § 960.8(b). Decentralization of funding decisions under the Program is consistent with the Finance Board's ongoing efforts to transfer to the Banks those functions performed by the Finance Board that are related to Bank management and governance. Further, the Finance Board believes that, in light of the Banks' six years of experience evaluating and processing AHP applications, the Banks are fully prepared to take on this new authority. The Finance Board will continue to exercise its supervisory oversight role through examinations of each Bank's Program.

II. Analysis of Proposed Rule

A. Definitions—§ 960.1

Changes to individual definitions in § 960.1 of the existing AHP regulation, *see* 12 CFR 960.1, are discussed below in the context of specific regulatory requirements, with the exception of the definitions of ''direct subsidy,'' ''subsidized advance,'' ''subsidy,'' and ''cost of funds,'' which are discussed here.

1. Definition and Calculation of AHP Subsidy

a. *In general.* Under the Program, the Banks provide subsidies to finance AHP-eligible housing through: (1) advances with reduced interest rates, known as ''subsidized advances;'' and (2) direct cash grants, known as ''direct subsidies.'' *See id.* § 960.3. Under the existing regulation, the terms ''subsidized advance'' and ''direct subsidy'' are not defined. However, the existing regulation defines the term ''subsidy'' as ''direct cash payments under the Program or the net present-value of the foregone interest revenues to the Bank from making funds available under the Program at rates below the cost of funds.'' *See id.* § 960.1(n).

The existing rule defines ''cost of funds'' as ''the estimated cost of issuing Bank System consolidated obligations with maturities comparable to those of the subsidized advances, as published from time to time by the Federal Home Loan Bank System's Office of Finance.'' *See id.* § 960.1(f).

Based on the Finance Board's and the Banks' experience over the past six years in calculating subsidies in the context of the various kinds of financing structures used by members and AHP projects, the Finance Board is proposing to add definitions of ''subsidized advance'' and ''direct subsidy'' and to amend the definitions of ''subsidy'' and ''cost of funds'' to provide clearer guidance to the Banks in calculating the amount of AHP subsidy necessary for a proposed project. These changes also are intended to ensure that the AHP subsidy is passed through from the Bank to the ultimate borrower. *See* 12 U.S.C. 1430(j)(9)(E).

b. ''*Direct subsidy*''. The proposed rule defines ''direct subsidy'' as ''an AHP subsidy in the form of a direct cash

payment.'' *See* proposed § 960.1. Direct subsidies may be used either as cash grants to projects or to write down the interest rate on a loan to the project. The new definition of ''subsidy'' includes language that clarifies how direct subsidies are to be calculated when they are used to write down the interest rate on a loan to a project. *See id.* Specifically, if a direct subsidy is used to write down the interest rate on a loan extended by a member, sponsor, or other party to a project, the direct subsidy must equal the net present value of the interest foregone from making the loan below the lender's market interest rate (calculated as of the date the AHP application is submitted to the Bank, and subject to adjustment under § 960.9(c)(1)). *See id.*

c. ''*Subsidized advance*''. The proposed rule defines ''subsidized advance'' as ''an advance to a member at an interest rate reduced below the Bank's cost of funds, by use of a subsidy.'' *See id.*

The proposed rule defines ''subsidy,'' for purposes of determining the amount of the interest rate subsidy incorporated in a subsidized advance, as ''the net present value of the interest revenue foregone from making a subsidized advance at a rate below the Bank's cost of funds, determined as of the date of disbursement of the subsidized advance or the date prior to disbursement on which the Bank first manages the funding to support the subsidized advance through its asset/liability management system, or otherwise. *See id.*

d. ''*Cost of funds*''. The proposed rule defines ''cost of funds'' as ''for purposes of a subsidized advance, the estimated cost of issuing Bank System consolidated obligations with maturities comparable to that of the subsidized advance.'' *See id.* The Finance Board specifically requests comments on whether the interest rate subsidy incorporated in a subsidized advance should be defined by reference to a Bank's market advance rate, rather than the Bank's cost of funds. This would allow a Bank to use AHP subsidies to pay its regular advance mark-up where AHP subsidy is delivered to a project through a subsidized advance. Arguably, this eliminates a perceived disincentive to the Banks to make subsidized advances, versus direct subsidies. However, an argument can be made that the form in which AHP subsidies are delivered to projects, *i.e.*, subsidized advances versus direct subsidies, is determined by the financing structures used by proposed projects, not by the preferences of Banks in funding such projects. Consequently, it is argued that allowing Banks to use AHP subsidies to pay their regular advance mark-up would not affect the level of subsidized advances made by Banks and would use more AHP subsidies to produce the same amount of affordable housing.

B. Operation of Program and AHP Implementation Plans—§ 960.2

1. Program Operation

Proposed § 960.2(b) provides that each Bank's Program shall be governed solely by the requirements set forth in 12 U.S.C. 1430(j) and part 960, and a Bank shall not adopt any additional substantive AHP requirements, except as expressly provided in part 960. This is intended to make clear that the Finance Board intends its AHP regulation to ''occupy the field'' with regard to substantive requirements governing the Program. A Bank is prohibited from adopting additional substantive rules or policies governing its Program, unless expressly authorized to do so by a provision of the AHP regulation.

2. AHP Implementation Plans

The existing regulation requires each Bank's board of directors to adopt an AHP implementation plan annually, a copy of which must be submitted to the Finance Board annually. *See* 12 CFR 960.2(b). Proposed § 960.2(c) requires adoption of the plan by December 1 of each year, and prohibits the board of directors from delegating responsibility for adoption of the plan to Bank officers or other Bank employees.

A Bank's implementation plan must set forth: (1) the Bank's project cost guidelines, adopted pursuant to proposed § 960.3(b); (2) the Bank's schedule for AHP funding periods, adopted pursuant to proposed § 960.6(a); (3) any District threshold requirements, adopted pursuant to proposed § 960.7(b); (4) the Bank's AHP scoring guidelines, adopted pursuant to proposed § 960.8(a); (5) the Bank's procedures for verifying a project's use of AHP subsidies within a reasonable period of time pursuant to proposed § 960.9(a); (6) the Bank's procedures for verifying compliance upon disbursement of AHP subsidies pursuant to § 960.9(b); (7) the requirements for any homeownership assistance program adopted pursuant to proposed § 960.12; and (8) the Bank's policies and procedures for carrying out the Bank's monitoring obligations under proposed § 960.13.

A Bank must give its Advisory Council a reasonable period of time to review the Bank's plan and any subsequent amendments and provide its recommendations to the Bank's board of directors prior to adoption. This provision is intended to expand the Advisory Councils' role in advising the Banks on how AHP subsidies should be allocated to meet the low- and moderate-income housing and community development programs and needs in their Districts. A Bank's plan, and any amendments, must be made available to members of the public, upon request.

Proposed § 960.2(d) carries forward the requirement in § 960.6(a) of the existing regulation that each Bank shall provide reports and documentation concerning the Program as the Finance Board may request from time to time. *See id.* § 960.6(a). A Bank must provide promptly to the Finance Board and the Advisory Council a copy of the AHP implementation plan and any amendments.

C. Eligible Costs—§ 960.3

1. General

The proposed rule revises § 960.3 of the existing regulation by clarifying the kinds of activities and costs that are eligible to be financed with AHP subsidies. *See id.* § 960.3. The Act requires each Bank to establish a Program ''to subsidize the interest rate on advances to members engaged in lending for long term, low- and moderate-income, owner-occupied and affordable rental housing * * *.'' *See* 12 U.S.C. 1430(j)(1). The Act further provides that AHP subsidized advances are to be used to: (1) finance homeownership by families with incomes at or below 80 percent of the median income for the area (*i.e.*, low- or moderate-income households); or (2) finance the purchase, construction, or rehabilitation of rental housing, at least 20 percent of the units of which will be occupied by and affordable for very low-income households for the remaining useful life of such housing or the mortgage term. *See id.* § 1430(j)(2).

Proposed § 960.3(a) implements this statutory requirement. It provides that AHP subsidies may be used to finance: (1) the purchase, construction, or rehabilitation of owner-occupied housing by or for very low- or low- or moderate-income households; and (2) the purchase, construction, or rehabilitation of rental projects where at least 20 percent of the units in the project are occupied by and affordable for very low-income households. The Finance Board wishes to make clear that those units in excess of 20 percent are not required to be, but may be committed to be, occupied by and

affordable for very low- or low- or moderate-income households.

2. Definitions of ''Low- and Moderate-Income Household'' and ''Very Low-Income Household''

Section 10(j)(13)(A) of the Act defines the term ''low- or moderate-income household'' as a household that has an income of 80 percent or less of the area median. *See id.* § 1430(j)(13)(A). Section 10(j)(13)(B) of the Act defines the term ''very low-income household'' as a household that has an income of 50 percent or less of the area median. *See id.* § 1430(j)(13)(B).

The Finance Board's existing regulation defines ''low- and moderate-income households'' as households for which the aggregate income is 80 percent or less of the area median income, and ''very low-income households'' as households for which the aggregate income is 50 percent or less of the area median income. *See* 12 CFR 960.1 (g), (o). ''Median income'' is defined as ''the median family income for an area as determined and published by the U.S. Department of Housing and Urban Development [(HUD)].'' *Id.* § 960.1(h). ''Area'' is defined as ''a metropolitan statistical area, a county, or a nonmetropolitan area, as established by the U.S. Office of Management and Budget.'' *Id.* § 960.1(c).

Under section 3 of the United States Housing Act of 1937, the Secretary of HUD annually publishes median income limits for 2,700 metropolitan statistical areas (MSAs), counties, and nonmetropolitan statistical areas, and makes adjustments to these limits for various local conditions as well as for household size. *See* 42 U.S.C. 1437a(b)(2). In some areas, the Secretary adjusts the income limit downward to take into account prevailing construction costs, low housing costs, or unusually high household incomes.

To date, the Finance Board has interpreted § 960.1 (c) and (h) of the existing regulation to require the use of the income limits published by HUD, including HUD's adjustments for household size, in determining household eligibility under the Program. On November 5, 1993, the Finance Board published for comment a proposal to amend the definitions of the terms described above in order to redefine the AHP income limits without certain adjustments incorporated in the HUD income limits. *See* 58 FR 58988 (Nov. 5, 1993). This proposal also was part of the Finance Board's January 10, 1994 proposal. *See* 59 FR 1323 (Jan. 10, 1994).

Proposed § 960.1 continues to require the use of HUD income limits, including adjustments for household size, in determining household eligibility under the Program. One reason for this approach is that arguably, in more affluent areas, limited AHP resources should go to those households that have greater need for housing assistance relative to households at the higher end of the median income scale. Failure to use HUD downward adjustments may create a preference for relatively affluent areas over other areas within a state.

On the other hand, the HUD adjustment may result in an inappropriate exclusion of certain relatively higher income households from affordable housing in a particular local market on the basis that housing costs are lower or household incomes are higher in that market than in other regions of the United States. Although using HUD's income limits, including the downward adjustment, decreases the number of households in an area that are eligible to receive assistance under the Program, such areas may continue to have many households with incomes below HUD's adjusted income limits who are ready and able to qualify for AHP-assisted housing.

By adopting the HUD program standards, including regional caps and variations for family size, the Finance Board has made it obligatory to use the HUD schedule for all AHP projects, even where no HUD money is involved. There are other legitimate federal, state, and local government sources for area median income data which may be valid and more accurate measures of local economic conditions than the HUD schedule, which reflects internal adjustments to the data furnished by the U.S. Department of Commerce.

There has been concern that the current regulation has precluded AHP participation in any state or local, public or private program that does not conform to the HUD schedule or formula for adjusting for family size. In some cases, a member may not be able to generate an AHP project in an area where it offers banking services, simply because the member's market area is a higher-cost area that is not compatible with HUD's program limits.

The alternatives discussed below would not change the income eligibility standards of 80 percent and 50 percent of area median income, but would provide greater flexibility in determining the basis on which these percentages are calculated.

In light of the Finance Board's statutory mandate to ensure that the AHP regulation coordinates the Program with other federal and federally-subsidized affordable housing activities to the maximum extent possible, *see* 12 U.S.C. 1430(j)(9)(G), a more flexible definition would allow the Program to continue to conform with HUD programs while improving its compatibility with other housing programs, such as state mortgage revenue bond programs, that use different income statistics or different household size adjustments.

The alternatives would allow: (1) median income to be established using any reliable source for current area information and be determined for counties and other applicable state and local subdivisions as well as MSAs; (2) any adjustment for family size to be made in conformance with the requirements of the lead or controlling funding source or program; and (3) the use of whatever median income standard and adjustment is being used by the sponsoring or funding entity for the project, provided that the standard is from a legitimate state or federal source that regularly provides such information on income. The Finance Board specifically requests comments on these alternatives.

3. Definition of ''Affordable''

The proposed rule eliminates the existing definition of ''affordable for very low-income households,'' *see* 12 CFR 960.1(b), and replaces it with a definition of ''affordable,'' which is defined to mean that the monthly housing costs charged to a household for an AHP-assisted rental unit cannot exceed 30 percent of the income of a household of the maximum income and size expected, under the commitment made in the approved AHP application, to occupy the unit (assuming occupancy of 1.5 persons per bedroom or 1.0 person per unit without a separate bedroom). *See* proposed § 960.1. Under the revised definition, the affordability concept can now be applied not only to very low-income households, but also to low- or moderate-income households. In addition, the revisions clarify that the rent for those units designated for occupancy by households with a specific income level cannot exceed 30 percent of the income of a household of the maximum income and size expected, under the commitment made in the approved AHP application, to occupy the unit (assuming occupancy of 1.5 persons per bedroom or 1.0 person per unit without a separate bedroom). *See id.* For example, if a unit is designated for occupancy by a four-person household with a maximum income equal to 40 percent of the median income for the area and the household occupying the unit is a three-person household whose income is 35 percent of the median income for the

area, the rent should be equal to 30 percent of 40 percent of the median income for the area for a four-person household. This is necessary because project rent projections, which determine, in part, the amount of subsidy needed by a project, are based on the assumption that rents will be set based on the maximum income and size of households expected to occupy designated very low-income units. The proposed definition of ''affordable'' also incorporates the new proposed definition of ''monthly housing costs.'' *See id.*

4. Eligible Costs

Proposed § 960.3(b) clarifies the language in the existing regulation describing the costs that are eligible to be paid with AHP subsidies. *See* 12 CFR 960.3(c). Proposed § 960.3(b) provides that AHP subsidies may be used to pay only for the customary and standard costs typically incurred, at fair market prices, to purchase, construct, or rehabilitate AHP-eligible housing. In addition, the Banks are required to evaluate the reasonableness of project costs, based upon project cost guidelines adopted by the Bank. Section 10(j)(9)(F) of the Act requires the Finance Board to establish maximum subsidy limitations under the Program, and section 10(j)(9)(D) of the Act requires the Finance Board to ensure that a preponderance of assistance provided under the Program is ultimately received by low- and moderate-income households. *See* 12 U.S.C. 1430(j)(9)(D), (F). Requiring that project costs be reasonable is one way of keeping projects from being over-subsidized, ensuring that a preponderance of the funds are received by the targeted households, through the lowering of their housing costs and avoiding any undue benefit to the intermediaries in the development process. The proposal that Banks undertake a project cost review of each application merely codifies the existing practice of many of the Banks.

5. Ineligible Costs

Proposed § 960.3(c) sets forth the following costs that may not be paid using AHP subsidies.

a. *Pre-development expenses.* Proposed § 960.1 defines ''pre-development expenses'' as ''expenses for the purpose of determining the feasibility of a proposed project.'' Examples of such expenses include architectural, legal, and engineering fees and survey costs incurred to determine the feasibility of a proposed project. The Finance Board believes that, based on its experience with the Program, there is a great likelihood that expenses incurred during the pre-feasibility period, rather than the post-feasibility period, of a project will not result in the actual purchase, construction, or rehabilitation of housing. Further, since the inception of the Program, demand for AHP subsidies for projects in the post-feasibility stage has significantly exceeded available funds. Thus, if AHP subsidies were to be approved for use during the pre-feasibility period, potentially significant amounts of subsidies that currently go toward completing projects might instead be paying for activities that never result in the financing or production of housing. Proposed § 960.3(c)(1), therefore, prohibits the use of AHP subsidies for pre-development expenses not yet incurred by a proposed project as of the date the AHP application is submitted to the Bank. Nonetheless, projects in the post-feasibility stage may apply for AHP subsidies to reimburse the pre-development expenses they incurred during the pre-feasibility period.

b. *Prepayment and cancellation fees.* Proposed § 960.3(c) (2) and (3) prohibit the use of AHP subsidies for prepayment and cancellation fees and penalties imposed by a Bank on a member for a subsidized advance or advance commitment that is prepaid or canceled, respectively. The Finance Board believes that funding such fees is an unproductive use of AHP subsidies and does not meet the statutory requirement that AHP subsidies be used to finance housing. *See* 12 U.S.C. 1430(j)(2).

c. *Counseling costs.* Counseling can play an important role in the development and success of affordable housing projects. The Finance Board specifically requests comments on whether AHP subsidies should be permitted to pay for counseling costs, generally, and whether they should be used to pay only for counseling for homebuyers, homeowners, or tenants of AHP-assisted units. The Finance Board believes that if AHP subsidies are to be used for counseling, they should be used to expand the pool of resources available for counseling, rather than replace existing sources of funding. The Finance Board wishes to prevent AHP subsidies from being used to pay for counseling that, in the absence of the AHP subsidy, would customarily be financed by another source of funding for a project. Therefore, proposed § 960.3(c)(4) prohibits the use of AHP subsidies for costs incurred in connection with counseling of homebuyers, homeowners, or tenants except for costs of homebuyer counseling where: (1) the counseling is provided to a household that actually purchases an AHP-assisted unit; and (2) the cost of the counseling has not been covered by another funding source, including the member.

d. *Direct subsidy processing fees.* Members do not conduct the same level of underwriting and processing when providing direct subsidies to projects as they do when making loans to projects. Therefore, proposed § 960.3(c)(5) prohibits the use of AHP subsidies for processing fees charged by members for providing direct subsidies to AHP-assisted projects. This would not preclude a member from using AHP subsidies to pay for an origination fee in cases where the member receives both a subsidized advance and a direct subsidy, or only a direct subsidy, from a Bank, and in turn makes both a loan and a grant to the project, provided the AHP subsidies are used to pay only for the loan origination fee and not for any fee associated with providing the direct subsidy.

6. Refinancing

Proposed § 960.3(d) provides that AHP subsidies may be used to refinance an existing single-family or multifamily mortgage loan, provided the equity proceeds of the refinancing are used only for the purchase, construction, or rehabilitation of AHP-eligible housing. This provision is intended to prevent the owner of an existing housing project from using AHP subsidies to liquidate the owner's equity stake in the project, for the sole benefit of the owner. Such use of AHP subsidies would be contrary to the Act, because there would be no resulting purchase, construction, or rehabilitation of AHP-eligible housing. *See* 12 U.S.C. 1430(j)(2).

D. Retention of AHP-Assisted Housing—§ 960.4

Under the existing regulation, there is no specified minimum retention period for AHP-assisted owner-occupied or rental housing. Projects that commit to longer retention periods receive more points in the scoring process. See 12 CFR 960.5(d)(2). Further, the existing regulation does not provide specific requirements governing the kinds of retention mechanisms that are to be used to ensure that AHP-assisted housing continues to meet AHP statutory and regulatory requirements and the obligations committed to in applications for AHP subsidies. The proposed rule establishes minimum threshold retention periods for AHP-assisted housing and clarifies the kinds of retention mechanisms that must be used for such housing.

a. *Owner-occupied units.* The Finance Board believes that the purpose of the language in the Act directing AHP subsidies to be used to ''finance homeownership by families with incomes at or below 80 percent of the median income for the area,'' is to assist low- and moderate-income households in achieving homeownership, and then permitting the households to have rights in a home to the same extent as other homeowners, including the benefit of appreciation of the value of the home. *See* 12 U.S.C. 1430(j)(2)(A). Unlike the statutory provision governing AHP-assisted rental housing, *see id.* § 1430(j)(2)(B), the provision governing AHP-assisted owner-occupied housing does not mandate continued affordability for subsequent purchasers of owner-occupied units, nor does it impose restrictions on the resale price of such units. Therefore, the retention provisions of the proposed rule do not impose such requirements on owner-occupied units. However, to minimize opportunities for speculation, proposed § 960.4(a) requires each AHP-assisted owner-occupied unit to be subject to a deed restriction, ''soft'' second mortgage, or other legally enforceable mechanism facilitating recovery of a portion of the AHP subsidy if, prior to the end of the retention period, the owner sells the unit to a household that is not a low- or moderate-income household or refinances the unit and fails to ensure that it continues to be subject to a retention mechanism for the remainder of the retention period. In the latter case, the homeowner is required to repay the full amount of the direct subsidy.

Proposed § 960.1 defines ''retention period'' as the period during which the sponsor or owner of an AHP-assisted project commits to comply with the requirements of 12 U.S.C. 1430(j), the AHP regulation, and the terms of the approved AHP application. Proposed § 960.1 provides that the minimum retention period for an owner-occupied unit is 5 years, and for a rental unit is 15 years from the date of project completion. Under proposed § 960.8(a)(2)(v)(E), a Bank may establish a scoring priority for applications for projects with retention periods in excess of the required minimums.

Proposed § 960.4(a)(1) provides specifically that an owner-occupied unit financed by a direct subsidy under the Program must be subject to a deed restriction, ''soft'' second mortgage, or other legally enforceable mechanism requiring that the Bank or its designee is to be given notice of any sale or refinancing of the unit occurring prior to the end of the retention period. In the case of a sale prior to the end of the retention period, a pro rata share of the direct subsidy, reduced for every year the seller owned the unit, must be repaid to the Bank from any net gain realized upon the sale of the unit after deduction for sales expenses, unless the purchaser is a low- or moderate-income household. In the case of a refinancing prior to the end of the retention period, the full amount of the direct subsidy must be repaid to the Bank from any net gain realized upon the refinancing of the unit, unless the unit continues to be subject to a retention mechanism for the remainder of the retention period. This is intended to ensure that the owner of an AHP-assisted unit does not circumvent the retention requirement by refinancing the unit.

Proposed § 960.4(a)(2) provides specifically that an owner-occupied unit financed by a loan from the proceeds of a subsidized advance under the Program must be subject to a deed restriction or other legally enforceable mechanism requiring that the Bank or its designee is to be given notice of any sale or refinancing of the unit occurring prior to the end of the retention period. In the case of a refinancing prior to the end of the retention period, the full amount of the interest rate subsidy received by the owner, based on the pro rata portion of the interest rate subsidy imputed to the subsidized advance during the period the owner occupied the unit prior to refinancing, must be repaid to the Bank from any net gain realized upon the refinancing, unless the unit continues to be subject to a retention mechanism for the remainder of the retention period.

Where a member uses the proceeds of a subsidized advance to make loans financing owner-occupied units, the Bank must require the member to agree in writing that if such loans are prepaid by the borrower, the member may, at its option, either: (1) repay to the Bank that portion of the subsidized advance used to make the loan to the borrower, and be subject to a fee imposed by the Bank sufficient to compensate the Bank for any loss the Bank experiences in reinvesting the repaid amount at a rate of return below the cost of funds originally used by the Bank to calculate the interest rate subsidy incorporated in the subsidized advance; or (2) continue to maintain the subsidized advance outstanding, subject to the Bank resetting the interest rate on that portion of the subsidized advance used to make the loan to the borrower to a rate equal to the cost of funds originally used by the Bank to calculate the interest rate subsidy incorporated in the subsidized advance.

The Finance Board specifically requests comments on whether repayment of AHP subsidy should be triggered in all cases of refinancing by the owner prior to the end of the retention period, not just in cases where the owner fails to ensure that the unit continues to be subject to a retention mechanism after the refinancing. Refinancing may allow the owner of an AHP-assisted unit, in effect, to take the subsidy out of the unit prior to the end of the 5-year retention period, which, arguably, is a windfall to the owner. However, homeowners, generally, can take advantage of lower interest rates by refinancing their homes, and households that purchase AHP-assisted homes should not be denied this opportunity. As long as the owner of an AHP-assisted home ensures that after the refinancing, the home continues to be subject to the AHP retention requirement, the goal of the Program is met.

b. *Rental projects.* The Act provides that AHP-assisted rental housing must be occupied by and affordable for very low-income households ''for the remaining useful life of such housing or the mortgage term.'' *See id.* § 1430(j)(2). The Finance Board believes that the statutory requirement that AHP-assisted rental housing be affordable for the ''mortgage term'' should not be interpreted to refer to the term of the mortgage loan actually financing a particular housing project, because this would encourage owners to obtain the shortest term financing available in order to limit the time that units must remain affordable. The Finance Board believes that 15 years reflects a reasonable period of time for the imposition of affordability requirements on AHP-financed rental units and is within a reasonable range of the average mortgage terms for affordable rental housing. Project sponsors continue to have the option of maintaining the affordability of units in the project for the remaining useful life of the housing, *see id.* § 1430(j)(2), but the regulatory minimum under the proposed rule is 15 years.

Proposed § 960.4(b)(1) provides that a rental project financed with a direct subsidy must be subject to a deed restriction or other legally enforceable mechanism requiring that the project's rental units, or applicable portion thereof, must remain occupied by and affordable for households with incomes at or below the levels committed to be served in the AHP application for the duration of the retention period, and the Bank or its designee is to be given notice of any sale or refinancing of the project occurring prior to the end of the

retention period. In the case of a sale prior to the end of the retention period, an amount equal to the entire amount of any direct subsidy received must be repaid to the Bank, unless the subsequent owner agrees in writing to comply with the income-eligibility and affordability restrictions committed to in the AHP application. In the case of a refinancing prior to the end of the retention period, an amount equal to the entire amount of any direct subsidy received must be repaid to the Bank, unless the project continues to be subject to a deed restriction or other legally enforceable mechanism requiring the project's rental units, or applicable portion thereof, to remain occupied by and affordable for households with incomes at or below the levels committed to be served in the AHP application for the duration of the retention period.

Proposed § 960.4(b)(2) provides that a rental project financed with a subsidized advance must be subject to a deed restriction or other legally enforceable mechanism requiring that the project's rental units, or applicable portion thereof, must remain occupied by and affordable for households with incomes at or below the levels committed to be served in the AHP application for the duration of the retention period, and the Bank or its designee is to be given notice of any sale or refinancing of the project occurring prior to the end of the retention period. In the case of a sale prior to the end of the retention period, the full amount of the interest rate subsidy received by the seller, based on the pro rata portion of the interest rate subsidy imputed to the subsidized advance during the period the seller owned the project prior to the sale, must be repaid to the Bank, unless the subsequent owner agrees in writing to comply with the income-eligibility and affordability restrictions committed to in the AHP application. In the case of a refinancing prior to the end of the retention period, the full amount of the interest rate subsidy received by the owner, based on the pro rata portion of the interest rate subsidy imputed to the subsidized advance during the period the owner owned the project prior to refinancing, must be repaid to the Bank, unless the project continues to be subject to a deed restriction or other legally enforceable mechanism requiring the project's rental units, or applicable portion thereof, to remain occupied by and affordable for households with incomes at or below the levels committed to be served in the AHP application for the duration of the retention period.

Where a member uses the proceeds of a subsidized advance to make loans financing a rental project, the Bank must require the member to agree in writing that if such loans are prepaid by the borrower, the member may, at its option, either: (1) repay to the Bank that portion of the subsidized advance used to make the loan to the borrower, and be subject to a fee imposed by the Bank sufficient to compensate the Bank for any loss the Bank experiences in reinvesting the repaid amount at a rate of return below the cost of funds originally used by the Bank to calculate the interest rate subsidy incorporated in the subsidized advance; or (2) continue to maintain the subsidized advance outstanding, subject to the Bank resetting the interest rate on that portion of the subsidized advance used to make the loan to the borrower to a rate equal to the cost of funds originally used by the Bank to calculate the interest rate subsidy incorporated in the subsidized advance.

The Finance Board specifically requests comments on whether an owner of an AHP-assisted rental project should be required to repay the entire amount of the AHP subsidy, versus a pro rata share, where the project is sold prior to the end of the retention period and the subsequent owner fails to agree in writing to comply with the income-eligibility and affordability restrictions committed to in the AHP application. This requirement arguably serves to discourage the conversion of AHP-assisted rental projects into projects that charge market rents, prior to the end of the retention period.

E. Timing of Household Income Qualification—§ 960.5

Proposed § 960.5 adds new provisions intended to clarify the time at which a household's income should be examined to determine whether it meets the income eligibility requirements for AHP-assisted housing.

1. Owner-Occupied Projects

Proposed § 960.5(a) provides that in order to qualify as a very low- or a low- or moderate-income household for purposes of an AHP-assisted owner-occupied project, a household must have an income at or below the level committed to in the AHP application at the time the household is qualified by the sponsor for participation in the project, but no earlier than the date on which the AHP application was submitted to the Bank for approval.

2. Rental Projects

Proposed § 960.5(b) provides that in order to qualify as a very low- or a low- or moderate-income household for purposes of an AHP-assisted rental project, a household must have an income at or below the level committed to in the AHP application for a particular unit upon initial occupancy only. The household may continue to occupy such designated unit even if its income subsequently increases above the income-eligibility requirement for that unit. The unit may continue to count toward meeting the targeted income-eligibility requirement, provided the rent charged remains affordable, as defined in proposed § 960.1, for the targeted household.

F. Funding Periods—§ 960.6

1. Definition of Member

Proposed § 960.1 revises the definition of ''member'' in the existing AHP regulation, *see* 12 CFR 960.1(i), to conform the definition to that used in the Finance Board's regulation on membership. *See id.* § 933.1(s).

2. District-Wide Competitions

Proposed § 960.6(a) continues the existing requirement that each Bank: (1) administer a District-wide competition for its AHP subsidies; (2) announce the application due dates by December 1 of the preceding year; and (3) offer comparable amounts of AHP subsidies in each funding period. *See id.* § 960.4(a). Proposed § 960.6(a) revises the existing regulation by permitting the Banks to accept applications from members for AHP funding during a specified number of funding periods each year, as determined by the Bank, instead of only twice a year as required under the existing regulation. *See id.* The Finance Board specifically requests comments on whether the Banks should be permitted to accept AHP applications on a rolling basis, and, if so, how applications would be scored under such a process.

3. Funding Availability; Notification to Members

Proposed § 960.6(b) requires each Bank to notify its members and other interested parties of: (1) the approximate amount of annual AHP subsidies available for the Bank's District; and (2) the approximate amount of AHP subsidies to be offered in each funding period. *See id.* § 960.4(b).

Proposed § 960.6(b) also adds three new Bank notification requirements. Each Bank must notify its members and other interested parties of: (1) the applicability of any District threshold requirements established pursuant to proposed § 960.7(b); (2) the scoring guidelines contained in the Bank's AHP

implementation plan; and (3) the application due dates. The term ''interested parties'' in proposed § 960.6(b) is meant to refer to those parties that have expressed an interest to the Bank in receiving information about AHP funding periods.

G. Application Requirements—§ 960.7

Proposed § 960.7(a) consolidates, streamlines, and revises the AHP application requirements in §§ 960.4(c) and 960.5(a)(1) and (2) of the existing regulation. *See* 12 CFR 960.4(c), 960.5(a)(1), (2).

1. Mandatory Requirements

Under proposed §§ 960.7(a)(1) through (3), each Bank must require members to include in their AHP applications: (1) a concise description of the proposed project; (2) the estimated amount of AHP subsidy required for the proposed project; and (3) a disclosure of the member's direct or indirect interest, if any, in the property or proposed project. These requirements generally reiterate application requirements in the existing regulation. *See id.* § 960.4(c) (1), (5), (6). However, proposed § 960.7(a)(2) adds a new requirement that in the case of an application for a subsidized advance, the member shall include in its application the interest rate on the member's loan to the proposed project, and, for purposes of scoring the application, the Bank shall estimate the subsidy required for the proposed project based on the Bank's cost of funds as of the date on which all AHP applications are due for the funding period in which the application is submitted. This is intended to address the fact that the actual amount of AHP subsidy that will be incorporated in the subsidized advance for which the member is applying will not be determined until after the member submits its application to the Bank. Therefore, in order to treat all members applying for subsidized advances in a given funding period on an equal basis, the proposed rule requires that the estimate of the subsidy in a subsidized advance be based on the Bank's cost of funds as of the date on which all AHP applications are due for the funding period in which the application is submitted.

Proposed § 960.7(a)(4) requires that AHP applications include an explanation of how the proposed project will comply with the eligible costs provision of proposed § 960.3(b). In order to meet this requirement, applications should include an explanation of how the AHP subsidy will be used. The proposed requirement is consistent with the existing application requirements for eligible uses of AHP subsidies. *See id.* §§ 960.4(c)(1), 960.5(a)(1).

Proposed § 960.7(a)(5) requires that AHP applications include an explanation of how the proposed project will comply with the retention requirements of proposed § 960.4. In order to meet this requirement, applications should include an explanation of what legal agreements, deed restrictions, or other legally enforceable mechanisms are or will be in place to ensure retention of the project in accordance with the requirements of proposed § 960.4. This is consistent with the requirement in the existing regulation that the Bank consider the extent to which the project facilitates the maximum retention of such housing as evidenced through the existence of long-term guarantees, covenants, and similar techniques. *See id.* § 960.5(d)(2).

Proposed § 960.7(a)(6) requires that AHP applications include an explanation of how the proposed project is financially viable and likely to be completed within a reasonable period of time, and why the requested AHP subsidy is needed. In evaluating the application for compliance with this requirement, a Bank must analyze all project sources and uses of funds (including the value of any donated land, materials, and professional labor), multi-year operating pro formas for rental projects, sale prices for owner-occupied units, and local market conditions and review the reasonableness of information relating to available sources and uses of funding and financing capacity, such as operating pro formas, to verify the proposed project's need for AHP subsidy.

This provision amends the feasibility requirement in the existing regulation by specifying the types of information that must be included in the project feasibility analysis and by adding an explicit requirement that the Banks analyze a proposed project's need for the requested AHP subsidy. *See id.* §§ 960.4(c)(3), 960.5(a)(2)(ii). This change would make clear that the Banks, in addition to reviewing the reasonableness of project costs, must review the reasonableness of operating pro formas for the proposed project to ensure that representations regarding the financing capacity of the project (such as debt servicing capacity and equity market value), and the consequent need for AHP subsidy, are reasonable.

The requirement that the project is likely to be completed within a reasonable period of time replaces the requirement in § 960.5(a)(2)(iv) of the existing regulation that projects be evaluated for their ability to begin using AHP subsidies within 12 months of approval. *See id.* § 960.5(a)(2)(iv).

Proposed § 960.7(a)(7) requires that AHP applications include an explanation of the project sponsor's qualifications and ability to perform its responsibilities as committed to in the AHP application. This provision is consistent with the sponsor qualification requirement in the existing regulation. *See id.* § 960.4(c)(4). Proposed § 960.1 defines a ''sponsor'' as a not-for-profit or for-profit organization or public entity that is: (1) An owner of a rental project; or (2) integrally involved in an owner-occupied project, such as by exercising control over the planning, development or management of such project, or by qualifying borrowers and providing or arranging financing for the owners of the units. This definition revises the definition in the existing regulation to clarify the different roles of sponsors in rental as opposed to owner-occupied projects.

Proposed § 960.7(a)(8) requires that AHP applications include a statement that the project sponsor and owner will comply with any applicable fair housing law requirements, and an explanation of how the project sponsor and owner intend to affirmatively market the proposed project and otherwise comply with such requirements. This provision is consistent with the fair housing requirements in the existing regulation. *See id.* §§ 960.4(c)(2), 960.5(a)(2)(i).

The proposed rule does not include the existing regulatory requirement that AHP applications be evaluated to ensure the member's ability to qualify for a subsidized advance. *See id.* § 960.5(a)(2)(iii). Since a Bank is always required to determine a member's creditworthiness before providing funds to the member, *see* 12 CFR part 935, it is not necessary to repeat this requirement in the AHP regulation.

Proposed § 960.7(a)(9)(i) requires that AHP applications include a statement that the proposed project will satisfy the maximum subsidy requirement, *i.e.*, that no subsidized household in the proposed project shall pay less than 20 percent of such household's gross monthly income toward monthly housing costs, as defined in proposed § 960.1 (the 20 percent requirement), unless an exception applies. This provision carries forward, in revised form, the provisions of § 960.9 of the existing regulation, which were issued by the Finance Board as an interim rule. *See id.* § 960.9. The maximum subsidy provisions implement the maximum subsidy limitation requirement

contained in section 10(j)(9)(F) of the Act. *See* 12 U.S.C. 1430(j)(9)(F).

Proposed § 960.7(a)(9)(ii)(A) provides that the 20 percent requirement shall not apply where an AHP-assisted rental project also receives funds from a federal or state rental housing program that requires qualifying households to pay as rent a certain percentage of their monthly income or a designated amount, and the households in the project meet such requirements. This provision is consistent with the similar exception in the existing regulation. *See* 12 CFR 960.9(b)(1).

Proposed § 960.7(a)(9)(ii)(B) also provides that the 20 percent requirement shall not apply where the total amount of the AHP subsidies provided to the project to finance rehabilitation of housing units owned by very low-income households is $10,000 or less per household, and for housing units owned by low- or moderate-income households, $5,000 or less per such household. This provision is a change from the existing regulation which permits an exception to the 20 percent requirement for rehabilitation only of units owned by very low-income households. *See id.* § 960.9(b)(2).

Proposed § 960.7(a)(9)(ii)(C) further provides that the 20 percent requirement shall not apply where the total amount of AHP subsidies provided to the project to finance the purchase of housing units is $5,000 or less per household. This is a change from the existing regulation, which permits an exception to the 20 percent requirement for purchase of units only by households that are above the threshold income level for very low-income households and at or below the income level to qualify as low- or moderate-income households. *See id.* § 960.9(b)(3).

In addition, proposed § 960.7(a)(9)(ii)(D) provides that the 20 percent requirement shall not apply where AHP subsidies are used to assist a household participating in a self-help, sweat equity or similar housing program that requires the household to contribute its skilled or unskilled labor valued at a minimum of $2,000 per household, working cooperatively with others, to construct or rehabilitate housing which the household or other program participants are purchasing or already own and occupy, and that involves supervision of the work performed by skilled builders or rehabilitators. This provision is consistent with the similar exception in the existing regulation. *See id.* § 960.9(b)(4).

Proposed § 960.7(a)(9)(ii) also deletes the annual Consumer Price Index adjustments required in the existing regulation, in order to simplify implementation of the exceptions. *See id.* § 960.9(b) (2), (3), (4).

Proposed § 960.7(a)(10) requires that AHP applications include an explanation of how the proposed project meets any applicable District threshold requirements adopted by the Bank pursuant to proposed § 960.7(b), discussed further below.

Proposed § 960.7(a)(11) requires that AHP applications include an explanation of how the proposed project meets the priorities and objectives identified in proposed § 960.8(a). This provision carries forward the similar provision in the existing regulation. *See id.* § 960.4(c)(1).

Proposed § 960.7(a)(12) requires that AHP applications include a certification from the member, project sponsor, and project owner committing to comply with the requirements of 12 U.S.C. 1430(j), part 960, and all obligations committed to in the AHP application. This provision incorporates the certification requirements in §§ 960.4(c) (8) and (9) of the existing regulation into a general requirement for certification of compliance with all applicable AHP requirements and commitments, and requires sponsors and owners, as well as members, to make such certification. *See* 12 CFR 960.4(c) (8), (9).

Proposed § 960.7(a)(13) requires that AHP applications include such other information as the Bank may reasonably require in order to verify compliance of the AHP applications with the requirements of part 960. This provision carries forward the comparable provision in the existing regulation, but establishes a standard for when the Banks may require other additional information not identified in proposed § 960.7(a). *See id.* § 960.4(c)(10).

The proposed rule eliminates the requirement in existing § 960.4(c)(7), *see id.* § 960.4(c)(7), that a member must explain in its application how it will monitor the proposed project, because, as discussed further below, the proposed rule establishes specific monitoring requirements for all members. *See* proposed § 960.13.

The proposed rule also eliminates the requirement in existing § 960.4(c)(8) that a member must explain how any excess AHP subsidy will be recaptured. *See* 12 CFR 960.4(c)(8). As discussed further below, the proposed rule establishes specific requirements for all members governing the recapture of AHP subsidies as well as other remedies for noncompliance. *See* proposed § 960.14.

2. District Threshold Requirements

As discussed in part I of the **SUPPLEMENTARY INFORMATION,** the Finance Board published a Subsidy Limits Proposal on November 1, 1995, *see* 60 FR 55487 (Nov. 1, 1995), and received 25 comment letters. Commenters included ten Banks, four Bank Advisory Councils, five Bank members, three trade associations, one private housing developer, one not-for-profit sponsor, and one housing authority sponsor. A majority of the commenters supported the Subsidy Limits Proposal. Three commenters opposed member subsidy limits, four commenters opposed project application subsidy limits, and four commenters opposed project unit subsidy limits.

As discussed below, § 960.7(b) of the proposed rule incorporates the Finance Board's Subsidy Limits Proposal, taking into account public comments received. Specifically, the proposed rule permits the Banks, in their discretion, to establish certain application threshold requirements in addition to those expressly set forth in § 960.7(a).

a. *Member, project, and unit subsidy limits.* Proposed § 960.7(b)(1) provides that a Bank's board of directors, after consultation with its Advisory Council, may establish limits on the maximum amount of AHP subsidy available per member per year; or per member, per project, or per project unit in a single funding period, provided that such subsidy limits must apply equally to all members. *See* 12 U.S.C. 1427(j).

Member subsidy limits may prevent a small number of members, especially larger members with competitive advantages, from receiving all of the AHP subsidy available in a given funding period. This would encourage participation by a greater number of members in the Program. The benefits of the Program may be distributed across a wider geographic area and among a broader variety of projects.

There may be an effect on the AHP regulatory program goal of promoting competition if highly competitive projects have difficulty finding available members that have not exceeded their limits to submit AHP applications for them. However, the Finance Board believes that sufficient numbers of members should be available to accommodate all AHP applications. Any noncompetitive effect likely would be minimal in comparison to the benefit of greater member participation in the Program. Several Banks already unilaterally have adopted member subsidy limits.

Project application and project unit subsidy limits may prevent a small number of projects from receiving all or most of the available AHP subsidies in a given funding period. This would encourage funding of a greater number of AHP projects. Funding more projects may serve housing needs in more areas of the Bank's District, and promote greater participation by members, especially small members that cannot handle large projects, in the Program. Such limits would not prevent competitive projects from being funded. Those projects merely would be funded at lower levels, with the gaps in funding made up from other funding sources, thereby enabling the funding of additional AHP projects.

There may be an effect on the AHP regulatory program goal of promoting competition if otherwise highly competitive projects that need a large amount of subsidy, such as some rural or homeownership projects, have difficulty finding other available sources of funding, and therefore, remain financially unfeasible. There also could be an impact on the AHP statutory and regulatory program goal of promoting funding of units for very low-income households, which often need larger subsidies to make the projects financially feasible. *See* 12 U.S.C. 1430(j)(2)(B); 12 CFR 960.5(d)(1). However, the Finance Board believes that any noncompetitive effect or impact on very low-income targeting may be outweighed by the benefit of funding a greater number of AHP projects, and the ability to receive additional scoring points under the AHP regulatory scoring criterion for very low-income targeting. Project unit subsidy limits also conform with the goal of the effectiveness scoring criterion in the existing regulation and proposed rule to encourage lower levels of AHP subsidy per unit by giving additional scoring points for projects with lower ratios. *See* 12 CFR 960.5(d)(3); proposed § 960.8(a)(3)(ii). Several Banks already unilaterally have adopted project application and project unit subsidy limits.

Limits on the amount of direct subsidy per project may promote greater member involvement in the Program by encouraging more members to borrow AHP subsidized advances and, in turn, lend their own funds to project borrowers. This would build greater member affordable housing lending capacity and expertise. If members' own funds were at risk as a result of such limits, members may have greater incentive to underwrite and monitor projects for financial feasibility and AHP compliance, respectively. Direct subsidies, which, in some cases, are passed on by members to borrowers without members putting any of their own funds at risk, do not promote these goals. Several Banks already unilaterally have adopted project direct subsidy limits.

The proposed rule provides that establishment of member, project, or unit subsidy limits would be optional with the Banks. The Banks would be required to consult with their Advisory Councils in establishing such limits, since Advisory Council members typically have affordable housing expertise that may be very useful to the Banks in determining the affordable housing needs of the District and how any subsidy limit would promote those needs. Thus, if a Bank determines that imposition of particular subsidy limits will have specific negative impacts on members or projects (*e.g.*, as described by some commenters in their comments on the Subsidy Limits Proposal) that outweigh the benefits to the Program, the Bank can choose not to adopt such limits. The proposed rule, thus, provides flexibility to the Banks, which best understand their markets, including the availability of other subsidy sources and affordability levels, to respond to individual District needs.

b. *Sponsor subsidy limits.* In the Subsidy Limits Proposal, the Finance Board requested comments on whether the Banks should be permitted to establish maximum subsidy limits per project sponsor. *See* 60 FR 55489.

One commenter supported such authority. Sponsor subsidy limits might encourage greater participation by sponsors in the Program, increase the affordable housing development capacity of more sponsors, and encourage the creation of more sponsors. Such limits might be especially beneficial where one large or particularly active sponsor in a District is winning a large portion of the Bank's AHP subsidies. However, the Finance Board believes that the competitive and market aspects of the Program will preclude any one sponsor from dominating the AHP funding process. Accordingly, the proposed rule does not authorize the Banks to establish a limit on the maximum amount of AHP subsidy that may be requested per project sponsor.

c. *Subsidy limits based on member capital stock investment.* Several commenters proposed that the Banks be permitted to establish subsidy limits based on the level of a member's capital stock investment in the Bank. Members are required by the Act to maintain a specified amount of Bank capital stock to support their advance borrowings. *See* 12 U.S.C. 1426(b)(2), 1430(e)(1). The argument was made that encouraging member advance borrowings and the corresponding investment in Bank capital stock would further the goal of increasing Bank earnings and, therefore, the AHP fund, which is derived from Bank earnings. However, such limits may not enlarge the AHP fund by increasing member borrowing because small member institutions, by virtue of their limited asset size, would be incapable of increasing or unwilling to increase their borrowings (due to the increased cost of borrowing resulting from investing in additional Bank stock) just to receive ''preferred treatment'' under such a subsidy limits policy. Accordingly, the proposed rule does not authorize the Banks to establish subsidy limits based on members' levels of capital stock investment in the Bank.

d. *Limitation on access to AHP subsidies based on member's use of Bank credit products.* Proposed § 960.7(b)(3) authorizes a Bank to require that members submitting AHP applications have made use of a credit product offered by the Bank within the previous 12 months, other than AHP or Community Investment Program (CIP) (*see* 12 U.S.C. 1430(i)) credit products, provided that the requirement is applied equally to all members.

In the Subsidy Limits Proposal, the Finance Board specifically requested comments on whether the Banks should be permitted to establish AHP subsidy limits based on the level of a member's regular advance borrowings from a Bank. *See* 60 FR 55490–91. One Bank already unilaterally has adopted such a policy. Ten commenters supported such authority, while five commenters opposed it. One reason expressed for imposing such limits was that they would encourage broader participation by members in the Program, thereby giving sponsors more options for financing AHP projects, and providing experience and education to more members that could help them develop additional capacity to engage in affordable housing lending. However, such limits may not achieve this goal if members with high levels of borrowing who already participate in the Program are allowed to apply for and win the additional AHP subsidies no longer available to those members subject to the limits. Uniform limits on the amount of AHP subsidy for which each member may apply may have a greater likelihood of increasing member participation in the Program.

It also was argued that credit-based subsidy limits may increase the pool of available AHP funds by encouraging greater borrowing from the Bank and, therefore, increasing Bank earnings,

from which AHP funds are derived. The argument also was made that members that contribute to Bank earnings by borrowing should have greater access than non-borrowing members to AHP subsidies derived from such earnings.

The Act does not restrict availability of AHP subsidies to ''borrowing'' members. Nor does it specify any correlation between the member's contribution to Bank earnings and its access to AHP subsidies. Bank earnings are affected by economic factors other than the amount of outstanding advances of members participating in the Program. Thus, even non-borrowing members contribute to Bank earnings and, therefore, to the AHP fund. The limits also may not enlarge the AHP fund by increasing member borrowing because, as discussed above, small member institutions, by virtue of their limited asset size, would be incapable of increasing or unwilling to increase their borrowings (due to the increased cost of borrowing resulting from investing in additional Bank stock) just to receive ''preferred treatment'' under an AHP subsidy limits policy.

Instead, proposed § 960.7(b)(3) authorizes a Bank to require that members submitting AHP applications have made use of a Bank credit product within the previous 12 months, other than AHP or CIP credit products, provided that the requirement is applied equally to all members. The Finance Board believes that there is some merit in tying access to AHP subsidies to a member's contribution to the Bank's housing finance mission through its use of one or more of the Bank's regular credit products. This type of limitation would not discriminate against a member based on its asset size, as all members would have the capability to borrow some amount from the Bank.

e. *Subsidy limits based on the level of a member's mortgage-related assets.* The Finance Board requested comments in the Subsidy Limits Proposal on whether the Banks should be permitted to establish AHP subsidy limits based on the level of a member's mortgage-related assets. *See* 60 FR 55490–91. Seven commenters supported such authority, while six commenters opposed it.

Commenters argued that such subsidy limits may encourage members to increase their mortgage-related lending, consistent with the provisions of the Act that impose less burdensome advances and stock requirements on institutions that devote a greater percentage of their assets to housing finance (qualified thrift lenders). *See* 12 U.S.C. 1430(e)(1), (2); 12 CFR 935.13. However, the Finance Board believes that such limits would defeat this goal since members, especially commercial banks, with lower levels of mortgage-related assets would have limited access to AHP subsidies which they could use for such housing finance purposes. Accordingly, the proposed rule does not authorize the Banks to establish AHP subsidy limits based on the level of a member's mortgage-related assets.

f. *Limiting or prohibiting AHP applications for out-of-District projects.* Proposed § 960.7(b)(2) authorizes the Banks, at their option, to establish a threshold requirement prohibiting applications for AHP subsidies for projects located outside the Bank's District. Proposed § 960.8(a)(2)(v)(M) also authorizes the Banks to adopt as an optional Bank District scoring priority a priority for projects located within the Bank's District.

In the Subsidy Limits Proposal, the Finance Board specifically requested comments on whether the Banks should be permitted to limit or prohibit members from submitting AHP applications for projects located outside of the Bank's District. *See* 60 FR 55489. Several Banks already unilaterally have adopted a prohibition or a scoring priority for projects located within a Bank's District. Seven commenters supported allowing the Banks to adopt a limit or prohibition, four commenters opposed a limit or prohibition, and three commenters supported limits only. Two commenters supported allowing the Banks to adopt a District scoring priority for projects located within the District, while one commenter opposed such a priority.

The Finance Board believes that the Banks should have authority to prohibit AHP applications for out-of-District projects, or to give scoring priority to applications for in-District projects, because a few large multistate members could win AHP subsidies for out-of-District projects, thereby resulting in less AHP subsidies available for use by other members and sponsors within the District. A prohibition or priority would help ensure that a Bank can adequately serve the affordable housing needs within its District. A priority would not preclude members from competing for AHP subsidies for out-of-District projects, but would require that they score highly on other scoring factors in order to qualify for AHP funding. Sponsors of out-of-District projects would not be precluded from participating in the Program, as they could apply for AHP subsidies through a member of another Bank. In addition, it may be more difficult and costly for a Bank to monitor projects located outside the District for compliance with AHP requirements.

A prohibition or priority could limit or prevent access to AHP subsidies by members' out-of-District branches, which would deny that member the opportunity to take advantage, on behalf of a customer, of a source of funds it was, in part, responsible for generating. However, since adopting a prohibition or priority would be optional with the Bank, the Bank, in consultation with its Advisory Council, would determine whether the advantages outweigh any disadvantages. The proposed rule provides flexibility to the Banks to determine whether to adopt a prohibition or priority in response to their individual District needs.

g. *Member financial involvement as a threshold requirement or scoring criterion.* Proposed § 960.8(a)(2)(v)(D) provides that a Bank may adopt a District scoring priority for projects involving member financial participation (excluding the pass-through of AHP subsidy), such as providing market rate or concessionary financing, fee waivers, or donations.

In the Subsidy Limits Proposal, the Finance Board specifically requested comments on whether the Banks should have authority to require certain types of member financial involvement in a project as a threshold requirement that a project must satisfy in order to be considered for scoring and approval for AHP funding, or whether such member financial involvement should be included as a scoring criterion. *See* 60 FR 55490. Six commenters supported a threshold requirement, while nine commenters supported a scoring criterion.

The Finance Board believes that where a member's own funds and contributions are at risk in a project, the member has a greater incentive to underwrite the project for financial feasibility and monitor the project for AHP compliance. Greater member involvement in projects builds member affordable housing lending capacity and expertise. However, the Finance Board does not believe member financial involvement should be a threshold requirement because some projects may not require or be able to sustain additional debt related to member financial involvement, but still may contribute toward the objectives of the Program, particularly by those members that are not large enough to finance a project loan, waive fees or donate funds. In addition, such a threshold requirement could discourage member participation in the Program. Accordingly, the proposed rule permits a Bank to adopt member financial involvement in the project as a scoring priority, as further discussed below.

H. Application Scoring and Approvals—§ 960.8

1. In General

Proposed § 960.8 carries forward the existing regulatory framework governing the scoring of AHP applications, with revisions based on a new allocation of points among revised scoring categories, and additional discretion provided to the Banks, as further discussed below. The Finance Board specifically requests comments on the proposed scoring provisions. In particular, comments are requested on ways in which the scoring system can be simplified, such as by creating discrete scoring categories containing criteria required by the Act, criteria established by the Finance Board, and criteria established by the Banks.

Proposed 960.8(a)(1) provides that a Bank shall score only those applications meeting the application requirements of proposed § 960.7. Applications shall be scored based on the extent to which they meet the scoring priorities and objectives set forth in proposed § 960.8. The Banks are required to adopt written guidelines implementing these scoring requirements.

The total possible score an AHP application may receive is 100 points. In determining the number of points to award an application for any given scoring category, the Bank shall evaluate applications relative to each other.

2. Revised Scoring Priorities Categories

Applications that meet the application requirements of proposed § 960.7 are scored according to the priorities in proposed § 960.8(a)(2). Proposed § 960.8(a)(2) makes the following changes to the existing regulatory provisions governing scoring priorities. The Finance Board's existing regulation contains seven priority categories: homeownership projects; rental projects; projects using federal government properties; projects with a not-for-profit or state or local agency sponsor; projects promoting empowerment; homeless permanent housing projects; and projects meeting a Bank District priority. *See* 12 CFR 960.5(b). Under the existing regulation, applications meeting at least three of the seven priorities are scored and ranked, as a group, before applications meeting fewer than three of the priorities. *See id.* § 960.5(a)(3).

Proposed § 960.8(a)(2) contains only six priority categories. The total points available for the priority categories are increased from 25 to 60, with the Bank required to allocate the 60 points among the six priority categories as discussed below. The priority categories are either fixed-point priorities or variable-point priorities. Variable-point priorities, which are listed in paragraphs (a)(2)(i) through (iv), and (v)(A) through (E), are those where there are varying degrees to which an application can satisfy the priority. Each variable-point priority category must be allocated at least 8 points. The number of points that may be awarded to an application for meeting a variable-point priority will vary, depending on the extent to which the application satisfies the priority, compared to the other applications being scored. The application(s) best achieving each variable-point priority shall receive the maximum point score available for that priority category, with the remaining applications scored on a declining scale. An application receiving at least half of the points allocated to a variable-point priority category shall be considered to have met that priority.

Fixed-point priority categories, which are listed in paragraphs (a)(2)(v)(F) through (M), are those which an application must meet in order to receive the allocated points. Each fixed-point priority category must be allocated 8 points. An application meeting a fixed-point priority shall be awarded 8 points.

The priority selected by a Bank under paragraph (a)(2)(vi) may be either a variable-point or fixed-point priority, depending on the nature of the priority, and points must be allocated and awarded accordingly.

Applications meeting at least two of the six priorities shall be considered priority applications, and, as a group, shall be scored before applications meeting fewer than two of the priorities.

Priority applications shall be scored against each other, based on the extent to which they meet the priorities and the scoring objectives contained in paragraph (a)(3).

As under the existing regulation, the remaining applications are scored only if there are insufficient priority applications to exhaust the total AHP subsidy amount available for the funding period. *See id.* § 960.5(a)(3).

Proposed § 960.8(a)(2) eliminates the existing priority categories for homeownership and rental projects because a project must be either a rental or homeownership project in order to qualify for AHP funding.

Proposed § 960.8(a)(2)(i) revises the existing priority category for projects involving federal government properties by including properties owned or held by state and local governments, agencies, or instrumentalities thereof, and by requiring that at least 20 percent of the units in such projects meet this requirement. *See id.* § 960.5(b)(3); 12 U.S.C. 1430(j)(3)(B). State and local government properties are included under this priority category because the stock of available federal government properties is decreasing. The 20 percent of units requirement is intended to ensure that a reasonable number of units in a project previously were government owned in order for an AHP application to receive credit under this priority category.

Proposed § 960.8(a)(2)(ii) retains the priority category for projects sponsored by not-for-profit organizations, or state or local government entities in the existing regulation. *See* 12 CFR 960.5(b)(4); 12 U.S.C. 1430(j)(3)(C).

The existing priority category for projects that empower the poor is subsumed under proposed § 960.7(a)(2)(v)(B), as further discussed below. *See* 12 CFR 960.5(b)(5).

Proposed § 960.8(a)(2)(iii) revises the existing homeless housing priority category to provide that in order to meet this priority, projects financing permanent or transitional housing for the homeless must reserve at least 20 percent of their units for occupancy by homeless households. *See id.* § 960.5(b)(6). Proposed § 960.1 defines ''permanent or transitional housing'' as housing with six-month minimum occupancy, but excluding overnight shelters.

Proposed § 960.8(a)(2)(iv) adds a new priority category for projects meeting housing needs documented as part of a community revitalization or economic development strategy approved by a unit of state or local government.

Proposed § 960.8(a)(2)(v) retains the existing Bank District priority category but requires the Bank to select the priority, as recommended by the Bank's Advisory Council, for each funding period, from the specific priorities listed in paragraphs (a)(2)(v)(A) through (M) in the proposed rule, most of which are derived from priorities Banks have chosen in the past. The priority category in paragraph (a)(2)(v)(B) replaces the priority category in § 960.5(b)(5) of the existing regulation for projects empowering the poor with a priority for housing incorporating the following elements of empowerment: programs offering employment, education, training, homeownership counseling, or daycare services that assist AHP-eligible residents to move toward better economic opportunities. *See id.* § 960.5(b)(5).

As discussed above, among the priority categories that a Bank may select are priorities for: projects involving member financial participation; projects with retention

periods in excess of 5 and 15 years for owner-occupied and rental projects, respectively; and projects located within the Bank's District. *See* proposed § 960.7(a)(2)(v) (B), (E), (M).

Proposed § 960.8(a)(2)(vi) adds a new Bank District priority category under which a Bank may adopt a priority for projects meeting a housing need in the Bank's District, as defined and recommended by the Bank's Advisory Council. The priority may be chosen from the list of priorities in proposed paragraph (a)(2)(v), provided the priority is different from the Bank District priority adopted under that paragraph.

The Finance Board specifically requests comments on whether a seventh priority category should be added for projects involving member financing (excluding the pass-through of AHP subsidies). Proposed § 960.8(a)(2)(v)(D) permits the Banks to adopt member financial involvement as a Bank District priority. Although members have played a critical role in the Program, their participation has not generally involved lending their own funds. Where a member lends its own funds to a project, it is more likely to underwrite the project for financial feasibility and monitor the project for AHP compliance. Greater member financial involvement in projects also builds member affordable housing lending capacity and expertise. Adding a permanent seventh priority for applications submitted by members that will have a financial stake in the AHP project may serve to encourage more of such activity. The Finance Board also requests comments on whether a member should be deemed to meet such a priority for member financial involvement based on the member's record of affordable housing lending activities apart from its lending under the Program.

3. Revised Scoring Objectives

The Finance Board's existing regulation contains the following six scoring ''objectives'' categories: targeting; long-term retention; effectiveness (subsidy per unit); community involvement; community stability; and innovation. *See* 12 CFR 960.5(d), (e). Proposed § 960.8(a)(3) eliminates the need for long-term retention as a scoring objective because proposed § 960.1 establishes minimum retention periods of 5 and 15 years as threshold requirements for owner-occupied and rental projects, respectively.

Proposed § 960.8(a)(3) also eliminates the innovation objective category. *See* 12 CFR 960.5(e)(3). The Finance Board believes that innovation is an important part of producing affordable housing in many cases, but is not an objective in itself. In some cases, reliance on well-established approaches may better serve a project, and the project should not be penalized for this. Further, innovation is a highly subjective element that is difficult to assess consistently among projects.

Proposed § 960.8(a)(3) also makes the following revisions to the remaining four objectives categories. The total points available for the objectives categories are reduced from 75 to 40, with a Bank required to allocate the 40 points among the four objectives categories, provided that the targeting objective category is allocated no less than 8 points. The application(s) best achieving each objective shall receive the maximum point score available for that objective category, with the remaining applications scored on a declining scale.

Under the targeting objective category in the existing regulation, applications for projects serving the greatest number of very low-income households are awarded the most points. *See id.* § 960.5(d)(1). Applications targeting 100 percent of the units in a project to very low-income households generally receive the most points. The Finance Board believes that this scoring practice creates an inappropriate bias against mixed-income rental projects. Under the Act, a minimum of 20 percent of the units in an AHP rental project must be occupied by, and affordable for, very low-income households. *See* 12 U.S.C. 1430(j)(2)(B). In order to reduce the emphasis on funding projects that are occupied solely by very low-income households, proposed § 960.8(a)(3)(i) provides that applications for rental projects shall be awarded the maximum number of points available for the targeting objective category if at least 60 percent of the units in a project are reserved for occupancy by households with incomes at or below 50 percent of the area median income.

The Finance Board specifically requests comments on ways in which the targeting objective may be structured so that it is more closely compatible with the monitoring requirements for AHP projects, discussed below under proposed § 960.13.

Proposed § 960.8(a)(3)(ii) clarifies the subsidy-per-unit objective (effectiveness) category in the existing regulation. *See* 12 CFR 960.5(d)(3). The proposed rule provides that applications are awarded points based on the extent to which a project proposes to use the least amount of AHP subsidy per AHP-targeted unit. The Finance Board wishes to clarify that in calculating subsidy per unit, only AHP-targeted units should be counted. Further, this scoring criterion may not include a ''leveraging'' criterion whereby the application is scored based on the percentage of the project's total development cost that is to be financed with the AHP subsidy. The subsidy-per-unit objective, in effect, favors projects with a shallower subsidy. Under the proposed scoring system, a Bank may de-emphasize this effect and promote deeper subsidies per unit by allocating as few as one point to this objective. The Finance Board specifically requests comments on whether this gives the Banks adequate flexibility in applying the subsidy-per-unit objective in their Districts.

Proposed § 960.8(a)(3) (i) and (ii) provide that applications for owner-occupied projects and rental projects must be scored separately for purposes of the targeting and subsidy-per-unit objectives, because these two objectives inherently favor rental projects, which, in general, have more units targeted to lower income households and lower amounts of subsidy per unit than do owner-occupied projects.

Proposed § 960.8(a)(3) (iii) and (iv) clarify the community involvement and community stability objectives in the existing regulation, respectively, by adding examples of activities satisfying the objectives. *See id.* § 960.5(e) (1), (2).

4. Application Approvals

Proposed § 960.8(b) provides that the board of directors of each Bank (without delegation to Bank officers or other Bank employees) shall approve promptly the AHP applications in descending order starting with the highest scoring application until the total funding amount for the particular funding period, except for any amount insufficient to fund the next highest scoring application, has been allocated. The board also must approve the next four highest scoring applications as alternates and, within one year of approval by the Bank, may fund such alternates if any previously committed AHP subsidies become available.

I. Disbursement of AHP Subsidies—§ 960.9

1. Failure to Use AHP Subsidies Within Reasonable Period of Time

Proposed § 960.9(a) adds a new provision requiring a Bank to determine whether a member or project sponsor draws down and begins using AHP subsidies for an approved project within a reasonable period of time after application approval. If a member or project sponsor fails to draw down and

begin using AHP subsidies within a reasonable period of time, the Bank shall cancel its approval of the project's application, and those subsidies approved for the project shall be made available for other AHP-eligible projects.

2. Compliance Upon Disbursement of AHP Subsidies

Proposed § 960.9(b) adds provisions codifying the Banks' duty to verify that the member and project sponsor are in compliance with AHP statutory requirements, regulatory requirements, and the obligations committed to in the approved application, prior to initial disbursement of AHP subsidies by the Bank for an approved project, and prior to each disbursement thereafter. The Bank is required to obtain, and maintain in its project file, documents sufficient to demonstrate such compliance prior to making such disbursement, including, but not limited to, an independent, current (6 months or less) appraisal (or recertification of a prior independent appraisal, if appropriate) provided by the member indicating the fair market value of the property or project if the member has a direct or indirect interest in such property or project.

3. Changes in Approved AHP Subsidy Amount Where a Direct Subsidy is Used For a Principal or Interest Rate Write-Down

Proposed § 960.9(c) adds a new provision addressing changes in a project's approved AHP subsidy amount where the Banks provide direct subsidies to write down the principal amount or the interest rates on loans provided by members to projects. The proposed rule provides that if a member is approved to receive a direct subsidy to write down the principal amount or the interest rate on a loan to a project and the amount of subsidy required to maintain the debt service cost required by the project varies from the amount of subsidy initially approved by the Bank due to a change in interest rates between the time of approval and the time the lender commits to the interest rate to finance the project, the Bank shall modify the subsidy amount accordingly. For example, if, in the interim period, interest rates rise, thereby requiring more direct subsidy for the lender to write down its loan to the project (keeping the loan's interest rate constant), the Bank must increase the amount of direct subsidy for the project accordingly.

Under proposed § 960.9(c)(2), the amount of such increase shall be drawn first from any uncommitted or recaptured AHP subsidies for the current year and then from the Bank's required AHP contribution for the next year.

Proposed § 960.9(c) transfers the interest rate risk associated with the lag time between AHP application approval and funding from the AHP projects to the AHP fund in cases where direct subsidies are used for interest rate write-downs. The practical effect of this is to guarantee AHP-assisted financing at a specific interest rate in such cases. The Finance Board believes this is necessary to help ensure that changes in lenders' market interest rates do not render approved AHP projects financially infeasible at the time they are ready for funding.

4. Banks' Responsibility to Ensure Proper Use of AHP Subsidies

a. *In general.* Proposed § 960.9(d)(1) carries forward the existing regulatory requirements reiterating the statutory requirements that each Bank shall ensure that: (1) AHP subsidies provided by the Bank to members are passed on to the ultimate borrower; and (2) the preponderance of AHP subsidies provided by the Bank ultimately is received by very low- and low- or moderate-income households. *See* 12 CFR 960.3(d); 12 U.S.C. 1430(j)(9) (D), (E).

b. *Fairness in transactions.* Proposed § 960.9(d)(2) adds a new requirement that each Bank shall ensure that the terms of any member's participation in a transaction benefiting from an AHP subsidy are fair to the Program. This provision is intended to highlight the public purpose of the Program—providing housing to benefit low- and moderate-income households—and to put the Banks and members on notice that they should view all transactions involving the Program in light of this purpose.

c. *Market interest rate and charges.* Proposed § 960.9(d)(3) requires each Bank to ensure, with respect to any loan financing an AHP project, that the rate of interest, fees, points, and any other charges by the lender shall not exceed a reasonable market rate of interest, fees, points, and charges for a loan of similar maturity, terms, and risk. This provision is intended to prevent a lender from recouping part of the direct subsidy provided to the project by coupling the direct subsidy with an above-market rate loan to the project. Accordingly, § 960.9(c) of the existing regulation, which provides that ''a member receiving a subsidized advance shall extend credit to qualified borrowers at a rate of interest discounted at least to the same extent as the subsidy granted to the member by the Bank,'' is eliminated. *See* 12 CFR 960.9(c).

d. *Lending direct subsidies.* For various tax reasons, sponsors prefer to structure projects involving federal Low-Income Housing Tax Credits so that AHP direct subsidies are loaned to the project, with principal and interest payments deferred until the end of the loan term. This use of direct subsidies raises the question whether the direct subsidies, which are grants, are being passed on to the ultimate recipients, as required under section 10(j)(9)(E) of the Act, since they ultimately may be repaid by the recipients. *See* 12 U.S.C. 1430(j)(9)(E).

Proposed § 960.9(d)(4) is intended to accommodate the needs of sponsors and the statutory requirement governing the pass-through of AHP subsidies. It provides that a member or a sponsor may lend a direct subsidy in connection with an AHP rental project involving federal Low-Income Housing Tax Credits, provided that all payments by the borrower are deferred until the end of the loan term and no interest is charged. Upon repayment of the loan, the entire amount of the direct subsidy must be repaid to the Bank.

e. *Matched repayment schedules.* Proposed § 960.9(d)(5) requires the term of a subsidized advance to be no longer than the term of the member's loan to the AHP project funded by the advance, and the scheduled principal repayments for the subsidized advance to be reasonably related to the scheduled principal repayments for the member's loan to the AHP project, such that at least once in every 12-month period, the member must pay to the Bank the principal repayments received by the member on its loan to the project. This new requirement is intended to ensure that the repayment schedules of subsidized advances and the loans that they fund are closely matched, because the closer the match, the more efficient the use of the AHP subsidy. Furthermore, without a close match, a portion of the interest rate subsidy, in effect, is retained by the member each time the project makes a scheduled repayment of principal. For example, if the member's loan to the project is fully amortizing with level periodic payments over the term of the loan, less subsidy is needed for a subsidized advance that is also fully amortizing with level periodic payments over the term of the advance, than for a subsidized advance with the same term as the member's loan, but with all principal payments due at maturity (a bullet advance). If a member makes a non-amortizing loan to a project, the member typically would match its loan structure by borrowing a non-amortizing, or bullet, advance.

Since a member's loan typically involves an interest rate mark-up to cover the member's cost and profit, it is not possible to match perfectly the scheduled principal repayments of a member's equal-payment amortizing loan to the AHP project with the scheduled principal repayments of the equal-payment amortizing advance with a similar term. However, the Finance Board will consider such repayments to be reasonably related if both the member's loan and the subsidized advance are fully amortized with level periodic payments over the term of the loan, and the member makes principal repayments on the advance no less frequently than once in every 12-month period. As a practical matter, requiring the member to make principal repayments to the Bank at least annually will avoid requiring the establishment of complicated systems to account for monthly principal repayments.

Proposed § 960.9(e) adds a new provision requiring a Bank to provide in its advances agreement with each member receiving a subsidized advance that upon prepayment of a subsidized advance, the Bank shall charge a prepayment fee only to the extent the Bank suffers an economic loss from the prepayment.

J. Modifications of Approved AHP Applications—§ 960.10

The Finance Board's existing regulation does not directly address project modifications after approval. Under Decision Memorandum 94–DM–27, dated July 22, 1994, the Banks, subject to certain standards, have authority to approve modifications to previously approved AHP applications, except for modifications involving increases in the amount of AHP subsidy approved for a project. Proposed § 960.10 establishes a procedure and standards under which a member may request approval by the Bank of a modification prior to completion of the project. The proposed procedures and standards largely codify the Finance Board's current procedure and standards for approving modifications, except that changes to a project after completion, full occupancy, and closing of permanent financing no longer will be considered modifications.

Proposed § 960.1 defines a ''project modification'' as any change in the project prior to the project's completion, full occupancy and closing of permanent financing, that materially affects the facts under which the project's AHP application was originally scored under proposed § 960.8 and approved.

K. Avoidance of Actual or Apparent Conflicts of Interest—§ 960.11

Proposed § 960.11 adds a new requirement that the board of directors of each Bank, without delegation to Bank officers or other Bank employees, must adopt a written policy preventing a Bank director, officer, employee, or contractor who has a personal interest in, or who is a director, officer or employee of an organization involved in a project that is the subject of a pending or approved AHP application, from participating in or attempting to influence the evaluation, approval, funding, monitoring, or any remedial process for such project under the Program.

L. Homeownership Assistance Programs—§ 960.12

Proposed § 960.12 revises the homeownership set-aside provisions of § 960.5(g) of the existing regulation to allow the Banks more flexibility in establishing AHP-funded programs targeted specifically to promote homeownership. *See* 12 CFR 960.5(g). Existing § 960.5(g)(1) of the AHP regulation allows the Banks to establish such homeownership assistance programs based on a matched savings model, in which a Bank provides its members with matching funds for first-time homebuyers who are saving to pay for a downpayment and closing costs on the purchase of a home. *See id.* § 960.5(g)(1). Under the existing regulation, Banks must establish their programs in accordance with the specific requirements set forth in § 960.5(g)(1), unless they obtain Finance Board approval to establish ''nonconforming'' programs. *See id.* § 960.5(g)(2).

In the seven months following the establishment of the homeownership set-aside provisions of § 960.5(g), five Banks requested and were granted Finance Board approval to establish nonconforming homeownership set-asides that vary from the matched savings model to some degree. For instance, some Banks do not have a matched savings requirement and do not require participating households to qualify as first-time homebuyers. Some Banks give priority to certain categories of households, such as those with incomes below specified levels or households located in rural areas.

The purpose of proposed § 960.12 is to revise the homeownership set-aside requirements in order to encompass the variations adopted by the Banks in their ''nonconforming'' set-asides and to allow the Banks flexibility to adopt new variations, within the general framework of § 960.12, without having to obtain prior Finance Board approval. Among the changes made by proposed § 960.12 is elimination of the requirement that participating households be first-time homebuyers. *See id.* § 960.5(g)(1). Under proposed § 960.12(b), Banks may now provide funds under their programs for rehabilitation by current homeowners, as well as for home purchases. The proposed rule clarifies that, notwithstanding proposed § 960.3(c)(4), which permits AHP subsidies to be used for homebuyer counseling costs under certain limited circumstances, homeownership assistance program funds may not be used for homebuyer or homeowner counseling costs. In addition, the proposed rule eliminates the existing requirement that participating households provide matching funds through dedicated savings accounts with members. *See* 12 CFR 960.5(g)(1)(iii)(B). Under proposed § 960.12(d)(2), Banks are free to establish their own fair and reasonable procedures and criteria for allocating funds under their programs. The proposed rule also no longer gives a Bank the option to extend the retention period for homes financed under the program beyond 5 years. *See* 12 CFR § 960.5(g)(1)(xi). Instead, proposed § 960.12(f) provides that such homes are subject to the same 5-year retention period as owner-occupied units financed through the Banks' District-wide AHP competitions. *See* proposed § 960.3(b)(1)(i).

M. Monitoring Requirements—§ 960.13

1. In General

Section 10(j)(9)(C) of the Act requires the Finance Board to issue regulations ensuring ''that advances made under this program will be used only to assist projects for which adequate long-term monitoring is available to guarantee that affordability standards and other requirements of [section 10(j) of the Act] are satisfied.'' *See* 12 U.S.C. 1430(j)(9)(C).

The existing regulation requires each Bank to monitor member and project compliance with the AHP requirements, but does not establish procedures, standards or documentation to assist the Banks in meeting that requirement. *See* 12 CFR 960.7 (b), (c). Sections 960.6 (b) and (c) of the existing regulation require members to file annual reports and certifications on the use of AHP subsidies. *See id.* § 960.6 (b), (c).

In the absence of specific regulatory guidance, over the six years that the Program has been in operation, the Banks have attempted to comply with

their monitoring obligations by developing their own individual approaches to monitoring. This practice has led to uncertainty about the sufficiency of any one monitoring procedure. In addition, some members consider the certification and reporting requirements of the existing regulation to be too burdensome. As discussed below, the Finance Board is proposing to establish clear, uniform monitoring procedures and standards that take into account the costs of monitoring relative to the benefits, and reduce the overall monitoring burden, including eliminating the annual certification requirement for members under the existing regulation. The Finance Board's proposal is based on the principles that: (1) monitoring a project closely in its initial stages of development will ensure that less monitoring is necessary in the project's later stages of operation; (2) the degree of monitoring of AHP-assisted projects should be directly related to the amount of AHP subsidy invested in such projects; and (3) the Banks should be permitted to rely, to the extent feasible, on monitoring by housing credit agencies.

2. AHP Monitoring Agreements Between Members and Project Sponsors and Owners

Under proposed § 960.13(a), a Bank must require each member receiving an AHP subsidy to have in place an AHP monitoring agreement with each project sponsor—in the case of owner-occupied projects—or project owner—in the case of rental projects—under which the project sponsor or owner agrees to monitor the AHP project as discussed below.

a. *Owner-occupied projects.* Under proposed § 960.13(a)(1), during the period of construction or rehabilitation of an owner-occupied project, the project sponsor must report to the member semiannually on whether reasonable progress is being made towards completion. Until all approved AHP subsidies are provided to eligible households in a project, the project sponsor must certify annually to the member and the Bank that the AHP subsidies have been used according to the commitments made in the AHP application, and such certifications shall be supported by household income verification documentation maintained by the project sponsor and available for review by the member or the Bank.

b. *Rental projects.* Under proposed § 960.13(a)(2), during the period of construction or rehabilitation of a rental project, the project owner must report to the member semiannually on whether reasonable progress is being made towards completion. Within the first year after project completion, the project owner must certify to the member and the Bank that the services and activities committed to in the AHP application have been provided in connection with the project. Within the first year after project completion to the end of the project's retention period, the project owner annually must provide a list of tenant rents and incomes to the Bank and certify that: (1) the tenant rents and incomes are accurate and in compliance with the rent and income targeting commitments made in the AHP application; (2) the project is habitable; and (3) the project owner regularly informs households applying for and occupying AHP-assisted units of the address of the Bank that provided the AHP subsidy to finance the project. A project owner must maintain tenant income verification documentation, available for review by the member or the Bank, to support such certifications.

3. AHP Monitoring Agreements Between Banks and Members

Under proposed § 960.13(b), a Bank must have in place an AHP monitoring agreement with each member receiving an AHP subsidy, under which the member agrees to monitor the AHP project as discussed below.

a. *Owner-occupied projects.* Under § 960.13(b)(1), during the period of construction or rehabilitation of an owner-occupied project, the member must take the steps necessary to determine whether reasonable progress is being made towards completion and report to the Bank semiannually on the status of the project. Within one year after disbursement to a project of all approved AHP subsidies, the member must review the project documentation and certify to the Bank that: (1) the AHP subsidies have been used according to the commitments made in the AHP application; and (2) the AHP-assisted units are subject to deed restrictions, ''soft'' second mortgages, or other legally enforceable mechanisms pursuant to the requirements of proposed § 960.4(a).

b. *Rental projects.* Under proposed § 960.13(b)(2), during the period of construction or rehabilitation of a rental project, the member must take the steps necessary to determine whether reasonable progress is being made towards completion and report to the Bank semiannually on the status of the project. Within the first year after project completion, the member must review the project documentation and certify to the Bank that: (1) the project is habitable; (2) the project meets its low- and moderate-income targeting commitments; and (3) the rents charged for income-targeted units do not exceed the maximum levels committed to in the AHP application. For projects receiving $500,000 or less in AHP subsidy, during the period from the second year after project completion to the end of the retention period, the member must certify to the Bank biennially that, based on an exterior visual inspection, the project continues to be occupied and appears habitable.

4. Monitoring Requirements for Banks

a. *Owner-occupied projects.* Proposed § 960.13(c)(1) provides that each Bank must establish a monitoring procedure that provides reasonable assurances that, based on a review of the documentation for a sample of projects and units within one year of receiving the certification from a member described in proposed § 960.13(b)(1)(ii): (1) the incomes of the households that own the AHP-assisted units did not exceed the levels committed to in the AHP application at the time the households qualified for the AHP subsidy; (2) the AHP subsidies were used for eligible purposes; and (3) the AHP-assisted units are subject to deed restrictions, ''soft'' second mortgages, or other legally enforceable mechanisms pursuant to the requirements of proposed § 960.4(a)(1).

b. *Rental projects.* Proposed § 960.13(c)(2) provides that each Bank must establish a monitoring procedure providing reasonable assurances that: (1) within the first year after completion of an AHP-assisted rental project, the services and activities committed to in the AHP application have been provided; and (2) during the period from the second year after project completion to the end of the retention period: (i) the project is habitable; (ii) the project meets its low- and moderate-income targeting commitments; and (iii) the rents charged for income-targeted units do not exceed the maximum levels committed to in the AHP application.

A Bank must use the following monitoring procedure, depending on the amount of AHP subsidy received by a project. For all projects, the Bank shall make reasonable efforts to investigate any complaints received about a specific project. For projects receiving $50,001 to $250,000 of AHP subsidies, the Bank must review tenant rent and income documentation, including tenant income verification documents, for a sample of the project's units at least once every six years, to verify compliance with the rent and income targeting commitments in the AHP application. Currently, approximately 330 projects have received between $0 and $50,000 of AHP subsidy, and

approximately 1,000 projects have received between $50,001 and $250,000 of AHP subsidy. For projects receiving $250,001 to $500,000 of AHP subsidies, the Bank must review tenant rent and income documentation, including tenant income verification documents, for a sample of the project's units at least once every four years, to verify compliance with the rent and income targeting commitments in the AHP application. Currently, approximately 200 projects have received between $250,001 to $500,000 of AHP subsidies. For projects receiving over $500,000 of AHP subsidies, the Bank must perform an annual on-site inspection of the project, including review of tenant rent and income verification documentation, for a sample of the project's units, to verify compliance with the rent and income targeting commitments in the AHP application. Currently, only 60 projects have received over $500,000 of AHP subsidy.

A Bank may use a reasonable sampling plan to select the projects monitored each year and to review the documentation supporting the certifications made by members and project sponsors and owners.

5. Monitoring by a Housing Credit Agency

In order to take advantage of opportunities to reduce the costs of monitoring where there are multiple funders of AHP-assisted projects, the Finance Board is proposing to permit the Banks to rely on monitoring by state or local housing agencies that have provided federal Low-Income Housing Tax Credits to an AHP project. Under 26 CFR 1.42–5, housing credit agencies administering such Tax Credits must establish a procedure for monitoring for compliance with the applicable provisions of the Internal Revenue Code governing use of federal Low-Income Housing Tax Credits. *See* 26 U.S.C. 42; 26 CFR 1.42–5. The Finance Board believes that where a housing credit agency undertakes such monitoring, it would be unnecessarily duplicative for the Banks to undertake independent monitoring if the income targeting requirements, the rent requirements, and the retention period requirements being monitored by the housing credit agency are the same as, or more restrictive than, those committed to for purposes of the Program.

Therefore, proposed § 960.13(c)(iv) provides that for projects receiving $500,000 or less of AHP subsidies, a Bank may rely on monitoring by a housing credit agency that also has provided funds to the project if: (1) the income targeting requirements, the rent requirements, and the retention period monitored by the housing credit agency are the same as, or more restrictive than, those committed to in the AHP application; (2) the housing credit agency agrees to inform the Bank of instances where tenant rents or incomes are found to be in noncompliance with the rent and income targeting requirements being monitored by the housing credit agency or where the project is not in a habitable condition; (3) the Bank does not have information that monitoring by such housing credit agency is not occurring or is inadequate; and (4) the Bank makes reasonable efforts to investigate any complaints received about the project. In projects involving more than $500,000 in AHP subsidies, the Finance Board believes that monitoring should remain the responsibility of the Bank, rather than a third party, in light of the substantial amount of the AHP subsidy.

In cases where a Bank relies on a housing credit agency to monitor a project, the project owner annually must provide a list of tenant rents and incomes to the Bank and certify that they are accurate and in compliance with the rent and income targeting commitments made in the AHP application.

The Finance Board specifically requests comments on whether there are any other state or local government entities, in addition to housing credit agencies, that monitor rental projects for compliance with requirements comparable to AHP requirements. In order to be able to rely on the monitoring of another government housing program that also has funded an AHP project, that program's income targeting, rent, and retention requirements must be the same as, or more restrictive than, those committed to by the project for purposes of the AHP. The Act requires that AHP subsidies be used to finance homeownership by low- or moderate-income households, or finance rental housing where at least 20 percent of the units are occupied by and affordable for very low-income households. *See* 12 U.S.C. 1430(j)(2). On their face, these statutory minimum income targeting and rent requirements are consistent with the requirements of certain other government housing programs that also fund AHP projects, such as the federal Low-Income Housing Tax Credit, HOME, and Section 8 programs. However, the targeting scoring criterion in the existing and proposed AHP regulation appears to encourage projects to target greater numbers of very low-income households in order to receive higher scores and AHP funding. *See* 12 CFR 960.5(d)(1); proposed § 960.8(a)(3)(i). Most AHP projects have AHP income targeting and rent commitments that are more restrictive than those required and monitored by other government housing programs also funding the project, thereby preventing reliance on such third parties for monitoring of AHP compliance.

Under the Act, the Finance Board's AHP regulation must ''coordinate activities under [the Program] with other Federal or federally-subsidized affordable housing activities to the maximum extent possible.'' *See* 12 U.S.C. 1430(j)(9)(G). The Finance Board specifically requests comments on ways in which the targeting scoring objective in the proposed rule may be modified, or whether it should be eliminated, so that the income targeting and rent requirements for AHP projects will be compatible with those required and monitored by other government housing entities.

The following table summarizes the proposed monitoring framework discussed above for AHP-assisted rental projects:

RENTAL PROJECT MONITORING REQUIREMENTS

	Projects for which there is no qualifying 3rd party monitoring	Projects monitored by a qualifying 3rd party monitor	All projects receiving over $500,000 of AHP subsidy
Project Construction or Rehabilitation.	—Member and owner submit semi-annual progress reports for each project.		
Within First Year After Project Completion	—Owner certifies project habitability, provision of services promised in AHP application, compliance of project rents and tenant incomes —Member certifies compliance of project rents and tenant incomes		

RENTAL PROJECT MONITORING REQUIREMENTS—Continued

	Projects for which there is no qualifying 3rd party monitoring			Projects monitored by a qualifying 3rd party monitor	All projects receiving over $500,000 of AHP subsidy
	—Bank monitors compliance with provision of services promised in AHP application, and compliance of project rents and tenant incomes				
2nd Year After Project Completion to the End of the Retention Period	—Bank responds to any complaints about projects —Owner certifies annually to project habitability, accuracy of tenant rents and incomes, and that tenants of, and applicants for, project units are notified of the Bank's address.				
	Member visually inspects exterior of project every 2 years			3rd party reports to Bank on any failure to meet rent and income requirements and on habitability.	Bank performs annual on-site inspection of project, and reviews tenant rents and incomes
	$AHP Subsidy in Project				
	$0–$50,000	$50,001–$250,000	$250,001–$500,000		
	No Bank review	Bank reviews tenant incomes and rents every 6 years.	Bank reviews tenant incomes and rents every 4 years.		

The Finance Board specifically requests comments on the proposed monitoring requirements.

N. Corrective and Remedial Actions for Noncompliance—§ 960.14

Section 10(j) of the Act is silent on what specific corrective and remedial actions should be imposed when there is noncompliance with the requirements of the Program. *See* 12 U.S.C. 1430(j). The existing regulation provides that, where funds provided under the Program will not be or are no longer being used for their approved purposes, the amount of committed but unused subsidy or improperly used subsidy shall be recovered and made available by the Bank for future AHP projects. *See* 12 CFR 960.8(a). The existing regulation requires the Bank, in recapturing such funds, to take any or all of the following actions, without limitation on other remedies, in its discretion: (1) reprice the advance at the interest rate charged to members on non-subsidized advances of comparable type and maturity at the time of the original advance; (2) call the advance; (3) assess a prepayment fee; or (4) require the member to reimburse the Bank for the amount of the unused or improperly used subsidy on the advance or other assistance. *See id.* § 960.8(b). In addition, some Banks have adopted procedures that require a direct subsidy to be converted to an advance if the project is found to be in noncompliance with the requirements of the AHP regulation.

A number of concerns have been raised about the recapture provisions of the existing regulation. Given the range of potential circumstances of noncompliance, limiting the universe of remedies to *one*—recapture—is by necessity assuring that the remedy will be too harsh in some cases, and too liberal in others. For instance, it may not always be equitable to require the member to reimburse the Bank when the project sponsor is in noncompliance with AHP requirements. Requiring recapture of the AHP subsidy could in some situations result in the member having to foreclose against a property in order to recover the funds to repay an advance to the Bank, thereby eliminating affordable housing units even when only a few of the units in the project may be out of compliance with AHP requirements. In short, it has become clear through the operation of the Program that recapture will not be the appropriate remedial action in all circumstances. Other less severe remedial actions may be more appropriate depending on the nature of the noncompliance that has occurred. In addition, the remedial actions should be directed only at the parties that are in noncompliance. Accordingly, the proposed rule contains a wider range of remedies and tailors the remedial actions required to the nature of the noncompliance and the party committing the noncompliance, as discussed further below.

1. Noncompliance by Project Sponsors and Project Owners

Proposed § 960.14(a) provides that a Bank shall require a member receiving an AHP subsidy to have in place a recapture agreement with each sponsor of an owner-occupied project and each owner of a rental project, under which the sponsor or owner agrees: (1) to ensure that the AHP subsidy is used in compliance with the requirements of 12 U.S.C. 1430(j), part 960, and the obligations committed to in the AHP application; (2) to make reasonable efforts to cure any noncompliance, pursuant to a compliance plan approved by the Bank; and (3) to repay the amount of any misused AHP subsidy (plus interest, if appropriate) resulting from the sponsor's or owner's noncompliance, if the noncompliance is not cured within a reasonable period of time.

2. Noncompliance by Members

Proposed § 960.14(b) requires a Bank to have in place a recapture agreement with each member receiving an AHP subsidy under which the member agrees: (1) to ensure that the AHP subsidy is used in compliance with the requirements of 12 U.S.C. 1430(j), part 960, and the obligations committed to, and to be performed, by the member in its AHP application; (2) to make reasonable efforts to cure any noncompliance by the member; (3) to repay the amount of any misused AHP subsidy (plus interest, if appropriate) resulting from the member's noncompliance, if the noncompliance is not cured within a reasonable period of time; (4) to recover any misused AHP subsidy from a project sponsor or owner under the terms of the member's recapture agreement with the project sponsor or owner, provided that the member shall not be liable to the Bank for failure to return amounts that cannot be recovered from the project sponsor or owner despite reasonable collection efforts by the member; and (5) to return any misused subsidy recovered by the

member from a project sponsor or owner to the Bank.

3. Noncompliance by Banks

Proposed § 960.14(c)(1) provides that the Finance Board, upon determining that a misuse of AHP subsidy, or the failure to recover misused AHP subsidy, is attributable to the action or inaction of a Bank, may order the Bank to reimburse its AHP fund in an amount equal to the misused subsidy, plus interest, if appropriate.

Proposed § 960.14(c)(2) is intended to eliminate uncertainty about the sufficiency of a Bank's recovery of misused subsidies in cases of noncompliance by members or project sponsors or owners, including cases where misuse results from ''acts of God'' or from personal or financial hardship. If a Bank enters into a settlement agreement or other arrangement with a member resulting in the return of a sum that is less than the full amount of any misused AHP subsidy, the Finance Board may, in its sole discretion, require the Bank to reimburse its AHP fund in an amount equal to the difference between the full amount of the misused subsidy and the sum actually recovered by the Bank, plus interest, if appropriate, unless: (1) the Bank has sufficient documentation showing that the sum agreed to be repaid under any settlement agreement or other arrangement is reasonably justified, based on the facts and circumstances of the noncompliance (including the degree of culpability of the noncomplying parties and the extent of the Bank's recovery efforts); or (2) the Bank obtains a determination from the Finance Board that the sum agreed to be repaid under any settlement agreement or other arrangement is reasonably justified, based on the facts and circumstances of the noncompliance (including the degree of culpability of the noncomplying parties and the extent of the Bank's recovery efforts). The latter provision would avoid a later determination by the Finance Board that such recovery was legally insufficient.

Proposed § 960.14(d) provides that AHP subsidies recovered by a Bank under this section shall be made available for other AHP projects. This is a change from the requirement of § 960.8(a) of the existing regulation that recaptured subsidies must be made available for future AHP projects. *See* 12 CFR 960.8(a). The change is intended to make clear that recovered subsidies may be made available for alternate projects previously approved by a Bank pursuant to proposed § 960.8(b), as well as other AHP projects.

Proposed § 960.14(e) provides that a Bank or the Finance Board, after notice and opportunity for a hearing, may suspend or debar a member, project sponsor, or project owner from participation in the Program if such party shows a pattern of noncompliance, or engages in a single instance of flagrant noncompliance, with the requirements of 12 U.S.C. 1430(j), part 960, or the obligations committed to in AHP applications. Under the existing regulation, each AHP application must include a general statement of the project sponsor's qualifications. *See* 12 CFR 960.4(c)(4). However, the existing regulation does not expressly require those members, project sponsors, and project owners that previously have received AHP subsidies to be in compliance with AHP requirements in order to receive additional AHP subsidies. Proposed § 960.8(e) expressly allows the Banks and the Finance Board to use their experience with a member's or project sponsor's or owner's compliance with AHP requirements on an ongoing basis to bar those participants with a pattern of noncompliance, or who have committed a single instance of flagrant noncompliance, from future participation in the Program.

Under proposed § 960.14(f), without limitation on other remedies, the Finance Board, upon determining that a Bank has engaged in mismanagement of its Program, may designate another Bank to administer all or a portion of the first Bank's annual AHP contribution, for the benefit of the first Bank's members, under such terms and conditions as the Finance Board may prescribe. The Finance Board has broad powers under the Act to issue remedial orders directing a Bank to take action in response to a situation that the Finance Board considers mismanagement of the Bank's Program. *See* 12 U.S.C. 1422b(a)(1). Proposed § 960.14(f) describes one of several actions the Finance Board could take in response to a Bank's mismanagement of its Program, depending on the relevant facts and circumstances.

O. Required Annual AHP Contributions—§ 960.15

Proposed § 960.15 revises § 960.10 of the existing regulation, which provides for the Banks' annual contributions to their Program, to delete obsolete language regarding required contributions for 1990 through 1994. *See* 12 CFR 960.10. Proposed § 960.1 revises the definition of the term ''net earnings of a Bank'' in the existing regulation, to conform it to the definition of that term in the Act. *See* 12 U.S.C. 1430(j)(8); 12 CFR 960.1(j).

P. Temporary Suspension of AHP Contributions—§ 960.16

Proposed § 960.16 sets forth the provisions governing temporary suspensions by Banks of their required annual AHP contributions. A number of revisions have been made to the provisions in the existing regulation in order to more accurately track the language in section 10(j)(6) of the Act and to provide greater clarity. *See* 12 U.S.C. 1430(j)(6); 12 CFR 960.11.

1. Application for Temporary Suspension

Proposed § 960.16(a)(1) provides that if a Bank finds that the contributions required pursuant to proposed § 960.15 are contributing to the financial instability of the Bank, the Bank shall notify the Finance Board promptly, and may apply in writing to the Finance Board for a temporary suspension of such contributions.

Proposed § 960.16(a)(2) provides that a Bank's application for a temporary suspension of contributions shall include: (1) the period of time for which the Bank seeks a suspension; (2) the grounds for a suspension; (3) a plan for returning the Bank to a financially stable position; and (4) the Bank's annual financial report for the preceding year, if available, and the Bank's most recent quarterly and monthly financial statements and any other financial data the Bank wishes the Finance Board to consider.

The requirement in proposed § 960.16(a)(2)(ii) to include the grounds for a suspension is not explicitly required in the existing regulation. *See* 12 CFR 960.11(a).

The provision in proposed § 960.16(a)(2)(iv) that a Bank may include any other financial data it wishes the Finance Board to consider is not required in the existing regulation.

2. Finance Board Review of Application for Temporary Suspension

a. *Grounds for approval of application.* Proposed § 960.16(b)(1) provides that, in determining the financial instability of a Bank, the Finance Board shall consider such factors as: (1) whether the Bank's earnings are severely depressed; (2) whether there has been a substantial decline in the Bank's membership capital; and (3) whether there has been a substantial reduction in the Bank's advances outstanding.

b. *Limitations on grounds for approval of application.* Proposed § 960.16(b)(2) provides that the Finance

Board shall disapprove an application for a temporary suspension if it determines that the Bank's reduction in earnings is a result of: (1) a change in the terms of advances to members which is not justified by market conditions; (2) inordinate operating and administrative expenses; or (3) mismanagement.

The ''reduction in earnings'' language replaces the term ''financial instability'' used in the existing regulation, because the former is the term used in the Act. *See* 12 U.S.C. 1430(j)(6); 12 CFR 960.11(c).

In addition, the requirement in § 960.11(c)(5) of the existing regulation that the Finance Board shall disapprove an application if for any other reason the temporary suspension is not warranted, is deleted in the proposed rule because it is not required by the Act. *See* 12 U.S.C. 1430(j)(6); 12 CFR 960.11(c)(5).

3. Finance Board Decision

Proposed § 960.16(c) provides that the Finance Board's decision shall be in writing and shall be accompanied by specific findings and reasons for its action. If the Finance Board approves a Bank's application for a temporary suspension, the Finance Board's written decision shall specify the period of time such suspension shall remain in effect. The proposed rule removes the 30-day requirement for Finance Board action in the existing regulation, which is not required by the Act. *See* 12 U.S.C. 1430(j)(6)(C); 12 CFR 960.11(d).

4. Monitoring

Proposed § 960.16(d) provides that during the term of a temporary suspension approved by the Finance Board, the affected Bank shall provide to the Finance Board such financial reports as the Finance Board shall require to monitor the financial condition of the Bank.

5. Termination of Suspension

Proposed § 960.16(e) provides that if, prior to the conclusion of the temporary suspension period, the Finance Board determines that the Bank has returned to a position of financial stability, the Finance Board may, upon written notice to the Bank, terminate the temporary suspension.

6. Application for Extension of Temporary Suspension Period

Proposed § 960.16(f) provides that if a Bank's board of directors determines that the Bank has not returned to, or is not likely to return to, a position of financial stability at the conclusion of the temporary suspension period, the Bank may apply in writing for an extension of the temporary suspension period, stating the grounds for such extension. The proposed rule removes the 30-day requirement for Finance Board action in the existing regulation, which is not required by the Act. *See* 12 U.S.C. 1430(j)(6); 12 CFR 960.11(f).

The proposed rule deletes the provisions in the existing regulation on Finance Board notice to Congress, which are governed by the Act and need not be included in the regulation. *See* 12 U.S.C. 1430(j)(6)(F); 12 CFR 960.11(f), (g).

Q. Affordable Housing Reserve Fund—§ 960.17

Consistent with the existing regulation and the Act, proposed § 960.17(a) provides that if a Bank fails to use or commit the full amount of its required annual contribution to the Program, 90 percent of the amount that has not been used or committed in that year shall be deposited by the Bank in an Affordable Housing Reserve Fund established and administered by the Finance Board. *See* 12 U.S.C. 1430(j)(7); 12 CFR 960.12(a). The remaining 10 percent of the unused and uncommitted amount retained by the Bank should be fully used or committed by the Bank during the following year, and any remaining portion must be deposited in the Affordable Housing Reserve Fund. *See id.* Approval of AHP applications sufficient to exhaust the amount a Bank is required to contribute pursuant to proposed § 960.15 shall constitute use or commitment of funds.

Proposed § 960.17(b) provides that by January 15 of each year, each Bank shall provide to the Finance Board a statement indicating the amount of unused and uncommitted funds from the prior year, if any, which will be deposited in the Affordable Housing Reserve Fund.

Proposed § 960.17(c) provides that by January 31 of each year, the Finance Board will notify the Banks of the total amount of funds, if any, available in the Affordable Housing Reserve Fund.

Section 960.12(d) of the existing regulation governing how funds in an Affordable Housing Reserve Fund would be made available to the Banks, is deleted in the proposed rule. *See* 12 CFR 960.12(d). The Act states that such provisions would be determined pursuant to regulations issued by the Finance Board. *See* 12 U.S.C. 1430(j)(7). Since there currently are no such funds and it is not anticipated that there will be any such funds in the near future, it is not necessary at this time to include provisions in the proposed rule dealing with this issue. The Finance Board can issue regulations on this issue at a future date if such eventuality should arise.

R. Advisory Councils—§ 960.18

Proposed § 960.18 implements section 10(j)(11) of the Act governing the appointment and operations of Bank Advisory Councils. *See* 12 U.S.C. 1430(j)(11). Proposed § 960.18(a) requires each Bank to appoint an Advisory Council of 7 to 15 persons, who reside in the Bank's District and are drawn from community and not-for-profit organizations actively involved in providing or promoting low- and moderate-income housing in the District.

Proposed § 960.18(b) continues the existing regulatory requirement that each Bank shall solicit nominations for membership on the Advisory Council from community and not-for-profit organizations pursuant to a nomination process that is as broad and as participatory as possible, allowing sufficient lead time for responses. *See* 12 CFR 960.14(d). The Bank shall appoint Advisory Council members giving consideration to the size of the District and the diversity of low- and moderate-income housing needs and activities within the District. *See id.* § 960.14(b).

Under § 960.14(c) of the existing regulation, state and local housing officials are considered to qualify as persons drawn from ''community and nonprofit organizations,'' and, therefore, are permitted to serve on Advisory Councils, provided such officials do not constitute an ''undue proportion'' of any Advisory Council's membership. *See id.* § 960.14(c). Proposed § 960.14(c) broadens the ''undue proportion requirement'' to apply to all groups represented on an Advisory Council and adds an affirmative requirement that the membership of Advisory Councils include persons drawn from a diverse range of organizations. While the Finance Board does not believe that there should be absolute limits on the membership of any one group on the Advisory Councils, the Finance Board wishes to ensure a diversity of viewpoints so that no one group consistently has a dominant voice on an Advisory Council. In appointing Advisory Council members, the Banks are to draw from a diverse range of organizations, provided that representatives of no one group shall constitute an undue proportion of the membership of an Advisory Council.

Proposed § 960.18(d) provides that Advisory Council members shall serve for terms of three years, and such terms shall be staggered to provide continuity

in experience and service to theAdvisory Council. This is a change from the two-year terms required under the existing regulation. *See id.* § 960.14(f). The Finance Board believes that extending Advisory Council members' terms by a year will allow the Banks to benefit from the experience and familiarity with the Program that Advisory Council members develop the longer they serve on an Advisory Council.

Proposed § 960.18(d) also provides that an Advisory Council member may not serve for more than two consecutive terms. This provision is intended to ensure that the membership of the Advisory Councils reflects the diverse and changing viewpoints of private sector community and not-for-profit organizations on the housing and community development programs and needs of the Bank Districts.

Proposed § 960.18(e) provides that each Advisory Council may elect from among its members a chairperson, a vice chairperson, and any other officers the Advisory Council deems appropriate. The Finance Board believes that allowing the Advisory Council members to elect their own officers, rather than having their officers appointed by each Bank, will enhance each Advisory Council's ability to assess independently the Bank's low- and moderate-income housing and community development activity.

Proposed § 960.18(f)(1) carries forward the requirement in the existing regulation that representatives of the board of directors of the Bank shall meet with the Advisory Council at least quarterly to obtain the Advisory Council's advice on the low- and moderate-income housing programs and needs in the Bank's District, and expands the Advisory Council's role to include providing advice on ways in which the Bank can better carry out its housing finance mission, including the utilization of AHP subsidies, Bank advances, and other Bank credit products for community development programs and needs. The Finance Board expects that the Advisory Councils will assume a central role in advising the Banks on carrying out their overall housing finance mission, in addition to their specific focus on affordable housing and community development. Further, nothing in the proposed rule precludes Advisory Councils from meeting with representatives of the board of directors of the Bank more frequently than quarterly.

Proposed § 960.14(f)(2) adds a new requirement that a Bank shall comply with requests from the Advisory Council for summary information regarding AHP applications from prior funding periods. Upon the request of the Advisory Council, the Bank shall allow Advisory Council members to examine, on the Bank's premises, any AHP applications from prior funding periods. The Finance Board believes that this will aid the Advisory Council members in evaluating how the AHP application scoring guidelines adopted by the Bank affect the allocation of AHP subsidies among different types of housing projects. Due to cost considerations, the Banks are not required to distribute copies of the applications to the Advisory Councils, but may do so, at their discretion. In making AHP applications available for inspection, the Banks are subject to any confidentiality requirements of other laws that may apply. The Banks should take adequate precautions to maintain confidentiality and avoid conflicts of interest. Such precautions may include redacting portions of the AHP applications, as well as requiring Advisory Council members to agree not to disclose information from AHP applications.

Proposed § 960.14(f)(3) carries forward the annual reporting requirement in § 960.14(j) of the existing regulation, *see id.* § 960.14(j), but moves back the date of submission to the Finance Board from January 31 to March 1, and requires that the Advisory Council's report include an analysis of the community development activity of its Bank, in addition to its low- and moderate-income housing activity. The change in the reporting date is intended to give the Advisory Councils sufficient time after the end of the year to compile and evaluate year-end data in order to prepare their reports to the Finance Board.

Proposed § 960.18(g) continues the existing regulatory requirement that the Bank shall pay Advisory Council members travel expenses, including transportation and subsistence, for each day devoted to attending meetings with representatives of the board of directors of the Bank. Nothing in the proposed rule precludes the Banks from paying fees to Advisory Council members for attending meetings with representatives of the Banks' boards of directors. The Banks may do so at their discretion. Advisory Council members often are employed by organizations that make a financial sacrifice to lend housing and community development expertise to a Bank. Therefore, individual Banks should consider payment of fees to Advisory Council members.

Proposed § 960.18(h) adds a new requirement that an Advisory Council member who has a personal interest in, or who is a director, officer or employee of an organization involved in a project that is the subject of a pending or approved AHP application, may not participate in or attempt to influence the evaluation, approval, funding, monitoring, or any remedial process for such project under the Program. Each Bank's board of directors shall adopt a written policy applicable to the Bank's Advisory Council members to prevent actual or apparent conflicts of interest under the Program.

The Finance Board specifically requests comments on the role, selection, compensation, and all other aspects of Advisory Councils.

III. Regulatory Flexibility Act

The proposed rule applies only to the Banks, which do not come within the meaning of ''small entities,'' as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, *see id.* section 605(b), the Finance Board hereby certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

The current information collection has been approved by the Office of Management and Budget (OMB) and assigned OMB control number 3096–0006. The Finance Board has submitted to OMB for its approval an analysis of the proposed changes to the collection of information resulting from the proposed rule. The collection of information, as proposed to be revised, is described more fully in part II of the **SUPPLEMENTARY INFORMATION.** The information collection is necessary to enable the Banks and, where appropriate, the Finance Board, to determine: (1) whether AHP applications satisfy the statutory and regulatory requirements for the award of AHP subsidies; and (2) whether the use of AHP subsidies awarded to members is consistent with applicable requirements. *See* 12 U.S.C. 1430(j).

Likely respondents and/or recordkeepers will be financial institutions that are members of a Bank, housing developers, and owners of multifamily housing projects. Respondents are required to meet the collection and recordkeeping requirements in order to obtain and retain a benefit. Confidentiality of information obtained from respondents pursuant to this proposed revision of the currently approved information collection will be maintained by the Finance Board as required by applicable

statute, regulation, and agency policy.Potential respondents are not required to respond to the collection of information unless the regulation collecting the information displays a currently valid control number assigned by the OMB. *See* 44 U.S.C. 3512(a).

The estimated annual reporting and recordkeeping hour burden is:

a. Number of respondents—7462
b. Total annual responses—9949
Percentage of these responses collected electronically—0%
c. Total annual hours requested—64,274
d. Current OMB inventory—33,067
e. Difference—31,207

The estimated annual reporting and recordkeeping cost burden is:

a. Total annualized capital/startup costs—0
b. Total annual costs (O&M)—0
c. Total annualized cost requested—$2,117,450.00
d. Current OMB inventory—0
e. Difference—$2,117,450.00

The current OMB inventory for the estimated annual reporting and recordkeeping hour burden is based on the information collection contained in the proposed amendments to the AHP regulation that were issued by the Finance Board on January 10, 1994, but were never finalized. *See* 59 FR 1323 (Jan. 10, 1994). Comments concerning the accuracy of the burden estimates and suggestions for reducing the burden may be submitted to the Finance Board in writing at the address listed above.

The collections of information have been submitted to OMB for review in accordance with section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). Comments regarding the proposed collections of information may be submitted in writing to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Federal Housing Finance Board, Washington, DC 20503, by February 6, 1996.

List of Subjects in 12 CFR Part 960

Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements. Accordingly, the Finance Board hereby proposes to revise title 12, chapter IX, part 960, *Code of Federal Regulations,* to read as follows:

PART 960—AFFORDABLE HOUSING PROGRAM

Sec.

Authority: 12 U.S.C. 1430(j).

§ 960.1 Definitions.

As used in this part:

Act means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 et seq.).

Advance means a loan to a member from a Bank that is:

(1) Provided pursuant to a written agreement;

(2) Supported by a note or other written evidence of the borrower's obligation; and

(3) Fully secured by collateral in accordance with the Act and part 935 of this chapter.

Affordable means, for purposes of an AHP-assisted rental unit, that the monthly housing costs charged to a household for such unit not exceed 30 percent of the income of a household of the maximum income and size expected, under the commitment made in the approved AHP application, to occupy the unit (assuming occupancy of 1.5 persons per bedroom or 1.0 person per unit without a separate bedroom).

AHP or *Program* means the Affordable Housing Program established pursuant to 12 U.S.C. 1430(j) and this part.

Area has the same meaning as that used by the Department of Housing and Urban Development for purposes of determining its annually published area median income limits.

Bank means a Federal Home Loan Bank established under the authority of the Act.

CIP means a Bank's Community Investment Program established under section 10(i) of the Act (12 U.S.C. 1430(i)).

Cost of funds means, for purposes of a subsidized advance, the estimated cost of issuing Bank System consolidated obligations with maturities comparable to that of the subsidized advance.

Direct subsidy means an AHP subsidy in the form of a direct cash payment.

Finance Board means the agency established as the Federal Housing Finance Board.

Homeless means an individual, other than an individual imprisoned or otherwise detained pursuant to state or federal law, who:

(1) Lacks a fixed, regular, and adequate nighttime residence; or

(2) Has a primary nighttime residence that is:

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

Housing credit agency means a state or local government agency authorized to allocate federal Low-Income Housing Tax Credits under 26 U.S.C. 42.

Low-or moderate-income household means a household which has an income of 80 percent or less of the median income for the area, adjusted for family size, as published annually by the U.S. Department of Housing and Urban Development.

Low-or moderate-income neighborhood means any neighborhood in which 51 percent or more of the households are low-or moderate-income households.

Member means an institution that has been approved for membership in a Bank and has purchased capital stock in the Bank in accordance with §§ 933.20 and 933.24 of this chapter.

Monthly housing costs means:

(1) For households in AHP-assisted owner-occupied units, mortgage principal and interest payments, real property taxes, homeowners' insurance, a reasonable estimate of utility costs excluding telephone service, and for households in AHP-assisted condominium, cooperative, mutual housing or other housing projects involving common ownership, those portions of any regular operating assessment or fee allocated for principal and interest payments, taxes, insurance and a reasonable estimate of utilities attributable to the household's share of the common area and/or the individual unit; and

(2) For households in AHP-assisted rental units, rent payments, and where they are not already included in rent payments, a reasonable estimate of utility costs, excluding telephone service.

Net earnings of a Bank means the net earnings of a Bank for a calendar year after deducting the Bank's pro rata share

of the annual contribution to the Resolution Funding Corporation required under sections 21A or 21B of the Act (12 U.S.C. 1441a, 1441b), and before declaring any dividend under section 16 of the Act (12 U.S.C. 1436).

Owner-occupied project means a project involving the purchase, construction, or rehabilitation of owner-occupied housing.

Permanent or transitional housing means housing with six-month minimum occupancy, but excluding overnight shelters.

Pre-development expenses means expenses for the purpose of determining the feasibility of a proposed project.

Project modification means any change in the project prior to the project's completion, full occupancy and closing of permanent financing, that materially affects the facts under which the project's AHP application was originally scored under § 960.8 and approved.

Rental project means a project involving the purchase, construction, or rehabilitation of rental housing.

Retention period means the period during which the sponsor or owner of an AHP-assisted project commits to comply with the requirements of 12 U.S.C. 1430(j), this part, and the terms of the approved AHP application. The minimum retention period for an owner-occupied unit is 5 years, and for a rental unit is 15 years from the date of project completion.

Sponsor means a not-for-profit or for-profit organization or public entity that is:

(1) An owner of a rental project; or

(2) Integrally involved in an owner-occupied project, such as by exercising control over the planning, development, or management of the project, or by qualifying borrowers and providing or arranging financing for the owners of the housing units.

State means a state of the United States, the District of Columbia, Guam, Puerto Rico, or the U.S. Virgin Islands.

Subsidized advance means an advance to a member at an interest rate reduced below the Bank's cost of funds, by use of a subsidy.

Subsidy means:

(1) A direct subsidy, provided that if a direct subsidy is used to write down the interest rate on a loan extended by a member, sponsor, or other party to a project, the subsidy shall equal the net present value of the interest foregone from making the loan below the lender's market interest rate (calculated as of the date the AHP application is submitted to the Bank, and subject to adjustment under § 960.9(c)(1)); or

(2) The net present value of the interest revenue foregone from making a subsidized advance at a rate below the Bank's cost of funds, determined as of the date of disbursement of the subsidized advance or the date prior to disbursement on which the Bank first manages the funding to support the subsidized advance through its asset/liability management system, or otherwise.

Very low-income household means a household which has an income of 50 percent or less of the median income for the area, adjusted for family size, as published annually by the U.S. Department of Housing and Urban Development.

§ 960.2 Operation of Program and adoption of AHP implementation plan.

(a) *Policy of the Finance Board.* It is the policy of the Finance Board and the Banks to promote decent and safe affordable housing and to address critical affordable housing needs through use of subsidized advances and direct subsidies.

(b) *Program operation.* Each Bank's Program shall be governed solely by the requirements set forth in 12 U.S.C. 1430(j) and this part. A Bank shall not adopt any additional substantive AHP requirements, except as expressly provided in this part.

(c) *AHP implementation plan.*—(1) *Adoption of plan.* Consistent with the requirements of this part, each Bank's board of directors by December 1 each year shall adopt a written AHP implementation plan for the subsequent year, and any subsequent amendments thereto, which shall set forth:

(i) The Bank's project cost guidelines, adopted pursuant to § 960.3(b);

(ii) The Bank's schedule for AHP funding periods, adopted pursuant to § 960.6(a);

(iii) Any District threshold requirement, adopted by the Bank pursuant to § 960.7(b);

(iv) The Bank's AHP scoring guidelines, adopted by the Bank pursuant to § 960.8(a);

(v) The Bank's procedures for verifying a project's use of AHP subsidies within a reasonable period of time pursuant to § 960.9(a);

(vi) The Bank's procedures for verifying compliance upon disbursement of AHP subsidies pursuant to § 960.9(b);

(vii) The requirements for any homeownership assistance program adopted by the Bank pursuant to § 960.12; and

(viii) The Bank's policies and procedures for carrying out the Bank's monitoring obligations under § 960.13.

(2) *No delegation.* A Bank's board of directors shall not delegate to Bank officers or other Bank employees the responsibility for adopting the AHP implementation plan, or any subsequent amendments thereto.

(3) *Advisory Council review.* Prior to adoption of the Bank's AHP implementation plan, and any subsequent amendments thereto, the Bank shall provide its Advisory Council a reasonable period of time to review the plan and any subsequent amendments, and the Advisory Council shall provide its recommendations to the Bank's board of directors.

(4) *Public Access.* A Bank's AHP implementation plan, and any amendments, shall be made available to members of the public, upon request.

(d) *Reporting.* Each Bank shall provide reports and documentation concerning the Program as the Finance Board may request from time to time. The Bank shall provide promptly copies of its AHP implementation plan and any subsequent amendments to the Finance Board and the Bank's Advisory Council.

§ 960.3 Eligible costs.

(a) *Owner-occupied and rental housing.* AHP subsidies may be used to finance:

(1) The purchase, construction, or rehabilitation of owner-occupied housing by or for very low-or low- or moderate-income households; and

(2) The purchase, construction, or rehabilitation of rental projects where at least 20 percent of the units in the project are occupied by and affordable for very low-income households.

(b) *Eligible costs.* AHP subsidies may be used to pay only for the customary and standard costs typically incurred, at fair market prices, to purchase, construct, or rehabilitate housing meeting the requirements of paragraph (a) of this section. A Bank shall evaluate the reasonableness of project costs, based upon project cost guidelines adopted by the Bank.

(c) *Ineligible costs.* AHP subsidies may not be used to pay for:

(1) Pre-development expenses not yet incurred by the proposed project as of the date the AHP application is submitted to the Bank;

(2) Prepayment fees and penalties imposed by a Bank on a member for a subsidized advance that is prepaid;

(3) Cancellation fees and penalties imposed by a Bank on a member for a subsidized advance commitment that is canceled;

(4) Costs incurred in connection with counseling of homebuyers, homeowners, or tenants, except for costs of homebuyer counseling where:

(i) The counseling is provided to a household that actually purchases an AHP-assisted unit; and

(ii) The cost of the counseling has not been covered by another funding source, including the member; or

(5) Processing fees charged by members for providing direct subsidies to AHP-assisted housing projects.

(d) *Refinancing.* AHP subsidies may be used to refinance an existing single-family or multifamily mortgage loan, provided the equity proceeds of the refinancing are used only for the purchase, construction, or rehabilitation of AHP-eligible housing.

§ 960.4 Retention of AHP-assisted housing.

(a) *Owner-occupied units.*—(1) *Unit assisted by direct subsidy.* An owner-occupied unit financed by a direct subsidy under the Program must be subject to a deed restriction, ''soft'' second mortgage, or other legally enforceable mechanism requiring that:

(i) The Bank or its designee is to be given notice of any sale or refinancing of the unit occurring prior to the end of the retention period;

(ii) In the case of a sale prior to the end of the retention period, an amount equal to a pro rata share of the direct subsidy, reduced for every year the seller owned the unit, shall be repaid to the Bank from any net gain realized upon the sale of the unit after deduction for sales expenses, unless the purchaser is a low- or moderate-income household; and

(iii) In the case of a refinancing prior to the end of the retention period, the full amount of the direct subsidy shall be repaid to the Bank from any net gain realized upon the refinancing of the unit, unless the unit continues to be subject to a deed restriction, ''soft'' second mortgage, or other legally enforceable mechanism described in this paragraph (a)(1).

(2) *Unit assisted by a subsidized advance.* (i) An owner-occupied unit financed by a loan from the proceeds of a subsidized advance under the Program must be subject to a deed restriction or other legally enforceable mechanism requiring that:

(A) The Bank or its designee is to be given notice of any sale or refinancing of the unit occurring prior to the end of the retention period; and

(B) In the case of a refinancing prior to the end of the retention period, the full amount of the interest rate subsidy received by the owner, based on the pro rata portion of the interest rate subsidy imputed to the subsidized advance during the period the owner occupied the unit prior to refinancing, shall be repaid to the Bank from any net gain realized upon the refinancing, unless the unit continues to be subject to a deed restriction, ''soft'' second mortgage, or other legally enforceable mechanism described in this paragraph (a)(2).

(ii) Where a member uses the proceeds of a subsidized advance to make loans financing owner-occupied units, the Bank must require the member to agree in writing that if such loans are prepaid by the borrower, the member may, at its option, either:

(A) Repay to the Bank that portion of the subsidized advance used to make the loan to the borrower, and be subject to a fee imposed by the Bank sufficient to compensate the Bank for any loss the Bank experiences in reinvesting the repaid amount at a rate of return below the cost of funds originally used by the Bank to calculate the interest rate subsidy incorporated in the subsidized advance; or

(B) Continue to maintain the subsidized advance outstanding, subject to the Bank resetting the interest rate on that portion of the subsidized advance used to make the loan to the borrower to a rate equal to the cost of funds originally used by the Bank to calculate the interest rate subsidy incorporated in the subsidized advance.

(b) *Rental projects.*—(1) *Project assisted by direct subsidy.* (i) A rental project financed with a direct subsidy must be subject to a deed restriction or other legally enforceable mechanism requiring that:

(A) The project's rental units, or applicable portion thereof, must remain occupied by and affordable for households with incomes at or below the levels committed to be served in the AHP application for the duration of the retention period;

(B) The Bank or its designee is to be given notice of the sale or refinancing of the project occurring prior to the end of the retention period;

(C) In the case of a sale prior to the end of the retention period, an amount equal to the entire amount of any direct subsidy received must be repaid to the Bank, unless the subsequent owner agrees in writing to comply with the income-eligibility and affordability restrictions committed to in the AHP application; and

(D) In the case of a refinancing prior to the end of the retention period, an amount equal to the entire amount of any direct subsidy received must be repaid to the Bank, unless the project continues to be subject to a deed restriction or other legally enforceable mechanism requiring the project's rental units, or applicable portion thereof, to remain occupied by and affordable for households with incomes at or below the levels committed to be served in the AHP application for the duration of the retention period.

(2) *Project assisted by a subsidized advance.* (i) A rental project financed with a subsidized advance must be subject to a deed restriction or other legally enforceable mechanism requiring that:

(A) The project's rental units, or applicable portion thereof, must remain occupied by and affordable for households with incomes at or below the levels committed to be served in the AHP application for the duration of the retention period;

(B) The Bank or its designee is to be given notice of the sale or refinancing of the project occurring prior to the end of the retention period;

(C) In the case of a sale prior to the end of the retention period, the full amount of the interest rate subsidy received by the seller, based on the pro rata portion of the interest rate subsidy imputed to the subsidized advance during the period the seller owned the project prior to the sale, shall be repaid to the Bank, unless the subsequent owner agrees in writing to comply with the income-eligibility and affordability restrictions committed to in the AHP application; and

(D) In the case of a refinancing prior to the end of the retention period, the full amount of the interest rate subsidy received by the owner, based on the pro rata portion of the interest rate subsidy imputed to the subsidized advance during the period the owner owned the project prior to the refinancing, shall be repaid to the Bank, unless the project continues to be subject to a deed restriction or other legally enforceable mechanism requiring the project's rental units, or applicable portion thereof, to remain occupied by and affordable for households with incomes at or below the levels committed to be served in the AHP application for the duration of the retention period.

(ii) Where a member uses the proceeds of a subsidized advance to make loans financing a rental project, the Bank must require the member to agree in writing that if such loans are prepaid by the borrower, the member may, at its option, either:

(A) Repay to the Bank that portion of the subsidized advance used to make the loan to the borrower, and be subject to a fee imposed by the Bank sufficient to compensate the Bank for any loss the Bank experiences in reinvesting the repaid amount at a rate of return below the cost of funds originally used by the Bank to calculate the interest rate

subsidy incorporated in the subsidized advance; or

(B) Continue to maintain the subsidized advance outstanding, subject to the Bank resetting the interest rate on that portion of the subsidized advance used to make the loan to the borrower to a rate equal to the cost of funds originally used by the Bank to calculate the interest rate subsidy incorporated in the subsidized advance.

(c) *Use of recovered subsidies.* AHP subsidies recovered by a Bank pursuant to this section shall be made available for other AHP projects.

§ 960.5 Timing of household income qualification.

(a) *Owner-occupied projects.* In order to qualify as a very low- or a low- or moderate-income household for purposes of an AHP-assisted owner-occupied project, a household must have an income at or below the level committed to in the AHP application at the time the household is qualified by the sponsor for participation in the project, but no earlier than the date on which the AHP application was submitted to the Bank for approval.

(b) *Rental projects.* In order to qualify as a very low- or a low- or moderate-income household for purposes of an AHP-assisted rental project, a household must have an income at or below the level committed to in the AHP application for a particular unit upon initial occupancy only. The household may continue to occupy such designated unit even if its income subsequently increases above the income-eligibility requirement for that unit. The unit may continue to count toward meeting the targeted income-eligibility requirement, provided the rent charged remains affordable, as defined in § 960.1, for the targeted household.

§ 960.6 Funding periods.

(a) *District-wide competition.* Except as provided in § 960.12, each Bank shall administer a District-wide competition for its AHP subsidies. Banks may accept applications from members for funding during a specified number of funding periods each year, as determined by the Bank, and shall announce the application due dates for such periods no later than December 1 of the preceding year. The amount of subsidies offered in each funding period shall be comparable.

(b) *Funding availability; notification to members.* Each Bank shall notify its members and other interested parties of:

(1) The approximate amount of annual AHP subsidies available for the Bank's District;

(2) The approximate amount of AHP subsidies to be offered in each funding period;

(3) The applicability of any District threshold requirements established pursuant to § 960.7(b);

(4) The scoring guidelines contained in the Bank's AHP implementation plan; and

(5) The application due dates.

§ 960.7 Application requirements.

(a) *Mandatory requirements.* Each Bank shall require members to include in their AHP applications:

(1) *Description of project.* A concise description of the proposed project;

(2) *Amount of AHP subsidy.* The estimated amount of AHP subsidy required for the proposed project. In the case of an application for a subsidized advance, the member shall include in its application the interest rate on the member's loan to the proposed project, and, for purposes of scoring the application, the Bank shall estimate the subsidy required for the proposed project based on the Bank's cost of funds as of the date on which all AHP applications are due for the funding period in which the application is submitted;

(3) *Member interest in property or project.* A disclosure of the member's direct or indirect interest, if any, in the property or proposed project;

(4) *Eligible costs.* An explanation of how the proposed project will comply with the eligible costs provision of § 960.3(b);

(5) *Retention requirements.* An explanation of how the proposed project will comply with the retention requirements of § 960.4;

(6) *Project feasibility and need for subsidy.* An explanation of how the proposed project is financially viable and likely to be completed within a reasonable period of time; and why the requested AHP subsidy is needed, based on:

(i) The Bank's analysis of all project sources and uses of funds (including the value of any donated land, materials, and professional labor), multi-year operating pro formas for rental projects, sale prices for owner-occupied units, and local market conditions; and

(ii) A review of the reasonableness of information relating to available sources and uses of funding and financing capacity, such as operating pro formas, to verify the proposed project's need for AHP subsidy;

(7) *Project sponsor qualifications.* An explanation of the project sponsor's qualifications and ability to perform its responsibilities as committed to in the AHP application;

(8) *Fair housing law requirements.* A statement that the project sponsor and owner will comply with any applicable fair housing law requirements, and an explanation of how the project sponsor and owner intend to affirmatively market the proposed project and otherwise comply with such requirements;

(9) *Maximum subsidy requirement.* (i) A statement that, except as otherwise provided in paragraph (a)(9)(ii) of this section, no subsidized household in the proposed project shall pay less than 20 percent of such household's gross monthly income toward monthly housing costs, as defined in § 960.1.

(ii) *Exceptions.* The requirement in paragraph (a)(9)(i) of this section shall not apply where:

(A) An AHP-assisted rental project also receives funds from a federal or state rental housing program that requires qualifying households to pay as rent a certain percentage of their monthly income or a designated amount, and the households in the project meet such requirements;

(B) The total amount of the AHP subsidies provided to the project to finance rehabilitation of housing units owned by very low-income households is $10,000 or less per such household and for housing units owned by low- or moderate-income households is $5,000 or less per such household;

(C) The total amount of the AHP subsidies provided to the project to finance the purchase of housing units is $5,000 or less per household; or

(D) AHP subsidies are used to assist a household participating in a self-help, sweat equity or similar housing program that requires the household to contribute its skilled or unskilled labor valued at a minimum of $2,000 per household, working cooperatively with others, to construct or rehabilitate housing which the household or other program participants are purchasing or already own and occupy, and that involves supervision of the work performed by skilled builders or rehabilitators;

(10) *District threshold requirements.* An explanation of how the proposed project meets any applicable District threshold requirements adopted by the Bank pursuant to paragraph (b) of this section;

(11) *Scoring requirements.* An explanation of how the proposed project meets the priorities and objectives identified in § 960.8(a);

(12) *Certification.* A certification from the member, project sponsor, and project owner committing to comply with all requirements of 12 U.S.C. 1430(j), this part, and all obligations

committed to in the AHP application; and

(13) *Other information.* Such other information as the Bank may reasonably require in order to verify compliance of the AHP applications with the requirements of this part.

(b) *District threshold requirements.* A Bank's board of directors, after consultation with its Advisory Council, may establish one or more of the following additional threshold requirements for AHP applications, provided that any such additional threshold requirements must apply equally to all members:

(1) A maximum amount of AHP subsidy available per member each year; or per member, per project, or per project unit in a single funding round;

(2) An exclusion of applications for funding for projects located outside the Bank's District; or

(3) A requirement that the member submitting the application has made use of a credit product offered by the Bank within the previous 12 months, other than AHP or CIP credit products.

§ 960.8 Application scoring and approvals.

(a) *Application scoring.*—(1) *General.* A Bank shall score only those applications meeting the application requirements of § 960.7. Applications shall be scored based on the extent to which they meet the scoring priorities and objectives set forth in this section. A Bank shall adopt written guidelines implementing the scoring requirements of this section. The total possible score an AHP application may receive is 100 points. In determining the number of points to award an application for any given scoring category, the Bank shall evaluate applications relative to each other.

(2) *Priority applications—60 points.* A Bank shall allocate 60 points among the six priority categories identified in this paragraph (a)(2). The priority categories are either fixed-point priorities or variable-point priorities. Variable-point priorities, which are listed in paragraphs (a)(2)(i) through (iv) and (a)(2)(v)(A) through (E) of this section, are those where there are varying degrees to which an application can satisfy the priority. Each variable-point priority category must be allocated at least 8 points. The number of points that may be awarded to an application for meeting a variable-point priority will vary, depending on the extent to which the application satisfies the priority, compared to the other applications being scored. The application(s) best achieving each variable-point priority shall receive the maximum point score available for that priority category, with the remaining applications scored on a declining scale. An application receiving at least half of the points allocated to a variable-point priority category shall be considered to have met that priority. Fixed-point priority categories, which are listed in paragraphs (a)(2)(v)(F) through (M) of this section, are those an application must meet in order to receive the allocated points. Each fixed-point priority category must be allocated 8 points. An application meeting a fixed-point priority shall be awarded 8 points. The priority selected by a Bank under paragraph (a)(2)(vi) of this section may be either a variable-point or fixed-point priority, depending on the nature of the priority. Applications meeting at least two of the six priorities shall be considered priority applications, and, as a group, shall be scored before applications meeting fewer than two of the priorities. Priority applications shall be scored against each other, based on the extent to which they meet the priorities of this paragraph (a)(2) and the scoring objectives contained in paragraph (a)(3) of this section. The remaining applications shall be scored only if there are insufficient priority applications to exhaust the AHP subsidy amount available for the funding period. The six priority categories are as follows:

(i) *Government-owned properties (variable point).* Projects financing the purchase or rehabilitation of housing, at least 20 percent of the units of which are owned or held by federal, state, or local governments or any agency or instrumentality thereof;

(ii) *Not-for-profit or state or local government sponsored projects (variable point).* Projects financing the purchase, construction, or rehabilitation of housing, the sponsor of which is a not-for-profit organization, a state or political subdivision of a state, a local housing authority, or a state housing agency;

(iii) *Permanent or transitional housing for the homeless (variable point).* Projects financing permanent or transitional housing for the homeless by reserving at least 20 percent of units for occupancy by homeless households;

(iv) *Community development (variable point).* Projects meeting housing needs documented as part of a community revitalization or economic development strategy approved by a unit of state or local government;

(v) *District priority.* Projects meeting one of the following criteria, as recommended by the Bank's Advisory Council and adopted by the Bank's board of directors for a particular funding period:

(A) *Variable point.* Projects in which at least 20 percent of the units are reserved for occupancy by households who have special needs, such as the elderly, mentally or physically disabled persons, persons recovering from physical abuse or alcohol or drug abuse, or persons with AIDS;

(B) *Variable point.* Projects providing housing in combination with a program offering employment, education, training, homeownership counseling, or daycare services that assist AHP-eligible residents to move toward better economic opportunities;

(C) *Variable point.* Projects financing housing for first-time homebuyers;

(D) *Variable point.* Projects involving member financial participation (excluding the pass-through of AHP subsidy), such as providing market rate or concessionary financing, fee waivers, or donations;

(E) *Variable point.* Projects with retention periods in excess of 5 and 15 years for owner-occupied and rental housing, respectively;

(F) *Fixed point.* Projects financing housing located in federally declared disaster areas;

(G) *Fixed point.* Projects financing housing located in rural areas;

(H) *Fixed point.* Projects financing urban in-fill and/or urban rehabilitation housing;

(I) *Fixed point.* Projects that are part of a strategy to end isolation of very low-income households by providing economic diversity through mixed-income housing in low- or moderate-income neighborhoods, or providing very low- or low- or moderate-income households with housing opportunities in areas where the median household income exceeds 80 percent of the area median income;

(J) *Fixed point.* Projects financing housing as part of a remedy undertaken by a jurisdiction adjudicated by a federal, state, or local court to be in violation of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), the Fair Housing Act (42 U.S.C. 3601 et seq.), or any other federal state, or local fair housing law, or as part of a settlement of such claims;

(K) *Fixed point.* Projects involving sweat-equity and/or self-help housing;

(L) *Fixed point.* Projects involving financing by a consortium of at least two financial institutions; or

(M) *Fixed point.* Projects located within the Bank's District; and

(vi) *District priority—defined housing need in the District.* Projects meeting a housing need in the Bank's District, as defined and recommended by the Bank's Advisory Council and adopted by the Bank's board of directors for a

particular funding period. The Bank may use one of the criteria listed in paragraph (a)(2)(v) of this section, provided it is different from the District priority adopted by the Bank under paragraph (a)(2)(v) of this section.

(3) *Objectives—40 points.* A Bank shall allocate 40 points among the four objectives categories identified in this paragraph (a)(3), provided that no less than 8 points are allocated to the targeting objective category. The application(s) best achieving each objective shall receive the maximum point score available for that objective category, with the remaining applications scored on a declining scale. The four objectives categories are as follows:

(i) *Targeting.* A Bank shall award points to applications based on the extent to which units in a project are to be sold initially to, or rehabilitated by, households with incomes at or below 80 percent of the area median income, in the case of owner-occupied housing projects, or occupied by and affordable for households with incomes at or below 50 percent of the area median income, in the case of rental housing projects. More points shall be awarded to applications for projects with greater numbers of units targeted to households with lower income levels. An application for a rental housing project shall be awarded the maximum number of points available under this scoring category if 60 percent or more of the units in the project are reserved for occupancy by households with incomes at or below 50 percent of the area median income. For purposes of this scoring category, applications for owner-occupied projects and rental projects shall be scored separately;

(ii) *AHP subsidy per unit.* A Bank shall award points to applications based on the extent to which a project proposes to use the least amount of AHP subsidy per AHP-targeted unit. For purposes of this scoring category, applications for owner-occupied projects and rental projects shall be scored separately;

(iii) *Community involvement.* A Bank shall award points to applications based on the extent to which there is demonstrated support for the project by local community organizations and individuals other than as project sponsors, such as through the commitment by such organizations and individuals of funds, goods and services, and volunteer labor; and

(iv) *Community stability.* A Bank shall award points to applications based on the extent to which a project maximizes community stability, such as by: Revitalizing vacant or abandoned properties; being integrally part of a neighborhood stabilization plan; and not displacing low- or moderate-income households, or if such displacement will occur, indicating how such households will be assisted to minimize the impact of such displacement.

(b) *Application approvals.*—(1) *Approval by Bank's board.* The board of directors of each Bank shall approve promptly the AHP applications in descending order starting with the highest scoring application until the total funding amount for the particular funding period, except for any amount insufficient to fund the next highest scoring application, has been allocated. The board of directors also shall approve the next four highest scoring applications as alternates and, within one year of approval, may fund such alternates if any previously committed AHP subsidies become available.

(2) *No delegation.* A Bank's board of directors may not delegate to Bank officers or other Bank employees the responsibility to approve or disapprove AHP applications.

§ 960.9 Disbursement of AHP subsidies.

(a) *Failure to use AHP subsidies within reasonable period of time.* A Bank shall determine whether a member or project sponsor draws down and begins using AHP subsidies for an approved project within a reasonable period of time after application approval. If a member or project sponsor fails to draw down and begin using AHP subsidies within a reasonable period of time, the Bank shall cancel its approval of the application, and those subsidies approved for the project shall be made available for other AHP-eligible projects.

(b) *Compliance upon disbursement of AHP subsidies.* The Bank shall verify prior to initial disbursement of AHP subsidies by the Bank for an approved project, and prior to each disbursement thereafter, that the member and project sponsor are in compliance with all applicable requirements of 12 U.S.C. 1430(j), this part, and all obligations committed to in the approved application. The Bank shall obtain, and maintain in its project file, documents sufficient to demonstrate such compliance prior to making such disbursement, including, but not limited to, an independent, current (6 months or less) appraisal (or recertification of a prior independent appraisal, if appropriate) provided by the member indicating the fair market value of the property or project if the member has a direct or indirect interest in such property or project.

(c) *Changes in approved AHP subsidy amount where a direct subsidy is used for a principal or interest rate write-down.*—(1) *Change in subsidy amount.* If a member is approved to receive a direct subsidy to write down the principal amount or the interest rate on a loan to a project and the amount of subsidy required to maintain the debt service cost required by the project varies from the amount of subsidy initially approved by the Bank due to a change in interest rates between the time of approval and the time the lender commits to the interest rate to finance the project, the Bank shall modify the subsidy amount accordingly.

(2) *Reconciliation of AHP fund.* If a Bank increases the amount of AHP subsidy approved for a project, the amount of such increase shall be drawn first from any uncommitted or recaptured AHP subsidies for the current year and then from the Bank's required AHP contribution for the next year. If a Bank reduces the amount of AHP subsidy approved for a project, the amount of such reduction shall be returned to the Bank's AHP fund.

(d) *Bank's responsibility to ensure proper use of AHP subsidies.*—(1) *In general.* Each Bank shall ensure that the AHP subsidies provided by the Bank to members are passed on to the ultimate borrower, and that the preponderance of AHP subsidies provided by the Bank is ultimately received by very low- and low- or moderate-income households.

(2) *Fairness in transactions.* Each Bank shall ensure that the terms of any member's participation in a transaction benefiting from an AHP subsidy are fair to the Program.

(3) *Market interest rate and charges.* Each Bank shall ensure that, with respect to any loan financing an AHP project, the rate of interest, fees, points, and any other charges by the lender shall not exceed a reasonable market rate of interest, fees, points, and charges for a loan of similar maturity, terms, and risk.

(4) *Lending direct subsidies.* A member or a project sponsor may lend a direct subsidy in connection with an AHP rental project involving federal Low-Income Housing Tax Credits, provided that all payments by the borrower are deferred until the end of the loan term and no interest is charged. Upon repayment of the loan, the entire amount of the direct subsidy must be repaid to the Bank.

(5) *Matched repayment schedules.* The term of a subsidized advance shall be no longer than the term of the member's loan to the AHP project funded by the advance, and the scheduled principal repayments for the subsidized advance shall be reasonably related to the scheduled principal

repayments for the member's loan to the AHP project, such that at least once in every 12-month period, the member must pay to the Bank the principal repayments received by the member on its loan to the project.

(e) *Prepayment fees charged by the Banks.* A Bank shall provide in its advances agreement with each member receiving a subsidized advance that upon prepayment of a subsidized advance, the Bank shall charge a prepayment fee only to the extent the Bank suffers an economic loss from the prepayment.

§ 960.10 Modifications of approved AHP applications.

(a) *Modification request.* A member seeking a modification of its approved AHP application due to a project modification, as defined in § 960.1, must submit a request for such modification in writing to the Bank for review and approval. A modification request must include, at a minimum:

(1) A description of any changes in the terms of the approved application;

(2) The reason for the proposed modification;

(3) In cases of requests for additional AHP subsidies, revised financial statements, sources and uses of funds, development budgets, and, in the case of rental housing projects, operating pro formas; and

(4) Any other information that the Bank determines is necessary to take action on the proposed modification.

(b) *Approval of modification request.* (1) In the case of a modification request other than for an increase in AHP subsidy, the Bank's board of directors shall approve such request, in writing, if the project:

(i) Continues to meet all of the requirements of 12 U.S.C. 1430(j) and this part; and

(ii) Continues to score high enough, as proposed to be modified, to have been approved in its original application funding period.

(2) In the case of a modification request for an increase in AHP subsidy, the Bank's board of directors may, in its discretion, approve such request, in writing, if the project satisfies the requirements of paragraph (b)(1)(i) and (ii) of this section.

(c) *No delegation.* A Bank's board of directors may not delegate to Bank officers or other Bank employees the responsibility to take action on AHP modification requests.

§ 960.11 Avoidance of actual or apparent conflicts of interest.

(a) *In general.* A Bank director, officer, employee, or contractor who has a personal interest in, or who is a director, officer or employee of an organization involved in a project that is the subject of a pending or approved AHP application, may not participate in or attempt to influence the evaluation, approval, funding, monitoring, or any remedial process for such project under the Program.

(b) *Adoption of written policy.* Each Bank's board of directors shall adopt a written policy applicable to the Bank's directors, officers, employees, and contractors to prevent actual or apparent conflicts of interest under the Program.

(c) *No delegation.* A Bank's board of directors may not delegate to Bank officers or other Bank employees the responsibility to adopt such policy.

§ 960.12 Homeownership assistance programs.

(a) A Bank, after consultation with its Advisory Council, may set aside annually up to the greater of $1 million or 10 percent of its annual required AHP contribution to fund a homeownership assistance program, pursuant to the requirements of this section. Homeownership assistance programs established by a Bank under this section shall be considered priority projects under section 10(j)(3) of the Act (12 U.S.C. 1430(j)(3)).

(b) *Use of program funds.* Pursuant to written policies established by each Bank, a Bank may provide homeownership assistance program funds to members as grants to be used to provide downpayment, closing cost, or rehabilitation assistance to participating households in connection with a household's purchase of a one-to-four family property (including a condominium or cooperative housing unit) to be used as the household's primary residence. Notwithstanding § 960.3(c)(4), homeownership assistance program funds shall not be used for homebuyer or homeowner counseling costs. A Bank may administer its homeownership assistance program through independent not-for-profit organizations with a demonstrated ability to administer program funds effectively and impartially.

(c) *Household eligibility criteria.* In order to be eligible to receive homeownership assistance program funds from a member participant, a household must:

(1) Be a low- or moderate-income household, as defined in § 960.1, at the time the household is approved for participation in the program;

(2) In the case of home purchase, complete a homebuyer counseling program provided by the member or another organization that is based on those offered by or in conjunction with a not-for-profit housing agency or other organization recognized as experienced in homebuyer counseling; and

(3) Meet such other eligibility criteria as may be established by the Bank, in its discretion, such as a matching funds or matched savings requirement on the part of the household, provided that such criteria are consistent with, and in furtherance of, the requirements and goals of the Program and the National Homeownership Strategy coordinated by the Department of Housing and Urban Development.

(d) *Notification of availability and allocation of program funds to member participants.* (1) A Bank shall notify its members of the amount of funds available under its homeownership assistance program within a reasonable period of time prior to the date that applications for such funds are due from members.

(2) A Bank may allocate homeownership assistance program funds among its members on a first-come-first-served basis, or pursuant to such other fair and reasonable procedures and criteria established by the Bank and disclosed to members, including but not limited to:

(i) Priorities for specific kinds of housing, such as housing for first-time homebuyers or housing in rural areas;

(ii) Maximum amounts of homeownership assistance program funds available to each member participant; and

(iii) Maximum amounts of homeownership assistance program funds available to each participating household.

(3) The maximum amount of homeownership assistance program funds allocated per participating household shall not exceed $5,000.

(4) In cases where the amount of homeownership assistance program funds applied for by members in a given year exceeds the amount of set-aside funds available for that year, a Bank may:

(i) Make available up to an additional $1 million from the next year's set-aside of funds for the homeownership assistance program;

(ii) Allocate funds among member participants by a random selection process;

(iii) Reduce each member participant's allocation of funds and the maximum amount of funds available to each participating household, based on fair and reasonable criteria established by the Bank and disclosed to member participants; or

(iv) Establish a waiting list by which member participants would be allocated

funds on a household-by-household basis, as funds become available.

(5) After determining the allocation of homeownership assistance program funds among member participants, the Bank shall notify each member participant of the amount of its allocation.

(e) *Disbursement of funds to member participants.* Prior to disbursement of funds by the Bank to a member participant, the Bank shall require the member to certify that:

(1) The funds received from the Bank will be provided to a participating household meeting the eligibility requirements of paragraph (c) of this section; and

(2) If the member is providing mortgage financing to the participating household, the member has provided financial or other incentives in connection with such mortgage financing, and the interest rate, fees, points, and any other charges by the member do not exceed a reasonable market interest rate, fees, points, and charges for a loan of similar maturity, terms, and risk.

(f) *Retention requirements.* A home purchased or rehabilitated using homeownership assistance program funds is subject to the retention requirements of § 960.4(a)(1).

(g) *Use of recaptured funds.* Recaptured homeownership assistance program funds shall be returned to the Bank to be made available to other participating households under its homeownership assistance program or to other AHP projects.

§ 960.13 Monitoring requirements.

(a) *AHP monitoring agreements between members and project sponsors and owners.* A Bank shall require a member to have in place an AHP monitoring agreement with each project sponsor or owner, as applicable, under which the project sponsor or owner agrees to monitor the AHP project according to the following requirements:

(1) *Owner-occupied projects.* (i) During the period of construction or rehabilitation of an owner-occupied project, the project sponsor must report to the member semiannually on whether reasonable progress is being made towards completion; and

(ii) Until all approved AHP subsidies are provided to eligible households in a project, the project sponsor must certify annually to the member and the Bank that the AHP subsidies have been used according to the commitments made in the AHP application, and such certifications shall be supported by household income verification documentation maintained by the project sponsor and available for review by the member or the Bank; and

(2) *Rental projects.* (i) During the period of construction or rehabilitation of a rental project, the project owner must report to the member semiannually on whether reasonable progress is being made towards completion;

(ii) Within the first year after project completion, the project owner must certify to the member and the Bank that the services and activities committed to in the AHP application have been provided in connection with the project;

(iii) Within the first year after project completion to the end of the project's retention period, the project owner annually must provide a list of tenant rents and incomes to the Bank and certify that:

(A) The tenant rents and incomes are accurate and in compliance with the rent and income targeting commitments made in the AHP application;

(B) The project is habitable; and

(C) The project owner regularly informs households applying for and occupying AHP-assisted units of the address of the Bank that provided the AHP subsidy to finance the project; and

(iv) A project owner must maintain tenant income verification documentation, available for review by the member or the Bank, to support such certifications.

(b) *AHP monitoring agreements between Banks and members.* A Bank shall have in place an AHP monitoring agreement with each member receiving an AHP subsidy, under which the member agrees to monitor the AHP project according to the following requirements:

(1) *Owner-occupied projects.* (i) During the period of construction or rehabilitation of an owner-occupied project, the member must take the steps necessary to determine whether reasonable progress is being made towards completion and must report to the Bank semiannually on the status of the project; and

(ii) Within one year after disbursement to a project of all approved AHP subsidies, the member must review the project documentation and certify to the Bank that:

(A) The AHP subsidies have been used according to the commitments made in the AHP application; and

(B) The AHP-assisted units are subject to deed restrictions, ''soft'' second mortgages, or other legally enforceable mechanisms pursuant to the requirements of § 960.4(a); and

(2) *Rental projects.* (i) During the period of construction or rehabilitation of a rental project, the member must take the steps necessary to determine whether reasonable progress is being made towards completion and must report to the Bank semiannually on the status of the project;

(ii) Within the first year after project completion, the member must review the project documentation and certify to the Bank that:

(A) The project is habitable;

(B) The project meets its low- and moderate-income targeting commitments; and

(C) The rents charged for income-targeted units do not exceed the maximum levels committed to in the AHP application; and

(iii) For projects receiving $500,000 or less in AHP subsidy, during the period from the second year after project completion to the end of the retention period, the member must certify to the Bank biennially that, based on an exterior visual inspection, the project continues to be occupied and appears habitable.

(c) *Monitoring requirements for Banks.*—(1) *Owner-occupied projects.* Each Bank must take the steps necessary to determine that, based on a review of the documentation for a sample of projects and units within one year of receiving the certification described in paragraph (b)(1)(ii) of this section:

(i) The incomes of the households that own the AHP-assisted units did not exceed the levels committed to in the AHP application at the time the households qualified for the AHP subsidy;

(ii) The AHP subsidies were used for eligible purposes; and

(iii) The AHP-assisted units are subject to deed restrictions, ''soft'' second mortgages, or other legally enforceable mechanisms pursuant to the requirements of § 960.4(a)(1).

(2) *Rental projects.*—(i) *In general.* Each Bank must take the steps necessary to determine that:

(A) Within the first year after completion of an AHP-assisted rental project, the services and activities committed to in the AHP application have been provided; and

(B) During the period from the second year after project completion to the end of the retention period:

(1) The project is habitable;

(2) The project meets its low- and moderate-income targeting commitments; and

(3) The rents charged for income-targeted units do not exceed the maximum levels committed to in the AHP application.

(ii) *Monitoring schedule.* A Bank's monitoring procedure shall include the following elements:

(A) *All projects.* For all projects, the Bank shall make reasonable efforts to investigate any complaints received about a specific project;

(B) *$50,001 to $250,000.* For projects receiving $50,001 to $250,000 of AHP subsidies, the Bank must review tenant rent and income documentation, including tenant income verification documents, for a sample of the project's units at least once every six years, to verify compliance with the rent and income targeting commitments in the AHP application;

(C) *$250,001 to $500,000.* For projects receiving $250,001 to $500,000 of AHP subsidies, the Bank must review tenant rent and income documentation, including tenant income verification documents, for a sample of the project's units at least once every four years, to verify compliance with the rent and income targeting commitments in the AHP application; and

(D) *Over $500,000.* For projects receiving over $500,000 of AHP subsidies, the Bank must perform an annual on-site inspection of the project, including review of tenant rent and income verification documentation, for a sample of the project's units, to verify compliance with the rent and income targeting commitments in the AHP application.

(iii) *Sampling plan.* A Bank may use a reasonable sampling plan to select the projects monitored each year and to review the documentation supporting the certifications made by members and project sponsors and owners.

(iv) *Monitoring by a housing credit agency—for projects receiving $500,000 or less of AHP subsidy.* (A) *In general.* For projects receiving $500,000 or less of AHP subsidies, a Bank may rely on monitoring by a housing credit agency that also has provided funds to the project if:

(1) The income targeting requirements, the rent requirements, and the retention period monitored by the housing credit agency are the same as, or more restrictive than, those committed to in the AHP application;

(2) The housing credit agency agrees to inform the Bank of instances where tenant rents or incomes are found to be in noncompliance with the requirements being monitored by the housing credit agency or where the project is not in a habitable condition;

(3) The Bank does not have information that monitoring by such housing credit agency is not occurring or is inadequate; and

(4) The Bank makes reasonable efforts to investigate any complaints received about the project.

(B) *Annual certification requirement for project owner.* In cases where a Bank relies on a housing credit agency to monitor a project, the project owner annually must provide a list of tenant rents and incomes to the Bank and certify that they are accurate and in compliance with the rent and income targeting commitments made in the AHP application.

§ 960.14 Corrective and remedial actions for noncompliance.

(a) *Noncompliance by project sponsors and owners.* A Bank shall require a member receiving an AHP subsidy to have in place a recapture agreement with each sponsor of an owner-occupied project and each owner of a rental project, under which the sponsor or owner agrees:

(1) To ensure that the AHP subsidy is used in compliance with the requirements of 12 U.S.C. 1430(j), this part, and the obligations committed to in the AHP application;

(2) To make reasonable efforts to cure any noncompliance, pursuant to a compliance plan approved by the Bank; and

(3) To repay the amount of any misused AHP subsidy (plus interest, if appropriate) resulting from the sponsor's or owner's noncompliance, if the noncompliance is not cured within a reasonable period of time.

(b) *Noncompliance by members.* A Bank shall have in place with each member receiving an AHP subsidy a recapture agreement under which the member agrees:

(1) To ensure that the AHP subsidy is used in compliance with the requirements of 12 U.S.C. 1430(j), this part, and the obligations committed to, and to be performed, by the member in its AHP application;

(2) To make reasonable efforts to cure any noncompliance by the member;

(3) To repay the amount of any misused AHP subsidy (plus interest, if appropriate) resulting from the member's noncompliance, if the noncompliance is not cured within a reasonable period of time;

(4) To recover any misused AHP subsidy from a project sponsor or owner under the terms of the member's recapture agreement with the project sponsor or owner, provided that the member shall not be liable to the Bank for failure to return amounts that cannot be recovered from the project sponsor or owner despite reasonable collection efforts by the member; and

(5) To return any misused subsidy recovered by the member from a project sponsor or owner to the Bank.

(c) *Noncompliance by Banks*—(1) *In general.* The Finance Board, upon determining that the misuse of AHP subsidy, or the failure to recover misused AHP subsidy, is attributable to the action or inaction of a Bank, may order the Bank to reimburse its AHP fund in an amount equal to the misused subsidy, plus interest, if appropriate.

(2) *Adequacy of settlements.* If, in a case of noncompliance by a member or a project sponsor or owner, a Bank enters into a settlement agreement or other arrangement with a member resulting in the return of a sum that is less than the full amount of any misused AHP subsidy, the Finance Board may, in its sole discretion, require the Bank to reimburse its AHP fund in an amount equal to the difference between the full amount of the misused subsidy and the sum actually recovered by the Bank, plus interest, if appropriate, unless:

(i) The Bank has sufficient documentation showing that the sum agreed to be repaid under any settlement agreement or other arrangement is reasonably justified, based on the facts and circumstances of the noncompliance (including the degree of culpability of the noncomplying parties and the extent of the Bank's recovery efforts); or

(ii) The Bank obtains a determination from the Finance Board that the sum agreed to be repaid under any settlement agreement or other arrangement is reasonably justified, based on the facts and circumstances of the noncompliance (including the degree of culpability of the noncomplying parties and the extent of the Bank's recovery efforts).

(d) *Use of recovered subsidies.* AHP subsidies recovered by a Bank pursuant to this section shall be made available for other AHP projects.

(e) *Suspension and debarment.* A Bank or the Finance Board, after notice and opportunity for a hearing, may suspend or debar a member, project sponsor, or owner from participation in the Program if such party shows a pattern of noncompliance, or engages in a single instance of flagrant noncompliance, with the requirements of 12 U.S.C. 1430(j), this part, or the obligations committed to in AHP applications.

(f) *Transfer of Program administration.* Without limitation on other remedies, the Finance Board, upon determining that a Bank has engaged in mismanagement of its Program, may designate another Bank to administer all or a portion of the first Bank's annual AHP contribution, for the benefit of the first Bank's members,

under such terms and conditions as the Finance Board may prescribe.

§ 960.15 Required annual AHP contributions.

Each Bank shall contribute annually to its Program the greater of:

(a) 10 percent of the Bank's net earnings for the previous year; or

(b) That Bank's pro rata share of an aggregate of $100 million to be contributed in total by the Banks, such proration being made on the basis of the net earnings of the Banks for the previous year.

§ 960.16 Temporary suspension of AHP contributions.

(a) *Application for temporary suspension*—(1) *Notification to Finance Board.* If a Bank finds that the contributions required pursuant to § 960.15 are contributing to the financial instability of the Bank, the Bank shall notify the Finance Board promptly, and may apply in writing to the Finance Board for a temporary suspension of such contributions.

(2) *Contents.* A Bank's application for a temporary suspension of contributions shall include:

(i) The period of time for which the Bank seeks a suspension;

(ii) The grounds for a suspension;

(iii) A plan for returning the Bank to a financially stable position; and

(iv) The Bank's annual financial report for the preceding year, if available, and the Bank's most recent quarterly and monthly financial statements and any other financial data the Bank wishes the Finance Board to consider.

(b) *Finance Board review of application for temporary suspension*—(1) *Determination of financial instability.* In determining the financial instability of a Bank, the Finance Board shall consider such factors as:

(i) Whether the Bank's earnings are severely depressed;

(ii) Whether there has been a substantial decline in the Bank's membership capital; and

(iii) Whether there has been a substantial reduction in the Bank's advances outstanding.

(2) *Limitations on grounds for suspension.* The Finance Board shall disapprove an application for a temporary suspension if it determines that the Bank's reduction in earnings is a result of:

(i) A change in the terms of advances to members which is not justified by market conditions;

(ii) Inordinate operating and administrative expenses; or

(iii) Mismanagement.

(c) *Finance Board decision.* The Finance Board's decision shall be in writing and shall be accompanied by specific findings and reasons for its action. If the Finance Board approves a Bank's application for a temporary suspension, the Finance Board's written decision shall specify the period of time such suspension shall remain in effect.

(d) *Monitoring.* During the term of a temporary suspension approved by the Finance Board, the affected Bank shall provide to the Finance Board such financial reports as the Finance Board shall require to monitor the financial condition of the Bank.

(e) *Termination of suspension.* If, prior to the conclusion of the temporary suspension period, the Finance Board determines that the Bank has returned to a position of financial stability, the Finance Board may, upon written notice to the Bank, terminate the temporary suspension.

(f) *Application for extension of temporary suspension period.* If a Bank's board of directors determines that the Bank has not returned to, or is not likely to return to, a position of financial stability at the conclusion of the temporary suspension period, the Bank may apply in writing for an extension of the temporary suspension period, stating the grounds for such extension.

§ 960.17 Affordable Housing Reserve Fund.

(a) *Deposits.* If a Bank fails to use or commit the full amount it is required to contribute to the Program in any year pursuant to § 960.15, 90 percent of the amount that has not been used or committed in that year shall be deposited by the Bank in an Affordable Housing Reserve Fund established and administered by the Finance Board. The remaining 10 percent of the unused and uncommitted amount retained by the Bank should be fully used or committed by the Bank during the following year, and any remaining portion must be deposited in the Affordable Housing Reserve Fund. Approval of AHP applications sufficient to exhaust the amount a Bank is required to contribute pursuant to § 960.15 shall constitute use or commitment of funds.

(b) *Annual statement.* By January 15 of each year, each Bank shall provide to the Finance Board a statement indicating the amount of unused and uncommitted funds from the prior year, if any, which will be deposited in the Affordable Housing Reserve Fund.

(c) *Annual notification.* By January 31 of each year, the Finance Board shall notify the Banks of the total amount of funds, if any, available in the Affordable Housing Reserve Fund.

§ 960.18 Advisory Councils.

(a) *In general.* Each Bank shall appoint an Advisory Council of 7 to 15 persons, who reside in the Bank's District and are drawn from community and not-for-profit organizations actively involved in providing or promoting low- and moderate-income housing in the District.

(b) *Nominations and appointments.* Each Bank shall solicit nominations for membership on the Advisory Council from community and not-for-profit organizations pursuant to a nomination process that is as broad and as participatory as possible, allowing sufficient lead time for responses. The Bank shall appoint Advisory Council members giving consideration to the size of the District and the diversity of low- and moderate-income housing needs and activities within the District.

(c) *Diversity of membership.* In appointing its Advisory Council, a Bank shall ensure that the membership includes persons drawn from a diverse range of organizations, provided that representatives of no one group shall constitute an undue proportion of the membership of the Advisory Council.

(d) *Terms of Advisory Council members.* The Bank shall appoint Advisory Council members to serve for no more than two consecutive terms of three years each, and such terms shall be staggered to provide continuity in experience and service to the Advisory Council.

(e) *Election of officers.* Each Advisory Council may elect from among its members a chairperson, a vice chairperson, and any other officers the Advisory Council deems appropriate.

(f) *Duties.*—(1) *Meetings with the Banks.* Representatives of the board of directors of the Bank shall meet with the Advisory Council at least quarterly to obtain the Advisory Council's advice on ways in which the Bank can better carry out its housing finance mission, including, but not limited to, advice on the low- and moderate-income housing and community development programs and needs in the Bank's District, and on the utilization of AHP subsidies, Bank advances, and other Bank credit products for these purposes.

(2) *Review of prior AHP applications.* The Bank shall comply with requests from the Advisory Council for summary information regarding AHP applications from prior funding periods. Upon the request of the Advisory Council, the Bank shall allow Advisory Council members to examine, on the Bank's

premises, any AHP applications from prior funding periods.

(3) *Annual report to the Finance Board.* Each Advisory Council shall submit to the Finance Board annually by March 1 its analysis of the low- and moderate-income housing and community development activity of the Bank by which it is appointed.

(g) *Expenses.* The Bank shall pay Advisory Council members travel expenses, including transportation and subsistence, for each day devoted to attending meetings with representatives of the board of directors of the Bank.

(h) *Avoidance of actual or apparent conflicts of interest.*—(1) *In general.* An Advisory Council member who has a personal interest in, or who is a director, officer or employee of an organization involved in a project that is the subject of a pending or approved AHP application, may not participate in or attempt to influence the evaluation, approval, funding, monitoring, or any remedial process for such project under the Program.

(2) *Adoption of written policy.* Each Bank's board of directors shall adopt a written policy applicable to the Bank's Advisory Council members to prevent actual or apparent conflicts of interest under the Program.

(3) *No delegation.* A Bank's board of directors may not delegate to Bank officers or other Bank employees the responsibility to adopt such policy.

Dated: October 9, 1996.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 96–28319 Filed 11–7–96; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–160–AD]

RIN 2120–AA64

Airworthiness Directives; Jetstream BAe Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Jetstream BAe Model ATP airplanes, that would have required repetitive inspections to detect damage of the antenna mounting reinforcing plates and surrounding fuselage skin. If any damage was detected, the proposed AD would have also required replacement of the reinforcing plate with a new reinforcing plate and/or repair of the surrounding fuselage skin, which would have terminated the repetitive inspection requirements. That proposal was prompted by reports of corrosion found at the antenna reinforcing plates, which was caused by ingress of water at the plates. This action revises the proposed rule by expanding the inspection area. The actions specified by this proposed AD are intended to prevent such corrosion, which could result in reduced structural integrity of the fuselage pressure vessel.

DATES: Comments must be received by December 2, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–160–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) 227–2141; 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–160–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–160–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Jetstream BAe Model ATP airplanes, was published as a notice of proposed rulemaking (NPRM) in the Federal Register on March 8, 1996 (61 FR 9371). That NPRM would have required repetitive detailed external visual inspections to detect damage (i.e., corrosion, cracks, pillowing, and rivet pulling) of the antenna mounting reinforcing plates and surrounding fuselage skin. For cases where any damage was detected during the inspection, the NPRM would have required replacement of the reinforcing plate with a new reinforcing plate and/or repair of the surrounding fuselage skin; this replacement/repair would have constituted terminating action for the repetitive inspection requirements. That NPRM was prompted by reports of corrosion found at the antenna reinforcing plates, which was caused by the ingress of water at the plates. That condition, if not corrected, could result in reduced structural integrity of the fuselage pressure vessel.

Actions Since Issuance of Previous Proposal

Since the issuance of that NPRM, Jetstream has issued Service Bulletin ATP–53–31, Revision 1, dated December 5, 1995. (The original issue of the service bulletin, dated July 1, 1995, was cited in the NPRM as the appropriate source of service

information.) Revision 1 of the service bulletin differs from the original issue in that it includes procedures for inspecting two additional reinforcing plates at the automatic direction finder (ADF) loop antenna positions. The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, classified this revised service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

Review of Relevant Service Information

The FAA examined the findings of the CAA and reviewed the revised service information. The FAA finds that the NPRM must be revised to require that inspections be accomplished of the inspection areas described in Revision 1 of the service bulletin. The FAA also finds that the NPRM must be revised to specify Revision 1 of the service bulletin as the appropriate source of service information for accomplishment of the replacement/repair. Paragraphs (a) and (b) of this supplemental NPRM have been revised accordingly.

In addition, a note has been added to this supplemental NPRM to specify that inspections accomplished prior to the effective date of the proposed AD, in accordance with the original version of the service bulletin, are considered acceptable for compliance with the applicable inspections in Revision 1 of the service bulletin.

Conclusion

Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,200, or $120 per airplane, per inspection cycle.

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

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), 40113, 44701.

§ 39.13 [Amended]

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

Jetstream Aircraft Limited (Formerly British Aerospace Commercial Aircraft Limited): Docket 95–NM–160–AD.

Applicability: Model BAe ATP airplanes having constructor's numbers 2002 through 2063 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been 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 request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent corrosion of the antenna mounting reinforcing plates and surrounding skin, which could result in reduced structural integrity of the fuselage pressure vessel, accomplish the following:

(a) Within 6 months after the effective date of this AD, perform a detailed external visual inspection to detect damage (i.e., corrosion, cracks, pillowing, and rivet pulling) of the antenna mounting reinforcing plates and surrounding fuselage skin in accordance with Part A of the Accomplishment Instructions of Jetstream Service Bulletin ATP–53–31, Revision 1, dated December 5, 1995.

Note 2: Inspections of the areas specified in Jetstream Service Bulletin ATP–53–31, dated July 1, 1995, that have been accomplished prior to the effective date of this AD and in accordance with that service bulletin, are considered acceptable for compliance with the inspections of those areas as required by paragraph (a) of this AD. (It should be noted, however, that Revision 1 of Service Bulletin ATP–53–31 specifies procedures for inspection of two additional ADF antenna locations.)

(1) If no damage is detected, repeat the inspection thereafter at intervals not to exceed 1 year.

(2) If any damage is detected, replace the reinforcing plate with a new reinforcing plate and/or repair the surrounding fuselage skin at the applicable times specified in Figure 4 of the service bulletin, and in accordance with Part B of the Accomplishment Instructions of the service bulletin. Accomplishment of this replacement/repair constitutes terminating action for the repetitive inspection requirements of paragraph (a)(1) of this AD.

(b) Accomplishment of the replacement/repair procedures specified in Part B of the Accomplishment Instructions of Jetstream Service Bulletin ATP–53–31, Revision 1, dated December 5, 1995, constitutes terminating action for the requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

Issued in Renton, Washington, on November 1, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–28691 Filed 11–.7–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 96–NM–154–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes. This proposal would require loosening certain nuts on the horizontal stabilizer control unit (HSCU) to reduce stress on bolts; a one-time inspection of certain bolts on the HSCU to detect cracking, and replacement, if necessary; application of corrosion protection to these bolts; and reassembly and reidentification of the modified HSCU. This proposal is prompted by reports indicating that stress corrosion, resulting from overtightening of nuts on these bolts, has caused some of these bolts to crack and fail. The actions specified by the proposed AD are intended to prevent failure of these bolts because of stress corrosion cracking which, if not corrected, could lead to loss of control of the horizontal stabilizer and reduced controllability of the airplane.

DATES: Comments must be received by December 20, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–154–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 Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1149.

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 96–NM–154–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. 96–NM–154–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises that it has received reports indicating that lower bolts joining the dog-links to the pistons of the horizontal stabilizer control unit (HSCU) have cracked and failed on some airplanes. For the dog-links to disconnect from the pistons, both lower bolts would have to fail; no disconnections, however, have been reported.

Investigation revealed that overtightening of the nuts on these bolts resulted in stress corrosion, which caused bolts to crack and fail. This condition, if not corrected, could lead to loss of control of the horizontal stabilizer and reduced controllability of the airplane.

Explanation of Relevant Service Information

Fokker has issued Service Bulletin SBF100–27–069, dated January 1, 1996, as revised by Service Bulletin Change Notification SBF100–27–069/01, dated January 8, 1996, which describes procedures for loosening (reducing the torque value) the nuts on the lower bolts that join the dog-links to the pistons of the horizontal stabilizer control unit (HSCU); a one-time inspection of these bolts to detect cracking, and replacement of discrepant bolts with serviceable bolts; application of corrosion protection to these bolts; and reassembly and reidentification of the HSCU that has been modified. The service bulletin references Menasco Aerospace Ltd. Service Bulletin 23100–27–19, dated November 10, 1995, as an additional source of service information for these procedures. The RLD classified the Fokker service bulletin, Fokker service bulletin change notification, and Menasco Aerospace Ltd. service bulletin as mandatory, and issued Netherlands airworthiness directive BLA 1996–006 (A), dated January 31, 1996, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

This airplane model is manufactured in the Netherlands 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 RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, 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.

Explanation of Requirements of Proposed Rule

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

loosening of nuts on lower bolts that join the dog-links to the pistons of the HSCU; a one-time inspection of these bolts to detect cracking, and replacement of discrepant bolts with serviceable bolts; application of corrosion protection to these bolts; and reassembly and reidentification of the HSCU that has been modified. (Some airplanes were modified on the production line, but the HSCU was not reidentified. This proposal would require that the HSCU on those airplanes also be reidentified.).

The proposed actions would be required to be accomplished in accordance with the service bulletins and service bulletin change notification described previously.

Cost Impact

The FAA estimates that 125 Fokker Model F28 Mark 0100 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per airplane to accomplish the proposed loosening of nuts, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $37,500, or $300 per airplane.

The FAA also estimates that it would take approximately 6 work hours per airplane to accomplish the proposed inspection, apply corrosion protection to the bolts, and reassemble and reidentify the HSCU. The average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $45,000, or $360 per airplane.

There currently are no known airplanes of U.S. registry that would be required to accomplish the proposed reidentification of the HSCU because the HSCU was modified on the production line and not reidentified.

The cost impact figures discussed above are 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), 40113, 44701.

§ 39.13 [Amended]

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

Fokker: Docket 96–NM–154–AD.

Applicability: Model F28 Mark 100 series airplanes, as listed in Fokker Service Bulletin SBF100–27–069, dated January 1, 1996; 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 request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the lower bolts that join the dog-links to the piston of the horizontal stabilizer control unit (HSCU) because of stress corrosion cracking, which could result in loss of control of the horizontal stabilizer and reduced controllability of the airplane, accomplish the following:

(a) Within 3 months after the effective date of this AD, loosen the nut [part number (P/N) MS17825–10] on each lower bolt (P/N 23233–1) that joins the dog-links to the piston of the HSCU, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–27–069, dated January 1, 1996, as revised by Part 1 of Fokker Service Bulletin Change Notification SBF100–27–069/01, dated January 8, 1996; and Part A of the Accomplishment Instructions of Menasco Aerospace Ltd. Service Bulletin 23100–27–19, dated November 10, 1995.

(b) Within 6 months after the effective date of this AD, inspect each lower bolt (P/N 23233–1) that joins the dog-links to the pistons of the HSCU to detect cracking and failure, in accordance with the Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–27–069, dated January 1, 1996, as revised by Part 2 of Fokker Service Bulletin Change Notification SBF100–27–069/01, dated January 8, 1996; and Part B of the Accomplishment Instructions of Menasco Aerospace Ltd. Service Bulletin 23100–27–19, dated November 10, 1995.

(1) If no cracking or failure is detected, prior to further flight, apply corrosion protection to each bolt, and reassemble and reidentify the HSCU, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–27–069, dated January 1, 1996, as revised by Part 2 of Fokker Service Bulletin Change Notification SBF100–27–069/01, dated January 8, 1996; and Part B of the Accomplishment Instructions of Menasco Aerospace Ltd. Service Bulletin 23100–27–19, dated November 10, 1995.

(2) If any cracking or failure is detected, prior to further flight, replace the discrepant bolt with a serviceable bolt, apply corrosion protection to each serviceable bolt, and reassemble and identify the HSCU, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–27–069, dated January 1, 1996, as revised by Part 2 of Fokker Service Bulletin Change Notification SBF100–27–069/01, dated January 8, 1996; and Part B of the Accomplishment Instructions of Menasco Aerospace Ltd. Service Bulletin 23100–27–19, dated November 10, 1995.

(c) For airplanes having serial numbers 11500, 11505, and 11511: Within 6 months after the effective date of this AD, reidentify the HSCU in accordance with Part 3 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–27–069, dated January 1, 1996.

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

Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

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

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

Issued in Renton, Washington, on November 1, 1996.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–28690 Filed 11–7–96; 8:45 am]

BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 181–0021; FRL–5642–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) for ozone. The revision concerns the control of oxides of nitrogen (NO_X) and oxides of sulfur (SO_X) emissions using an emissions-limiting economic incentive program (EIP), the NO_X and SO_X Regional Clean Air Incentives Market (NO_X/SO_X RECLAIM). This program, which consists of twelve rules and associated appendices known as Regulation XX, applies to facilities in the South Coast Air Quality Management District (SCAQMD) with four or more tons of NO_X or SO_X emissions per year from permitted equipment. The subject facilities, in order to meet annual emission reduction requirements, will participate in an EIP in order to reduce emissions at a significantly lower cost. The intended effect of proposing approval of this rule is to regulate emissions of NO_X in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking will incorporate this rule into the federally approved SIP. EPA has evaluated this rule and is proposing to approve it under provisions of the CAA regarding EPA actions on SIP submittals, SIPs for national primary and secondary ambient air quality standards (NAAQS), and plan requirements for nonattainment areas. Elsewhere in the Federal Register today, EPA is finalizing a limited approval/limited disapproval of an earlier version of the RECLAIM program (submitted to EPA for approval on March 21, 1994); when EPA publishes its final action approving the August 28, 1996 submittal, the possibility of sanctions mentioned in the final limited approval/limited disapproval of the earlier submittal will be removed.

DATES: Comments on this proposed action must be received in writing on or before December 9, 1996.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule and EPA's evaluation report are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Kenneth Israels, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1194.

SUPPLEMENTARY INFORMATION:

Applicability

The rule being proposed for approval into the California SIP is: SCAQMD Regulation XX, NO_X/SO_X RECLAIM. This rule was submitted by the California Air Resources Board (CARB) to EPA on August 28, 1996 and found complete on September 17, 1996.

Background

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA) were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of NO_X emissions through reasonably available control technology (RACT) are set out in section 182(f) of the CAA. On November 25, 1992, EPA published a NPRM entitled ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement) which describes and provides preliminary guidance on the requirements of section 182(f). The November 25, 1992, notice should be referred to for further information on the NO_X requirements and is incorporated into this document by reference.

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_X (''major'' as defined in section 302 and section 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas. The Los Angeles-South Coast Air Basin is classified as extreme;[1] therefore this area was subject to the RACT requirements of section 182(b)(2) and the November 15, 1992 deadline, cited below.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC (and NO_X) emissions (not covered by a pre-enactment control techniques guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO_X CTGs issued before enactment and EPA has not issued a CTG document for any NO_X sources since enactment of the CAA. The RACT rules covering NO_X sources and submitted as SIP revisions, are expected to require final installation of the actual NO_X controls as expeditiously as practicable, but no later than May 31, 1995.

On April 7, 1994, EPA published a Notice of Final Rulemaking (NFRM) concerning EIPs entitled ''Economic Incentive Program Rules,'' (EIP rules) in order to fulfill the requirements of section 182(g)(4)(A) of the Act (see 59 FR 16690). The EIP rules establish several requirements which State programs must meet. These requirements are:

- *Statement of goals and rationale.* This element shall include a clear statement as to the environmental problem being addressed, the intended environmental and economic goals of the program, and the rationale relating the incentive-based strategy to the program goals.
- *Program scope.* This element shall contain a clear definition of the sources affected by the program.

[1] The Los Angeles-South Coast Air Basin retained its designation of nonattainment and classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

• *Program baseline.* A program baseline shall be defined as a basis for projecting program results and, if applicable, for initializing the incentive mechanism (e.g., for marketable permits programs). The program baseline shall be consistent with, and adequately reflected in, the assumptions and inputs used to develop an area's reasonable further progress (RFP) plans and attainment and maintenance demonstrations, as applicable. The State shall provide sufficient supporting information from the areawide emissions inventory and other sources to justify the baseline used in the State or local EIP.

• *Replicable emission quantification methods.* This program element, for programs other than those which are categorized as directionally-sound, shall include credible, workable, and replicable methods for projecting program results from affected sources and, where necessary, for quantifying emissions from individual sources subject to the EIP. Such methods, if used to determine credit taken in attainment, RFP, and maintenance demonstrations, as applicable, shall yield results which can be shown to have a level of certainty comparable to that for source-specific standards and traditional methods of control strategy development.

• *Source requirements.* This program element shall include all source-specific requirements that constitute compliance with the program. Such requirements shall be appropriate, readily ascertainable, and State and federally enforceable.

• *Projected results and audit/reconciliation procedures.* This program element includes a commitment to ensure the timely implementation of programmatic revisions or other measures which the State, in response to the audit, deems necessary for the successful operation of the program in the context of overall RFP and attainment requirements. (see 40 CFR 51.493(f)(3)(i))

• *Implementation schedule.* The program shall contain a schedule for the adoption and implementation of all State commitments and source requirements included in the program design.

• *Administrative procedures.* The program shall contain a description of State commitments which are integral to the implementation of the program, and the administrative system to be used to implement the program, addressing the adequacy of the personnel, funding, and legislative authority.

• *Enforcement mechanisms.* The program shall contain a compliance instrument(s) for all program requirements, which is legally binding and enforceable by both the State and EPA. This program element shall also include a State enforcement program which defines violations, and specifies auditing and inspections plans and provisions for enforcement actions. The program shall contain effective penalties for noncompliance which preserve the level of deterrence in traditional programs. For all such programs, the manner of collection of penalties must be specified.

The EIP rule should be referred to for further information on the EIP requirements and is incorporated into this proposal by reference.

This document addresses EPA's proposed action for SCAQMD Regulation XX—NO_X/SO_X RECLAIM. The rule was adopted by the SCAQMD on December 7, 1995 and May 10, 1996, and submitted by the CARB on August 28, 1996. Regulation XX was found to be complete on September 17, 1996 pursuant of EPA's completeness criteria that are set forth in 40 CFR Part 51 Appendix V[2] and is being proposed for approval into the SIP. Elsewhere in the Federal Register today, EPA is finalizing a limited approval/limited disapproval of an earlier version of the RECLAIM program (submitted to EPA for approval on March 21, 1994); when EPA publishes its final action approving the August 28, 1996 submittal, the possibility of sanctions mentioned in the final limited approval/limited disapproval of the earlier submittal will be removed.

NO_X emissions contribute to the production of ground level ozone and smog. The revision concerns the control of oxides of nitrogen (NO_X) and oxides of sulfur (SO_X) emissions using an emissions-limiting EIP, NO_X/SO_X RECLAIM. This program, which consists of twelve rules and associated appendices known as Regulation XX, applies to facilities in the SCAQMD with four or more tons of NO_X or SO_X emissions per year from permitted equipment. The subject facilities, in order to meet annual emission reduction requirements, will participate in an EIP in order to reduce emissions at a significantly lower cost. The regulation was adopted as part of SCAQMD's efforts to achieve the NAAQS for ozone and in response to the CAA requirements cited above. The following is EPA's evaluation and proposed action for Regulation XX.

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

EPA Evaluation and Proposed Action

In determining the approvability of a NO_X rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). EPA's interpretation of these requirements, which forms the basis for this action, appears in the NO_X Supplement (57 FR 55620) and various other EPA policy guidance documents.[3] Among these provisions is the requirement that a NO_X rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_X emissions.

For the purposes of assisting state and local agencies in developing NO_X RACT rules, EPA prepared the NO_X Supplement to the General Preamble. In the NO_X supplement, EPA provides preliminary guidance on how RACT will be determined for stationary sources of NO_X emissions. While most of the guidance issued by EPA on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO_X (see section 4.5 of the NO_X Supplement). In addition, pursuant to section 183(c), EPA has issued alternative control technique documents (ACTs) that identify alternative controls for all categories of stationary sources of NO_X. The ACT documents provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO_X. However, the ACTs do not establish a presumptive norm for what is considered RACT for stationary sources of NO_X. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted NO_X RACT rules meet Federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

In evaluating the rule, EPA must also determine whether the section 182(b) requirement for RACT implementation by May 31, 1995 is met. The NO_X/SO_X RECLAIM program meets this requirement by establishing baseline emissions in January 1994 and July 1994 in the market which are below RACT

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice'' (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988).

and are annually reduced further below this level.

In determining the approvability of an EIP, EPA must evaluate the regulation for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 4 of this notice. Among these provisions is the requirement that an EIP rule must, at a minimum, be consistent with attainment and RFP requirements found in the CAA.

For the purpose of assisting state and local agencies in developing rules which incorporate economic incentive strategies, EPA prepared the EIP rules, cited above (59 FR 16690). In the EIP rules, EPA provides guidance on how EIPs can be designed to be consistent with the attainment and RFP requirements of the CAA. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted EIPs meet federal requirements and are fully enforceable and strengthen or maintain the SIP.

A more detailed discussion of the sources controlled, the controls required, and justification for why these controls represent RACT can be found in the Technical Support Document (TSD), dated August, 1996.

The revised RECLAIM program rule (Regulation XX) contains significant changes which address the deficiencies identified in the original NPRM, dated February 28, 1995[4] in the following ways:

- The program no longer allows the use of variances to avoid compliance with program requirements; the program now meets the requirements of Section 110(i) of the Act,
- The SCAQMD revised the program so that it meets certain new source review requirements of the Act and Part D, which were listed as deficiencies in the February 28, 1995 NPRM,
- The program no longer allows the use of Executive Officer discretion in the implementation of certain emissions monitoring provision, which were listed as deficiencies in the February 28, 1995 NPRM,
- The EPA and SCAQMD have agreed upon a permit mechanism to address the program's references to other programs, notably those involving the use of mobile source emission reduction credits (MERCs) to ensure that the program is consistent with Section 110(i) of the Act, and
- The SCAQMD, with the August 28, 1996 submittal, provided all of the necessary demonstrations to ensure that the requirements of the EIP rules are being met.

A detailed discussion of the rule provisions and evaluations has been provided in the TSD available at EPA's Region 9 office (TSD dated August, 1996).

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations and EPA policy. Therefore, SCAQMD's Regulation XX—NO_X/SO_X RECLAIM is being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a), section 182(b)(2), section 182(f), the NO_X Supplement to the General Preamble, and the EIP rules.

EPA is seeking comment in this NPRM on whether the deficiencies cited in the final limited approval/limited disapproval of NO_X/SO_X RECLAIM found elsewhere in the Federal Register today have been addressed. EPA believes that the cited deficiencies have been addressed with the August 28, 1996 submittal of revisions to Regulation XX.

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

Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

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

SIP approvals under sections 110 and 301, and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. 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 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 approval action promulgated 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, will result from this action.

[4] For more information on how these deficiencies were addressed, please see the TSD which accompanies this rulemaking, available from EPA Region 9.

D. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 7, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401–7671q.

Dated: October 6, 1996.

Felicia Marcus,

Regional Administrator.

[FR Doc. 96–28595 Filed 11–7–96; 8:45 am]

BILLING CODE 6560–50–W

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3820

[WO–320–1990–01–24 1A]

RIN 1004–AC60

Surface Management of Mineral Activities Within the Bodie Bowl Under the Bodie Protection Act of 1994

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) proposes to amend its regulations to carry out the Bodie Protection Act of 1994 (the Act). The Act withdrew Federal lands located around the historic former gold mining town of Bodie, California from availability under the mineral laws of the United States. The Act directs the Secretary of the Interior (Secretary) to determine the validity of and establish surface management requirements for all mining claims and sites within the Bodie Bowl.

DATES: Submit comments by January 7, 1997.

ADDRESSES: Submit comments or suggestions to: Director (420), Bureau of Land Management, Room 401 L, 1849 C Street, N.W., Washington, DC 20240. You may also send comments by Internet to WOComment@wo.blm.gov. Please include ''attn: AC60'' and your name and address in your Internet message. Comments will be available for public review at Room 401, 1620 L Street, N.W., Washington, DC, during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Bob Barbour, (202) 452–7784, or Roger Haskins (202) 452–0355.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Written comments on the proposed rule should be specific, confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. If possible, please reference the specific section or paragraph of the proposal that you are addressing. BLM may not consider or include in the Administrative Record for the final rule comments received after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

II. Background

The Bureau of land Management (BLM) is adding this subpart to carry out Title X of the Act of October 31, 1994, The Bodie Protection Act of 1994 (108 Stat. 4471, 4509). This Act withdrew Federal lands in Mono County, California located around the historic gold mining town of Bodie from location, leasing and disposal of minerals and mineral materials under the mining, mineral leasing, and mineral material laws of the United States. The Bodie Protection Act designated this area as the Bodie Bowl and references a map dated June 12, 1992. This map is available at the Bakersfield District Office, 3801 Pegasus Avenue, Bakersfield, California 93308 and is included in the Administrative Record for this proposed rule at the address listed above (see **ADDRESSES**). The Act provides that:

(a) The Secretary of the Interior, in consultation with the Governor of the State of California, must promulgate rules for management of mineral activities within the Bodie Bowl that are no less stringent than the rules promulgated by the National Park Service under the Mining in the Parks Act (16 U.S.C. 1901 *et seq.*), now codified at 36 CFR part 9. The BLM has consulted with the Governor of the State of California, acting by and through the State Department of Parks and Recreation, which administers the Bodie Historic Park. The Department of Parks assisted in the creation of this rule and will assist the BLM in the formulation of the final rule.

(b) The Secretary of the Interior must determine the validity of all mining claims and sites within the Bodie Bowl.

(c) Mineral patents will only be issued within the Bodie Bowl if the Secretary determines that for the claim concerned, a patent application was filed, and all requirements fully complied with, on or before January 11, 1993.

(d) Mining claims within the Bodie Bowl are prohibited from the performance of annual assessment work and must instead file an annual notice of intent to hold with the BLM.

(e) Mineral activities must be conducted so as to avoid adverse effects on historic, cultural, recreational and natural resource values of the Bodie Bowl.

III. Discussion of the Proposed Rule

The following section-by-section discussion of the proposed rule explains the requirements of the proposed rule.

Part 3820—Areas Subject to Special Mining Laws

Subpart 3826—Bodie Bowl California: Surface Management

The proposed subpart is designed as the primary mechanism for obtaining approval to conduct mineral activities within the Bodie Bowl on claims or sites determined by the Secretary to have a valid existing right. To avoid a duplication of plan of operations requirements, BLM will use this subpart in conjunction with the National Park Services (NPS) Minerals Management regulations at 36 Code of Federal Regulations (CFR) part 9, subpart A. BLM will use the procedures, standards and requirements of 36 CFR part 9, which would be incorporated by reference, to process and approve plans of operations. Where provisions of part 9 are not intended to apply, exceptions

are noted in the proposed rule. Subpart 3826 of 43 CFR part 3820 contains additional requirements for mineral activities within the Bodie Bowl. If a conflict occurs between a procedure, standard, or requirement of 36 CFR part 9 and 43 CFR part 3820, subpart 3826, the requirements of subpart 3826 prevail in all cases.

Introduction and General Provisions

Section 3826.1 What is the Purpose of This Subpart?

This section explains that the purpose of this subpart is to carry out the requirements of the Act of October 31, 1994, for Federal lands and to protect and preserve the current and historic attributes of the Bodie Bowl. It would clearly set forth that the subpart does not apply to lands patented under the public land or general mining laws.

Section 3826.2 What Standards Apply to My Mineral Activities Within the Bodie Bowl?

This section provides the standards that mineral activities must meet to protect and preserve the historic, cultural, recreational, and natural resources of the Bodie Bowl.

This section identifies the regulations under which surface management of mining claims and sites will occur on Federal lands within the Bodie Bowl.

It provides that the regulations in Title 43 of the Code of Federal Regulations continue to apply to Federal lands within the Bodie Bowl except where such regulations are inconsistent with proposed subpart 3826. For instance, all recording, transfers, annual fees, and waivers are processed pursuant to Part 3830; all claim or site definitions and location requirements are in Part 3840; and Parts 4 and 1840 will govern contests and appeals. As mentioned above, 36 CFR part 9, subpart A, as applied to and modified by subpart 3826, would apply to all surface management actions and approvals.

Section 3826.4 Are There BLM Definitions for Any of the Terms Used in This Subpart?

This section contains the proposed definitions for ''Bodie Bowl'', ''Mineral Activities'', and ''Valid Existing Rights''. The proposed definitions would track the definitions in sections 1003 and 1004(b) of the Act.

Section 3826.5 What is the Status of Federal Land Within the Bodie Bowl

This section explains that Federal land within the Bodie Bowl is withdrawn from all forms of mineral location, leasing and disposal. It would implement section 1004 of the Act.

Section 3826.6 Are State Laws Applicable?

This section explains that State laws and regulations will apply on Federal lands within the Bodie Bowl as long as such laws and regulations do not conflict with established Federal law or regulations.

Section 3826.7 What Assessment Work or Annual Maintenance Requirements Affect my Mining Claims or Sites in the Bodie Bowl?

This section explains the options available to the owners of mining claims and sites in the Bodie Bowl to avoid forfeiture of those claims and sites under the Act of August 10, 1993; 30 U.S.C. 28 f–k. Under the proposed rule, mining claims and sites within the Bodie Bowl are subject to the payment of the annual $100 per claim or site maintenance fees pursuant to 43 CFR part 3830, subpart 3833. If you own mining claims or sites within the Bodie Bowl you must either (1) pay the maintenance by August 31 of each year or (2) request a waiver from payment of the maintenance fee under 43 CFR 3833.1–6(d). Denial of access to the mining claims or sites concerned would constitute a sufficient basis for a waiver. You must also pay the $5 fee required by 43 CFR 3833.1–6(d)(3) for each claim or site listed on your waiver document. The waiver document, accompanied by the proper payment, would satisfy the requirement for a notice of intention to hold, and BLM would not require you to file a separate notice of intention to hold. For details of the waiver requirements, see 43 CFR 3833.1–6(d)(3).

Section 3826.8 Will the Secretary of the Interior Issue Me a Mineral or Mill Site Patent Within the Bodie Bowl?

The Secretary will not issue mineral patents within the Bodie Bowl. Under the Act only those claimants that applied for a mineral patent on or before to January 11, 1993 are eligible to receive a mineral patent. According to BLM records, no one filed a mineral patent application meeting the requirements of the Act and none are pending.

Use Authorization Procedures

Section 3826.110 Do I Need a Plan of Operations Within the Bodie Bowl?

This section gives the information required and procedure for filing a plan of operations. Plans of operation would be required for all mineral activities other than casual use. Operations under a notice, rather than approved plan, would not be allowed. This would be as stringent as the regulations applicable to National Park System, as required by section 1005(d) of the Act.

Section 3826.111 How Do I Obtain Access to My Mining Claims or Sites?

BLM will not approve your plan of operations until the mining claim(s) or site(s) covered by your plan are determined by the BLM or the Department to constitute valid existing rights. If BLM determines that a claim or site is not valid BLM would bring a contest action pursuant to 43 CFR 4.451. This section establishes the conditions for physical access to an operations area or claim/site.

Section 3826.120 How Do I Get My Plan of Operations Approved?

This section, along with 36 CFR 9.10, provides the process for approving a plan of operations within the Bodie Bowl.

Section 3826.130 Can I Change My Plan of Operations?

This section provides the process for revising or modifying an approved plan of operations. It is read in conjunction with 36 CFR 9.12.

Section 3826.140 Am I Required To Maintain Site, Structures and Facilities During Periods of Non-operation?

This section provides for maintenance of a safe operation and worksite if you temporarily suspend your mineral activities. It also requires reclamation of operations that are inactive for more than twelve months, unless you get BLM approval.

Section 3826.150 Will the BLM Inspect My Mineral Activities?

This section provides that the site of operations is subject to periodic inspection by BLM to ensure compliance with the approved plan of operations and the regulations.

Section 3826.160 Can BLM Suspend or Revoke My Plan of Operations for Failure To Take Corrective Action?

This section explains the reasons for which BLM will revoke an approved plan and the procedures it will use to do so. It would provide for an immediate suspension of operations if such a suspension is necessary to protect health, safety or the environment. This provision would be based upon section 302(c) of the Federal Land Policy and Management Act, 43 U.S.C. 1732(c). Such decisions would remain in effect during any

administrative appeal, unless a stay were granted.

Section 3826.170 Are Documents I Submit Open to Public Inspection?

This section provides that with regard to the public availability of documents, the Department's Freedom of Information Act rules for such evaluation and release, contained in 43 CFR part 2, will be followed.

Reclamation of Lands

Section 3826.210 Am I Responsible for Reclamation of My Claims or Sites?

This section establishes the requirement for reclamation of Federal lands affected by mineral activities authorized under 43 CFR part 3820, subpart 3826. Such reclamation would have to begin no later than six months from completion of mining operations. It also requires those claimants whose mining claims or sites are determined by BLM or the Department not to have valid existing rights, to commence final reclamation within six months of such final administrative decision. In addition if a person has no present development plans for a mining claim determined by BLM or the Department to have valid existing rights, the proposal would require him to submit a plan to reclaim previous disturbances. Such plan would have to be submitted within one year of that determination.

This section also gives the form and manner of final reclamation BLM expects at the end of mineral activities, including restoration of natural processes and historic and scenic conditions to the extent economically and technologically practicable.

Section 3826.211 Am I Responsible for Damage to Federal Lands Caused by My Mineral Activities?

Proposed 43 CFR 3826.211 would clarify that you are responsible for damages or adverse effects upon the Federal lands within the Bodie Bowl resulting from a failure to comply with your approved plan of operations.

Bonds and Financial Guarantees

Section 3826.310 Do I Need Reclamation and Performance Bonds To Conduct My Mineral Activities?

This section establishes the form and type of bonds and financial instruments that the BLM will accept for plan of operations bonds, and gives the terms and conditions to be applied to such bonds. If BLM finalizes the proposed amendment to 43 CFR part 3800, subpart 3809 (see 56 FR 31602 (July 11, 1991)) before this rulemaking is completed, the final Bodie rule would incorporate the new bonding requirements of that subpart, unless, based on public comments, BLM decides not to do so.

Prohibited Acts, Penalties, and Enforcement

Section 3826.410 What if I Fail To Comply With These Regulations?

This section explains the action that BLM will take when an operator fails to comply with these regulations. It specifies the procedures for service of a notice of noncompliance, the contents of such notices, and the consequences of the failure to comply. For instance, a record of noncompliance (one or more outstanding uncorrected notices of noncompliance) will subject the operator/claimant to a suspension or revocation of his plan of operations under 43 CFR 3826.160 and possible forfeiture of the bond or other financial guarantee by BLM to implement the corrective action specified in the notice(s) of noncompliance.

Section 3826.420 What Acts Am I Prohibited From Taking?

This section lists the actions or lack of action which are prohibited and are, therefore, subject to civil or criminal enforcement.

Section 3826.430 Will I Be Penalized if I Commit a Prohibited Act?

This section describes the civil and criminal penalties BLM may impose if you knowingly and willfully engage in a prohibited act or knowingly and willfully violate any requirement of proposed 43 CFR part 3820, subpart 3826. The criminal penalties described in this section are from the Sentencing Reform Act of 1994, *as amended* (18 U.S.C. 3551 *et seq.*), for Class A misdemeanors under that Act. Violations of FLPMA are Class A misdemeanor under that Act. Class A misdemeanors under the Sentencing Reform Act, *as amended*, provides for fines of up to $100,000 for individuals and $200,000 for organizations, or for imprisonment of individuals for not to exceed one year, or both. For paragraph (c) a conviction under the False Claims Act, 18 U.S.C. 1001, is a Class E felony under the Sentencing Reform Act of 1994. The penalty is a fine of $250,000 or imprisonment for up to five years, or both.

Appeals

Section 3826.510 What if I Disagree With a Decision Made Under This Subpart?

This section explains where to find the administrative and procedural requirements for filing a protest or appeal to an adverse decision of BLM and cross-references 43 CFR parts 4 and 1840. Proposed paragraph (b) would specify which decisions would remain in effect during the periods for appeal and during the pendency of an appeal unless a stay is granted.

IV. Procedural Matters

National Environmental Policy Act

BLM prepared an environmental assessment (EA) and determined that the proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The EA and FONSI are on file in the Administrative Record for the proposed rule at the address specified previously (see **ADDRESSES**).

Federal Paperwork Reduction Act

This subpart relies upon previously approved OMB information collection requirements for mining claim location and annual maintenance procedures under 43 CFR part 3833 (OMB clearance number 1004–0114); for plans of operations and associated financial guarantees under 43 CFR part 3800, subpart 3809 (OMB clearance number 1004–0104); and plans of operations processing, approval, and reclamation under 36 CFR part 9 (OMB clearance number 1024–0064). This proposed rule does not contain additional information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

BLM determined that the proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). There are only six mining claimants present within the limits of the Congressional withdrawal, with the mineral rights controlled by or through one claimant, Galactic Resources, Inc. No one can locate new claims within the withdrawn area.

Unfunded Mandates Reform Act

BLM has determined that this regulation is not significant under the Unfunded Mandates Reform Act of 1995 since it will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year.

This regulation will not significantly or uniquely affect small governments.

Executive Order 12988

The Department conducted an Executive Order 12988 review of the proposed rule and determined that it meets the applicable standards of section 3 (a) and (b) of the Executive Order.

Executive Order 12866

BLM reviewed the proposed rule and determined that it is not a significant regulatory action under Executive Order 12866.

Authors

The principal authors of this proposed rule are Douglas Dodge of the Bishop Resource Area, Roger Haskins of the Solid Minerals Group, Bob Barbour of the Regulatory Affairs Group, and Joel Yudson of the Office of the Solicitor, Department of the Interior.

List of Subjects in 43 CFR Part 3820

Administrative practice and procedure, Environmental protection, Fees, Intergovernmental affairs, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements, Special mining acts, Surety bonds, Surface management.

Dated: October 2, 1996.

Sylvia V. Baca,

Deputy Assistant Secretary—Land and Minerals Management.

For the reasons discussed above 43 CFR part 3820 is proposed to be amended as follows:

PART 3820—AREAS SUBJECT TO SPECIAL MINING LAWS

1. The authority citation for part 3820 is revised to read as follows:

Authority: Secs. 1001–1007, Pub. L. 103–433, 108 Stat. 4509; 30 U.S.C. 22 *et seq;* 43 U.S.C. 1701 *et seq.*

2. Subpart 3826, consisting of § 3826.1 through 3826.510, is added to read as follows:

Subpart 3826—Bodie Bowl, California: Surface Management

Introduction and General Provisions

Sec.

Use Authorization Procedures

Reclamation of Lands

Bonds and Financial Guarantees

Prohibited Acts, Penalties, and Enforcement

Appeals

Subpart 3826—Bodie Bowl, California: Surface Management

Introduction and General Provisions

§ 3826.1 What is the purpose of this subpart?

This subpart implements the requirements of the Bodie Protection Act of 1994 for all mineral activities conducted on or under mining claims, mill sites, or tunnel sites on Federal lands within the Bodie Bowl, California which result from the exercise of valid existing mineral rights on unpatented mining claims or sites. This subpart does not apply to lands patented under the public land or general mining laws.

§ 3826.2 What standards apply to my mineral activities within the Bodie Bowl?

(a) Your mineral activities must be conducted so as to:

(1) Ensure that operations and activities on mining claims and sites within the Bodie Bowl are conducted in a manner consistent with the Management Plan for the Bodie Bowl Area of Critical Environmental Concern;

(2) Avoid adverse effects on the historic, cultural, recreational, and natural resource values of the Bodie Bowl, including, but not limited to physical and aesthetic impacts to Bodie Bowl's historical integrity, cultural values, and ghost town character; and

(3) Minimize other adverse impacts to the environment.

(b) The regulations at 36 CFR 9.9 through and including 9.12 apply to mineral activities upon Federal lands within the Bodie Bowl, except as provided in this subpart. When applying 36 CFR part 9, the terms listed below have the following meanings:

(1) *Regional Director* means District Manager, Bakersfield District Office, Bureau of Land Management.

(2) *Significant* means any surface disturbance within the Bodie Bowl resulting from mineral activities other than casual use as defined in 43 CFR 3809.0–5(b).

(3) *Statement for Management* means the Management Plan for the Bodie Bowl Area of Critical Environmental Concern.

(4) *Superintendent* means Area Manager, Bishop Resource Area, Bureau of Land Management.

(5) *Unit* means the Bodie Bowl.

(c) The regulations in 43 CFR subtitle A and chapter II of subtitle B, including but not limited to groups 1800, 3700 and 3800, continue to apply to Federal lands within the Bodie Bowl unless their application is inconsistent with the provisions of this subpart.

§ 3826.4 Are there any BLM definitions for the terms used in this subpart?

(a) *Bodie Bowl* means the Federal lands and interests in lands within the area generally depicted as the Bodie Bowl on the map dated June 12, 1992, and designated as the Bodie Bowl by sections 1003 and 1004(a) of the Bodie Protection Act of 1994.

(b) *Mineral activities* means any activity involving mineral prospecting, exploration, extraction, mining, beneficiation, processing, and reclamation.

(c) *Valid existing rights* means in reference to the general mining laws that:

(1) A mining claim, mill site or tunnel site located on lands within the Bodie

Bowl that was properly located and maintained under the general mining laws on or before October 31, 1994; and

(2) (i) As to any mining claim, the claim was supported by a discovery of a valuable mineral deposit within the meaning of the general mining laws on that date, and that such claim continues to be supported by such a discovery, properly maintained, and otherwise valid;

(ii) As to any mill site, the mill site was and still is being used or occupied for uses reasonably incident to mining or milling purposes and continues to be properly maintained and otherwise valid; or

(iii) As to any tunnel site, work on the tunnel site was and is being performed with reasonable diligence by its proprietors, and continues to be properly maintained and otherwise valid.

§ 3826.5 What is the status of Federal land within the Bodie Bowl?

On October 31, 1994 the Bodie Protection Act of 1994 withdrew all Federal land within the Bodie Bowl, subject to valid existing rights, from:

(a) All entry, location, and disposal under the general mining laws (30 U.S.C. 22 *et seq.*);

(b) Leasing under the Mineral Leasing Act (30 U.S.C. 181 *et seq.*) and the Geothermal Steam Act (30 U.S.C. 1001 *et seq.*); and

(c) Disposal of mineral materials under the Materials Act of 1947 (30 U.S.C. 601 *et seq.*).

§ 3826.6 Are state laws applicable to my mineral activities within the Bodie Bowl?

Yes. State laws and regulations will apply to your operations on Federal lands within the Bodie Bowl as long as they do not conflict with Federal law or regulation.

§ 3826.7 What assessment work or annual maintenance requirements apply to my mining claims or sites in the Bodie Bowl?

If you hold mining claims and mill or tunnel sites within the Bodie Bowl, you are:

(a) Prohibited from performing annual assessment work under 43 CFR part 3850, subpart 3851 and must instead file an annual notice of intent to hold with the BLM under 43 CFR part 3830, subpart 3833. Under 43 CFR 3833.1–5(f), payment of the $100 annual maintenance fee satisfies the requirement to file a notice of intention to hold.

(b) Subject to the annual $100 per claim or site maintenance fees required under 43 CFR part 3830, subpart 3833. In this case, you must either:

(1) Pay the maintenance fees to BLM on or before each August 31; or

(2) Apply for a waiver from the maintenance fee requirement under 43 CFR 3833.1–6(d); denial by the United States of access to the mining claims or sites concerned will constitute a sufficient basis for a waiver. If you file a waiver request you must submit the $5 fee required by 43 CFR 3833.1–6(d)(3) for each mining claim, mill, or tunnel site listed on your waiver document. The filing of a waiver document with the proper service charges satisfies the requirement to file a notice of intention to hold, and a separate notice of intention to hold will not be required to be filed with the BLM.

§ 3826.8 Will the Secretary of the Interior issue me a mineral patent within the Bodie Bowl?

The Secretary will not issue a mineral patent within the Bodie Bowl. If you have mining claims within the Bodie Bowl you were required by the Bodie Protection Act of 1994 to file your patent applications on or before January 11, 1993. BLM records show that no one met this requirement.

§ 3826.9 Does BLM have a new information collection requirement under this subpart?

No new information collection is required by this subpart over and above what is already provided for under the current OMB approvals. We are required by the Paperwork Reduction Act, *as amended* (44 U.S.C. 3507) to provide you with an explanation of why information contained in this subpart is required of you. This subpart relies upon previously approved OMB information collection requirements for mining claim location and annual maintenance procedures under 43 CFR part 3830, subpart 3833 (OMB clearance number 1004–0114); for plans of operations and associated financial guarantees under 43 CFR part 3800, subpart 3809 (OMB clearance number 1004–0104); and plans of operations processing, approval, and reclamation under 36 CFR part 9 (OMB clearance number 1024–0064). Please refer to the referenced CFR parts and subparts for the necessary information collection disclosures and points of contact for comments on such information collections.

Use Authorization Procedures

§ 3826.110 Do I need a plan of operations within the Bodie Bowl?

(a) You must have an approved plan of operations to conduct mineral activities within the Bodie Bowl. You do not need a plan of operations for casual use as defined in 43 CFR 3809.0–5(b). BLM will not approve your plan of operations until the mining claim(s) or site(s) covered by your plan are determined by the BLM or the Department to constitute valid existing rights.

(b) You must file your plan of operations in accordance with 36 CFR 9.9. The following exceptions to 36 CFR 9.9 apply:

(1) In paragraph (b)(5), only the first sentence applies;

(2) Paragraph (b)(8) does not apply; and

(3) Paragraph (d) does not apply.

§ 3826.111 How do I obtain access to my mining claims or sites?

Your plan of operations must specify the location of access routes for mineral activities and other purposes necessary under this subpart. BLM may require you to use existing roads to minimize the number of access routes, and, if practicable, to construct access roads within a transportation or utility corridor.

§ 3826.120 How do I get my plan of operations approved?

BLM will process your plan of operations in accordance with 36 CFR 9.10 except for the following:

(a) Paragraph (a)(1) does not apply;

(b) The proviso at the end of paragraph (a)(3) does not apply;

(c) Paragraph (a)(5) shall not apply;

(d) The date of January 26, 1977 in 36 CFR 9.10(a)(2) and (a)(3) does not apply. Instead, for purposes of significant surface disturbances under this subpart, the date of October 31, 1994 applies; and

(e) References to 36 CFR 9.4 are not applicable to this subpart.

§ 3826.130 Can I change my plan of operations?

You can modify, supplement, or revise your plan of operations in accordance with 36 CFR 9.12, except that the reference in the last sentence of 36 CFR 9.12 to 36 CFR 9.14 does not apply. Instead, you may appeal under 43 CFR 3826.510.

§ 3826.140 Am I required to maintain my site, structures, and facilities during periods of non-operation?

You must maintain your site, structures and other facilities in a safe condition during any non-operating periods. You must, after an extended period of non-operation for other than seasonal operations, remove all structures, equipment and other facilities and reclaim the site of operations, unless you receive permission in writing from BLM to do

otherwise. BLM will consider your operation complete when you cease to operate for a period of 12 months or more. At that time, you are required to close and reclaim your site under 43 CFR 3826.210, unless you receive written permission from BLM to do otherwise.

§ 3826.150 Will BLM inspect my mineral activities?

BLM will periodically inspect your operations to determine if you are complying with these regulations and your approved plan of operations. You must permit BLM access for this purpose.

§ 3826.160 Can BLM suspend or revoke my plan of operations if I fail to take corrective action?

(a) After giving you notice and opportunity for a hearing, (except as provided in paragraph (b) of this section), the BLM may suspend or revoke approval of your plan of operations if you have any uncorrected noncompliance that violates the terms of your approved or revised plan of operations or if you have uncorrected noncompliance with any other provision of this subpart.

(b) BLM will issue an order for the immediate suspension of your operations if we determine that such a suspension is necessary to protect health, safety or the environment. You may not resume operation until you correct the situation and receive written permission from the BLM to recommence operations.

§ 3826.170 Are documents I submit open for public inspection?

Any document you submit is available for public inspection, subject to the terms of 43 CFR Part 2, the Interior Department rules implementing the Freedom of Information Act.

Reclamation of Lands

§ 3826.210 Am I responsible for reclamation of my claims or sites?

(a) You must reclaim Federal lands affected by your mineral activities as soon as possible, but in no case begin later than six (6) months after completion of mining operations. If your approved mining, reclamation or closure plan has a specified time frame for reclamation, you must meet that time frame.

(1) You must perform your reclamation in accordance with 36 CFR 9.11, except that paragraphs (a)(1), (a)(2)(iii), and (c) of 36 CFR 9.11 do not apply.

(2) You must to the extent economically and technologically practicable replace overburden and spoil material to restore natural processes.

(3) You must return the area to a condition which does not jeopardize visitor safety or public use, and to the extent economically and technologically practicable return the historic and scenic landscape to a condition equivalent to that which existed before your operations.

(b) You must submit a reclamation plan meeting the requirements of paragraph (a) of this section for all mining claims or sites that are determined by the BLM not to have valid existing rights. You will have six calendar months from the date of BLM's determination, or, if that decision is appealed under 36 CFR 3826.510 and upheld, the Department's decision to submit a reclamation plan for your claims or sites.

(c) If you have mining claims or sites that are determined by BLM or the Department to have valid existing rights and do not plan to operate on these claims or sites within one year of that determination, you must submit a reclamation plan within one year of that determination. That plan must meet the requirements of paragraph (a) of this section for disturbances caused by previous mineral activities.

§ 3826.211 Am I responsible for damage to Federal lands caused by my mineral activities?

You are responsible for any damage or adverse effects upon the Federal lands within the Bodie Bowl resulting from your failure to comply with the terms of the approved plan of operations and/or reclamation plan.

Bonds and Financial Guarantees

§ 3826.310 Do I need a reclamation bond or other financial guarantee to conduct my mineral activities?

(a) Before you begin any surface disturbance under your plan of operations, you must submit and obtain approval for a financial guarantee meeting the requirements of 43 CFR 3809.1–9. In addition to the types of bonds listed in 43 CFR 3809.1–9, you may file an irrevocable letter of credit acceptable to BLM. Your financial guarantee must be sufficient in amount to cover the estimated cost of full reclamation under your approved reclamation plan. You must file your financial guarantee in the California State Office of the Bureau of Land Management.

(b) If you revise or supplement your approved plan of operations in accordance with § 3826.130, BLM will adjust the amount of the financial guarantee to conform to the modified plan of operations.

(c) BLM may review the amount of the bond and make an adjustment based upon the outcome of our review.

Prohibited Acts, Penalties, and Enforcement

§ 3826.410 What if I fail to comply with this subpart?

(a) If you fail to comply BLM may send you a notice of noncompliance. BLM will serve a notice of noncompliance either by:

(1) Personal service (delivery) to you or your authorized agent of record; or

(2) Certified or registered mail, return receipt requested.

(b) The notice of noncompliance will specify:

(1) The regulation you violated;

(2) The corrective action you must take; and

(3) How much time you have to take the corrective action.

(c) Failure to take the necessary corrective actions within the specified time frame may subject you to:

(1) A court order enjoining continuation of operations;

(2) Penalties specified under 43 CFR 3826.430;

(3) A record of noncompliance;

(4) A suspension or revocation of your plan of operations, in accordance with § 3826.160; and

(5) Forfeiture of your bond or other financial guarantee by BLM to implement the corrective actions required in the notice of noncompliance.

§ 3826.420 What acts am I prohibited from taking?

You must not:

(a) Conduct mineral activities without the approved plan of operations required in 43 CFR part 3800, subpart 3809 and 43 CFR 3826.110.

(b) Fail to comply with a notice of noncompliance issued under 43 CFR 3826.410, unless BLM extends the time frame or otherwise modifies in writing the requirements set forth in your notice of noncompliance.

(c) Fail to complete reclamation required in your approved plan of operations and 43 CFR 3826.210.

(d) Fail to allow inspection of your mineral activities by BLM under 43 CFR 3826.150.

(e) Conduct operations which use cyanide or other leachates not described in the approved plan of operations required by 43 CFR 3826.110.

(f) Conduct operations without a financial guarantee accepted by BLM under 43 CFR 3826.310.

(g) Fail to prevent adverse effects to the historical, cultural, recreational or

natural resource values under 43 CFR 3826.2.

(h) Fail to notify BLM of, and leave intact, newly discovered cultural resources as required under 43 CFR 3826.2 (incorporating the relevant terms of 36 CFR 9.10).

(i) Fail to protect or report damage to survey and other monuments as required under 43 CFR 3826.2 (incorporating the relevant terms of 36 CFR 9.10).

(j) Fail to mark hazardous sites or conditions resulting from operations as required under 43 CFR 3826.2 (incorporating the relevant terms of 36 CFR 9.10).

(k) Fail to reclaim operations following an extended period of non-operations as required by 43 CFR 3826.210.

(l) Submit false or fictitious information or other misrepresentation.

§ 3826.430 Will I be penalized if I commit a prohibited act?

(a) If you knowingly and willfully commit one or more of the prohibited acts listed in 43 CFR 3826.420 or knowingly and willfully violate any other requirement of this subpart you are subject to criminal prosecution on each offense. Upon conviction, if you are an individual, you will be subject to a fine of not more than $100,000, or the alternate fine provisions of 18 U.S.C. 3571, or imprisoned for no more than twelve months, or both.

(b) Any organization that knowingly and willfully commits one or more of the prohibited acts of 43 CFR 3826.420 or violates any other requirement of this subpart is subject to criminal prosecution on each offense. If convicted, the organization will be subject to a fine of not more than $200,000, or the alternate fine provided for in the applicable provisions of 18 U.S.C. 3571.

(c) For each offense arising under 18 U.S.C. 1001, persons or organizations committing the offense may be fined $250,000 or imprisoned for up to 5 years, or both.

Appeals

§ 3826.510 What if I disagree with a decision made under this subpart?

(a) Any party who is adversely affected by decision made by BLM under this subpart may appeal the decision in accordance with parts 4 and 1840 of this title.

(b) Decisions issued under 43 CFR 3826.160(b) which order the immediate suspension of your operations will go into effect immediately and will remain in effect while appeals are pending unless a stay is granted in accordance with 43 CFR 4.21(b).

[FR Doc. 96–28482 Filed 11–7–96; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 961030300–6300–01; I.D. 101696D]

RIN 0648–AJ30

Magnuson Act Provisions; Essential Fish Habitat (EFH)

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

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: NMFS is in the process of developing guidelines, by regulation, to implement the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as mandated by the Sustainable Fisheries Act. These guidelines would assist Fishery Management Councils (Councils) in the description and identification of essential fish habitat (EFH), including adverse impacts on EFH, in fishery management plans (FMPs) and in the consideration of actions to conserve and enhance EFH. NMFS invites interested persons to submit written comments, information, and suggestions on all aspects of the EFH mandate. Comments from Councils, interstate fishery management commissions, state fishery management agencies, commercial and recreational fishing interests, environmental groups, and other interested parties are of particular interest.

DATES: Written comments must be received on or before December 9, 1996.

ADDRESSES: Comments should be sent to the Director, Office of Habitat Conservation, Attention: EFH, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3282.

FOR FURTHER INFORMATION CONTACT: Lee R. Crockett, 410–267–5672.

SUPPLEMENTARY INFORMATION: NMFS invites comments and information that will assist with the implementation of the new Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) mandates to: (1) Develop guidelines to assist Councils in the description and identification of EFH (including adverse impacts, and conservation and enhancement actions) for fisheries managed by any Council; (2) develop and provide information and recommendations to the Councils to assist in the identification of EFH in FMPs, adverse impacts to EFH (including adverse impacts from fishing), and actions to ensure the conservation and enhancement of EFH; and (3) recommend conservation and management measures for actions undertaken by any state or Federal agency that would adversely affect any EFH. NMFS is soliciting information on the habitat requirements, including the EFH, of fish species managed under the Magnuson-Stevens Act and the distribution of those habitats. NMFS is also soliciting information on the threats to EFH (including threats from fishing activities), the distribution of those threats, ways to prevent or mitigate the adverse impacts of those threats, and ways to conserve and enhance EFH.

Background

The Sustainable Fisheries Act, among other mandates, requires the Secretary of Commerce (Secretary), acting through NMFS, to carry out a number of activities to describe, identify, conserve, and enhance EFH. Below is a summary of the new EFH mandates of the Magnuson-Stevens Act.

Definition of EFH

EFH is defined as ''those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.''

Contents of FMPs

Several provisions were added to section (16 U.S.C. 1853(a)(7)) requiring that FMPs describe and identify EFH for the fishery based on guidelines established by the Secretary under section (16 U.S.C. 1855(b)(1)(A)). FMPs are also required to minimize the adverse effects on EFH caused by fishing, to the extent practicable. Finally, FMPs should identify other actions that encourage the conservation and enhancement of EFH.

Actions by the Secretary

• Develop guidelines, by regulation, to assist the Councils in the description and identification of EFH (including adverse impacts) in FMPs, and conservation and enhancement measures of such habitat, within 6 months of the date of enactment of the Magnuson-Stevens Act.

• Provide each Council, after consulting with the fishing industry, with recommendations and information

regarding each fishery under that Council's authority to assist in the identification of EFH, adverse impacts to EFH, and actions to ensure conservation and enhancement of that habitat.

• Review programs administered by NMFS and ensure that any relevant programs further the conservation and enhancement of EFH.

• Provide information to other Federal agencies to further the conservation and enhancement of EFH.

• Recommend conservation measures for any action undertaken by any state or Federal agency that would adversely affect any EFH.

Actions by the Councils

• The Councils are required to submit FMP amendments to the Secretary to implement the EFH and other new FMP requirements not later than 24 months after the date of enactment of the Magnuson-Stevens Act.

• Councils may comment on and make recommendations to the Secretary and any Federal or state agency concerning any activity, or proposed activity, authorized, funded, or undertaken by any Federal or state agency that may affect the habitat, including EFH, of a fishery under its authority.

• The Councils must comment on and make recommendations to the Secretary and any Federal or state agency concerning an activity that is likely to substantially affect the habitat, including EFH, of an anadromous fishery resource.

Actions Required of Other Federal Agencies

• Federal agencies must consult with the Secretary with respect to any activity, or proposed activity, authorized, funded, or undertaken by the agency that may adversely impact EFH.

• Within 30 days of receipt of a recommendation, Federal agencies are required to provide the Secretary and any Council that comments on an activity, or proposed activity, with a written description of the measures proposed by the agency for avoiding, mitigating, or offsetting the impact of the activity on EFH. If this response is inconsistent with the recommendations of the Secretary, the agency must explain that inconsistency.

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

Dated: November 4, 1996.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 96–28791 Filed 11–7–96; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 61, No. 218
Friday, November 8, 1996

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

Office of the Secretary

Members of Performance Review Boards

AGENCY: U.S. Department of Agriculture.

ACTION: Notice.

SUMMARY: This notice announces the appointment of members of the Performance Review Boards (PRBs) for the U.S. Department of Agriculture (USDA). The USDA PRBs provide fair and impartial review of Senior Executive Service (SES) performance appraisals and make recommendations to the Secretary of Agriculture, regarding final performance ratings, performance awards, pay adjustments, and Presidential Rank Awards for SES members.

EFFECTIVE DATE: November 8, 1996.

FOR FURTHER INFORMATION CONTACT: Barbara Holland, Executive Resources and Services Division, Departmental Administration Management Services, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250, (202) 720–6047.

SUPPLEMENTARY INFORMATION: The publication of PRB membership is required by Section 4314(c)(4) of Title 5, U.S.C. The following membership list represents a standing register, from which specific PRBs will be constituted.

Ackerman, Kenneth D.
Acord, Bobby R.
Ahalt, J. Dawson
Ahl, Alwynelle S.
Aldaya, George W.
Allen, Richard Dean
Alspach, David B.
Amontree, Thomas S.
Anderson, Margot H.
Andre, Pamela Q.
Andreuccetti, Eugene E.
Army, Thomas J.
Arnold, Richard W.
Arnoldi, Joan M.
Ashworth, Warren R.
Atienza, Mary E.
Baker, James Robert
Bange, Gerald A.
Barrett Jr, Fred S.
Bartuska, Ann M.
Bauer III, Henry A.
Bay, Donald M.
Beauchamp, Craig L.
Beck, Richard H.
Berg, Joel S.
Betschart, Antoinette A.
Billings, Greg T.
Billy, Thomas J.
Blackburn, Wilbert H.
Booth, Jerry J.
Bosecker, Raymond Ronald
Bosworth, Dale N.
Bottum, John S.
Braley, George A.
Breeze, Roger
Bryant, Arthur Ray
Buisch, William W.
Buntain, Bonnie J.
Buntrock, Grant B.
Burke, Brian E.
Burns, Denver P.
Burse Sr, Luther
Burt, John P.
Campbell, Arthur C.
Carey, Ann E.
Carey, Priscilla B.
Carpenter, Barry L.
Cartwright Jr, Charles W.
Chambliss, Mary T.
Cherry, John P.
Clayton, Kenneth C.
Cohen, Kenneth E.
Collins, Keith J.
Comanor, Joan M.
Connelly, Kathleen H.
Conrad, Virgil L.
Conway, Roger K.
Conway, Thomas V.
Cooksie, Carolyn B.
Coulter, Kyle Jane
David Irwin T.
Dewhurst, Stephen B.
Dittrich, Suzette M.
Dooms, Elnora C.
Drazek, Paul A.
Duesterhaus, Richard L.
Duncan, Charles N.
Duncan III, John P.
Dunkle, Richard L.
Ebbitt, James R.
Elder, Alfred S.
Elias, Thomas S.
Ellis, Joanne H.
Estill, Elizabeth
Evans, Gary R.
Evans, Reba P.
Fishman, Michael E.
Fleischman, Joyce N.
Fowler, Jerry L.
Franco, Robert
Franks Jr, William Jesse
Frazier, Gregory
Gadt, Larry O.
Galvin, Timothy J.
Gardner Jr, William Earl
Geasler, Mitchell Ray
Gelburd, Diane E.
Gerloff, Eldean D.
Giles, Jane L.
Gillam, Bertha C.
Gippert, Michael J.
Gipson, Chester A.
Glavin, Margaret Agnes
Glotfelty, Charles H.
Golden, John
Golodner, Adam M.
Greene, Frank C.
Greenshields, Bruce L.
Grundeman, Arnold James
Gugulis, Katherine C.
Guldin, Richard W.
Hadlock, Earl C.
Hagy III, William F.
Hall, David C.
Hall, John W.
Hamilton, Thomas E.
Hardy Jr, Leonard
Harrington Jr, Rube
Harris, Sharron L.
Hatamiya, Lon S.
Hatcher, Charles F.
Havlik, William J.
Hayes, Paula F.
Hebert, Thomas R.
Hefferan, Colien J.
Henneberry, Thomas J.
Hessel, David L.
Hicks, Vicki J.
Hill, Ronald W.
Hobbie, Mary Kyle
Hobbs, Alma C.
Hobbs, Ira L.
Holbrook, David M.
Hollingsworth, Jill M.
Holman, Pred Dwight
Horn, Floyd P.
Horner, Withers G.
House, Carol C.
Hudnall Jr, William J.
Hueston, William D.
Husnik, Donald F.
Jackson, Ruthie F.
Jackson, Yvette S.
Jacobs, Robert T.
Jakub, Lawrence M.
Janik, Phillip J.
Johnsen, Peter B.
Johnson, Allan S.
Johnson, Judith K.

Johnson, Paul Wesley
Johnson, Phyllis E.
Jordan, John P.
Joslin, Robert C.
Jung, Christine M.
Kaiser Jr, Harold F.
Kaplan, Dennis L.
Keeffe, Mary Ann
Keeney, Robert C.
Keith, Roderick
Kelly, James Michael
Kelly, Michael W.
Kennedy, Eileen T.
Kennedy, Maureen Ann
King, Janet C.
King, R. Alan
King Jr, Edgar G.
Knipling, Edward B.
Kuhn, Betsy A.
Kronenberger Jr, Donald R.
Laster, Danny B.
Laverty Jr, Robert L.
Lawin, Mary Jo
Lee, Warren M.
Leo, Joseph J.
Leonhardt, Barbara A.
Lewis, David N.
Lewis, Sherman L.
Lewis Jr, Robert
Lilja, Janice Grassmuck
Linden, Ralph A.
Little, James R.
Long, Richard D.
Luchsinger, Donald W.
Ludwig, William E.
Lugo, Ariel E.
Luken, Bonnie L.
Macias, Cheryl L.
Maloney, Kathryn P.
Manning, Amanda Dew
Margheim, Gary A.
Martin, Christopher J.
Martinez, Wilda H.
Matz, Deborah
Maupin, Gary T.
Mazie, Sara M.
McCleese, William L.
McCutcheon, John W.
McDonald, Stephen E.
McDougle, Janice H.
McKee, Richard M.
Medley, Terry L.
Mengeling, William L.
Mezainis, Valdis E.
Miller, Charles R.
Mills, Thomas J.
Mina, Mark T.
Montoya, David F.
Murrell, Kenneth D.
Nelson, Robert D.
Nelson, Robert Dale
Nervig, Robert M.
Newman, Richard Odell
Nordstrom, Gary R.
Novak, Jon E.
O Brien, Patrick Michael
Oberlander, Herbert
Offutt, Susan E.
Ohler, Barry A.
Oneil, Barbara T.
Oneth, Harry W.
Onstad, Charles A.
Orr, David M.
Osgood, Barbara T.
Otto, Ralph A.
Parry Jr, Richard M.
Pearson, James E.
Peer, Wilbur T.
Perry, James P.
Peters, Robert
Peterson, Kenneth R.
Phipps, Martha W.
Potts, Janet S.
Powers, Joseph A.
Powers, Judy M.
Prchal, Robert J.
Prucha, John C.
Purcell, Robert L.
Pytel, Christine
Radloff, David L.
Rains, Michael T.
Rawls, Charles R.
Read, Hershel R.
Reed, Anne F T.
Reed, Craig A.
Reed, Pearlie S.
Reginato, Robert J.
Reimers, Mark A.
Reynolds, Gray F.
Reynolds, James R.
Rhoades, James D.
Riemenschneider, Robert A.
Risbrudt, Christopher D.
Robertson, George S.
Robinson, Bobby H.
Rockey, Sarah J.
Rothbart, Herbert L.
Roussopoulos, Peter J.
Salwasser, Harold James
Satterfield, Steven E.
Schipper Jr, Arthur L.
Schroeder, James W.
Schroeter, Richard B.
Schumacher Jr, August
Schwalbe, Charles P.
Schwindaman, Dale F.
Segal, Judith A.
Sesco, Jerry A.
Sexton, Thomas J.
Seymour, Carol M.
Shackelford, Parks D.
Shands, Henry L.
Shipman, David R.
Simmons, Robert M.
Skeen, David
Smith, Dallas R.
Smith, Katherine R.
Smith, Peter Francis
Smythe, Richard V.
Sommers, William T.
Soper Jr, Richard S.
Space, James C.
Spence, Joseph
Spory, Gene P.
Sprague, G. Lynn
Squellati, Clarence P.
St John, Judith B.
Steele, W. Scott
Stencel III, John
Stewart, Ronald E.
Stockton Jr, Blaine D.
Stolfa, Patricia F.
Stommes, Eileen S.
Strating, Alfred
Stuber, Charles W.
Tanner, Steven N.
Tatum, James E.
Taylor, Michael R.
Tharrington, Ronnie O.
Thiermann, Alejandro B.
Thomas, Irving W.
Thomas, Jack W.
Thompson, Clyde
Thompson, Paul E,
Thornton, Samuel E.
Torres, Alfonso
Torgerson, Randall E.
Towns, Eleanor R.
Tuchmann, E. Thomas
Turner, James R.
Twining, Hollace L.
Unger, David G.
Vail, Kenneth H.
Valsing, D. Charles
Van Klaveren, Richard W.
Van Schilfgaarde, Jan
Verble, Sedelta D.
Vogel, Frederic A.
Vogel, Ronald J.
Vonk, Jeffrey Ronald
Wachs, Lawrence
Wachsmuth, Ina K.
Wagner, Lynnett M.
Walker, Larry A.
Walsh, Thomas M.
Walton, Thomas E.
Watkins, Dayton J.
Watkins, Shirley R.
Weber, Barbara C.
Weber, Bruce R.
Weber, Thomas A.
White, Evelyn M.
White Jr, T. Kelley
Whiteman, Glenn D.
Whitmore, Charles
Wilcox, Sterling J.
Wilds Jr, Jetie B.
Williams, John W.
Williams, Robert W.
Williamson, Robert L.
Wilson, Edward M.
Witt, Timothy Blaine
Woteki, Catherine E.
Wright, Lloyd E.
York, Phyllis B.
Young Jr, Robert W.
Zellers, Phillip
Zorn, Frances E.

Dated: November 4, 1996.

Richard E. Rominger,

Deputy Secretary.

[FR Doc. 96–28694 Filed 11–7–96; 8:45 am]

BILLING CODE 3410–96–M

Agricultural Research Service

Notice of Request for Reinstatement, With Change, of a Previously Approved Collection for Which Approval Has Expired

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Research Service's intent to request reinstatement, with change, of a previously approved collection, the Continuing Survey of Food Intakes by Individuals, for which approval has expired.

DATES: Comments on this notice must be received 65 days after date of publication to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Alanna J. Moshfegh, Research Leader, Food Surveys Research Group, Beltsville Human Nutrition Research Center, Agricultural Research Service, U.S. Department of Agriculture, 4700 River Road, Unit 83, Riverdale, MD 20737, (301) 734–8457.

SUPPLEMENTARY INFORMATION:

Title: Continuing Survey of Food Intakes by Individuals.

OMB Number: 0518–0020.

Expiration Date of Approval: January 31, 1997.

Type of Request: Reinstatement, with change, of a previously approved collection, the Continuing Survey of Food Intakes by Individuals, for which approval has expired.

Abstract: USDA has been conducting nationwide food surveys since the 1930's as one means of fulfilling its responsibility to ensure the health and well-being of Americans through improved nutrition. USDA food consumption surveys measure the levels and shifts in the food and nutrient content and the nutritional adequacy of U.S. diets over time, and provide other information pertinent to understanding diets and their determinants.

The Continuing Survey of Food Intakes by Individuals (CSFII) is a major component of the National Nutrition Monitoring and Related Research Program (NNMRRP), established by the National Nutrition Monitoring and Related Research Act of 1990 (P. L. 101–445). The CSFII addresses the requirement of the 1990 Act for continuous monitoring of the dietary and nutritional status of the U.S. population and trends with respect to such status by obtaining information on food intakes by individuals. For the CSFII, one national sample of persons from all income- and low-income (130 percent of Federal Poverty guidelines or less) households is drawn from the 50 States and Washington, D.C. Another component of the NNMRRP, the Diet and Health Knowledge Survey (DHKS), is included in the CSFII. The DHKS is the first national survey designed so that data on individuals' attitudes and knowledge about nutrition and health can be linked directly to data on their food and nutrient intakes.

The primary public policy applications of USDA's food consumption survey data include evaluating the adequacy of American diets in relationship to scientific and Federal dietary recommendations and goals. Other applications include monitoring the dietary status of at-risk population subgroups including children, the elderly, low-income, etc.; assessing the nutritional impact of Federal food assistance programs; estimating exposure to pesticide residues, food additives, and contaminants; monitoring and evaluating food use across the population specifically as it relates to food safety issues; developing food fortification, enrichment, and labeling policies and assessing the nutritional impact of those policies; and assessing demand for agricultural products.

Timely food consumption data in an electronic, user-friendly format is a goal essential for meeting the information needs of these applications. The first two years of the next CSFII are anticipated to be the research, development, and testing of a new method to meet this goal, followed by a year of data collection at the national level using the new method.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 90 minutes per response.

Respondents: Non-institutionalized individuals of all ages residing in private households.

Estimated Number of Respondents: 10,000 over 3 years.

Estimated Total Annual Burden on Respondents: 5,000 hours.

Copies of this information collection and related instructions can be obtained without charge from Katherine E. Sykes, Food Surveys Research Group, Beltsville Human Nutrition Research Center, Agricultural Research Service, U.S. Department of Agriculture, 4700 River Road, Unit 83, Riverdale, MD 20737, (301) 734–8457.

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 Katherine E. Sykes, Food Surveys Research Group, Beltsville Human Nutrition Research Center, Agricultural Research Service, U.S. Department of Agriculture, 4700 River Road, Unit 83, Riverdale, MD 20737, (301) 734–8457.

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 Beltsville, MD, October 29, 1996.

K. Darwin Murrell,

Director, Beltsville Area, Agricultural Research Service.

[FR Doc. 96–28782 Filed 11–7–96; 8:45 am]

BILLING CODE 3410–03–M

Forest Service

Easton Ridge Timber Sale, Wenatchee National Forest, Kittitas County, WA

AGENCY: Forest Service, USDA.

ACTION: Cancellation of a notice of intent to prepare an environmental impact statement.

SUMMARY: On May 2, 1991, a notice of intent to prepare an environmental impact statement (EIS) for the Easton Ridge Timber Sale on the Cle Elum Ranger District of the Wenatchee National Forest was published in the Federal Register (56 FR 20184). On June 5, 1991, a revision to the Notice of Intent was printed in the Federal Register (56 FR 25653), in which the comment period concerning the scope of analysis was extended. A Notice of Availability for the draft EIS was published in the Federal Register on June 5, 1992 (57 FR 24038). Forest Service has decided to cancel the EIS process for this proposed action. The Notice of Intent is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this cancellation to Floyd Rogalski, Cle Elum Ranger District, 803 West Second, Cle

Elum, Washington 98922 or telephone 509–674–4411.

Dated: October 29, 1996.

Catherine E. Stephenson,

District Ranger.

[FR Doc. 96–28722 Filed 11–7–96; 8:45 am]

BILLING CODE 3410–11–M

Stafford-Bear Timber Sale, Wenatchee National Forest, Kittitas County, WA

AGENCY: Forest Service, USDA.

ACTION: Cancellation of a notice of intent to prepare an environmental impact statement.

SUMMARY: On May 2, 1991, a notice of intent to prepare an environmental impact statement (EIS) for the Stafford-Bear Timber Sale on the Cle Elum Ranger District of the Wenatchee National Forest was published in the Federal Register (56 FR 20185). Forest Service has decided to cancel the preparation of an EIS for this proposed action. The Notice of Intent is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this cancellation to Floyd Rogalski, District Environmental Coordinator, Cle Elum Ranger District, 803 West 2nd, Cle Elum, Washington 98922 or telephone 509–674–4411.

Dated: October 29, 1996.

Catherine E. Stephenson,

District Ranger.

[FR Doc. 96–28723 Filed 11–7–96; 8:45 am]

BILLING CODE 3410–11–M

Lafferty Timber Sale, Wenatchee National Forest, Chelan County, WA

AGENCY: Forest Service, USDA.

ACTION: Cancellation of a notice of intent to prepare an environmental impact statement.

SUMMARY: On February 22, 1991, a notice of intent to prepare an environmental impact statement (EIS) for the Lafferty Timber Sale on the Chelan Ranger District of the Wenatchee National Forest was published in the Federal Register (56 FR 7338). A Notice of Availability for the draft EIS was published in the Federal Register on August 16, 1991 (56 FR 40895). Forest Service has decided to cancel the EIS process for this proposed action. The Notice of Intent is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this cancellation to Al Murphy, District Ranger, Chelan Ranger District, Rt. 2, Box 680, Chelan, Washington 98816 or telephone 509–682–2576.

Dated: October 29, 1996.

Al Murphy,

District Ranger.

[FR Doc. 96–28724 Filed 11–7–96; 8:45 am]

BILLING CODE 3410–11–M

Undercat/Panther Timber Sales, Wenatchee National Forest, Chelan County, WA

AGENCY: Forest Service, USDA.

ACTION: Cancellation of a notice of intent to prepare an environmental impact statement.

SUMMARY: On July 10, 1991, a notice of intent to prepare an environmental impact statement (EIS) for the Undercat/Panther Timber Sales on the Entiat Ranger District of the Wenatchee National Forest was published in the Federal Register (56 FR 31372). Forest Service has decided to cancel the preparation of an EIS for this proposed action. The Notice of Intent is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this cancellation to Tom Graham, District Environmental Coordinator, Entiat Ranger District, P.O. Box 476, Entiat, Washington 98822 or telephone 509–784–1511.

Dated: October 30, 1996.

Karin Whitehall,

District Ranger.

[FR Doc. 96–28725 Filed 11–7–96; 8:45 am]

BILLING CODE 3410–11–M

Lake Basin and Busch LP Timber Sales, Wenatchee National Forest, Chelan County, WA

AGENCY: Forest Service, USDA.

ACTION: Cancellation of a notice of intent to prepare an environmental impact statement.

SUMMARY: On March 8, 1993, a notice of intent to prepare an environmental impact statement (EIS) for the Lake Basin and Busch LP Timber Sales on the Entiat Ranger District of the Wenatchee National Forest was published in the Federal Register (58 FR 12929). Forest Service has decided to cancel the preparation of an EIS for this proposed action. The Notice of Intent is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this cancellation to Tom Graham, District Environmental Coordinator, Entiat Ranger District, P.O. Box 476, Entiat, Washington 98822, or telephone 509–784–1511.

Dated: October 30, 1996.

Karin Whitehall,

District Ranger.

[FR Doc. 96–28726 Filed 11–7–96; 8:45 am]

BILLING CODE 3410–11–M

County Timber Sale, Wenatchee National Forest, Yakima and Kittitas Counties, WA

AGENCY: Forest Service, USDA.

ACTION: Cancellation of a notice of intent to prepare an environmental impact statement.

SUMMARY: On March 29, 1991, a notice of intent to prepare an environmental impact statement (EIS) for the County Timber Sale on the Naches Ranger District of the Wenatchee National Forest was published in the Federal Register (56 FR 13112). A Notice of Availability for the draft EIS was published in the Federal Register on June 5, 1992 (57 FR 24038). Forest Service has decided to cancel the EIS process for this proposed action. The Notice of Intent is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this cancellation to Gale Grow, District Environmental Coordinator, Naches Ranger District, 10061 Highway 12, Naches, Washington 98937 or telephone 509–653–2205.

Dated: October 29, 1996.

Elton Thomas,

Resources Group Leader.

[FR Doc. 96–28727 Filed 11–7–96; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 9, 1996.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely

Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.
2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.
3. The action will result in authorizing small entities to furnish the commodities and services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Office and Miscellaneous Supplies
(Requirements for Fort McClellan, Alabama)
NPA: Alabama Industries for the Blind
Talladega, Alabama
Office and Miscellaneous Supplies
(Requirements for Fort Campbell, Kentucky)
NPA: National Industries for the Blind
Alexandria, Virginia

Services

Janitorial/Custodial
Naval Command Control & Ocean Surveillance Center
Naval Weapons Station, East Coast Division Complex
Charleston, South Carolina
NPA: Goodwill Industries of Lower SC, Inc.
Charleston, South Carolina
Switchboard Operation
Department of Veterans Affairs
New Jersey Health Care System
East Orange, New Jersey
NPA: New Jersey Association for the Deaf-Blind, Inc.
East Orange, New Jersey

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action does not appear to have a severe economic impact on future contractors for the commodities.
3. The action will result in authorizing small entities to furnish the commodities to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Spineboard
6530–01–119–0011
6530–01–119–0012

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–28776 Filed 11–7–96; 8:45 am]

BILLING CODE 6353–01–P

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: December 9, 1996.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On September 13 and 20, 1996, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (61 FR 48462 and 49435) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.
2. The action will not have a severe economic impact on current contractors for the commodity and services.
3. The action will result in authorizing small entities to furnish the commodity and services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Folder, IRS Tax Form
Document No. 6982

Services

Janitorial/Custodial
Physical Fitness Centers in Buildings 9301, 12018, 23001, 24006, 31006, 37017, 39008, 87019 and 91073
Fort Hood, Texas
Laundry Service
Naval Station Everett
Bachelor Enlisted Quarters (BEQ)
Everett, Washington

This action does not affect current contracts awarded prior to the effective

date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 96–28777 Filed 11–7–96; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration, Commerce

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Amended Export Trade Certificate of Review, Application No. 84–7A012.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to Northwest Fruit Exporters (''NFE'') on June 11, 1984. Notice of issuance of the Certificate was published in the Federal Register on June 14, 1984 (49 FR 24581).

FOR FURTHER INFORMATION CONTACT: W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1995).

The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the Federal Register. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 84–00012, was issued to NFE on June 11, 1984 (49 FR 24581, June 14, 1984) and previously amended on May 2, 1988 (53 FR 16306, May 6, 1988); September 21, 1988 (53 FR 37628, September 27, 1988); September 20, 1989 (54 FR 39454, September 26, 1989); November 19, 1992 (57 FR 55510, November 25, 1992); and August 16, 1994 (59 FR 43093).

NFE's Export Trade Certificate of Review has been amended to:

1. Add each of the following companies as a new ''Member'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Andrus & Roberts Produce Co., Sunnyside, Washington; Barbee Orchards/Obert Cold Storage, Zillah, Washington; Blue Bird, Inc., Peshastin, Washington; Blue Mountain Growers, Inc., Milton-Freewater, Oregon; Columbia Reach Pack, Yakima, Washington; Crandell Fruit Company, Wenatchee, Washington; Custom Apple Packers, Inc., Brewster, Washington; Dole Northwest, Wenatchee, Washington; Fossum Orchards, Inc., Yakima, Washington; G & G Orchards, Inc., Yakima, Washington; Keystone Ranch, Riverside, Washington; Olympic Fruit Co., Moxee, Washington; Rolling Hills Orchards, Emmett, Idaho; Roy Farms, Moxee, Washington; Sands Orchards, Inc., Emmett, Idaho; Smith & Nelson, Inc., Tonasket, Washington; Squaw Creek Ranch, Inc., Pateros, Washington; Symms Fruit Ranch, Inc., Caldwell Idaho; and The Apple House, Inc., Brewster, Washington.

2. Delete the following companies as a ''Members'' of the Certificate: Blue Chelan, Inc., Chelan, Washington; Earl E. Brown & Sons, Inc., Milton-Freewater, Oregon; Cowin & Sons, Wapato, Washington; Dovex Export Co., Wenatchee, Washington; Duckwall-Pooley Fruit Co., Odell, Oregon; E.W. Brandt & Sons, Inc., Parker, Washington; Holt and Robison Fruit Co., Inc., Omak, Washington; Jones Fruit & Produce, Inc., Cashmere, Washington; M & J Fruit Sales, Yakima, Washington; Nuchief Sales, Inc., Wenatchee, Washington; Orchard View Farms, The Dalles, Oregon; Pacific Fruit Growers & Packers, Inc., Yakima, Washington; Peshastin Fruit Growers Assn., Peshastin, Washington; Pine Canyon Fruit Co., Inc., Orondo, Washington; Poirier Warehouse, Pateros, Washington; Rainier Fruit Sales, Selah, Washington; Skookum, Inc., Wenatchee, Washington; Sun King Fruit, Sunnyside, Washington; Valicoff Fruit Company, Inc., Wapato, Washington; and Wapato Fruit, Wapato, Washington; and

3. Change the listing of the company name for the current Member ''Trout, Inc.'' to the new listing ''Trout-Blue Chelan, Inc.

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Dated: November 4, 1996.

W. Dawn Busby,

Director, Office of Export Trading Company Affairs.

[FR Doc. 96–28718 Filed 11–7–96; 8:45 am]

BILLING CODE 3510–DR–P

National Oceanic and Atmospheric Administration

[I.D. 102896D]

Permits; Foreign Fishing

In accordance with a Memorandum of Understanding with the Secretary of State, the National Marine Fisheries Service publishes for public review and comment summaries of applications received by the Secretary of State requesting permits for foreign fishing vessels to operate in the exclusive economic zone under provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). This notice concerns the receipt of an application from the Government of the Russian Federation requesting authorization to conduct joint venture operations in 1997 in the Northwest Atlantic Ocean for Atlantic sea herring and Atlantic mackerel. The large stern trawler/processors LIMB and NOVATOR are identified as the vessels that will receive Atlantic sea herring and Atlantic mackerel from U.S. vessels. Send comments on this application to:

National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Office of Sustainable Fisheries, 1315 East-West Highway, Silver Spring, MD 20910; and/or to the Regional Fishery Management Councils listed below:

Chris Kellogg, Acting Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906, (617) 231–0422;

David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 300 South New Street, Dover, DE 19901–6790, (302) 674–2331.

For further information contact Robert A. Dickinson, Office of Sustainable Fisheries, (301) 713–2337.

Dated: October 31, 1996

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–28709 Filed 11–7–96; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

November 5, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: November 5, 1996.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of of each Customs port or call (202) 927–6714. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for Categories 339 and 638/639 are being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 60 FR 65299, published on December 19, 1995). Also see 60 FR 62393, published on December 6, 1995.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 5, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on November 5, 1996, you are directed to amend the November 29, 1995 directive to increase the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
339	1,398,942 dozen.
638/639	75,325 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1995.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–28807 Filed 11–7–96; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 1:00 p.m., Tuesday, November 12, 1996.

PLACE: 1155 21st St. N.W., Washington, DC, 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Catherine D. Dixon,

Assistant to the Secretary.

[FR Doc. 96–28855 Filed 11–5–96; 8:45 am]

BILLING CODE 6351–01–M

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:00 a.m., Friday, November 22, 1996.

PLACE: 1155 21st St. NW., Washington, DC, 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–28891 Filed 11–6–96; 11:58 am]

BILLING CODE 6351–01–M

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:30 a.m., Tuesday, November 19, 1996.

PLACE: 1155 21st St., NW., Washington, DC, 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Objectives.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–28892 Filed 11–6–96; 11:58 am]

BILLING CODE 6351–01–M

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:00 a.m., Tuesday, November 19, 1996.

PLACE: 1155 21st St. NW., Washington, DC, Lobby Level Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Quarterly Objectives.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–28893 Filed 11–6–96; 11:58 am]

BILLING CODE 6351–01–M

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, November 18, 1996.

PLACE: 1155 21st St. NW., Washington, DC 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96–28894 Filed 11–6–96; 11:58 am]

BILLING CODE 6351–01–W

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Availability of Funds for Grants To Support the Martin Luther King, Jr. Service Day Initiative

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds.

SUMMARY: Pursuant to the King Holiday and Service Act of 1994, which amended the National and Community Service Act of 1990, the Corporation for National and Community Service (the Corporation) seeks to mobilize more Americans to participate in service opportunities in conjunction with the Martin Luther King, Jr. Federal Holiday. Specifically, the Corporation is authorized to pay for the Federal share of the cost of planning and carrying out such service opportunities. 42 U.S.C. § 12653(s). Accordingly, the Corporation announces the availability of up to $200,000 for individual grants up to $5,000 to support service projects under this Martin Luther King, Jr., Service Day initiative.

Service opportunities to be considered for this program ''shall consist of activities reflecting the life and teachings of Martin Luther King, Jr., such as cooperation and understanding among racial and ethnic groups, nonviolent conflict resolution, equal economic and educational opportunities, and social justice.'' 42 U.S.C. § 12653(s)(1).

Eligible service activities include, but are not limited to: community-wide servathons that bring a broad cross-section together, including schools or school districts that seek to involve all students and teachers; service-learning projects that link student service in schools, universities, and community-based organizations; faith-based service collaborations that bring together communities of faith and secular human service programs (subject to the limitations listed below); a day of service plan that is designed to produce a sustained service commitment or intense efforts to solve a narrowly defined community problem with a burst of one-day energy (i.e., renovate all public school libraries, restock all food pantries or blood banks, find a coat for every child that needs one, set a ''zero tolerance for violence'' for an area or a period of time, etc.).

Grants under this program constitute federal assistance and therefore may not be used primarily to inhibit or advance religion in a material way.

Grant funding will be available on a one-time, non-renewable basis. Grants provided for this program, together with all other Federal funds used to plan or carry out the service opportunity, may not exceed 30 percent of the cost of planning and carrying out the service opportunity. In determining the non-federal share of the costs of the program supported by the grant, the Corporation will consider in-kind contributions (including facilities, equipment, and services) made to plan and carry out the service opportunity.

DATES: The deadline for submission of applications is December 2, 1996. Applications, one signed and three copies, must be received no later than 3:00 p.m. Central Standard Time on that date. Facsimile copies will not be accepted. The Corporation anticipates making decisions on applications no later than December 10, 1996.

ADDRESSES: Applications may be obtained from, and must be submitted to: MLK Day of Service, The Corporation for National Service, North Central Service Center, 77 West Jackson Blvd., Suite 442, Chicago, IL 60604–3511. Applications may not be submitted by facsimile.

FOR FURTHER INFORMATION CONTACT: Mary Lubertozzi at (312) 353–7705. This notice may be requested in an alternative format for the visually impaired by calling (202) 606–5000, ext. 260. The Corporation's T.D.D. number is (202) 565–2799.

SUPPLEMENTARY INFORMATION:

Background

The Corporation is a federal government corporation that engages Americans of all ages and backgrounds in community-based service. This service addresses the nation's education, public safety, environmental, or other human needs to achieve direct and demonstrable results. In doing so, the Corporation fosters civic responsibility, strengthens the ties that bind us together as a people, and provides educational opportunities for those who make a substantial commitment to service. The Corporation supports a range of national service programs including AmeriCorps, Learn and Serve America, and the National Senior Service Corps.

Pursuant to the National and Community Service Act of 1990, as amended, the Corporation may make grants to share the cost of planning and carrying out service opportunities in conjunction with the Federal legal holiday honoring the birthday of Martin Luther King, Jr. The Corporation intends that these grants will: (1) Get necessary things done in communities, (2) strengthen the communities engaged in the service activity, and (3) reflect the life and teachings of Martin Luther King, Jr.

By ''getting things done,'' initiatives will help communities meet education, public safety, environmental, or human needs through direct and demonstrable service. Accordingly, the Corporation expects an initiative sponsor to identify an unmet need that is important to the community and design a project that produces a demonstrable impact on that community need.

By strengthening communities through sustained service, projects should be collaborations that bring people together in pursuit of a common objective that is of value to the community. Initiatives should engage a full range of local partners in the communities served. Service projects should be designed, implemented, and evaluated with these partners, including national service programs (AmeriCorps, Learn and Serve America, National Senior Service Corps), community-based agencies, local and state King Holiday Commissions, schools and school districts, volunteer organizations, communities of faith, businesses and foundations, state and local governments, labor organizations, and colleges and universities.

By ''reflecting the life and teaching of Martin Luther King'', initiatives should demonstrate his proposition that ''Everybody can be great because everybody can serve,'' through the types of service activities listed above.

Eligible Applicants

By law, any entity otherwise eligible for assistance under the national service laws shall be eligible to receive a grant under this announcement. The applicable laws include the National and Community Service Act of 1990, as amended, and the Domestic Volunteer Service Act of 1972, as amended. Eligible applicants include, but are not limited to: nonprofit organizations (excluding those prohibited under the Lobbying Disclosure Act of 1995 from receiving federal grants, as explained below), State Commissions, state and local governments, Indian Tribes, U.S. territories, institutions of higher education, state and local education agencies, educational institutions, private organizations that intend to utilize volunteers in carrying out the

purposes of this program, and foundations.

The Corporation especially invites applications from organizations with experience in, and commitment to, fostering service on Martin Luther King, Jr. day, including applicable State Martin Luther King, Jr. Commissions, local education agencies, faith-based partnerships, and volunteer centers.

Pursuant to the Lobbying Disclosure Act of 1995, an organization described in section 501(c)(4) of the Internal Revenue Code of 1986, 26 U.S.C. 501(c)(4), which engages in lobbying activities, is not eligible.

Overview of Application Requirements

The application shall be submitted in the required format, and shall contain the following:

1. A narrative section describing:

a. The planned activities being conducted in conjunction with Martin Luther King, Jr. Day, as well as the partnerships in the local community that are being engaged in support of the day and/or a description of sustained service activities over a period of time;

b. The organization's background and capacity to carry out this program;

c. The proposed staffing of the activity;

2. A budget in the prescribed format; and

3. Required certifications that the organization will comply with all conditions attendant to the receipt of federal funding.

The narrative portion of the application may be no longer than 15 single-sided pages double-spaced in 12-point font.

Review of Applications and Selection Criteria

The applications will be reviewed initially to confirm that the applicant is an eligible recipient and to ensure that the application contains the information required. The Corporation will assess applications based on their responsiveness to the objectives set forth in this announcement based on the following criteria listed below (in descending order of importance):

(1) *Quality.* The proposal must demonstrate the applicant's ability to meet community needs through meaningful service activities, establish strong community partnerships, and fulfill the goals of Martin Luther King Jr's life and teaching;

(2) *Organizational Capacity.* The application must demonstrate the organization's ability to carry out the activities described in the proposal, including the use of high quality staff;

(3) *Cost.* The applicant must demonstrate how this grant will be spent, including the sources and uses of matching support.

Dated: November 5, 1996.

Terry Russell,

Acting Executive Director, Corporation for National and Community Service.

[FR Doc. 96–28864 Filed 11–7–96; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Department of Defense, Office of the Deputy Under Secretary of Defense (International & Commercial Programs).

ACTION: Notice.

In compliance with Section 350(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Deputy Under Secretary of Defense (International & Commercial Programs) announces the proposed public information collection in order to implement the Defense Loan Guarantee Program and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 7, 1997.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Office of the Deputy Under Secretary of Defense (International & Commercial Programs), 3070 Defense Pentagon, 3E1082, Washington, DC 20301–3070.

FOR FURTHER INFORMATION CONTACT: To request further information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Robert Hertzfeld, Esquire, (703) 697–0351.

Title, Associated Form, and OMB Number: DELG Program Application, DD Form 2747, 0704–0391.

Needs and Uses: The information collection requirement is necessary to review and process applications for loan guarantees issued under 10 U.S.C. 2540 for defense exports.

Affected Public: Businesses or other for profit, Small businesses or organizations.

Annual Burden Hours: 20.

Number of Respondents: 20.

Responses to Respondent: 1.

Average Burden per Response: 1 Hour.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are defense suppliers or exporters, lenders or nations, who are requesting a DoD guarantee of a private sector loan in support of the sale or loan terms lease, to certain eligible countries, of U.S. defense articles, services or design and construction services. The completed form will enable the department to determine whether the proposed transaction meets statutory guidance for program implementation.

Dated: November 4, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–28754 Filed 11–7–96; 8:45 am]

BILLING CODE 5000–04–M

Defense Export Loan Guarantee Program

AGENCY: Department of Defense.

ACTION: Notice of program announcement.

SUMMARY: The National Defense Authorization Act for FY96, directs the Secretary of Defense to implement an export loan guarantee program for private sector loans made to eligible sovereign nations for the sale or long-term lease of U.S. defense articles, services or design and construction services. The program is limited to $15 billion in contingent liability and is available for NATO allies, major non-NATO allies, emerging democracies of Central Europe and non-communist members of APEC. The law requires that the program be implemented at no cost to the Department and operated through the collection of user fees and exposure fees to cover the cost of program implementation and the risk of loan default. This notice announces the Department of Defense's implementation of this law and describes the basic parameters of the program.

EFFECTIVE DATE: November 8, 1996.

FOR FURTHER INFORMATION CONTACT: The Office of the Deputy Under Secretary of Defense (International and Commercial Programs)—Defense Export Loan Guarantee Program, telephone 703–697–2685.

Introduction

Section 1321, the National Defense Authorization Act for Fiscal year 1996 (Pub. L. 104–106), codified at 10 U.S.C. 2540, directs the Secretary of Defense to establish a loan guarantee program. This notice describes the Defense Export Loan Guarantee (DELG) program established in accordance with the guidelines in the legislation.

Program Purpose

The purpose of the Department of Defense (DoD) Export Loan Guarantee program is to meet national security objectives by encouraging standardization and interoperability of defense systems with our allies, lowering purchase costs of defense items to DoD, preserving critical defense skills, and maintaining the stability of the industrial base by facilitating the export of American-made products.

Overview

The Deputy Under Secretary of Defense (International and Commercial Programs) will have oversight of the DELG program. The DELG program issues comprehensive guarantees to lenders against losses of principal or interest, or both, for loans extended to eligible countries. Guarantees are available for loans to certain sovereign nations for the sale or long-term lease of U.S. defense articles, services or design and construction services, as defined in the Arms Export Control Act, ((AECA)(22 U.S.C. 2751, et seq.)). Guarantees will only be issued if the products and services are approved for export under AECA procedures. The DELG Program will also provide loan guarantees for eligible sales under DoD's Foreign Military Sales program.

The DELG program will function much the same way as the Export Import Bank (Ex-Im Bank) functions. Under 10 U.S.C. 2540, the DELG program may not offer guarantees with terms and conditions more favorable than those offered by Ex-Im Bank. However, the DELG program procedures differ from the Ex-Im Bank procedures in several ways.

First, the DELG program must charge fees to cover all expected current and future program costs. Second, the DELG legislation requires the borrowing country (borrower) to pay an exposure fee to cover the risk associated with a potential default. That exposure fee cannot be included in the amount guaranteed. Lastly, the definition of export for the DELG program is as defined in the AECA and its implementing regulations.

Like the Ex-Im Bank's program, the DELG comprehensive guarantee commits the full faith and credit of the U.S. Government and covers 100 percent of the risk of nonpayment of principal and interest. Likewise, the borrower must accept the loan as sovereign debt and make a cash payment to the supplier of at least 15 percent of the contract price. Notes guaranteed by DoD are fully and freely transferable but all claims must be submitted by the original lender or its paying agent, as discussed below.

All loans guaranteed by DoD must be denominated and payable in U.S. currency. Current authority limits the U.S. Government's contingent liability to $15 billion under the DELG program. DoD reserves the right to limit the loan amount guaranteed for any one country.

Eligible Countries

10 U.S.C. 2540 (b) limits participation in the DELG program to countries meeting any of the following criteria.

(1) A member of the North Atlantic Treaty Organization (NATO).

(2) A country designated, as of March 31, 1995, as a major non-NATO ally pursuant to 10 U.S.C. 2350a(i)(3).

(3) A country in Central Europe that the Secretary of State has determined: (a) Has changed its form of national government from a non-democratic form to a democratic form since October 1, 1989, or (b) is in the process of changing its form of national government from a non-democratic form to a democratic form.

(4) A noncommunist country that was a member nation of the Asia Pacific Economic Cooperation (APEC) as of October 31, 1993.

Notwithstanding the above, DoD will not guarantee a loan to a country that is ineligible for guarantees from the Ex-Im Bank.

Eligible Exports

DoD will issue guarantees only for loans related to the sale or long-term lease of U.S. defense articles, services, or design and construction services as defined under the AECA. If the item to be exported contains foreign-made components, only the U.S. content as determined by DoD will be supported by a DELG guarantee. In order to qualify for a DELG guarantee, the U.S. portion of the production cost of the items exported must be greater than 50%.

Application Process

The DELG program offers both a letter of interest and a final commitment. The lender, borrower or suppliers/exporters may apply for a letter of interest. Only the lender or the borrower may apply for a final commitment. Applicants for a letter of interest will be charged a processing fee of $1,250 and applicants for a final commitment will be charged a processing fee of $25,000. Applications will not be processed without the appropriate processing fee. A letter of interest is not a prerequisite for application for a final commitment.

Applicants for a DELG guarantee must comply with all applicable U.S. laws and regulations, including those related to the export of defense articles and services.

Letter of Interest

DoD issues a letter of interest to indicate that a proposed loan may be eligible for a DELG guarantee. The letter of interest is based upon a limited review of the proposed transaction for which a loan guarantee is sought, and provides an estimate of the guarantee terms and DELG program fees. Terms and fees stated in the letter of interest are subject to change. The letter of interest is valid for six months and may be renewed. The letter of interest does not obligate DoD to provide a guarantee.

A letter of interest may be sought before the details of the transaction are fully defined. Accordingly, it is acceptable for the applicant to provide estimates on its application. However, the accuracy of the DELG program fee estimates depends on the accuracy of the information provided by the applicant.

Final Commitment

The final commitment is a firm indication that DoD will guarantee the loan for a particular sale or lease, subject to satisfaction of all conditions specified in the commitment letter. A final commitment is issued upon extensive review of the application and the documentation that must accompany it. Prior to issuance of a final commitment, DoD must receive a copy of a valid export license or other evidence of compliance with the AECA. Additionally, DoD must receive written notice from the appropriate authority of the borrower that it will accept the loan as sovereign debt.

Eligible Lenders

Lenders qualified for loan guarantees under the procedures of the Ex-Im Bank will become eligible to participate in the DELG program upon execution of the DELG Master Guarantee Agreement

(MGA). (See discussion of the Master Guarantee Agreement below.) Lenders not currently qualified must first seek qualification from Ex-Im Bank. DoD reserves the right to disallow a lender for a particular transaction, even if that lender is otherwise qualified and has signed a DELG MGA.

Master Guarantee Agreement

The MGA is an agreement between DoD and a lender. The MGA provides the general terms and conditions applicable to DELG guarantees. The MGA facilitates the guarantee process.

For each specific loan transaction, a credit agreement must be executed by the lender, the borrower and DoD. A standard credit agreement has been developed for use in these transactions. A promissory note must also be executed by the borrower for the benefit of the lender to further evidence the credit.

Fees

DoD is required to fund all program costs through the assessment of fees. As described below, several types of fees are assessed at various stages of the process to cover these costs. Fees are subject to change without notice.

Processing Fees

The processing fee for a letter of interest is $1,250. A fee of $500 will be charged to renew or update a letter of interest. The processing fee for a final commitment is $25,000.

Exposure Fee

The exposure fee covers the expected future cost to the U.S. government of a potential default by the borrower. The exposure fee is paid proportionately as the guaranteed loan is disbursed. The exposure fee must be paid by the borrower and shall not be included in the guaranteed loan amount.

DoD will calculate the exposure fee based upon the loan's repayment term (up to 12 years), its disbursement schedule (up to 5 years), the country's risk ratings (1 to 8, with 1 representing the least risk), and the guaranteed loan's interest rate. The country risk ratings are determined by schedules and agreements set by the Interagency Country Risk Assessment System (ICRAS). The Office of Management and Budget (OMB) requires that all U.S. credit agencies use the same country risk factors and methodology to calculate the subsidy (in this case, the exposure fee) inherent in a sovereign credit transaction.

These fees change periodically based upon changes in the ICRAS ratings and other factors. The exposure fee schedule for different risk ratings is available from the DELG program or the DELG internet site at www.acq.osd.mil\icp\.

Administrative Fee

The administrative fee covers the cost of servicing the guarantee during the disbursement and repayment period. The administrative fee shall be paid at loan closing and shall be three-eights of one percent (⅜%) of the guaranteed amount. The parties to the transaction must decide who will pay the administrative fee and notify DELG at the time of application.

Commitment Fee

The lender or borrower shall pay a commitment fee of one-eighth of one percent (⅛%) per annum on the undisbursed balance of a guaranteed loan. Commitment fees begin to accrue 60 days after DoD issues the final commitment letter, and will be computed on a 360-day year basis.

Other Reimbursable Costs

Parties to the transaction will reimburse DoD for any legal fees and for any other transaction costs required for loan closing and issuance of the guarantee. These fees must be paid at loan closing.

Financing Terms

Cash Payment

The borrower must make a cash payment to the supplier/exporter equal to at least 15 percent of the contract price. The payment may be paid in a lump sum prior to disbursement of the guaranteed loan, or it may be paid in installments equal to at least 15 percent of the value of each payment under the contract or lease for which the loan is being disbursed.

Coverage

Principal. DoD's maximum guarantee will be the lesser of 85 percent of the contract price or 100 percent of the U.S. content.

Interest. A DELG guarantee is available for fixed or floating-rate loans and covers 100 percent of the interest on the guaranteed amount.

Disbursement Methods

The loan disbursement period shall not extend beyond the receipt of operational capability or completion of services, and in no case shall it extend beyond five years. The DELG program recognizes two disbursement methods: the reimbursement method and the letter of credit (L/C) method. Under either method of disbursement, interest will accrue on the outstanding balance of the loan during the disbursement period.

Reimbursement method. The borrower pays the supplier in accordance with the terms of the contract and then requests that the lender disburse the loan to reimburse the borrower.

L/C method. The borrower arranges for a letter of credit to be issued by the lender, or a bank acceptable to the lender and to DoD, in favor of the supplier. The supplier then draws on the letter of credit in accordance with the contract or lease.

Repayment Term

The repayment term on a transaction supported by a loan guaranteed by DoD can be no more than 12 years. The DoD will determine the repayment period based on the contract value, the useful life of the item, and the purchasing country. Major defense equipment generally will be allowed a maximum repayment term of 12 years and all other defense end items generally will be allowed a maximum repayment term of 10 years. The term of the loan shall never exceed the expected useful life of the item, as determined by DoD.

Repayment of principal must commence within six months of the end of the disbursement period as defined above.

Conditions of the Guarantee

Supplier's Certificate

DoD requires a certification from the supplier/exporter stating that the goods and services meet the foreign content criteria and disclosing any commissions or fees other than those paid in the ordinary course of business.

Transportation

When the supplier is responsible for shipping, exports financed under a DELG guaranteed loan that are transported by ocean vessel must be shipped in vessels of U.S. registry, unless the foreign buyer obtains a waiver of this requirement from the U.S. Maritime Administration. Borrowers should address waiver requests to: Director, Officer of Market Development, Maritime Administration, U.S. Department of Transportation, 400 7th Street SW., Washington, DC 20590.

Insurance

The borrower shall obtain insurance against marine and transit hazards on all shipments guaranteed under the DELG program, or shall accept, in writing, the risk of loss of the items due to such hazards. U.S. insurers should be given a nondiscriminatory opportunity to bid for such insurance business. Premiums

for hazard insurance payable to U.S. insurance companies are eligible for DELG financing.

Conditions Precedent to Disbursement

Before any disbursements can be made under a guaranteed loan, parties to the transaction will be required to satisfy all conditions precedent set out in the underlying loan documents, including payment of all fees due and any other applicable transaction closing costs and expenses.

When the conditions precedent to disbursement have been met to the satisfaction of DoD, and upon the written request of the lender, the DoD will affix a guarantee legend to the appropriate instrument in accordance with the term of the MGA.

Transferability

The DELG guarantee is freely transferable (by endorsing the note over to the new holder) without prior approval of DoD. This facilitates loan participation and loan syndication as well as straight sale of obligations.

To provide for the transfer of notes covered by a DELG guarantee, DoD requires the use of a paying agent/registrar if the lender intends to transfer the notes. The lender may be the paying agent/registrar.

Although the obligation may be transferred, the responsibilities of the lender/paying agent are not transferred with the obligation. The original lender/paying agent is required to keep records of the transfer and the new holder of the note must work through the original lender/paying agent to make a claim against DoD.

Claims

Procedure

Only the original lender/paying agent may make a claim. Under DELG guarantees, a claim may be filed when a borrower fails to pay for any reason, including a failure to pay resulting from official debt relief accorded by the U.S. Government.

The lender/paying agent, on behalf of the note holder if other than the original lender/paying agent, may demand payment from DoD if a note is in default for an installment of either principal and/or interest for at least 30 calendar days, and if at least 15 days have elapsed since a written demand for payment was made on the borrower. The written demand to DoD must be made not later than 150 calendar days from the due date of the installment in default. If a claim is not made within 150 days of default, the DELG guarantee terminates for that installment.

The guaranteed amount includes the unpaid principal amount of the installment and any accrued unpaid interest. Before payment by DoD, any payments made by or on behalf of the borrower shall be applied to amounts due in accordance with the priorities set forth in the credit agreement or note(s).

Payment by DoD

DoD will pay the lender/paying agent the guaranteed amount of the installment after timely receipt of the lender/paying agent's fully documented claim including a written demand for payment to DoD and the note(s) endorsed to DoD. The lender/paying agent is responsible for paying the note holders.

DoD shall not accelerate any guaranteed loan or increment, or make any payments other than in accordance with the original terms of the loan.

After DoD makes the first payment under its guarantee for either principal and/or interest, DoD acquires all right, title, and interest in and to the note(s), the credit agreement, and any security. DoD, in its sole discretion, will pursue collection of all amounts due or to become due for its own account. The lender/paying agent shall be entitled only to payments from DoD under the original terms of the loan.

Additional Information

For additional information on any of the topics covered in the program description, please contact: DELG Program, Office of the Deputy Under Secretary of Defense (International and Commercial Programs), 3070 Defense Pentagon, Room 3E1082, Washington, D.C. 20301–3070. Telephone: 703–697–2685. Fax: 703–695–5343.

Dated: November 4, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–28755 Filed 11–7–96; 8:45 am]

BILLING CODE 5000–04–M

Department of the Navy

Notice of Public Hearing for the Draft Environmental Impact Statement (DEIS) for Reuse of Naval Station Puget Sound, Sand Point, Seattle, WA

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the Department of the Navy, has prepared and filed with the U.S. Environmental Protection Agency a Draft Environmental Impact Statement (DEIS) for proposed reuse of the former Naval Station Puget Sound, Sand Point property and structures in Seattle, Washington. The Draft EIS has been prepared in compliance with the 1991 Base Realignment and Closure (BRAC) directive from Congress to close Naval Station Puget Sound, Sand Point. The property will be disposed of in accordance with the provisions of the Defense Base Closure and Realignment Act (Public Law 101–510) of 1990 as amended, and applicable federal property disposal regulations. Naval Station Puget Sound, Sand Point closed on September 30, 1995.

The DEIS assesses the potential environmental impacts associated with reuse of Naval Station Puget Sound, Sand Point. Three action alternatives are under consideration in this DEIS: the City of Seattle Community Reuse Plan for Sand Point (City Plan); the City Plan with Option; and the Muckleshoot Indian Tribe Reuse Plan for the Naval Station Puget Sound, Sand Point (Muckleshoot Plan). The ''No Action'' alternative is also being evaluated.

The preferred alternative, the City Plan, proposes the following land uses to be located within five functionally distinct subareas: arts/cultural activities, open space/ recreation, education/ community activities, residential, and institutional. The Muckleshoot Plan proposes the following land uses: recreation, education, administration, recreational/commercial, warehousing, light industrial, and institutional. Under the ''No Action'' alternative, the Navy would continue to be caretaker of the base, with no defined productive reuse. Although both reuse plans have the potential for significant impacts, appropriate mitigation measures implemented by the acquiring entity would minimize the impacts.

On September 30, 1995, the Navy closed the Naval Station Puget Sound, Sand Point and placed it in caretaker status. The City Plan continues to be refined and possible changes to the City Plan under consideration are analyzed in the DEIS under the headings: Options to the City Plan and Ballard High School Option.

This DEIS evaluates the following elements of the environment: land use, historic and cultural resources, socioeconomics, recreation, transportation, noise, public services and utilities, public health and safety, biological resources/endangered species, water, and air quality.

The Draft EIS is available for review at the following public libraries: Seattle Public Library, 1000 4th Ave., Seattle; Northeast Branch Library, 6801 35th

Ave. NE, Seattle; and King County Library, 300 8th Ave. North, Seattle.

ADDRESSES: The Navy will conduct a public hearing on Monday December 2, 1996 at 7:00 PM in the auditorium at Eckstein Middle School, 3003 NE 75th Street, Seattle, Washington, to inform the public of the DEIS findings and to solicit comments. Federal, state and local agencies, and interested individuals are invited to be present or represented at the hearing. Oral comments will be heard and transcribed by a stenographer. To assure accuracy of the record, all comments should be submitted in writing. All comments, both oral and written, will become part of the public record in the study. In the interest of available time, each speaker will be asked to limit oral comments to three minutes. Longer comments should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the address listed below.

FOR FURTHER INFORMATION CONTACT: All written comments must be submitted no later than December 23, 1996, to Mr. Don Morris (Code 232DM), Engineering Field Activity Northwest, Naval Facilities Engineering Command, 19917 7th Ave. NE, Poulsbo, WA 98370–7570; telephone (360) 396–0920; FAX (360) 396–0854.

Dated: November 5, 1996.

D.E. Koenig,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 96–28767 Filed 11–7–96; 8:45 am]

BILLING CODE 3810–FF–P

Board of Visitors to the United States Naval Academy; Partially Closed Meeting

SUMMARY: Pursuant to the provisions of the Federal Advisory Act (5 U.S.C. App. 2), notice is hereby given that the Board of Visitors to the United States Naval Academy will meet on 18 November, 1996, at Alumni Hall, United States Naval Academy, Annapolis, MD at 8:30 a.m. The executive session of this meeting from approximately 8:30 a.m. to 10:30 a.m. will be closed to the public. Following executive session to the remainder of the meeting will be opened to the public.

The purpose of the meeting is to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. During executive session these inquiries will relate to the internal personnel rules and practices of the Academy, may involve on-going criminal investigations, and include discussions of personal information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, the Secretary of the Navy has determined in writing that the executive session portion of the meeting shall be closed to the public because they will be concerned with matters as outlined in section 552(b) (2), (5), (6), and (7) of title 5, United States Code. Due to extraordinary administrative delays, this published notice may provide less than 15 days notice, per 41 CFR Section 101–6.1015(b)(2).

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Adam S. Levitt, U.S. Navy Secretary to the Board of Visitors, Office of the Superintendent, United States Naval Academy, Annapolis, MD 21402–5000, telephone number (410) 293–1503.

Dated: November 5, 1996.

D.E. Koenig,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 96–28764 Filed 11–7–96; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Public Meetings on Electricity Restructuring

AGENCY: Office of Policy, U.S. Department of Energy.

ACTION: Notice of public meetings.

SUMMARY: On September 27, 1996, the U.S. Department of Energy announced two public meetings to solicit input from affected constituencies before formulating the Department's recommendation respecting electric industry restructuring. (61 FR 50810) This is an announcement for two more public meetings in Chicago, Illinois and Atlanta, GA. The midwest regional meeting in Chicago, Illinois will focus on market structure and operational issues. The southeast regional meeting in Atlanta, Georgia will provide an opportunity to revisit issues already covered as well as new ones such as the Public Utility Regulatory Policies Act, tax issues, and research and development. Although each meeting will focus on specific issue areas, participants will be allowed to address other topics pertaining to electric industry restructuring.

DATES: November 15, 1996: Chicago, Illinois; December 12, 1996: Atlanta, GA.

ADDRESSES: The meetings will be held at the following Addresses:

Midwest Regional Meeting, Marriott - Chicago Downtown, 540 North Michigan Avenue, Chicago, Illinois

Southeast Regional Meeting, Site TBD, Atlanta, GA

Information Hotline: (423) 576–3610.

Issued in Washington, D.C. November 4, 1996.

Marc Chupka,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 96–28744 Filed 11–7–96; 8:45 am]

BILLING CODE 6450–01–P

Office of Energy Efficiency and Renewable Energy

[Case No. DH–006]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Vented Home Heating Equipment Test Procedure to Vermont Castings, Inc.

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: Notice is given of the Decision and Order (Case No. DH–006) granting a Waiver to Vermont Castings, Inc. (Vermont Castings) from the existing Department of Energy (DOE or Department) test procedure for vented home heating equipment. The Department is granting Vermont Castings' Petition for Waiver regarding pilot light energy consumption for manually controlled heaters in the calculation of Annual Fuel Utilization Efficiency (AFUE), and calculation procedure for weighted average steady state efficiency for manually controlled heaters with various input rates for its model DV40 manually controlled vented heater.

FOR FURTHER INFORMATION CONTACT:

William W. Hui, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–43

Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–9145

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0103, (202) 586–9507.

SUPPLEMENTARY INFORMATION: In accordance with Title 10 CFR 430.27(j), notice is hereby given of the issuance of the Decision and Order as set out below.

In the Decision and Order, Vermont Castings has been granted a Waiver for its model DV40 manually controlled vented heater, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, on November 4, 1996.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Decision and Order

In the matter of: Vermont Castings, Inc. (Case No. DH–006).

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act, Public Law 94–163, 89 Stat. 917, as amended (EPCA), which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including vented home heating equipment. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at Title 10 CFR Part 430, Subpart B.

The Department amended the prescribed test procedures by adding Title 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

Vermont Castings filed a ''Petition for Waiver,'' dated July 12, 1996, in accordance with section 430.27 of Title 10 CFR Part 430. The Department published in the Federal Register on September 10, 1996, Vermont Castings' Petition and solicited comments, data and information respecting the Petition. 61 FR 47741, September 10, 1996. Vermont Castings also filed an ''Application for Interim Waiver'' under section 430.27(b)(2), which DOE granted on September 4, 1996. 61 FR 47741, September 10, 1996.

No comments were received concerning either the ''Petition for Waiver'' or the ''Interim Waiver.'' The Department consulted with the Federal Trade Commission (FTC) concerning the Vermont Castings Petition. The FTC did not have any objections to the issuance of the waiver to Vermont Castings.

Assertions and Determinations

Vermont Castings' Petition seeks a waiver from the DOE test provisions regarding (a) pilot light energy consumption for manually controlled heaters in the calculation of AFUE and (b) calculation procedure for weighted average steady state efficiency for manually controlled heaters with various input rates. The DOE test provisions in section 3.5 of Title 10 CFR Part 430, Subpart B, Appendix O requires measurement of energy input rate to the pilot light (Q_P) with an error no greater than 3 percent for vented heaters, and use of this data in section 4.2.6 for the calculation of AFUE using the formula: $AFUE=[4400\eta_{ss}\eta_u Q_{in\text{-}max}]/[4400\eta_{ss}Q_{in\text{-}max}+2.5(4600)\eta_u Q_P]$. Vermont Castings requests the allowance to delete the $[2.5(4600)\eta_u Q_P]$ term in the denominator in the calculation of AFUE when testing its model DV40 manually controlled vented heater. Vermont Castings states that its model DV40 manually controlled vented heaters are designed with a transient pilot which is to be turned off by the user when the heater is not in use.

The control knob on the combination gas control in these heaters has three positions: ''OFF,'' ''PILOT'' and ''ON.'' Gas flow to the pilot is obtained by rotating the control knob from ''OFF'' to ''PILOT,'' depressing the knob, holding in, pressing the piezo igniter. When the pilot heats a thermocouple element, sufficient voltage is supplied to the combination gas control for the pilot to remain lit when the knob is released and turned to the ''ON'' position. The main burner can then be ignited by moving an ON/OFF switch to the ''ON'' position. Instructions to instruct users to turn the gas control knob to the ''OFF'' position when the heater is not in use, which automatically turns off the pilot, are provided in the User's Instruction Manual and on a label adjacent to the gas control knob. If the manufacturer's instructions are observed by the user, the pilot light will not be left on. This will result in a lower energy consumption, and in turn a higher efficiency than calculated by the current DOE test procedure. Since the current DOE test procedure does not address this issue, Vermont Castings asks that the Waiver be granted.

Based on DOE's review of how Vermont Castings' model DV40 manually controlled vented heater operates and the fact that if the manufacturer's instructions are followed, the pilot light will not be left on, DOE grants Vermont Castings a Petition for Waiver to exclude the assumed pilot light energy input term in the calculation of AFUE.

This decision is subject to the condition that the heaters shall have an easily read label near the gas control knob instructing the user to turn the valve to the off-position when the heaters are not in use be maintained.

Vermont Castings also seeks a Waiver from the DOE test provisions in section 3.1.1 of Title 10 CFR Part 430, Subpart B, Appendix O that requires steady state efficiency for manually controlled heaters with various flow rates to be determined at a fuel input rate that is within ±5 percent of 50 percent of the maximum fuel input rate, and the use of this data in section 4.2.4 to determine the weighted average steady state efficiency in the calculation of AFUE.

Vermont Castings states that its manually controlled heaters utilize a gas control with a variable pressure regulator control that allows the user to select various fuel input rates by varying the range of pressures of the heaters, and requests that it be allowed to determine steady state efficiency and weighted average steady state efficiency in the calculation of AFUE at a minimum fuel input rate of no greater than two-thirds of the maximum fuel input rate instead of the specified ±5 percent of 50 percent of the maximum fuel input rate. Also, previous Petitions for Waiver to exclude the pilot light energy input term in the calculation of AFUE for home heating equipment with a manual transient pilot control and allowance to determine steady state efficiency and weighted average steady state efficiency used in the calculation of AFUE at a minimum fuel input rate of no greater than two-thirds of the maximum fuel input rate have been granted by DOE to Appalachian Stove and Fabricators, Inc., 56 FR 51711, October 15, 1991; Valor Inc., 56 FR 51714, October 15, 1991; CFM International Inc., 61 FR 17287, April 19, 1996; Vermont Castings, Inc., 61 FR

17290, April 19, 1996; and Superior Fireplace Company, 61 FR 17885, April 23, 1996.

Based on DOE having granted similar waivers in the past to heaters utilizing a variable pressure regulator control that allows a user to set various fuel input rates, DOE agrees that a waiver should be granted to allow the determination of steady state efficiency and weighted average steady state efficiency used in the calculation of AFUE at a minimum fuel input rate of no greater than two-thirds of the maximum fuel input rate instead of the specified ±5 percent of 50 percent of the maximum fuel input rate for Vermont Castings model DV40 manually controlled vented heater.

It is therefore, ordered that:

(1) The ''Petition for Waiver'' filed by Vermont Castings, Inc. (Case No. DH–006) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of Appendix O of Title 10 CFR Part 430, Subpart B, Vermont Castings, Inc. shall be permitted to test its model DV40 manually controlled vented heaters on the basis of the test procedure specified in Title 10 CFR Part 430, with modifications set forth below:

(i) Delete paragraph 3.5 of Appendix O.

(ii) The last paragraph of 3.1.1 of Appendix O is revised to read as follows:

3.1.1 (a) For manually controlled gas fueled vented heaters, with various input rates determine the steady-state efficiency at:

(1) A fuel input rate within ±5 percent of 50 percent of the maximum fuel input rate or,

(2) The minimum fuel input rate if the design of the heater is such that ±5 percent of 50 percent of the maximum fuel input rate can not be set, provided this minimum input rate is no greater than two-thirds of the maximum input rate of the heater.

(b) If the heater is designed to use a control that precludes operation at other than maximum output (single firing rate) determine the steady state efficiency at the maximum input rate only.

(iii) Delete paragraph 4.2.4 of Appendix O and replace with the following paragraph:

4.2.4 Weighted Average Steady-State Efficiency. (a) For manually controlled heaters with various input rates, the weighted average steady-state efficiency ($\eta_{SS\text{-}WT}$) is:

(1) At ±5 percent of 50 percent of the maximum fuel input rate as measured in either section 3.1.1 to this appendix for manually controlled gas vented heaters or section 3.1.2 to this appendix for manually controlled oil vented heaters, or

(2) At the minimum fuel input rate as measured in either section 3.1.1 to this appendix for manually controlled gas vented heaters or section 3.1.2 to this appendix for manually controlled oil vented heaters if the design of the heater is such that ±5 percent of 50 percent of the maximum fuel input rate cannot be set, provided the tested input rate is no greater than two-thirds of maximum input rate of the heater.

(b) For manually controlled heater with one single firing rate, the weighted average steady-state efficiency is the steady-state efficiency measured at the single firing rate.

(iv) Delete paragraph 4.2.6 of Appendix O and replace with the following paragraph:

4.2.6 Annual Fuel Utilization Efficiency. For manually controlled vented heaters, calculate the Annual Fuel Utilization Efficiency (AFUE) as a percent and defined as:

$AFUE = \eta_u$

where:

η_u = as defined in section 4.2.5 of this appendix.

(v) With the exception of the modification set forth above, Vermont Castings, Inc. shall comply in all respects with the test procedures specified in Appendix O of Title 10 CFR Part 430, Subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to model DV40 manually controlled vented heater manufactured by Vermont Castings, Inc.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that a factual basis underlying the Petition is incorrect.

(5) Effective November 4, 1996, this Waiver supersedes the Interim Waiver granted Vermont Castings, Inc. on September 4, 1996. 61 FR 47741, September 10, 1996. (Case No. DH–006).

Issued in Washington, DC, on November 4, 1996.

Christine A. Ervin,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 96–28745 Filed 11–7–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ER97–178–000]

Boston Edison Company; Notice of Filing

November 4, 1996.

Take notice that on October 11, 1996, Boston Edison Company tendered for filing its compliance refund report pursuant to the Commission's September 16, 1996 letter order in Docket Nos. ER93–150–009, EL93–10–006 and EL94–73–001.

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 November 15, 1996. 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. 96–28707 Filed 11–7–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–371–001 & Docket No. ER95–1295–001 (Not Consolidated)]

Cleveland Electric Illuminating Company and Market Responsive Energy, Inc.; Notice of Filing

November 4, 1996.

Take notice that on October 11, 1996, Cleveland Electric Illuminating Company tendered for filing revised Market Based Tariff, FERC No. 4 in compliance with the Commission's order issued on September 27, 1996 in Docket No. ER96–376–000. Also in compliance with that order, Market Responsive Energy, Inc. tendered for filing revised Market Based Rate Schedule, FERC No. 1, and Code of Conduct, Supplement No. 1 to Rate Schedule FERC No. 1.

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 and 214 of the Commission's Rules of

Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 15, 1996. 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. 96–28705 Filed 11–7–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1471–002]

Cleveland Electric Illuminating Company; Notice of Filing

November 4, 1996.

Take notice that on September 24, 1996, Cleveland Electric Illuminating Company tendered for filing testimony regarding the development of cost based charges in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 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 and 18 CFR 385.214). All such motions or protests should be filed on or before November 15, 1996. 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. 96–28706 Filed 11–7–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–1703–000, et al.]

Pacific Gas and Electric Company, et al.; Electric Rate and Corporate Regulation Filings

November 1, 1996.

Take notice that the following filings have been made with the Commission:

1. Pacific Gas and Electric Company

[Docket No. ER96–1703–000]

Take notice that on October 25, 1996, Pacific Gas and Electric Company (PG&E) tendered for filing additional information in response to a letter from FERC dated September 27, 1996.

Comment date: November 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. AYP Energy, Inc.

[Docket No. ER96–2673–000]

Take notice that on October 23, 1996, AYP Energy, Inc. tendered for filing an amendment in the above-referenced docket.

Comment date: November 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Citizens Utilities Company

[Docket No. ER96–2707–000]

Take notice that on October 22, 1996 and October 23, 1996, Citizens Utilities Company tendered for filing amendments in the above-referenced docket.

Comment date: November 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. Southern Indiana Gas & Electric Company

[Docket No. ER96–2734–001]

Take notice that on October 29, 1996, Southern Indiana Gas & Electric Company (SIGECO) submitted for filing revisions to its Wholesale Power Sales Tariff in compliance with the order issued in this proceeding by the Federal Energy Regulatory Commission on October 15, 1996. Southern Indiana Gas & Electric Company, 77 FERC ¶ 61,024 (1996).

Comment date: November 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Louisville Gas and Electric Company

[Docket No. ER96–2801–000]

Take notice that on October 24, 1996, Louisville Gas and Electric Company tendered for filing an amendment to its initial filing in the above-cited docket in compliance with the Commission's directive in Order 888 to unbundle its rates.

Comment date: November 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. New England Power Company

[Docket No. ER96–2865–000]

Take notice that on October 25, 1996, New England Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: November 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Duke Power Company

[Docket No. ER96–2943–000]

Take notice that on October 23, 1996, Duke Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: November 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Southwestern Public Service Company

[Docket No. ER96–2948–000]

Take notice that on October 28, 1996, Southwestern Public Service Company tendered for filing an amendment in the above-referenced docket.

Comment date: November 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. PacifiCorp

[Docket No. ER96–3040–000]

Take notice that on October 28, 1996, PacifiCorp tendered for filing additional cost support for a Letter Agreement dated July 3, 1996 between PacifiCorp and Portland General Electric (PGE).

Copies of this filing were supplied to PGE, the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

Comment date: November 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Great Bay Power Corporation

[Docket No. ER97–99–000]

Take notice that on October 9, 1996, Great Bay Power Corporation tendered for filing a service agreement between Enron Power Marketing, Inc. and Great Bay for service under Great Bay's revised Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on May 17, 1996, in Docket No. ER96–725–000. The service agreement is proposed to be effective October 8, 1996.

Comment date: November 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Northern Indiana Public Service Company

[Docket No. ER97–191–000]

Take notice that on October 23, 1996, Northern Indiana Public Service Company, tendered for filing an executed Standard Transmission Service Agreement between Northern Indiana Public Service Company and Morgan Stanley Capital Group, Inc.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Morgan Stanley Capital Group, Inc. pursuant to

the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. ER96–1426–000 and allowed to become effective by the Commission. *Northern Indiana Public Service Company*, 75 FERC ¶ 61,213 (1996). Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of November 1, 1996.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: November 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. Northern Indiana Public Service Company

[Docket No. ER97–192–000]

Take notice that on October 23, 1996, Northern Indiana Public Service Company, tendered for filing an executed Standard Transmission Service Agreement between Northern Indiana Public Service Company and Williams Energy Services Company.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Williams Energy Services Company pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. ER96–1426–000 and allowed to become effective by the Commission. *Northern Indiana Public Service Company*, 75 FERC ¶ 61,213 (1996). Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of November 1, 1996.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: November 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Northern Indiana Public Service Company

[Docket No. ER97–193–000]

Take notice that on October 23, 1996, Northern Indiana Public Service Company, tendered for filing an executed Standard Transmission Service Agreement between Northern Indiana Public Service Company and WPS Energy Services, Inc.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to WPS Energy Services, Inc. pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. ER96–1426–000 and allowed to become effective by the Commission. *Northern Indiana Public Service Company*, 75 FERC ¶ 61,213 (1996). Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of November 1, 1996.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: November 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Northern Indiana Public Service Company

[Docket No. ER97–194–000]

Take notice that on October 23, 1996, Northern Indiana Public Service Company, tendered for filing an executed Standard Transmission Service Agreement between Northern Indiana Public Service Company and InterCoast Power Marketing Company.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to InterCoast Power Marketing Company pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. ER96–1426–000 and allowed to become effective by the Commission. *Northern Indiana Public Service Company*, 75 FERC ¶ 61,213 (1996). Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of November 1, 1996.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: November 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Montana-Dakota Utilities Co., a division of MDU Resources Group, Inc.

[Docket No. ER97–195–000]

Take notice that on October 24, 1996, Montana-Dakota Utilities Co., a division of MDU Resources Group, Inc. (Montana-Dakota), tendered for filing an Interconnection Agreement between Montana-Dakota and Capital Electric Cooperative, Inc. (Capital).

Montana-Dakota asserts that the filing has been served on Capital and on all interested state regulatory agencies.

Comment date: November 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER97–196–000]

Take notice that on October 24, 1996, GPU Service, Inc. (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (GPU Energy), filed an executed Service Agreement between GPU and Williams Energy Services Company (WILLIAMS), dated October 2, 1996. This Service Agreement specifies that WILLIAMS has agreed to the rates, terms and conditions of GPU Energy's 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 WILLIAMS to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than GPU Energy's cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of October 2, 1996 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: November 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Tampa Electric Company

[Docket No. ER97–197–000]

Take notice that on October 24, 1996, Tampa Electric Company (Tampa Electric), tendered for filing service agreements with the City of Lake Worth, Florida, South Carolina Electric & Gas Company, the City of Lakeland, Florida, Williams Energy Services Company, and Tampa Electric itself, for non-firm point-to-point transmission service under Tampa Electric's open access transmission tariff.

Tampa Electric proposes an effective date of October 24, 1996, for the service agreements, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on the other parties to the service agreements and the Florida Public Service Commission.

Comment date: November 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Louisville Gas and Electric Company

[Docket No. ER97–199–000]

Take notice that on October 25, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and Enron Power Marketing, Inc. under Rate GSS.

Comment date: November 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. Pennsylvania Power & Light Company

[Docket No. ER97–200–000]

Take notice that on October 23, 1996, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement dated October 22, 1996, with Sonat Power Marketing L.P. (Sonat) for non-firm point-to-point transmission service under PP&L's Open Access Transmission Tariff. The Service Agreement adds Sonat as an eligible customer under the Tariff.

PP&L requests an effective date of October 24, 1996, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Sonat and to the Pennsylvania Public Utility Commission.

Comment date: November 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Pennsylvania Power & Light Company

[Docket No. ER97–201–000]

Take notice that on October 23, 1996, Pennsylvania Power & Light Company (PP&L), filed a Service Agreement dated October 22, 1996, with Virginia Electric and Power Company (Virginia Power) for non-firm point-to-point transmission service under PP&L's Open Access Transmission Tariff. The Service Agreement adds Virginia Power as an eligible customer under the Tariff.

PP&L requests an effective date of October 24, 1996, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Virginia Power and to the Pennsylvania Public Utility Commission.

Comment date: November 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

21. Portland General Electric Company

[Docket No. ER97–202–000]

Take notice that on October 23, 1996, Portland General Electric Company (PGE), tendered for filing under FERC Electric Tariff, First Revised Volume No. 2, an executed Service Agreement with Western Power Services, Inc.

Pursuant to 18 CFR 35.11 and the Commission's order issued July 30, 1995 (Docket No. PL93–2–002), PGE respectfully requests the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the executed Service Agreement to become effective October 1, 1996.

A copy of this filing was caused to be served upon Western Power Services, Inc., as noted in the filing letter.

Comment date: November 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

22. Southern Company Services, Inc.

[Docket No. ER97–203–000]

Take notice that on October 23, 1996, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Companies) filed one (1) service agreement between SCS, as agent of Southern Companies, and Southeastern Power Administration for non-firm point-to-point transmission service under Part II of the Open Access Transmission Tariff of Southern Companies.

Comment date: November 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

23. Interstate Power Company

[Docket No. ER97–204–000]

Take notice that on October 23, 1996, Interstate Power Company, tendered for filing a Notice of Cancellation of its Municipal Electric Wholesale Agreement with the City of Guttenberg filed with FERC under Original Volume No. 1.

Comment date: November 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

24. Pacific Gas and Electric Company

[Docket No. ER97–205–000]

Take notice that on October 24, 1996, Pacific Gas and Electric Company (PG&E), tendered for filing an agreement (Special Facilities Agreement) dated June 27, 1996, and a First Amendment to the Special Facilities Agreement dated October 3, 1996 between PG&E and the United States of America acting by and through the Department of the Navy.

The purpose of the Special Facilities Agreement is to: 1) install at the Navy's request certain facilities (Special Facilities) necessary for interconnection at U.S. Naval Air Station, Lemoore, California of the Navy's substation and PG&E's transmission system; and 2) to facilitate payment of PG&E's costs of designing, constructing, procuring, installing, testing, and placing in operation Special Facilities for the Navy, and to provide a mechanism for PG&E to recover the ongoing costs of owning, operating and maintaining the Special Facilities (Cost of Ownership Charges).

Copies of this filing have been served upon the Navy and the California Public Utilities Commission.

Comment date: November 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

25. Northern States Power Company (Minnesota Company)

[Docket No. ER97–206–000]

Take notice that on October 24, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing the Transmission Service Agreement between NSP and Sonat Power Marketing L.P.

NSP requests that the Commission accept the agreement effective September 24, 1996, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: November 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

26. Boston Edison Company

[Docket No. ER97–207–000]

Take notice that on October 25, 1996, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement under Original Volume No. 8, FERC Order 888 Tariff (Tariff) for Maine Public Service Company (Maine). Boston Edison requests that the Service Agreement become effective as of October 1, 1996.

Edison states that it has served a copy of this filing on Maine and the Massachusetts Department of Public Utilities.

Comment date: November 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

27. Maine Public Service Company

[Docket No. ER97–208–000]

Take notice that on October 24, 1996, Maine Public Service Company (Maine Public), filed an executed Service Agreement with Sonat Power Marketing, Inc.

Comment date: November 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

28. Maine Public Service Company

[Docket No. ER97–209–000]

Take notice that on October 24, 1996, Maine Public Service Company (Maine Public), filed an executed Service Agreement with Transcanada Power Corporation.

Comment date: November 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

29. Duke Power Company

[Docket No. ER97–210–000]

Take notice that on October 24, 1996, Duke Power Company (Duke), tendered for filing a Market Rate Service Agreement between Duke and MidCon Power Services Corp. Duke requests that the Agreement be made effective as of September 27, 1996.

Comment date: November 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

30. Central Illinois Public Service Company

[Docket No. ER97–211–000]

Take notice that on October 24, 1996, Central Illinois Public Service Company (CIPS), submitted a service agreement, dated October 14, 1996, establishing Minnesota Power & Light Company (MP&L) as a customer under the terms of CIPS's Open Access Transmission Tariff.

CIPS requests an effective date of October 14, 1996, for the service agreement. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served upon MP&L and the Illinois Commerce Commission.

Comment date: November 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

31. Boston Edison Company

[Docket No. ER97–212–000]

Take notice that on October 25, 1996, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement under Original Volume No. 8, FERC Order 888 Tariff (Tariff) for LG&E Power Marketing, Inc. (LPM). Boston Edison requests that the Service Agreement become effective as of October 1, 1996.

Edison states that it has served a copy of this filing on LPM and the Massachusetts Department of Public Utilities.

Comment date: November 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

32. Public Service Company of Colorado

[Docket No. ER97–213–000]

Take notice that on October 25, 1996, Public Service Company of Colorado (Public Service), tendered for filing a revision to Exhibit B of the Power Supply Agreement between Public Service and Holy Cross Electric Association, Inc. (Holy Cross). Specifically Public Service is filing a Revision to Exhibit B of this Contract designated as Public Service Rate Schedule FERC No. 52. This revision eliminates Glenwood, Mitchell Creek, and Roaring Fork as Delivery Points and shows the addition of Emergency Taps at various other Delivery Points. Public Service requests that this revision to Exhibit B be made effective on the first day of the month following FERC's approval.

Comment date: November 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

33. Louisville Gas and Electric Company

[Docket No. ER97–214–000]

Take notice that on October 25, 1996, Louisville Gas and Electric Company, tendered for filing copies of a service agreement between Louisville Gas and Electric Company and PanEnergy Power Services under Rate GSS.

Comment date: November 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

34. Northern States Power Company (Minnesota Company)

[Docket No. ER97–215–000]

Take notice that on October 25, 1996, Northern States Power Company (Minnesota) (NSP), tendered for filing Supplement No. 10 to the Interconnection and Interchange Agreement between NSP and United Power Association (UPA). This supplement establishes a control area meter point on the existing transformer at the Vadnais Heights Substation and UPA agreed to install a second transformer and a control area meter point at the Vadnais Heights Substation.

NSP requests that the Commission accept the supplement effective October 28, 1996, and requests waiver of the Commission's notice requirements in order for the supplement to be accepted for filing on the date requested.

Comment date: November 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

35. Southwestern Public Service Company

[Docket No. ER97–216–000]

Take notice that on October 25, 1996, Southwestern Public Service Company (Southwestern), submitted an executed service agreement under its open access transmission tariff with Aquila Power Marketing. The service agreement is for umbrella non-firm transmission service.

Comment date: November 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

36. Florida Power & Light Company

[Docket No. ER97–217–000]

Take notice that on October 25, 1996, Florida Power & Light Company (FPL), tendered for filing a revised Attachment A to the Revised and Restated Transmission Service Agreement for Stanton Unit Two between FPL and The Florida Municipal Power Agency. FPL proposed to make the revised Attachment A effective June 1, 1996.

Comment date: November 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

37. Portland General Electric Company

[Docket No. ER97–218–000]

Take notice that on October 25, 1996, Portland General Electric Company (PGE), tendered for filing its Average System Cost (ASC) as calculated by PGE and determined by the Bonneville Power Administration under the revised ASC Methodology which became effective on October 1, 1984. This filing includes PGE's revised Appendix 1 of the Residential Purchase and Sale Agreement.

PGE states that the revised Appendix 1 shows the ASC to be 36.31 mills/kWh effective March 11, 1996. The Bonneville Power Administration determined the ASC rate for PGE to be 36.34 mills/kWh.

Copies of the filing have been served on the persons named in the transmittal letter as included in the filing.

Comment date: November 15, 1996, in accordance with Standard Paragraph E at the end of this notice.

38. Central Louisiana Electric Company, Inc.

[Docket No. ES97–6–000]

Take notice that on October 30, 1996, Central Louisiana Electric Company, Inc. filed an application, under Section 204 of the Federal Power Act, seeking authorization to issue short-term indebtedness, from time to time, in an aggregate principal amount of not more than $145 million outstanding at any one time, during the period ending December 31, 1998, with a final

maturity date no later than December 31, 1999.

Comment date: November 29, 1996, in accordance with Standard Paragraph E at the end of this notice.

39. Consumers Power Company

[Docket No. ES97–7–000]

Take notice that on October 30, 1996, Consumers Power Company filed an application, under Section 204 of the Federal Power Act, seeking authorization to issue secured and/or unsecured long-term securities, from time to time, in an aggregate principal amount of not more than $500 million outstanding at any one time, during the period December 1, 1996 through November 30, 1998, with final maturities no later than 30 years from the date of issue.

Comment date: November 26, 1996, in accordance with Standard Paragraph E at the end of this notice.

40. Exxon Chemical Company and Exxon Company, U.S.A.

[Docket No. QF89–41–002])

On October 28, 1996, Exxon Chemical Company and Exxon Company, U.S.A. (Applicants), c/o John B. O'Sullivan, Esquire, 1101 Vermont Avenue, N.W., Suite 1000, Washington, D.C. 20005, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to Applicants, the topping-cycle cogeneration facility is located in Baytown, Texas. The Commission previously certified the facility as a qualifying cogeneration facility in *Exxon Chemical Company and Exxon Company, U.S.A.*, 47 FERC ¶ 62,047 (1989) and recertified the facility in *Exxon Chemical Company and Exxon Company, U.S.A.*, 57 FERC ¶ 62,063 (1991). The instant request for recertification is due to the addition of new electric and steam producing and ancillary equipment within the existing facility.

Comment date: 15 days after the date of publication of this notice in the Federal Register, 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, 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. 96–28704 Filed 11–7–96; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 1994–004]

Heber Light & Power Company; Notice of Intent To Prepare an Environmental Assessment and Notice of Solicitation of Written Scoping Comments

November 4, 1996.

The Federal Energy Regulatory Commission (Commission) has received an application from the Heber Light and Power Company (Heber) to relicense the Snake Creek Hydroelectric Project No. 1994–004. The 800-kilowatt project is located partially within Uintah National Forest, near Heber City, in Wasatch County, Utah.

The Commission, as lead agency, and Forest Service intend to prepare an Environmental Assessment (EA) for the project in accordance with the National Environmental Policy Act.

In the EA, we will consider reasonable alternatives to the project as proposed by Heber, analyze both site-specific and cumulative environmental impacts of the project as well as economic and engineering impacts.

The draft EA will be issued and circulated to those on the mailing list for this project. All comments filed on the draft EA will be analyzed by the staff and considered in a final EA. The staff's conclusions and recommendations presented in the final EA will then be presented to the Commission to assist in making a licensing decision.

Scoping

We are asking agencies, Indian tribes, non-governmental organizations, and individuals to help us identify the scope of environmental issues that should be analyzed in the EA, and to provide us with information that may be useful in preparing the EA.

To help focus comments on the environmental issues, a scoping document outlining subject areas to be addressed in the EA will soon be mailed to those on the mailing list for the project. Those not on the mailing list may request a copy of the scoping document from the environmental coordinator, whose telephone number is listed below.

Those with comments or information pertaining to this project should file it with the Commission at the following address: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The comments and information are due to the Commission within 60 days from the issuance date of the scoping document. All filings should clearly show the following on the first page: Snake Creek Hydroelectric Project, FERC No. 1994–004.

Intervenors are reminded of the Commission's Rules of Practice and Procedure which require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Any questions regarding this notice may be directed to Hector Perez, environmental coordinator, at (202) 219–2843.

Lois D. Cashell,

Secretary.

[FR Doc. 96–28708 Filed 11–7–96; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Notice of Cases Filed; Week of September 2 Through September 6, 1996

During the Week of September 2 through September 6, 1996, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585–0107.

Dated: October 25, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED

Date	Name and location of applicant	Case No.	Type of submission
Sept. 3, 1996	Craig W. Anderson, Salt Lake City, Utah	VFA–0213	Appeal of an information request denial. If Granted: The August 7, 1996 Freedom of Information Request Denial issued by Idaho Operations Office would be rescinded, and Craig W. Anderson would receive access to certain DOE information.
Do	Harold Bibeau, Troutdale, Oregon	VFA–0212	Appeal of an information request denial. If Granted: The May 28, 1996 Freedom of Information Request Denial issued by the Oak Ridge Institute for Science and Education would be rescinded, and Harold Bibeau would receive access to certain Department of Energy information.
Sept. 4, 1996	Schenectady Naval Reactors Office, Schenectady, New York.	VSO–0112	Request for hearing under 10 CFR Part 710. If Granted: An individual employed at Schenectady Naval Reactors Office would receive a hearing under 10 CFR Part 710.
Sept. 5, 1996	Oak Ridge Operations Office, Oak Ridge, Tennessee.	VSO–0113	Request for hearing under 10 CFR Part 710. If Granted: An individual employed at Oak Ridge Operations Office would receive a hearing under 10 CFR Part 710.

[FR Doc. 96–28750 Filed 11–7–96; 8:45 am]
BILLING CODE 6450–01–P

Notice of Cases Filed; Week of September 9 Through September 13, 1996

During the Week of September 9 through September 13, 1996, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585–0107.

Dated: October 25, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

Date	Name and location of applicant	Case No.	Type of submission
Sept. 9, 1996	Hanford Education Action League, Spokane, Washington.	VFA–0217	Appeal of an information request denial. If Granted: The August 6, 1996 Freedom of Information Request Denial issued by the Richland Office of External Affairs would be rescinded, and Hanford Education Action League would receive access to certain Department of Energy information.
Sept. 10, 1996	Paul Freier, Littleton, Colorado	VFA–0214	Appeal of an information request denial. If Granted: The August 15, 1996 Freedom of Information Request Denial issued by Albuquerque Operations Office would be rescinded, and Paul Freier would receive access to certain DOE information.
Do	Specialized Trucking Service, Inc., Tacoma, Washington.	RR272–246 ...	Request for modification/rescission in the crude oil refund proceeding. If Granted: The August 19, 1996 Decision and Order Case No. RG272–931, issued to Specialized Trucking Services Inc. would be modified regarding the firm's application for refund submitted in the Crude Oil Refund Proceeding.
Sept. 10, 1996	Allied Signal, Inc., Atlanta, Georgia	RR272–247 ...	Request for modification/rescission in the crude oil refund proceeding. If Granted: The July 1, 1996 Decision and Order, Case No. RF272–77990, issued to Allied Signal, Inc. would be modified regarding the firm's application for refund submitted in the Crude Oil Refund Proceeding.
Sept. 12, 1996	Thomas P. Koenigs, Raleigh, North Carolina.	VFA–0215	Appeal of an Information request denial. If Granted: The February 10, 1994 and July 26, 1994 Freedom of Information Request Denial issued by the Savannah River Operations Office would be rescinded, and Thomas P. Koenigs would receive access to certain Department of Energy information.
Do	Town Center Management Corp., Washington, DC.	RR272–248 ...	Request for modification/rescission in the crude oil refund proceeding. If Granted: The February 19, 1992 Dismissal, Case No. RF272–59805, issued to Town Center Management Corp. would be modified regarding the firm's application for refund submitted in the Crude Oil Refund Proceeding.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

Date	Name and location of applicant	Case No.	Type of submission
Sept. 13, 1996	George O'Nale, New Castle, Virginia	VFA–0216	Appeal of an information request denial. If Granted: The August 12, 1996 Freedom of Information Request Denial issued by the Freedom of Information/Privacy Act Division would be rescinded, and George O'Nale would receive access to certain Department of Energy information.
Do	Thomas Oil Co., Gainesville, Florida	VEE–0032	Exception to the reporting requirements. If Granted: Thomas Oil Co. would not be required to file Form EIA–782B Retailer's/Reseller's Monthly Petroleum Product Sales Report.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund applicant	Case No.
9/9 thru 9/13/96	Crude Oil Supplemental Applications	RK272–3900 thru RK272–3906.

[FR Doc. 96–28751 Filed 11–7–96; 8:45 am]
BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders During the Week of September 16 Through September 20, 1996

During the week of September 16 through September 20, 1996, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: October 30, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 990

Week of September 16 Through September 20, 1996

Appeals

FOIA Group Inc., 9/18/96, VFA–0208

FOIA Group, Inc. (Appellant) filed an Appeal of a Determination issued to it by the Department of Energy (DOE) in response to a request under the Freedom of Information Act. In the Determination, DOE's Schenectady Naval Reactors Office stated it could not locate any documents responsive to the Appellant's request. Upon investigation, and clarification of the Appellant's inaccurate description of the requested documents, the OHA located the requested documents as being under the jurisdiction of Richland Operations Office (DOE/RL). Accordingly, the DOE granted the Appeal and directed the matter to DOE/RL for further action.

James D. Hunsberger, 9/20/96, VFA–0206

James D. Hunsberger filed an Appeal from a determination issued to him by the Office of Human Experiments of the Department of Energy (DOE) in response to a Request for Information submitted under the Freedom of Information Act (FOIA). Mr. Hunsberger had filed a lengthy FOIA request seeking information in DOE files concerning human radiation experiments in general and on any experiments which may have been performed on him in particular. He also sought information on intra- and inter-governmental sharing of human experiment data and on other related matters. In considering the Appeal, the DOE determined that the Office of Human Experiments had performed an adequate search. The DOE also found, however, that other parts of the Department might contain responsive records. The DOE also determined that parts of the request were so vague or broad that they could not form the basis of a reasonable search. Accordingly, the Appeal was denied in part, granted in part, and remanded to the Freedom of Information and Privacy Group of the DOE Executive Secretariat to determine which parts of Mr. Hunsberger's request could form the basis for a reasonable search, whether the agency might have responsive documents, and the appropriate place(s) to search for documents.

Malcolm Parvey, 9/17/96, VFA–0205

The DOE's Office of Hearings and Appeals (OHA) issued a determination denying a Freedom of Information Act (FOIA) Appeal filed by Malcolm Parvey (Parvey). Parvey appealed the Western Area Power Administration's (WAPA) assessment of fees. OHA found that the fees were properly assessed.

Refund Application

Navy Resale and Services Support Office, 9/16/95, RF272–31780

The DOE issued a Decision and Order concerning an Application for Refund filed in the crude oil special refund proceeding. The Navy Resale and Services Support Office (NAVRESSO) applied for a refund based upon its purchases of motor gasoline which it then resold to military personnel and their dependents. In support of its application, NAVRESSO asserted that all profits from its operations were funneled into a morale, welfare and recreation fund (MWR Fund) which supports programs for members of the military and their dependents. Thus, NAVRESSO argued that it was economically inseparable from its customers and it should therefore be considered an end-user. NAVRESSO also argued that it should be granted a refund because it would funnel any refund it receives back to its customers through the MWR Fund. The DOE found that NAVRESSO was a retailer and that there was not such an identity of interest between NAVRESSO, the MWR Fund and the purchasers of NAVRESSO's gasoline to justify treating NAVRESSO as an end-user. Further, the DOE found that giving NAVRESSO a refund and having it distribute the refund through the MWR Fund would

not constitute sufficient restitution to the individuals actually injured by the overcharges. Because the DOE determined that NAVRESSO was not injured by the overcharges and that a refund to it would not provide restitution to injured persons, NAVRESSO's application was denied.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Cascade Aggregates, Inc. et al	RK272–00432	09/17/96
City of Hayward	RF272–69291	09/16/96
James Hagan; Thomas Hagan	RJ272–19, RJ272–20	09/17/96
Lasalle Farmers Grain Co. et al	RG272–631	09/16/96
Telleri Trucking Co. et al	RG272–00544	09/18/96

Dismissals

The following submissions were dismissed:

Name	Case No.
Dorchester Cooperative	RG272–670
Jack Daniel Distillery	RG272–848
Maywood Cooperative Association	RF272–76889
Scandinavia Cooperative Produce Company	RG272–585
Western Stone Products	RR272–244

[FR Doc. 96–28748 Filed 11–7–96; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders During the Week of September 23 Through September 27, 1996

During the week of September 23 through September 27, 1996, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management*: *Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: October 30, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 991

Week of September 23 Through September 27, 1996

Appeals

Dirk T. Hummer, 9/27/96, VFA–0209

The Department of Energy issued a Decision and Order denying a Freedom of Information Act Appeal that was filed by Dirk T. Hummer. In his Appeal, Mr. Hummer contested a finding by the Richland Operations Office that the documents he requested were not ''agency records,'' and were therefore not subject to the FOIA. In the Decision, the DOE found that the documents in question were not ''agency records.'' Mr. Hummer's Appeal was therefore denied.

Local Union # 701, I.B.E.W., 9/27/96, VFA–0210

Local Union #701, I.B.E.W. (IBEW) filed an Appeal from a determination issued to it on August 22, 1996, by the Department of Energy's Fermi Group. In that determination, the Fermi Group Manager stated that the payroll records sought by the IBEW are not the property of the Department of Energy. In considering the Appeal, the DOE confirmed that the records requested by the IBEW are not agency records subject to the FOIA. Accordingly, the DOE denied the IBEW Appeal.

Personnel Security Hearing

Rocky Flats Field Office, 9/23/96, VSO–0093

An OHA Hearing Officer issued an opinion concerning the continued eligibility of an individual for access authorization under 10 C.F.R. Part 710, entitled, ''Criteria and Procedures for Determining Eligibility for Access Authorization to Classified Matter or Special Nuclear Material.'' The Rocky Flats Field Office (RFFO) had suspended the individual's access authorization based on security concerns arising from the individual's harrassment of a female coworker. The Hearing Officer found the individual had not produced evidence that would mitigate security concerns. Accordingly, the Hearing Officer found that the individual's access authorization should not be restored.

Refund Applications

Eason Oil Co./M&M Gas Company, 9/24/96, RF352–6, RF352–10 thru RF352–14

The DOE issued a Decision and Order concerning a refund application that was submitted on behalf of the former partners of M&M Gas Company in the Eason Oil Company (Eason) special refund proceeding. The DOE found that M&M Gas Company was a retailer of Eason products that qualified for a refund under the 60% mid-range presumption of injury. The DOE granted M&M Gas Company a total refund of $40,662. The OHA determined that the original partners in the business, Max Miller and John Mahoney retained their right to the company's refund. Since both of these individuals are deceased, the OHA identified their respective successors in interest and divided the refund among those individuals.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Crude Oil Supplemental Refund Distribution	RB272–87	09/27/96
Crude Oil Supplemental Refund Distribution	RB272–89	09/27/96
John Sexton Contractors Co.	RK272–03854	09/24/96
Rock Road Companies, Inc., et al	RK272–01370	09/27/96

Dismissals

The following submissions were dismissed:

Name	Case No.
Almena Cooperative Association	RG272–600
George O'Nale	VFA–0216
Paul T. Freier	VF–0214
Richmond County	RF272–98121
State of New Hampshire	RF272–98133

[FR Doc. 96–28749 Filed 11–7–96; 8:45 am]

BILLING CODE 6450–01–P

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of proposed implementation of special refund procedures and solicitation of comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces proposed procedures and solicits comments concerning the refunding of $214,236.37 (plus accrued interest) in consent order funds. The funds are being held in escrow pursuant to a Consent Judgment and a Bankruptcy Distribution involving Houma Oil Company and Jedco, Inc., respectively.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this in the Federal Register and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0107. All comments should conspicuously display a reference to Case Numbers VEF–0023 (Houma Oil Co.) or VEF–0024 (Jedco, Inc.).

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, S.W. Washington, D.C. 20585–0107, (202) 426–1575.

SUPPLEMENTARY INFORMATION: In accordance with Section 205.282(b) of the procedural regulations of the Department of Energy, 10 C.F.R. § 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set forth below. The Proposed Decision relates to a Consent Judgment entered into by the Houma Oil Company which settled possible pricing violations in the firm's sales of motor gasoline during the period May 1, 1979 through April 30, 1980. The Proposed Decision also relates to a Bankruptcy Distribution which settled pricing violations stemming from Jedco, Inc.'s sales of motor gasoline during the period November 1, 1973 through March 31, 1974.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute funds remitted by Houma and Jedco and being held in escrow. The DOE has tentatively decided that the funds should be distributed in two stages in the manner utilized with respect to consent order funds in similar proceedings.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the Federal Register, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0107.

Dated: October 28, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

Department of Energy

Washington, DC 20585

October 28, 1996

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

Name of Firms: Houma Oil Company Jedco, Inc.

Date of Filing: September 1, 1995

Case Numbers: VEF–0023, VEF–0024

In accordance with the procedural regulations of the Department of Energy (DOE), 10 C.F.R. Part 205, Subpart V, the Regulatory Litigation branch of the Office of General Counsel (OGC)(formerly the Economic Regulatory Administration (ERA)) filed Petitions for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on September 1, 1995. The petitions request that the OHA formulate and implement procedures for the distribution of funds received pursuant to a Consent Judgment and a Bankruptcy Distribution concerning Houma Oil Co. (Houma) and Jedco, Inc. (Jedco), respectively.

Background

Houma was a ''reseller-retailer'' during the period of price controls. The ERA audited Houma's business records and determined it violated DOE's regulations in its purchases and sales of motor gasoline during the period May 1, 1979 through April 30, 1980. On November 21, 1983, the ERA issued a Proposed Remedial Order (PRO) to Houma in which it determined the firm overcharged its customers by $503,810 during the audit period. On August 1, 1984, Houma and DOE entered into a consent order in which Houma agreed to refund the overcharge amount, plus interest, in installment payments to DOE over a two year period. Houma ultimately defaulted on its repayment obligation and the matter was referred to the Department of Justice (DOJ) for enforcement. The DOJ then obtained a Consent Judgment against Houma on February 9, 1995. Pursuant to this Judgment, Houma remitted a total of $210,414.73 to the DOE. Houma then stopped

making payment, and the DOE determined that further legal action against Houma was unlikely to result in meaningful benefits to the taxpayer. The residual payment obligation was therefore declared uncollectible. The collected monies will be distributed in accord with the procedures proposed herein.

The DOE issued a Remedial Order (RO) to Jedco on October 24, 1978. Like Houma, Jedco was a ''reseller-retailer'' during the audit period. The RO required the firm to implement a rollback of its motor gasoline prices, thereby restoring its overcharged customers to the position they would have been in absent the overcharges.* Jedco failed to comply with the directives of the DOE in this matter and ultimately declared bankruptcy. The DOE's claim against the firm led to a final distribution to the DOE of $3,821.64. Since OGC has been unable to identify the customers injured by the Jedco overcharges, it has petitioned OHA to distribute this amount pursuant to Subpart V along with the funds obtained from Houma.

The funds obtained from the two firms are presently in interest-bearing escrow accounts maintained by the Department of the Treasury.

Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 C.F.R. Part 205, Subpart V. It is DOE policy to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of the settlement agreements, *see Office of Enforcement,* 9 DOE ¶ 82,553 (1982); *Office of Enforcement,* 9 DOE ¶ 82,508 (1981). After reviewing the record in the present case, we have concluded that a Subpart V proceeding is an appropriate mechanism for distributing the monies obtained from Houma and Jedco. We therefore propose to grant OGC's petitions and assume jurisdiction over distribution of the funds.

Proposed Refund Procedures

In cases where the DOE is unable to identify parties injured by the alleged overcharges or the specific amounts to which they may be entitled, we normally implement a two-stage refund procedure. In the first stage of the proceeding, those who bought refined petroleum products from the consent order firm may apply for a refund, which is calculated on a pro-rata or volumetric basis. In order to calculate the volumetric refund amount, the OHA divides the amount of money available for direct restitution by the number of gallons sold by the consent order firm during the period covered by the consent order. In the second stage, any funds remaining after all first-stage claims are decided are distributed for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07.

In the two cases covered by this Decision, however, we lack much of the information that we normally use to provide direct restitution to injured customers of the consent order firms. In particular, we have been unable to obtain any information on the volume of the relevant petroleum products sold by Houma and Jedco during the settlement period. Nor do we have any information concerning the customers of these firms. Based on the present state of the record in these cases, it would be difficult to implement a volumetric refund process. Nevertheless, we propose to accept any refund claims submitted by persons who purchased motor gasoline from Houma during the period May 1, 1979 through April 30, 1980 or from Jedco during the period November 1, 1973 through March 31, 1974. We propose to work with those claimants to develop additional information that would enable us to determine who should receive refunds and in what amounts. *See Bell Fuels, Inc.* 25 DOE ¶ 85,020 (1995).

Injury Presumptions/Showing of Injury

As in previous Subpart V proceedings, we propose that Houma and Jedco customers who were ultimate consumers (end-users) of their motor gasoline be presumed injured by their alleged overcharges. These customers will therefore not be required to make a further demonstration of injury in order to receive a refund.

We propose that reseller claimants (including retailers and refiners) who purchased motor gasoline from either of the two firms on a regular (non-spot) basis and whose refund claim is $10,000 or less will be presumed injured and therefore need not provide further demonstration of injury. *See E.D.G., Inc.,* 17 DOE ¶ 85,679 (1988). We realize that the cost to an applicant of gathering evidence of injury to support a relatively small refund claim could exceed the expected refund. Consequently, in the absence of simplified procedures some injured parties would be denied an opportunity to obtain a refund.

We further propose that any refund claimant advancing a refund claim in excess of $10,000 must establish that it did not pass the alleged Houma or Jedco overcharges along to its customers. *See, e.g., Office of Enforcement,* 8 DOE ¶ 82,597 (1981). While there are a variety of means by which a claimant could make this showing, a successful claimant should demonstrate that at the time it purchased motor gasoline from the consent order firm, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges. In addition, such claimants must show that they had a ''bank'' of unrecovered product costs sufficient to support their refund claim in order to demonstrate that they did not subsequently recover those costs by increasing their product prices. However, the maintenance of a cost bank does not automatically establish injury. *See Tenneco Oil/Chevron U.S.A.,* 10 DOE ¶ 85,014 (1982); *Vickers Energy Corp./Standard Oil Co.,* 10 DOE ¶ 85,036 (1982); *Vickers Energy Corp./ Koch Industries, Inc.,* 10 DOE ¶ 85,038 (1982), *Motion for Modification denied,* 10 DOE ¶ 85,062 (1983).

Conclusion

Refund applications in this proceeding should not be filed until the issuance of a final Decision and Order pertaining to the instant OGC Implementation Petitions. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received, we intend to publicize the distribution process and to provide an opportunity for any affected party to file a claim. A copy of this Proposed Decision and Order will be published in the Federal Register and public comments will be solicited.

Any funds that remain after all first-stage claims have been decided will be distributed in accordance with the provisions of PODRA. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies directly to injured parties in Subpart V proceedings and make those funds available to state governments as indirect restitution for use in energy conservation programs. The Secretary has delegated these responsibilities to OHA. Any funds in the Houma or Jedco escrow accounts the OHA determines will not be needed to effect direct restitution to injured customers of those firms will be distributed in accordance with the provisions of PODRA.

It Is Therefore Ordered That: The refund amounts remitted to the Department of Energy by Houma Oil Company and Jedco, Inc., pursuant to a Consent Judgment and a Bankruptcy Distribution respectively, will be distributed in accordance with the foregoing Decision.

[FR Doc. 96–28747 Filed 11–7–96; 8:45 am]

BILLING CODE 6450–01–P

* After the deregulation of petroleum prices, the RO was modified and this requirement was replaced by an order requiring payment to the U.S. Treasury. *Jedco, Inc.,* 8 DOE ¶ 81,068 (1981).

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5474–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 15, 1996 Through October 18, 1996 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 05, 1996 (61 FR 15251).

Draft EISs

ERP No. D–AFS–K65189–CA Rating EC2, Cavanah Multi-Resource Management Project, Implementation, Enchancing Forest Health and Productivity, Tahoe National Forest, Foresthill Ranger District, Placer County, CA.

Summary: EPA expressed environmental concerns that the proposed management activities in a watershed degraded water quality are not being taken under a fully integrated management plan.

ERP No. D–BLM–G67003–NM Rating LO, Little Rock Open-Pit Mine Project, Construction and Operation, Plan of Operations Approval, and several Permits Issuance, Grant County, NM.

Summary: EPA had no objection to the preferred alternative with the inclusion of the mitigation and monitoring measures presented in the Draft EIS addressing dust suppression as part of the mine plan operation.

ERP No. D–DOE–L09809–WA, Hanford Site Tank Waste Remediation Systems (TWRS), Management and Disposal of Radioactive, Hazardous, and Mixed Wastes, NPDES Permit and Approval of Several Permits, in the City of Richland, Grant County, WA.

Summary: EPA's previous endorsement of the single regulatory authority approach and the extensive involvement of the Washington Department of Ecology as a co-preparer of this draft EIS, EPA does not foresee having any critical environmental objections to the proposed project.

ERP No. D–NPS–L61211–AK Denali National Park and Reserve, ''Frontcountry'' Entrance Area and Road Corridor, Development Concept Plan, AK.

Summary: Our abbreviated review has revealed no EPA concerns on this project.

ERP No. DA–AFS–L65137–AK Rating EO2, Tongass Land Management Plan Revision (1996 DSEIS) New Information Concerning Changes to the Management Plan, Implementation, Tongass National Forest, AK.

Summary: EPA expressed environmental objections to the action as described in the preferred alternative because of potential adverse impacts to water quality and fish habitat.

ERP No. DR–SFW–K99026–CA Rating EC2, Multiple Species Conservation Program (MSCP) Planning Area, Issuance of Take Authorizations for Threatened and Endangered Species Due to Urban Growth, San Diego County, CA.

Summary: EPA expressed environmental concerns that tribal governments were not consulted. EPA also noted that requirements of Clean Water Act Section 404 will continue to apply on lands which do not become part of the habitat conservation area.

Final EISs

ERP No. F–AFS–K82005–CA Placerville Nursery Pest Management Plan, Implementation, Camino, El Dorado County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–AFS–L65259–OR Foss Perkins Analysis Area, Vegetation Management and Timber Sale, Ochoco National Forest, Snow Mountain Ranger District, Harney County, OR.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–BLM–K67033–NV Lone Tree Gold Mine Expansion Project, Plan of Operations Approval and Permit Issuance, Winnemucca District, Humboldt County, NV.

Summary: EPA continued to express environmental concerns regarding impact due to waste rock and design of the tailings facility.

ERP No. F–FRC–L05209–WA Nisqually Hydroelectric Project (FERC No. 1862) Issuing New License (Relicense), Nisqually River, Pierce, Thurston and Lewis Counties, WA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–NPS–L65258–ID Hagerman Fossil Beds National Monument, General Management Plan, Implementation, Twin Falls and Gooding Counties, ID.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

Other

ERP No. LD–AFS–K65185–CA Rating EO2, Tahoe National Forest and Portion of Plumas and EL Dorado National Forests, Implementation, Twenty-Two Westside Rivers for Suitability and inclusion in the National Wild and Scenic Rivers System, Wild and Scenic River Study, Placer, Nevada, Sierra, Plumas, EL Dorado and Yuba Counties, CA.

Summary: EPA expressed environmental objections to the minimal protection and designation of exceptional ecological areas and the use of less protective classifications for acknowledged wild segments. EPA urge the Forest Service to designate the Downieville complex or to actively seek Research Natural Area or Special Interest Area designation for this exceptional, biologically rich area and for reconsideration of the North Fork of the North Fork American River, North Fork of the Middle Fork American River, Fordyce Creek, Middle Yuba River, and the upper South Yuba River for designation into an ecosystem watershed management strategy.

Dated: November 5, 1996.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–28780 Filed 11–7–96; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–5474–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed October 28, 1996 Through November 01, 1996 Pursuant to 40 CFR 1506.9.

EIS No. 960512, DRAFT EIS, AFS, ID, Musselshell Analysis Area, Implementation, Pierce Ranger District, Clearwater National Forest, Clearwater County, ID, Due: December 23, 1996, Contact: Douglas Gober (208) 935–2513.

EIS No. 960513, DRAFT EIS, FHW, WI, Milwaukee East-West Corridor, Transportation Improvements, IH–43 and Hampton Avenue to downtown Milwaukee and along IH–94 to WI–16, Major Investment Study, Funding, US Coast Guard and COE Section 404 Permits, Milwaukee and Waukesha Counties, WI, Due: January 10, 1997, Contact: Richard Madrzak (608) 829–7510.

EIS No. 960514, FINAL EIS, AFS, AK, Upper Carroll Timber Sale, Implementation, Tongass National Forest, Ketchikan Administrative Area, Ketchikan Ranger District, Revillagigedo Island, AK, Due: December 09, 1996, Contact: Bill Nightingale (907) 225–2148.

EIS No. 960515, DRAFT EIS, AFS, ID, Mosquito-Fly Project Area, Implementation, Harvest Timber, Road Construction and Grant Access to Private Land, Idaho Panhandle National Forests, St. Joe Ranger District, Shoshone County, ID, Due: December 23, 1996, Contact: Andy Schmidt (208) 245–4517.

EIS No. 960516, DRAFT SUPPLEMENT, FHW, WI, US 12 Highway

Improvement, Updated Information, Sauk City to Middleton, Funding and COE Section 404 Permits Issuance, Sauk and Dane Counties, WI, Due: January 31, 1997, Contact: Richard Madrzak (608) 829–7510.

EIS No. 960517, DRAFT EIS, IBR, AZ, Programmatic EIS Pima-Maricopa Irrigation Project, Construction and Operation, Maricopa and Pinal Counties, AZ, Due: December 31, 1996, Contact: Bruce D. Ellis (602) 870–6767.

EIS No. 960518, FINAL EIS, CGD, Atlantic Protected Living Marine Resource Initiative, Implementation, Atlantic Ocean, from Maine to Florida, Due: December 09, 1996, Contact: Commander R. Rooth (202) 267–1456.

EIS No. 960519, DRAFT EIS, UAF, CA, NM, Airborne Laser (ABL) Phase Program Definition and Risk Reduction Phase, Proposed Military Location: Home Base—Edward Air Force Base; Diagnostic Test Range—Western Range (Vandenberg Air Force Base and Point Mugu Naval Air Warfare Center Weapons Division), CA and NM, Due: December 23, 1996, Contact: Major Kark Freeks (703) 695–8942.

EIS No. 960520, DRAFT EIS, BLM, WY, North Rochelle Mine, Application for Federal Coal Lease (WYW127221), Special-Use-Permits and NPDES Permit, Campbell County, WY, Due: January 10, 1997, Contact: Nancy Doelger (307) 261–7627.

EIS No. 960521, DRAFT EIS, AFS, ID, White Pine Creek Timber Sale, Implementation, Clearwater National Forest, Palouse Ranger District, Benewah and Latah Counties, ID, Due: December 23, 1996, Contact: Suzanne Lay (208) 875–1131.

EIS No. 960522, DRAFT EIS, USN, WA, Puget Sound Naval Station, Sand Point, Disposal and Reuse, Implementation, King County, WA, Due: December 23, 1996, Contact: Chingmin Chern (703) 604–1268.

Amended Notices

EIS No. 960408, DRAFT EIS, NOA, OH, Ohio Combined Coastal Management Program, Implementation, Special Management Areas (SMAs), Lake Erie, OH, Due: November 22, 1996, Contact: Diana Olinger (301) 713–3113. Published FR 09–06–96—Review Period extended.

Dated: November 5, 1996.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96–28781 Filed 11–7–96; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Submitted to OMB for Review and Approval

November 4, 1996.

SUMMARY: The Federal Communications, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 9, 1996. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, N.W., Washington, DC 20503 or fain__t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0107.

Title: Private Radio Application for Renewal, Reinstatement and/or Notification of Change to License Information.

Form No.: 405–A.

Type of Review: Revision of currently approved collection.

Respondents: Individuals or households; Business or other for-profits; Not-for-profit institutions; Farms; Federal Government; State, Local and Tribal Government.

Number of Respondents: 2,700.

Estimated Time Per Response: 20 minutes.

Total Annual Burden: 891 hours.

Estimated Costs Per Respondent: $45 application fee and an average regulatory fee of $35. Governmental entitites and non-profit, public safety and actions for minor modifications/cancellations are exempt from fees.

Needs and Uses: CC Rules require that radio station licensees renew their PRMS (Private Mobile Radio Service) radio station authorization every five years or their CMRS (Commercial Mobile Radio Service) radio station authorization every ten years. Data is used to update the existing database and make efficient use of the frequency spectrum. Data is also used by Compliance personnel in conjunction with Field Engineers for enforcement and interference resolutions.

The data collected is required by the Communications Act of 1934, as amended; International Treaties and FCC Rules 47 CFR Parts 1.926, 90.119, 90.135, 90.157, 95.89, 95.103 and 95.107. The Commission intends to revise the FCC Form 405A to include the drug statement certification as part of the certification text in lieu of checking a ''yes''/''no'' block; amend purpose of application for Land Mobile notification of conditional cancellation for conversion to Private Carrier to have the applicant indicate the Private Carrier name in lieu of listing call signs for cancellation; add a block for applicant to provide an Internet address; and to require the submission of applicant's social security number (for individuals) or TIN Number (for businesses and for-profit organizations). The latter is a result of the Debt Collection Act of 1996. These changes are not expected to significantly change the applicant burden.

OMB Approval No.: None.

Title: 47 CFR Section 64.1510—Billing Disclosure Requirements for Pay-Per Call and Other Information Services.

Form No.: N/A.

Type of Review: New Collection.

Respondents: Businesses or other for profit, including small businesses.

Number of Respondents: 1,350.

Estimated Hour Per Response: 40 hours per response (avg.).

Total Annual Burden: 54,000.

Needs and Uses: 47 CFR 64.1510 imposes requirements on common

carriers that bill telephone subscribers for pay-per-call and other information services. The requirements are intended to ensure that consumers understand their rights and responsibilities with respect to these services.

OMB Approval No.: None.

Title: Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket No. 96–61 (INTEGRATED RATE PLANS).

Form No.: N/A.

Type of Review: New Collection.

Respondents: businesses or other for profit.

Number of Respondents: 6.

Estimated Hour Per Response: 100 hours.

Total Annual Burden: 600 hours.

Needs and Uses: Section 254(g) of the 1934 Communications Act, as amended, and our rules extend rate integration to all U.S. territories and possessions. We will require certain carriers to submit no later than February 1, 1997, preliminary plans to achieve rate integration by August 1, 1997, and final plans no later than June 1, 1997. These plans will permit the Commission to review progress toward achieving rate integration.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–28685 Filed 11–7–96; 8:45 am]

BILLING CODE 6712–01–P

[Report No. 2162]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

November 5, 1996.

Petitions for reconsideration and clarification have been filed in the Commission's 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. Oppositions to these petitions must be filed November 25, 1996. 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. (Waverly, NY and Altoona, PA) (MM Docket No. 96–11, RM–8742)

Number of Petitions Filed: 1.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96–28686 Filed 11–7–96; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Coastal Barrier Improvement Act; Property Availability: Black Mountain Property, San Diego County, California

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Black Mountain, located in the City of San Diego, San Diego County, California, is affected by section 10 of the Coastal Barrier Improvement Act of 1990 as specified below.

DATES: Written notice of serious interest to purchase or effect other transfer of all or any portion of this property may be mailed or faxed to the FDIC until February 6, 1997.

ADDRESSES: Copies of detailed descriptions of this property, including maps, may be obtained from or are available for inspection by contacting the following person: Mr. Kenneth Yopp, Federal Deposit Insurance Corporation, Southwest Service Center, 5080 Spectrum Drive, Suite 1000–East, Dallas, TX 75248, (972) 385–6278; Fax (972) 991–4958.

SUPPLEMENTARY INFORMATION: The Black Mountain property is located north of the northerly terminuses of Lynne Anne Lane and Rasmussen Way, extending northerly and easterly encompassing portions of the southern and eastern slopes of Black Mountain in the Rancho Penasquitos community in the northern part of the City of San Diego, California. The site consists of approximately 199.77 acres of mostly sloping to steeply sloping undeveloped land. The property contains habitat for the federally-listed threatened California gnatcatcher and is adjacent to Black Mountain Park to the north and dedicated open space known as Paraiso Cumbres to the east, both of which are managed by the City of San Diego Parks and Recreation Department for recreational and open space conservation purposes. This property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, P.L. 101–591 (12 U.S.C. 1441a–3).

Written notice of serious interest in the purchase or other transfer of all or any portion of this property must be received on or before February 6, 1996 by the Federal Deposit Insurance Corporation at the appropriate address stated above.

ELIGIBLE ENTITIES: Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the federal government;

2. Agencies or entities of state or local government; and,

3. ''Qualified organizations'' pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 179(h)(3)).

FORM OF NOTICE: Written notices of serious interest must be submitted in the following form:

NOTICE OF SERIOUS INTEREST

RE: Black Mountain Property

Federal Register Publication Date: _____

November 8, 1996.

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in the Coastal Barrier Improvement Act of 1990, P.L. 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)), including, for qualified organizations, a determination letter from the United States Internal Revenue Service regarding the organization's status under section 170(h)(3) of the U.S. Internal Revenue Code (26 U.S.C. 179(h)(3)).

3. Brief description of proposed terms of purchase or other offer for all or any portion of the property (e.g., price, method of financing, expected closing date, etc.).

4. Declaration of entity that it intends to use the property for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes (12 U.S.C. 1441a–3(b)(4)), as provided in a clear written description of the purpose(s) to which the property will be put and the location and acreage of the area covered by each purpose(s) including a declaration of entity that it will accept the placement, by the FDIC, of an easement or deed restriction on the property consistent with its intended conservation use(s) as stated in its notice of serious interest.

5. Authorized Representative (Name/Address/Telephone/Fax).

List of Subjects

Environmental protection.

Dated: November 1, 1996.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 96–28773 Filed 11–7–96; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3120–EM]

California; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of California (FEMA–3120–EM), dated October 23, 1996, and related determinations.

EFFECTIVE DATE: October 23, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 23, 1996, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the severe fires beginning on October 21, 1996, and continuing in the State of California are of sufficient severity and magnitude to warrant an emergency declaration under subsection 501(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act). I, therefore, declare that such an emergency exists in the State of California.

You are authorized to coordinate all disaster relief efforts which have the purpose of alleviating the hardship and suffering caused by the emergency on the local population, and to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for debris removal and emergency protective measures as authorized under subsection 502(a)(4) and (5), excluding regular time costs for subgrantees' regular employees, and disaster housing as authorized under subsection 502(a)(6).

In order to provide Federal assistance, you are hereby authorized to coordinate and direct other Federal agencies and fund activities not authorized under other Federal statutes and allocate from funds available for these purposes, such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Pursuant to this emergency declaration, you are authorized to provide emergency assistance as you deem appropriate under Title V of the Stafford Act at 75 percent Federal funding.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Roland Sarabia of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of California to have been affected adversely by this declared emergency:

The counties of Los Angeles, Orange and San Diego.

FEMA has been authorized to provide Federal funding for disaster housing, debris removal, and emergency protective measures as authorized under Title V subsections 502(a) (4), (5), and (6).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 96–28762 Filed 11–7–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1141–DR]

Florida; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Florida (FEMA–1141–DR), dated October 15, 1996, and related determinations.

EFFECTIVE DATE: October 15, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 15, 1996, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Florida, resulting from storm surge, heavy rains, flooding, and wind damage associated with Tropical Storm Josephine beginning on October 7, 1996, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Florida.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas. Public Assistance may be added at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Edward A. Thomas of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Florida to have been affected adversely by this declared major disaster:

Baker, Citrus, Clay, Dixie, Duval, Hernando, Hillsborough, Levy, Manatee, Nassau, Pasco, Pinellas, Putnam, Sarasota, Taylor, and Volusia Counties for Individual Assistance and Hazard Mitigation Grant Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 96–28761 Filed 11–7–96; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–3119–EM]

Massachusetts; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the Commonwealth of Massachusetts (FEMA–3119–EM), dated October 23, 1996, and related determinations.

EFFECTIVE DATE: October 23, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 23, 1996, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the extreme weather conditions and flooding beginning on October 20, 1996, and continuing in the Commonwealth of Massachusetts are of sufficient severity and magnitude to warrant an emergency declaration under subsection 501(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act). I, therefore, declare that such an emergency exists in the Commonwealth of Massachusetts.

You are authorized to coordinate all disaster relief efforts which have the purpose of alleviating the hardship and suffering caused by the emergency on the local population, and to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for debris removal and emergency protective measures as authorized under subsection 502(a) (4) and (5), excluding regular time costs for subgrantees' regular employees, and disaster housing as authorized under subsection 502(a)(6).

In order to provide Federal assistance, you are hereby authorized to coordinate and direct other Federal agencies and fund activities not authorized under other Federal statutes and allocate from funds available for these purposes, such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Pursuant to this emergency declaration, you are authorized to provide emergency assistance as you deem appropriate under Title V of the Stafford Act at 75 percent Federal funding.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Alma C. Armstrong of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the Commonwealth of Massachusetts to have been affected adversely by this declared emergency:

The counties of Essex, Middlesex, Norfolk, Plymouth and Suffolk.

FEMA has been authorized to provide Federal funding for disaster housing, debris removal, and emergency protective measures as authorized under Title V subsections 502(a) (4), (5), and (6).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 96–28763 Filed 11–7–96; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 22, 1996.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Robert Sidney Cauthorn, Del Rio, Texas, and James Guy Cauthorn, Del Rio, Texas; to each acquire a total of 29.25 percent of the voting shares of SW&KM Holdings, LLC, Del Rio, Texas; SW&KM Limited Parnership, Del Rio, Texas; Westex Bancorp, Inc., Del Rio, Texas; and Westex Bancorp of Delaware, Inc., Wilmington, Delaware, and thereby indirectly acquire Del Rio Bank & Trust Company, Del Rio, Texas; First State Bank, Brackettville, Texas; and Sutton City National Bank, Sonora, Texas.

Board of Governors of the Federal Reserve System, November 4, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–28729 Filed 11–07–96; 8:45 am]

BILLING CODE 6210–01–F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 3, 1996.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Panhandle Aviation, Inc., Clarinda, Iowa; to acquire 100 percent of the

voting shares of National Bank of Iowa, Denison, Iowa.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. IFB Holdings, Inc., Chillicothe, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Investors Federal Bank, N.A., Chillicothe, Missouri.

In connection with this application, Investors Federal Bank and Savings Association proposes to convert to a national bank, Investors Federal Bank, N.A., and concurrently form the applicant as its holding company.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Cullen/Frost Bankers, Inc., San Antonio, Texas, and The New Galveston Company, Wilmington, Delaware; to acquire 100 percent of the voting shares, and merge with Corpus Christi Bancshares, Corpus Christi, Texas; and thereby indirectly acquire C.S.B.C.C., Inc., Wilmington, Delaware; and Citizens State Bank, Corpus Christi, Texas.

2. SW&KM Limited Partnership, Del Rio, Texas; SW&KM Holdings, LLC, Del Rio, Texas; to become bank holding companies by acquiring Westex Bancorp of Delaware, Inc., Wilmington, Delaware, and Del Rio Bank & Trust Company, Del Rio, Texas; First State Bank, Brackettville, Texas; and Sutton City National Bank, Sonora, Texas.

Board of Governors of the Federal Reserve System, November 4, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–28730 Filed 11–7–96; 8:45 am]

BILLING CODE 6210–01–F

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Committee on Employee Benefits of the Federal Reserve System.*

TIME AND DATE: 2:45 p.m., Wednesday, November 13, 1996.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 2lst Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Review of the 1997 budget for the Office of Employee Benefits.

2. Any items carried forward from a previously announced meeting.

* The Committee on Employee Benefits considers matters relating to the Retirement, Thrift, Long-Term Disability Income, and Insurance Plans for Employees of the Federal Reserve System.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: November 6, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–28925 Filed 11–06–96; 2:13 pm]

BILLING CODE 6210–01–P

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Committee on Employee Benefits of the Federal Reserve System.*

TIME AND DATE: Approximately 3:15 p.m., Wednesday, November 13, 1996, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 2lst Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposal relating to Federal Reserve System benefits.

2. Proposed procedural amendments to the Federal Reserve System Retirement Plan.

3. Proposals regarding a contract for support of the Office of Employee Benefits.

4. Proposals relating to the Office of Employee Benefits.

5. Any items carried forward from a previously announced meeting.

* The Committee on Employee Benefits considers matters relating to the Retirement, Thrift, Long-Term Disability Income, and Insurance Plans for Employees of the Federal Reserve System.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: November 6, 1996.

William W. Wiles,

Secretary of the Board.

[FR Doc. 96–28926 Filed 11–06–96; 2:13 pm]

BILLING CODE 6210–01–P

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, notice is hereby given that the Federal Accounting Standards Advisory Board will meet on Wednesday, November 20, 1996, from 9:00 A.M. to 4:00 P.M. in room 7C13 of the General Accounting Office building, 441 G St., N.W., Washington, D.C.

The purpose of the meeting is to discuss and review the Management Discussion & Analysis (MD&A) and Interpretation follow-up.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Acting Executive Director, 750 First St., N.E., Room 1001, Washington, D.C. 20002, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: November 1, 1996.

Wendy M. Comes,

Acting Executive Director.

[FR Doc. 96–28731 Filed 11–7–96; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Meeting of a Panel of the National Bioethics Advisory Commission

SUMMARY: Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), this notice is hereby given to announce an open meeting of a panel of the National Bioethics Advisory Commission (NBAC). The purpose is to meet with representatives of ethics advisory bodies of other nations both (i) to examine the conclusions reached by various commissions regarding the protection of human subjects in research and the management and use of genetic information and (ii) to discuss common concerns that national ethics advisory bodies face in addressing public bioethics.

DATES: November 21, 1996, 8:30 a.m.–4:30 p.m.

PLACE: Crowne Plaza Parc Fifty Five Hotel, 55 Cyril Magnin Street, San Francisco, California 94102.

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) by Executive Order 12975, October 3, 1995. The purpose of NBAC is to provide advice and make recommendations to the National Science and Technology Council and other appropriate entities on bioethical issues arising from research on human biology and behavior and the applications, including the clinical applications, of that research.

Tentative Agenda

Thursday November 21, 1996

Morning Session

8:30 a.m. Call to Order, Opening Remarks, and Introductions
9:00 a.m. Presentations By Invited Officials and Guests and Discussion With NBAC Commissioners—What Have Commissions Done About the Protection of Human Subjects in Research and the Management and Use of Genetic Information?
10:00 a.m. Break
10:45 a.m. Morning Presentations and Discussion Continue
12:30 p.m. Lunch

Afternoon Session

1:00 p.m. Presentation by Amy Gutmann, Ph.D.—Deliberating About Ethics in a Democracy: Some Reflections for Commissions
2:00 p.m. Presentations By Invited Officials and Guests and Discussion With NBAC Commissioners—What Characteristics of Commissions—Such as Scope, Sponsorship, Public Access, Professional Dominance, Evaluation and Soundness, and Role and Structure—Contribute to Success or Failure?
4:00 p.m. Public Comment
4:30 p.m. Adjourn

Public Participation

The meeting is open to the public with attendance limited to space available. Members of the public who wish to make oral statements should contact NBAC at the address or telephone number listed below at least seven business days prior to the meeting. Reasonable provisions will be made to include on the agenda presentations by persons requesting an opportunity to speak. Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other special accommodations should also contact NBAC at the address or telephone number listed below at least seven business days prior to the meeting. Persons who wish to file written statements with NBAC may do so at any time.

FOR FURTHER INFORMATION CONTACT: Patricia Norris, Communications Director, National Bioethics Advisory Commission, MSC–7508, 6100 Executive Boulevard, Suite 3C01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax 301–480–6900.

Dated: November 5, 1996.

Phillip R. Lee,

Assistant Secretary for Health.

[FR Doc. 96–28940 Filed 11–7–96; 8:45 am]

BILLING CODE 4160–17–M

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health Review and Evaluation of the NIOSHTIC® and Registry of Toxic Effects of Chemical Substances (RTECS®) Electronic Databases

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services.

ACTION: Request for Comments.

SUMMARY: NIOSH is conducting a comprehensive evaluation of two of its electronic databases, the NIOSH Technical Information Center (NIOSHTIC®) and the Registry of Toxic Effects of Chemical Substances (RTECS®). The goal of this evaluation is to determine the importance and usefulness of NIOSHTIC® and RTECS® to the national and international occupational safety and health communities and to other users. Evaluation results will be used to generate a set of recommendations outlining possible options for the future of these databases.

DATES: Written comments on the issues outlined below should be submitted to Diane Manning, NIOSH Docket Office, 4676 Columbia Parkway, Mailstop C–34, Cincinnati, Ohio 45226, or by fax (513) 533–8285. Comments must be received on or before December 13, 1996. Comments may also be submitted by e-mail to: dmm2@NIOSDT1.em.cdc.gov. as WordPerfect 5.0, 5.1/5.2, 6.0/6.1, or ASCII files.

FOR FURTHER INFORMATION CONTACT: Technical information may be obtained from Jay Bainbridge, NIOSH, CDC, 1600 Clifton Road, N.E., Mailstop D–40, Atlanta, Georgia 30333, telephone (404) 639–3526, e-mail address: jkb1@niood1.em.cdc.gov.

Information may also be obtained by calling 1–800–35–NIOSH or through the NIOSH Home Page: http://www.cdc.gov/niosh/homepage/html.

SUPPLEMENTARY INFORMATION: NIOSH is interested in all comments regarding these databases, particularly useful would be comments about the following: the utility of the specific databases, the ability for these specific databases to supply needed information, the negative impact if the databases were no longer available, sources of comparable data, and suggestions for improvement.

Dated: November 4, 1996.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 96–28728 Filed 11–7–96; 8:45 am]

BILLING CODE 4163–19–P

Health Care Financing Administration

[BPD–879–NC]

Medicare and Medicaid Programs; Announcement of Additional Application From Hospital Requesting Waivers for Organ Procurement Service Area and Technical Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice with comment period.

SUMMARY: This notice announces an additional application which HCFA has received from a hospital requesting a waiver from dealing with its designated area organ procurement organization (OPO) in accordance with section 1138(a)(2) of the Social Security Act. It supplements notices published in the Federal Register on January 19, 1996 and May 17, 1996, that announced hospital waiver requests received by HCFA. Effective January 1, 1996, a hospital is required to have an agreement with the OPO designated for the area in which it is located unless HCFA grants it a waiver to have an agreement with an alternative, out-of-area OPO. This notice requests comments from OPOs and the general public for our consideration in determining whether such a waiver should be granted.

DATES: Written comments will be considered if we receive them at the appropriate address, as provided below,

no later than 5:00 p.m. on January 7, 1997.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–879–NC, P.O. Box 7517, Baltimore, MD 21244–0517.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments may also be submitted electronically to the following e-mail address: BPD–879–NC@hcfa.gov. E-mail comments must include the full name and address of the sender and must be submitted to the referenced addresss in order to be considered. All comments must be incorporated in the e-mail message because we may not be able to access attachments. Electronically submitted comments will be available for public inspection at the Independence Avenue address, below.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–879–NC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW, Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Mark A. Horney (410) 786–4554.

SUPPLEMENTARY INFORMATION:

I. Background

On January 19, 1996 and May 17, 1996, we published notices in the Federal Register (61 FR 1389 and 61 FR 24941) that announced applications which HCFA had received from hospitals requesting a waiver from dealing with their designated organ procurement organizations (OPOs) in accordance with section 1138 (a)(2) of the Social Security Act (the Act). This notice supplements these two notices and makes a technical correction to one of the groupings listed in the May 17, 1996 notice.

Section 1138 (a)(1)(A)(iii) of the Social Security Act (the Act) provides that a hospital or rural primary care hospital that participates in the Medicare or Medicaid programs must establish written protocols for the identification of potential organ donors. Section 155 of the Social Security Act Amendments of 1994 (SSA '94) (Public Law 103–432) amended section 1138 of the Act to require that effective January 1, 1996, a hospital must notify the organ procurement organization (OPO) designated for the service area in which it is located of potential organ donors (sections 1138 (a)(1)(A)(iii) and (a)(1)(B) of the Act). It must also have an agreement to do so only with that designated OPO (sections 1138 (a)(1)(C) and (a)(3)(A)).

The statute also provides that the hospital may obtain a waiver of these requirements from the Secretary. A waiver would allow the hospital to have an agreement with an ''out-of-area'' OPO (section 1138 (a)(2)) if it meets conditions specified in the statute (sections 1138 (a)(2)(A) (i) and (ii)).

The law further states that in granting a waiver, the Secretary must determine that such a waiver: (1) Would be expected to increase donation; and (2) will assure equitable treatment of patients referred for transplants within the service area served by the designated OPO and within the service area served by the out-of-area OPO (section 1138 (a)(2)(A)). In making a waiver determination, the Secretary may consider, among other factors: (1) Cost effectiveness; (2) improvements in quality; (3) whether there has been any change in a hospital's designated OPO service area due to the definition of metropolitan statistical areas (MSAs); and (4) the length and continuity of a hospital's relationship with the out-of-area OPO (section 1138(a)(2)(B)). Under section 1138(a)(2)(D) of the Act, the Secretary is required to publish a notice of any waiver applications within 30 days of receiving the application and offer interested parties an opportunity to comment in writing within 60 days of the published notice. Section 155(a)(2) of SSA '94 provides that any hospital that had an agreement with an out-of-area OPO on the date of enactment of that legislation, October 31, 1994, may obtain a temporary or interim waiver of the requirements of sections 1138(a)(1)(A)(iii) and (a)(l)(C). The statute requires that the hospital must have submitted a waiver request to the Secretary by January 1, 1996. The statute specifically provides that the hospital's existing agreement with the out-of-area OPO would remain in effect pending the Secretary's final determination under section 1138(a)(2) as to whether the hospital should be granted a permanent waiver.

For hospitals that do not meet these conditions, but that entered into agreements with out-of-area OPOs prior to January 1996, we have established a similar process. Under our section 1138(a)(2) authority to grant waivers if statutory conditions are met, we will make a preliminary determination as to whether the hospital's request meets the requirements of section 1138(a)(2)(A)(i) and (ii) based upon an initial review of its waiver request. If we determine that the hospital appears preliminarily to meet those standards, we will grant the hospital a temporary, interim waiver while we consider further the merits of the hospital's waiver request on a permanent basis. In the meantime, the hospital may continue its relationship with the OPO with which it has an agreement.

II. Waiver Request Procedures

In October 1995, we issued a Program Memorandum (Transmittal No. A–95–11) that has been supplied to each hospital. This Program Memorandum detailed the waiver process and discussed the information that may be provided by hospitals requesting a waiver. We indicated that upon receipt of the waiver requests, we would publish a Federal Register notice to solicit public comments, as required by law (section 1138(a)(2)(D)).

We will then review the requests and comments received. During the review process, we may consult on an as-needed basis with agencies outside HCFA, including the Public Health Service's Division of Transplantation, the United Network for Organ Sharing, and HCFA regional offices. If necessary, we may request additional clarifying information from the applying hospital or others. We then will make a final determination on the waiver requests and notify the affected hospitals and OPOs.

III. Additional Hospital Waiver Request

This notice adds an additional hospital to the May 17, 1996 notice. We are adding the Hutcheson Medical Center, Inc. of Fort Oglethorpe, GA. The Hutcheson Medical Center currently designated area OPO is Tennessee Donor Services (TNDS), 1714 Hayes Street, Nashville, TN 37203. The center's requested out-of-area OPO is Lifelink of Georgia (GALL), 3715 Northside Parkway, 100 Northcreek, Suite 300, Atlanta, GA 30327.

IV. Technical Corrections

In the May 17, 1996, notice with comment period on page 24943, in the Group I listing, we inadvertently carried the incorrect requested OPO code for

Mercy Hospital. The corrected entries for this hospital read as follows:

Name of facility	City	State	Requested OPO	Designated OPO
Mercy Hospital	Willard	OH	OHLC	OHLB

Key:
OHLC Life Connection of Ohio, 1545 Holland Road, Suite C, Maumme, OH 43537.
OHLB Lifebanc, 20600 Chagrin Blvd., Suite 350, Cleveland, OH 44122.

In the Group II listing, on page 24944, we inadvertently carried the incorrect code for the requested OPO and the designated OPO for New Milford Hospital. The corrected entries for this hospital read as follows:

Name of facility	City	State	Requested OPO	Designated OPO
New Milford Hospital	New Milford	CT	NYRT	CTHH

Key:
NYRT New York Regional Transplant Program, 475 Riverside Drive–Suite 1244, New York, NY 10115.
CTHH Northeast OPO and Tissue Bank, Hartford Hospital, 80 Seymour Street, Hartford, CT 06102–5037.

Authority: Section 1138 of the Social Security Act (42 U.S.C. 1320b–8).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 20, 1996.

Thomas A. Ault,

Director, Bureau of Policy Development, Health Care Financing Administration.

[FR Doc. 96–28684 Filed 11–7–96; 8:45 am]

BILLING CODE 4120–01–P

Substance Abuse and Mental Health Services Administration

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel II in December.

A summary of the meeting may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA Office of Extramural Activities Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: (301) 443–4783.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meeting will include the review, discussion and evaluation of individual contract proposals. These discussions could reveal personal information concerning individuals associated with the proposals and confidential and financial information about an individual's proposal. The discussion may also reveal information about procurement activities exempt from disclosure by statute and trade secrets and commercial or financial information obtained from a person and privileged and confidential. Accordingly, the meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(3), (4), and (6) and 5 U.S.C. App. 2, section 10(d).

Committee Name: SAMHSA Special Emphasis Panel II.

Meeting Date: December 3, 1996.

Panel: Technical Assistance to States and Universities in Mental Health Services, Human Resource Development.

Place: Parklawn Building, Room 12–94, 5600 Fishers Lane, Rockville, MD 20852.

Closed: December 3, 1996, 1:30 p.m.–4:00 p.m.

Contact: Constance M. Burtoff, M.A., Room 17–89, Parklawn Building, Telephone: (301) 443–2437 and FAX: (301) 443–3437.

Dated: November 1, 1996.

Jeri Lipov.

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 96–28758 Filed 11–7–96; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4124–N–11]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR Part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless

assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR Part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the Federal Register, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Army: Mr. Derrick Mitchell, CECPW–FP, U.S. Army Center for Public Works, 7701 Telegraph Road, Alexandria, VA 22310–3862; (703) 428–6083; (These are not toll-free numbers).

Dated: November 1, 1996.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 11/08/96

Suitable/Available Properties

Buildings (by State)

Arizona

Bldg. 71117
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 219630124
Status: Unutilized
Comment: 5,888 sq. ft., possible asbestos, most recent use—classroom, off-site use only.

Colorado

Bldg. T–106
Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 219630125
Status: Unutilized
Comment: 25,749 sq. ft., poor condition, possible asbestos/lead based paint, most recent use—storage, off-site use only.

Bldg. T–222
Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 219630126
Status: Unutilized
Comment: 2,750 sq. ft., poor condition, possible asbestos/lead based paint, most recent use—storage, off-site use only.

Bldg. P–1008
Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 219630127
Status: Unutilized
Comment: 3,362 sq. ft., fair condition, possible asbestos/lead based paint, most recent use—service outlet, off-site use only.

Bldg. 1302
Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 219630128
Status: Unutilized
Comment: 18,259 sq. ft., possible asbestos/lead based paint, most recent use—maintenance shop, off-site use only.

Bldg. T–1401
Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 219630129
Status: Unutilized
Comment: 327 sq. ft., poor condition, most recent use—storehouse, off-site use only.

Bldg. T–1441
Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 219630130
Status: Unutilized
Comment: 1.500 sq. ft., poor condition, possible asbestos/lead based paint, most recent use—admin., off-site use only.

Bldg. T–1827
Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 219630132
Status: Unutilized
Comment: 2,488 sq. ft., poor condition, possible asbestos, most recent use—service outlet, off-site use only.

Bldg. T–2438
Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 219630133
Status: Unutilized
Comment: 4,020 sq. ft., fair condition, most recent use—instruction bldg., off-site use only.

Bldg. 2739
Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 219630134
Status: Unutilized
Comment: 3,880 sq. ft., possible asbestos, most recent use—maintenance shop, off-site use only.

Bldg. T–2946
Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 219630135
Status: Unutilized
Comment: 5,830 sq. ft., poor condition, possible asbestos, most recent use—maintenance shop, off-site use only.

Bldg. T–6043
Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 219630136
Status: Unutilized
Comment: 10,225 sq. ft., poor condition, possible asbestos, most recent use—storage, off-site use only.

Bldg. T6052
Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 219630137
Status: Unutilized
Comment: 4,458 sq. ft., poor condition, possible asbestos, most recent use—maintenance shop, off-site use only.

Bldg. T–6084
Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 219630138
Status: Unutilized
Comment: 10,183 sq. ft., poor condition, possible asbestos/lead based paint, most recent use—training, off-site use only.

Bldg. T–6089
Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 219630139
Status: Unutilized
Comment: 3,150 sq. ft., poor condition, possible asbestos, most recent use—service outlet, off-site use only.

Bldg. S–6221
Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 219630140
Status: Unutilized
Comment: 5,798 sq. ft., fair condition, possible asbestos/lead based paint, most recent use—warehouse, off-site use only.

Bldg. S–6226
Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 219630141
Status: Unutilized
Comment: 13,154 sq. ft., fair condition, possible asbestos/lead based paint, most recent use—admin., off-site use only.

Bldg. S–6229
Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 219630142
Status: Unutilized
Comment: 480 sq. ft., poor condition, possible asbestos/lead based paint, most recent use—generator plant, off-site use only.

Bldg. S–6230
Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 219630143
Status: Unutilized
Comment: 13,154 sq. ft., fair condition, possible asbestos/lead based paint, most recent use—admin., off-site use only.

Bldg. S–6235
Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 219630144
Status: Unutilized
Comment: 10,038 sq. ft., poor condition, possible asbestos/lead based paint, most recent use—admin., off-site use only.

Bldg. S–6240
Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 219630145
Status: Unutilized
Comment: 9,985 sq. ft., poor condition, possible asbestos/lead based paint, most recent use—admin., off-site use only.

Bldg. S–6241
Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 219630146
Status: Unutilized
Comment: 10,038 sq. ft., poor condition, possible asbestos/lead based paint, off-site use only.

Bldg. S–6243
Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 219630147
Status: Unutilized
Comment: 12,745 sq. ft., poor condition, possible asbestos/lead based paint, most recent use—storage; off-site use only.

Bldgs. 6244, 6247
Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 219630148
Status: Unutilized
Comment: fair condition, possible asbestos/lead based paint, most recent use—admin., off-site use only.

Bldgs.S–6245, S–6246
Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 219630149
Status: Unutilized
Comment: fair condition, possible asbestos/lead based paint, most recent use—barracks, off-site use only.

Bldgs. S–6248, S–6249
Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 219630150
Status: Unutilized
Comment: poor condition, possible asbestos/lead based paint, most recent use—admin., off-site use only.

Bldg. S–6251
Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 219630151
Status: Unutilized
Comment: 11,906 sq. ft., fair condition, possible asbestos/lead based paint, most recent use—recreation, off-site use only.

Bldg. S–6260
Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 219630152
Status: Unutilized
Comment: 2,953 sq. ft., fair condition, possible asbestos/lead based paint, most recent use—comm. bldg., off-site use only.

Bldg. S–6261
Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 219630153
Status: Unutilized
Comment: 7,778 sq. ft., fair condition, possible asbestos/lead based paint, most recent use—storage, off-site use only.

Georgia

Bldg. T–425
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 219630155
Status: Unutilized
Comment: 1,367 sq. ft., needs major rehab, most recent use—storage, off-site use only.

Bldg. S–5608
Fort Stewart
Hinesveille Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219630159
Status: Unutilized
Comment: 2,688 sq. ft., fair condition, most recent use—admin., off-site use only.

Bldg. S–7332
Fort Stewart
Hinesville Co: Liberty GA 313314–
Landholding Agency: Army
Property Number: 219630160
Status: Unutilized
Comment: 1,140 sq. ft., fair condition, most recent use—admin., off-site use only.

Bldg. T–202
Fort Stewart
Hinesveille Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219630161
Status: Unutilized
Comment: 2,444 sq. ft., needs rehab, most recent use—admin., off-site use only.

Hawaii

Bldg. P–6082
Fort Shafter
Honolulu HI 96819–
Landholding Agency: Army
Property Number: 219630162
Status: Unutilized
Comment: 42 sq. ft., most recent use—storage, off-site only.

Bldg. P–2604
Schofield Barracks Military Reservation
Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219630163
Status: Unutilized
Comment: 112 sq. ft., most recent use—storage, off-site use only.

Louisiana

Bldg. 5917 A, B, C, D
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–7100
Landholding Agency: Army
Property Number: 219630164
Status: Unutilized
Comment: 3902 sq. ft., family housing, needs rehab.

New York

24 Residential Apt. Bldgs.
Stewart Gardens, Army Wherry Family Housing
New Windsor Co: Orange NY 12553–
Landholding Agency: Army
Property Number: 219630165
Status: Unutilized
Comment: most recent use—family housing, needs rehab, presence of asbestos, off-site use only.

11 Detached Garages
Stewart Gardens, Army Wherry Family Housing
New Windsor Co: Orange NY 12553–
Landholding Agency: Army
Property Number: 219630166
Status: Unutilized
Comment: needs rehab, off-site use only.

27 Storage Sheds
Stewart Gardens, Army Wherry Family Housing
New Windsor Co: Orange NY 12553–
Landholding Agency: Army
Property Number: 219630167
Status: Unutilized
Comment: good condition, off-site use only.

Bldg. 1810
Stewart Army Subpost
New Windsor Co: Orange NY 12553–
Landholding Agency: Army
Property Number: 219630168
Status: Unutilized

Comment: 1453 sq. ft., needs rehab, presence of asbestos, most recent use—office, off-site use only.

Bldg. 2297
Stewart Army Subpost
New Windsor Co: Orange NY 12553–
Landholding Agency: Army
Property Number: 219630169
Status: Unutilized
Comment: 102 sq. ft., needs rehab, presence of asbestos, most recent use—emerg. power station, off-site use only.

Bldgs. 2506, 2514, 2516
Stewart Army Subpost
New Windsor Co: Orange NY 12553–
Landholding Agency: Army
Property Number: 219630170
Status: Unutilized
Comment: 4350 sq. ft. each, needs rehab, presence of asbestos, most recent use—office, off-site use only.

Bldg. 2608
Stewart Army Subpost
New Windsor Co: Orange NY 12553–
Landholding Agency: Army
Property Number: 219630171
Status: Unutilized
Comment: 6634 sq. ft., needs rehab, presence of asbestos, most recent use-barracks, off-site use only.

Bldg. 2619
Stewart Army Subpost
New Windsor Co: Orange NY 12553–
Landholding Agency: Army
Property Number: 219630172
Status: Unutilized
Comment: 1680 sq. ft., needs rehab, presence of asbestos, most recent use—office, off-site use only.

Bldg. 1600
Stewart Army Subpost
New Windsor Co: Orange NY 12553–
Landholding Agency: Army
Property Number: 219630173
Status: Unutilized
Comment: 1453 sq. ft., needs rehab, presence of asbestos, most recent use—dayroom, off-site use only.

6 Bldgs.
Stewart Army Subpost
#1602, 1604, 1606, 1608, 1610, 1612
New Windsor Co: Orange NY 12553–
Landholding Agency: Army
Property Number: 219630174
Status: Unutilized
Comment: 4349 sq. ft. each, needs rehab, presence of asbestos, most recent use—barracks, off-site use only.

Bldgs. 644, 658
U.S. Military Academy–West Point
Highlands Co: Orange NY 10996–
Landholding Agency: Army
Property Number: 219630175
Status: Unutilized
Comment: 1922 sq. ft. each, needs repair, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 650
U.S. Military Academy–West Point
Highlands Co: Orange NY 10996–
Landholding Agency: Army
Property Number: 219630176
Status: Unutilized
Comment: 3292 sq. ft., needs repair, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 660
U.S. Military Academy–West Point
Highlands Co: Orange NY 10996–
Landholding Agency: Army
Property Number: 219630177
Status: Unutilized
Comment: 1742 sq. ft., needs repair, presence of asbestos, most recent use—admin., off-site use only.

Bldgs. 662, 664
U.S. Military Academy–West Point
Highlands Co: Orange NY 10996–
Landholding Agency: Army
Property Number: 219630178
Status: Unutilized
Comment: 5082 sq. ft. each, needs repair, presence of asbestos, most recent use—admin., off-site use only.

Bldg. 668
U.S. Military Academy–West Point
Highlands Co: Orange NY 10996–
Landholding Agency: Army
Property Number: 219630179
Status: Unutilized
Comment: 3140 sq. ft., needs repair, presence of asbestos, most recent use—preschool, off-site use only.

North Carolina

Bldg. D–1102
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219630180
Status: Unutilized
Comment: 3812 sq. ft., needs rehab, most recent use—training, off-site use only.

Bldg. K1320
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219630181
Status: Unutilized
Comment: 4725 sq. ft., needs repair, most recent use—community bldg. off-site use only.

Bldg. 2–3061
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219630182
Status: Unutilized
Comment: 6020 sq. ft., needs rehab, most recent use—storage, off-site use only.

Bldg. 2–5411
Fort Bragg
Ft. Bragg Co: Cumberland NC 38307–
Landholding Agency: Army
Property Number: 219630183
Status: Unutilized
Comment: 3100 sq. ft., needs major rehab, most recent use—heat plant, off-site use only.

Bldg. E–7429
Fort Bragg
Fort Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219630184
Status: Unutilized
Comment: 3780 sq. ft., needs rehab, most recent use—training bldg., off-site use only.

Bldg. E–7530
Fort Bragg
Fort Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219630185
Status: Unutilized
Comment: 3747 sq. ft., needs rehab, most recent use—training bldg., off-site use only.

Oklahoma

Bldg. P–508
U.S. Army Reserve Center, Norman #02
Norman Co: Cleveland OK
Landholding Agency: Army
Property Number: 219630186
Status: Unutilized
Comment: 210 sq. ft., most recent use—storehouse, off-site use only.

Texas

Bldg. 809
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219630187
Status: Unutilized
Comment: 16853 sq. ft., poor condition, most recent use—gymnasium, off-site use only.

Bldg. 2160
Fort Bliss, Hayes Housing Complex
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219630188
Status: Unutilized
Comment: 916 sq. ft., Poor condition, presence of asbestos/lead based paint, most recent use—family quarters, off-site use only.

Bldg. 2503
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219630189
Status: Unutilized
Comment: 3332 sq. ft., needs major rehab, presence of lead based paint, most recent use—maintenance shops, off-site use only.

Bldgs. 2504, 2506, 2510
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219630190
Status: Unutilized
Comment: 2331 sq. ft., needs major rehab, presence of lead based paint, most recent use—maintenance shops, off-site use only.

Bldgs. 2511–2513, 2516, 2519
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219630191
Status: Unutilized
Comment: 13711 sq. ft., needs major rehab, presence of lead based paint, most recent use—maintenance shops, off-site use only.

Bldgs. 2514, 2515
Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219630192
Status: Unutilized
Comment: 16976 sq. ft., needs major rehab, presence of lead based paint, most recent use—maintenance shops, off-site use only.

Bldg. 2535
Fort Bliss
El Paso Co: El Paso TX 79916–

Landholding Agency: Army
Property Number: 219630193
Status: Unutilized
Comment: 528 sq. ft., needs major rehab, presence of lead based paint, most recent use—maintenance shops, off-site use only.

32 Units
Fort Bliss
Upper William Beaumont Army Medical Center
El Paso Co: El Paso TX 79916–
Location: 7402, 7403, 7406, 7410, 7423, 7424, 7427, 7428, 7442, 7446, 7447, 7462, 7463, 7466, 7467, 7485—A/B
Landholding Agency: Army
Property Number: 219630194
Status: Unutilized
Comment: A side 1010 sq. ft., B side 777 sq. ft., poor condition, most recent use—residential off-site use only.

35 Units
Fort Bliss
Upper William Beaumont Army Medical Center
El Paso Co: El Paso TX 79916–
Location: 7401, 7404, 7405, 7408, 7412, 7422, 7425, 7426, 7429, 7430, 7441, 7444, 7445, 7448, 7461, 7464, 7465, 7481—A/B
Landholding Agency: Army
Property Number: 219630195
Status: Unutilized
Comment: 972 sq. ft., poor condition, most recent use—residential, off-site use only.

8 Units
Fort Bliss
Upper William Beaumont Army Medical Center
El Paso Co: El Paso TX 79916–
Location: 7407 A/B, 7421 A/B, 7443 A/B, 7483 A/B
Landholding Agency: Army
Property Number: 219630196
Status: Unutilized
Comment: 887 sq. ft., poor condition, most recent use—residential, off-site use only.

Washington

Bldg. A0213, Fort Lewis
Fort Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 219630198
Status: Unutilized
Comment: 9566 sq. ft., Possible asbestos/lead paint, most recent use—warehouse, off-site use only.

13 Bldgs. Fort Lewis
A0402, CO723, CO726, CO727, CO902, CO903, CO906, CO907, CO922, CO923, CO926, CO927, C1250
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 219630199
Status: Unutilized
Comment: 2360 sq. ft., possible asbestos/lead paint, most recent use—barracks, off-site use only.

7 Bldgs., Fort Lewis
AO438, AO439, CO901, CO910, CO911, CO918, CO919
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 219630200
Status: Unutilized
Comment: 1144 sq. ft., possible asbestos/lead paint, most recent use—dayroom bldgs., off-site use only.

Bldg. AO608, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 219630201
Status: Unutilized
Comment: 2285 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—dining, off-site use only.

Bldg. A1403, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 219630202
Status: Unutilized
Comment: 6704 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. A1405, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 219630203
Status: Unutilized
Comment: 6704 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

6 Bldgs., Fort Lewis
CO908, CO728, CO921, CO928, C1008, C1108
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 219630204
Status: Unutilized
Comment: 2207 sq. ft., possible asbestos/lead paint, most recent use—dining, off-site use only.

Bldg. CO909, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 219630205
Status: Unutilized
Comment: 1984 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. CO920, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 219630206
Status: Unutilized
Comment: 1984 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. C1249, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 219630207
Status: Unutilized
Comment: 992 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. C1322a, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 219630208
Status: Unutilized
Comment: 1843 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. C1322b, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 219630209
Status: Unutilized
Comment: 2284 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. C1331, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 219630210
Status: Unutilized
Comment: 3805 sq. ft., possible asbestos/lead paint, most recent use—housing, off-site use only.

Bldg. M0007, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 219630211
Status: Unutilized
Comment: 1901 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. M0011, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 219630212
Status: Unutilized
Comment: 1200 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only.

Bldg. 1164, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 219630213
Status: Unutilized
Comment: 230 sq. ft., possible asbestos/lead paint, most recent use—storehouse, off-site use only.

Bldg. 1228, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 219630215
Status: Unutilized
Comment: 10413 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only.

Bldg. 1307, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 219630216
Status: Unutilized
Comment: 1092 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 1309, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 219630217
Status: Unutilized
Comment: 1092 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only.

Bldg. 2167, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 219630218
Status: Unutilized
Comment: 288 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only.

Bldg. 4078, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 219630219
Status: Unutilized
Comment: 10200 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—warehouse, off-site use only.

Bldg. 9599, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army

Property Number: 219630220
Status: Unutilized
Comment: 12366 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only.

Suitable/Unavailable Properties

Buildings (by State)

Georgia

Bldg. T–125
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 219630154
Status: Unutilized
Comment: 9489 sq. ft., needs major rehab, most recent use—clothing sales, off-site use only.

Bldg. S–2605
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 219630156
Status: Unutilized
Comment: 800 sq. ft., needs major rehab, most recent use—scout bldg., off-site use only.

Bldg. T–6017
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 219630157
Status: Unutilized
Comment: 1625 sq. ft., needs major rehab, most recent use—scout bldg., off-site use only.

Bldg. T–377
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219630158
Status: Unutilized
Comment: 1250 sq. ft., fair condition, most recent use—admin., off-site use only.

Vermont

Conti-Tracy USAR Center
Montpelier Co: Washington VT 05602–9513
Landholding Agency: Army
Property Number: 219630197
Status: Unutilized
Comment: 2240 sq. ft., brick, proposed outgrant, most recent use—vehicle maintenance.

Unsuitable Properties

Buildings (by State)

Alabama

Bldg. 8004–8010
Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219640001
Status: Unutilized
Reason: Extensive deterioration.

8 Bldgs.
Fort Rucker
#811, 3505, 3709, 3908, 6205, 6206, 6208, 6212
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 21964002
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 9811, 9817, 24153
Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219640003
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1012
Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219640004
Status: Unutilized
Reason: Extensive deterioration.

Alaska

Bldg. 1051
Fort Wainwright
Ft. Wainwright Co: Fairbanks North AK 99703–
Landholding Agency: Army
Property Number: 219640005
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Floodway; Secured Area.

Bldg. 1560
Fort Wainwright
Ft. Wainwright Co: Fairbanks North AK 99703–
Landholding Agency: Army
Property Number: 21964006
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material Floodway; Secured Area.

Bldg. 4040
Fort Wainwright
Ft. Wainwright Co: Fairbanks North AK 99703–
Landholding Agency: Army
Property Number: 219640007
Status: Underutilized
Reason: Floodway; Secured Area.

California

Bldg. T–386
National Training Center, Fort Irwin
Ft. Irwin Co: San Bernardino CA 92310–5097
Landholding Agency: Army
Property Number: 219640008
Status: Unutilized
Reason: Extensive deterioration.

Colorado

Bldg. 6288
Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 219640009
Status: Unutilized
Reason: Extensive deterioration.

Georgia

Facility 133
Fort McPherson
Ft. McPherson Co: Fulton GA 30330–5000
Landholding Agency: Army
Property Number: 219640010
Status: Unutilized
Reason: Secured Area.

Bldgs. 960, 965, 969, 987
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219640011
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 961
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219640012
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 962
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219640013
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 964
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219640014
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 964A
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219640015
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 964B
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219640016
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 966
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219640017
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 968
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219640018
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 981
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219640019
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 983
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219640020
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 984, 985
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219640021
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 986
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–

Landholding Agency: Army
Property Number: 219640022
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 988
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219640023
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 999
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219640024
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 2100, 2101, 2102
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219640025
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2131
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219640026
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2133
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219640027
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2134
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219640028
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2135
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219640029
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2136
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219640030
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2137
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219640031
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2138
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219640032
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2139
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219640033
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2140
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219640034
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2143
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219640035
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2144
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219640036
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2204
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219640037
Status: Unutilized
Reason: Extensive deterioration.

Bldg. T–122
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 219640038
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1264
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219640039
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1365
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219640040
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1688
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219640041
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1689
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219640042
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1746
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219640043
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1747
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219640044
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2539
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219640045
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 5348
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219640046
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 5979
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219640047
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 9040
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219640048
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 9041
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 219640049
Status: Unutilized
Reason: Extensive deterioration.

Hawaii

Facility T–2427
Schofield Barracks
Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219640050
Status: Unutilized
Reason: Extensive deterioration.

Facility P–2429
Schofield Barracks
Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219640051
Status: Unutilized
Reason: Extensive deterioration.

Facility T–1050
Wheeler Army Airfield
Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219640052
Status: Unutilized
Reason: Extensive deterioration.

Louisiana

Bldg. 7824
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219640053

Status: Unutilized
Reason: Extensive deterioration.
Bldg. 7901
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219640054
Status: Unutilized
Reason: Extensive deterioration.
Bldg. 7902
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219640055
Status: Unutilized
Reason: Extensive deterioration.
Bldg. 7904
Fort Polk
Ft Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219640056
Status: Unutilized
Reason: Extensive deterioration.
Bldg. 7905
Fort Polk
Ft Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219640057
Status: Unutilized
Reason: Extensive deterioration.
Bldg. 7907
Fort Polk
Ft Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219640058
Status: Unutilized
Reason: Extensive deterioration.
Bldg. 7908
Fort Polk
Ft Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219640059
Status: Unutilized
Reason: Extensive deterioration.
Bldg. 8434
Fort Polk
Ft Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 219640060
Status: Unutilized
Reason: Extensive deterioration.

Maryland

Bldg. 3075
Aberdeen Proving Ground
Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219640062
Status: Unutilized
Reason: Extensive deterioration.
Bldg. 3142
Aberdeen Proving Ground Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219640062.
Status: Unutilized
Reason: Extensive deterioration.
Bldg. 703, Fort Detrick
Frederick Co: Frederick MD 21702–
Landholding Agency: Army
Property Number: 219640063
Status: Unutilized
Reason: Extensive deterioration.

New Jersey

Bldgs. 3305, 3708
Armament Research, Dev. & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219540002
Status: Underutilized
Reason: Secured Area.
Bldg. 1104
Armament Research, Dev. & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219540003
Status: Unutilized
Reason: Secured Area.
Bldg. 1105
Armament Research, Dev. & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219540004
Status: Unutilized
Reason: Secured Area.
Bldg. 1113
Armament Research, Dev. & Eng. Center
Picatinny Arsenal Co: Morris MJ 07806–5000
Landholding Agency: Army
Property Number: 219540005
Status: Unutilized
Reason: Secured Area.
Bldg. 1117
Armament Research, Dev. & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219540006
Status: Unutilized
Reason: Secured Area.
Bldg. 1118
Armament Research, Dev. & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219540007
Status: Unutilized
Reason: Secured Area.

North Carolina

Bldg. 1–1147
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640064
Status: Unutilized
Reason: Extensive deterioration.
Bldg. 1–1151
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640065
Status: Unutilized
Reason: Extensive deterioration.
Bldg. 1–1247
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640066
Status: Unutilized
Reason: Extensive deterioration.
Bldg. 1–1251
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640067
Status: Unutilized
Reason: Extensive deterioration.
Bldg. 2–3128
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640068
Status: Unutilized
Reason: Extensive deterioration.
Bldg. 2–3222
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640069
Status: Unutilized
Reason: Extensive deterioration.
Bldg. 4–2031
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640070
Status: Unutilized
Reason: Extensive deterioration.
Bldg. 8–2444
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640071
Status: Unutilized
Reason: Extensive deterioration.
Bldg. 8–2643
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640072
Status: Unutilized
Reason: Extensive deterioration.
Bldg. A–1515
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640073
Status: Unutilized
Reason: Extensive deterioration.
Bldg. A–1815
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640074
Status: Unutilized
Reason: Extensive deterioration.
Bldg. A–2034
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640075
Status: Unutilized
Reason: Extensive deterioration.
Bldg. A–4671
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640076
Status: Unutilized
Reason: Extensive deterioration.
Bldg. A–4673
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640077
Status: Unutilized
Reason: Extensive deterioration.
Bldg. A–4674
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640078

Status: Unutilized
Reason: Extensive deterioration.
Bldg. A–4675
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640079
Status: Unutilized
Reason: Extensive deterioration.
Bldg. A–4676
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640080
Status: Unutilized
Reason: Extensive deterioration.
Bldg. A–4677
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640081
Status: Unutilized
Reason: Extensive deterioration.
Bldg. A–4678
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640082
Status: Unutilized
Reason: Extensive deterioration.
Bldg. A–4680
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640083
Status: Unutilized
Reason: Extensive deterioration.
Bldg. A–4681
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640084
Status: Unutilized
Reason: Extensive deterioration.
Bldg. A–4682
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640085
Status: Unutilized
Reason: Extensive deterioration.
Bldg. A–5577
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640086
Status: Unutilized
Reason: Extensive deterioration.
Bldg. A–5578
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640087
Status: Unutilized
Reason: Extensive deterioration.
Bldg. A–5580
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640088
Status: Unutilized
Reason: Extensive deterioration.
Bldg. A–5581
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640089
Status: Unutilized
Reason: Extensive deterioration.
Bldg. A–5582
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640090
Status: Unutilized
Reason: Extensive deterioration.
Bldg. A–5586
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640091
Status: Unutilized
Reason: Extensive deterioration.
Bldg. A–5777
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640092
Status: Unutilized
Reason: Extensive deterioration.
Bldg. A–5778
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640093
Status: Unutilized
Reason: Extensive deterioration.
Bldg. A–5780
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640094
Status: Unutilized
Reason: Extensive deterioration.
Bldg. A–5781
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640095
Status: Unutilized
Reason: Extensive deterioration.
Bldg. A–5782
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640096
Status: Unutilized
Reason: Extensive deterioration.
Bldg. A–5929
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640097
Status: Unutilized
Reason: Extensive deterioration.
Bldg. A–6034
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640098
Status: Unutilized
Reason: Extensive deterioration.
Bldg. M–1657
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640099
Status: Unutilized
Reason: Extensive deterioration.
Bldg. M–1755
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640100
Status: Unutilized
Reason: Extensive deterioration.
Bldg. M–1757
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640101
Status: Unutilized
Reason: Extensive deterioration.
Bldg. M–1925
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640102
Status: Unutilized
Reason: Extensive deterioration.
Bldg. M–2065
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640103
Status: Unutilized
Reason: Extensive deterioration.
Bldg. M–2158
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640104
Status: Unutilized
Reason: Extensive deterioration.
Bldg. M–5734
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640105
Status: Unutilized
Reason: Extensive deterioration.
Bldg. M–5756
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640106
Status: Unutilized
Reason: Extensive deterioration.
Bldg. M–5836
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640107
Status: Unutilized
Reason: Extensive deterioration.
Bldg. M–5840
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640108
Status: Unutilized
Reason: Extensive deterioration.
Bldg. M–5842
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640109
Status: Unutilized
Reason: Extensive deterioration.
Bldg. M–5846
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–

Landholding Agency: Army
Property Number: 219640110
Status: Unutilized
Reason: Extensive deterioration.

Bldg. M–5848
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640111
Status: Unutilized
Reason: Extensive deterioration.

Bldg. M–5852
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640112
Status: Unutilized
Reason: Extensive deterioration.

Bldg. M–6460
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640113
Status: Unutilized
Reason: Extensive deterioration.

Bldg. M–6557
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640114
Status: Unutilized
Reason: Extensive deterioration.

Bldg. M–6561
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640115
Status: Unutilized
Reason: Extensive deterioration.

Bldg. M–6761
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640116
Status: Unutilized
Reason: Extensive deterioration.

Bldg. M–6857
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640117
Status: Unutilized
Reason: Extensive deterioration.

Bldg. M–7710
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640118
Status: Unutilized
Reason: Extensive deterioration.

Bldg. M–7713
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640119
Status: Unutilized
Reason: Extensive deterioration.

Bldg. M–7722
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640120
Status: Unutilized
Reason: Extensive deterioration.

Bldg. M–7727
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640121
Status: Unutilized
Reason: Extensive deterioration.

Bldg. M–7910
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640122
Status: Unutilized
Reason: Extensive deterioration.

Bldg. M–7925
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640123
Unutilized
Reason: Extensive deterioration.

Bldg. N–5505
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640124
Status: Unutilized
Reason: Extensive deterioration.

Bldg. N–5725
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640125
Status: Unutilized
Reason: Extensive deterioration.

Bldg. N–5825
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640126
Status: Unutilized
Reason: Extensive deterioration.

Bldg. N–5924
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640127
Status: Unutilzed
Reason: Extensive deterioration.

Bldg. 8–7003
Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219640128
Status: Unutilized
Reason: Extensive deterioration.

South Carolina

Bldg. 1434
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219640129
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1443
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219640130
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 1550
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219640131
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2371
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219640132
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2403
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219640133
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 2541
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219640134
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 3491
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219640135
Status: Unutilized
Reasons: Extensive deterioration.

Bldg. 3494
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219640136
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 3498
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219640137
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 3500
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219640138
Status: Unutilized
Reason Extensive deterioration.

Bldg. 3510
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219640139
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 3520
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219640140
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 3602
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219640141
Status: Unutilized

Reason: Extensive deterioration.

Bldg. 4345
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219640142
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 4355
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219640143
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 4381
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219640144
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 4383
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219640145
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 4384
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219640146
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 4385
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219640147
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 4446
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219640148
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 4448
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219640149
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 4450
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219640150
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 4451
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219640151
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 4460
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219640152
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 5033
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219640153
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 5034
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219640154
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 5042
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219640155
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 6585
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219640156
Status: Unutilized
Reason: Extensive deterioration.

4 Bldgs.
Fort Jackson
#9401, 9402, 9403, 9404
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219640157
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 9501
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219640158
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 9560
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219640159
Status: Unutilized
Reason: Extensive deterioration.

6 Bldgs.
Fort Jackson
Location: #10–508, 10–509, 10–510, 10–511, 10–512, 10–513
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219640160
Status: Unutilized
Reason: Extensive deterioration.

11 Bldgs.
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Location: #10–515, 10–516 10–517, 10–518, 10–519, 10–520, 10–521,10–522, 10–523 10–524, 10–525
Landholding Agency: Army
Property Number: 219640161
Status: Unutilized
Reason: Extensive deterioration.

10 Bldgs.
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Location: #10–526, 10–527, 10–528, 10–529, 10–530, 10–531, 10–532, 10–533, 10–534, 10–535
Landholding Agency: Army
Property Number: 219640162
Status: Unutilized
Reason: Extensive deterioration.

13 Bldgs.
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Location: #10–537, 10–538, 10–539, 10–540, 10–541, 10–542, 10–543, 10–544, 10–545, 10–546, 10–547, 10–548, 10–549
Landholding Agency: Army
Property Number: 219640163
Status: Unutilized
Reason: Extensive deterioration.

13 Bldgs.
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Location: #10–601, 10–602, 10–603, 10–604, 10–605, 10–606, 10–607, 10–608, 10–609, 10–610, 10–611, 10–612, 10–613
Landholding Agency: Army
Property Number: 219640164
Status: Unutilized
Reason: Extensive deterioration.

6 Bldgs.
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Location: #10–616, 10–617, 10–618, 10–619, 10–620, 10–621
Landholding Agency: Army
Property Number: 219640165
Status: Unutilized
Reason: Extensive deterioration.

Bldgs. 11–554, 11–555
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219640166
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 11–660
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219640167
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 07155
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219640168
Status: Unutilized
Reason: Extensive deterioration.

Tennessee

Bldg. 301–3
Volunteer Army Ammunition Plant
Chattanooga Co: Hamilton TN
Landholding Agency: Army
Property Number: 219640169
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 312–3
Volunteer Army Ammunition Plant
Chattanooga Co: Hamilton TN
Landholding Agency: Army
Property Number: 219640170
Status: Unutilized

Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

[FR Doc. 96–28611 Filed 11–7–96; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Western Water Policy Review Advisory Commission Meeting

AGENCY: Department of the Interior.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the Western Water Policy Review Advisory Commission (Commission), established by the Secretary of the Interior under the Reclamation Projects Authorization and Adjustment Act of 1992, will hold a public meeting at the Loews Coronado Bay, 4000 Coronado Bay Road, San Diego, California. Room locations will be posted in the hotel lobby.

This meeting is for the purpose of receiving briefings from the Western States Water Council and other researchers preparing reports on the status of water resources in the west today.

DATES: November 21 and 22, 1996. The meeting will begin at 8:00 a.m. Thursday morning and adjourn by no later than 5:00 p.m. on Friday. The Thursday afternoon session will be a joint meeting with the Western State Water Council.

PUBLIC PARTICIPATION: Written statements may be provided in advance to the following address: Western Water Policy Review Office, D–5001; P.O. Box 25007; Denver, CO 80225–0007, or submitted directly at the meeting. Statements received by mail will be provided to the members prior to the meeting if received by no later than November 15, 1996. The Commission's schedule will not allow time for oral presentations by the public during the meeting.

FOR FURTHER INFORMATION: Members of the public may contact the Commission Office by telephone, 303–236–6211, or fax, 303–236–4286.

Dated: November 4, 1996.

Larry Schulz,

Administrative Officer.

[FR Doc. 96–28792 Filed 11–7–96; 8:45 am]

BILLING CODE 4310–94–M

Fish and Wildlife Service

North American Wetlands Conservation Council; Meeting Announcement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The North American Wetlands Conservation Council (Council) will meet on December 11 to review proposals for funding submitted pursuant to the North American Wetlands Conservation Act. Upon completion of the Council's review, proposals will be submitted to the Migratory Bird Conservation Commission with recommendations for funding. The meeting is open to the public.

DATES: December 11, 1996, 9:00 A.M.

ADDRESSES: The meeting will be held at the Holiday Inn on the Beach, 5002 Seawall Boulevard, Paradise Ballroom South, Galveston, Texas. The North American Wetlands Conservation Council Coordinator is located at Fish and Wildlife Service, Arlington Square Building, 4401 N. Fairfax Drive, Suite 110, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Byron Kenneth Williams, Coordinator, North American Wetlands Conservation Council, (703) 358–1784.

SUPPLEMENTARY INFORMATION: In accordance with the North American Wetlands Conservation Act (Pub. L. 101–233, 103 Stat. 1968, December 13, 1989, as amended), the North American Wetlands Conservation Council is a Federal-State-private body which meets to consider wetland acquisition, restoration, enhancement and management projects for recommendation to and final approval by the Migratory Bird Conservation Commission. Proposals from State, Federal, and private sponsors require a minimum of 50 percent non-Federal matching funds.

Dated: October 31, 1996.

Jay L. Gerst,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 96–28721 Filed 11–7–96; 8:45 am]

BILLING CODE 4310–55–M

Geological Survey

Biological Resources Division; Species at Risk Program

ACTION: Notice of Availability.

SUMMARY: The Biological Resources Division (BRD) is announcing the availability of funds through the Species at Risk Program (SAR). The basic purpose of SAR is to fund short-term research, inventory and monitoring projects to generate information that allows development of conservation agreements, action plans and management alternatives that provide for the protection of species of flora and fauna and their habitats and thereby reduce the need for listing species as threatened or endangered.

DATES: Information packages describing requirements for participation in this initiative will be available upon request until December 13, 1996.

ADDRESSES: Parties interested in this program should request an information package from: Species at Risk Program, 12201 Sunrise Valley Drive, M.S. 300, Reston, VA 20192 ATTN. Mr. John Mosesso or Ms. Wendy Kuhne.

FOR FURTHER INFORMATION CONTACT: Mr. John Mosesso or Ms. Wendy Kuhne, Species at Risk Program, 12201 Sunrise Valley Drive, M.S. 300, Reston, VA 20192 E-Mail: John__Mosesso@nbs.gov or Wendy__Kuhne@nbs.gov or at 703–648–4070.

SUPPLEMENTARY INFORMATION:

A. Purpose

Species at Risk (SAR) is a program that develops scientific information on the status and trends of sensitive species, particularly with respect to the relationship of species abundance and distribution to habitat conditions and stresses. The basic purpose of SAR is to generate information that allows development of conservation agreements, action plans and management alternatives that provide for the protection of species and their habitats and thereby reduce the need for listing species as threatened or endangered. The program provides an opportunity for investigators to participate through survey, monitoring and research activities. Projects are specifically intended to be of short duration and should seek to optimize partnerships with Federal agencies, states, universities and others in the private sector. Successful SAR projects are often conducted by investigators who have identified key small but critical gaps in our biological knowledge. Projects then fill these gaps and provide resource managers, regulators and private landowners useable information from which prudent resource management decisions can be made. As in previous years, SAR will focus on species for which there is concern but limited information on their abundance, distribution and/or status. Projects should identify or develop new information that will reduce the need

for a formal listing under the Endangered Species Act. The U.S. Fish and Wildlife Service (FWS) has provided a list of species of particular concern (list will be provided with application package). Projects focusing on these species will be given special consideration. Projects focusing on species not included on this list will also be considered if accompanied by sufficient justification. This program is specifically directed towards species for which opportunities exist for developing strategies that assure long-term population stability and reduce the likelihood they will have to be dealt with through the regulatory processes. Therefore, projects involving FWS ''Candidate,'' ''Threatened,'' or ''Endangered'' species will not be considered. Likewise, species of great abundance, regardless of the management challenges they pose, are beyond the focus of SAR and will be rejected in the screening process.

This program is conducted in furtherance of the Secretary's obligations under the Fish and Wildlife Act of 1956 (16 USC 742a–742j, as amended) and the Fish and Wildlife Coordination Act (16 USC 661–667e, as amended).

B. Background

The National Biological Service was transferred to the U.S. Geological Survey and renamed the Biological Resources Division (BRD) under Secretarial Order No. 3202 on October 1,1996. BRD gathers and analyzes biological information and serves as an information clearinghouse, providing broad access to the widest possible range of factual data on the status and trends of the Nation's biota and the potential effects of land management choices. This information serves public and private landowners who are interested in sustaining biological resources. It also provides understanding to help avoid conflicts that can both impede development and degrade natural habitats.

The Species at Risk Program will develop scientific information and alternatives to assist Federal, State, and other land managers in their decisions regarding the protection of sensitive species and habitats.

C. Availability of Funds

Through this program, pre-proposals are invited for funding in Fiscal Year 1997. Total funding anticipated for the fiscal year is up to $370,000. Monies will be provided to successful applicants on a competitive basis. In order to maximize the number of proposals there is no minimum project cost. The maximum project cost will be $80,000.

D. Eligibility Requirements

Under the terms specified in the information package, pre-proposals will be accepted from State agencies, private and industry groups, academic institutions, and Native American Tribes and Nations. Pre-proposals will be evaluated in light of their scientific merit, partnership opportunities, potential for providing useful information to resource managers, potential for conservation agreements, possibilities for cost sharing, and demonstration of successful completion within 18 months of date of initiation. Possible selectees will then be invited to submit a full proposal for consideration of funding.

E. Application Process

Parties interested in participating in this program should request an information package that will include detailed application forms, Federal Assistance forms (Standard Form 424, etc.), proposal format requirements, etc. from:

Mail:
Species at Risk Program, 12201 Sunrise Valley Drive, M.S. 300, Reston, VA 20192, attn. John Mosesso or Wendy Kuhne
Or E-Mail:
John__Mosesso@nbs.gov
Wendy__Kuhne@nbs.gov
Or Call: (703) 648–4070

F. Dates

Notice of interest in this program must be received by December 13, 1996.

Dennis B. Fenn,

Chief Biologist, Biological Resources Division,

[FR Doc. 96–28756 Filed 11–7–96; 8:45 am]

BILLING CODE 4310–31–P

Bureau of Land Management

[CA–066–06–1220–00]

Management Plan and Environmental Assessment, Midland Long-Term Visitor Area, Palm Springs-South Coast Resource Area, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability

SUMMARY: In compliance with the National Environmental Policy Act of 1969 (NEPA), the Federal Land Policy and Management Act of 1976 (FLPMA) and the Code of Federal Regulations (40 CFR 1501.7, 43 CFR 1610.2), notice is hereby given that the Bureau of Land Management (BLM) has prepared an environmental assessment and management plan affecting public lands within the Palm Springs-South Coast Resource Area, southern California. BLM has expanded the boundaries of the existing Midland Long-Term Visitor Area (LTVA), allowing the collection of fees, and will provide limited public services to users.

DATES: Any person whose interest is adversely affected by these decisions may have certain appeal rights as described in Title 43 of the Code of Federal Regulations (CFR) Part 4.411 to the U.S. Department of the Interior Board of Land Appeals. The appeal must be submitted in writing no later than 30 days from the date of this notice to the following address: Ms. Julia Dougan, Area Manager, Bureau of Land Management, Palm Springs-South Coast Resource Area, 690 West Garnet Avenue, North Palm Springs, CA 92258–2000.

FOR ADDITIONAL INFORMATION CONTACT: David H. Eslinger, Outdoor Recreation Planner, Bureau of Land Management, Palm Springs-South Coast Resource Area, 690 West Garnet Avenue, North Palm Springs, CA 92258–2000; telephone (619) 251–4836.

SUPPLEMENTARY INFORMATION: The Midland LTVA currently contains 135 acres of public lands immediately north of Midland Road, eight miles north of Blythe, in Riverside County, California. BLM proposes to expand the LTVA by about 100 acres, directly south across Midland Road from the existing LTVA. The proposed expansion would protect sensitive soils and wildlife, improve manageability, provide user services, and authorize collection of fees to cover operating expenses for visitor services provided. The additional lands are located in T5S, R22E, Sections 22 and 23.

The following management prescriptions are proposed: develop and maintain access from Midland Road into the LTVA addition; blade a berm along Midland Road to prevent route proliferation; sign the boundaries of the LTVA; install a trash dumpster and an informational display and signs; prohibit camping on public lands within two miles of the LTVA; increase Ranger patrols; issue no apiary permits on public lands within three miles of the LTVA; and increase visitor services through the use of volunteer hosts and the Blythe Chamber of Commerce.

Nothing in the proposed plan shall have the effect of terminating any validly-issued rights-of-way or customary operation, maintenance, repair, or replacement activities in such rights-of-way within the LTVA

boundaries, in accordance with Sections 509 (a) and 701 (a) of the Federal Land Policy and Management Act of 1976.

Dated: October 24, 1996.

Lucia Kuizon,

Acting Area Manager.

[FR Doc. 96–28715 Filed 11–7–96; 8:45 am]

BILLING CODE 4310–40–P

[NV–930–1430–01; N–58812]

Notice of Realty Action: Non-Competitive Sale of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Non-Competitive Sale of Public Lands in Lincoln County, Nevada.

SUMMARY: The below listed public land in Rachel, Lincoln County, Nevada has been examined and found suitable for sale utilizing non-competitive procedures, at not less than the fair market value. In accordance with Section 7 of the Act of June 28, 1934, as amended, 43 U.S.C. 315f and EO 6910, the described lands are hereby classified as suitable for disposal under the authority of Section 203 and Section 209 of the Act of October 21, 1976; 43 U.S.C. 1761.

DATES: On or before December 23, 1996, interested parties may submit comments to the Assistant District Manager, Nonrenewable Resources.

ADDRESSES: Written comments should be addressed to: Bureau of Land Management, Gene L. Drais, Assistant District Manager, Nonrenewable Resources, HC 33, Box 33500, Ely, NV 89301–9408.

FOR FURTHER INFORMATION CONTACT: Michael McGinty, Realty Specialist, at the above address or telephone (702) 289–1882.

SUPPLEMENTARY INFORMATION: The following described parcel of land, situated in Lincoln County is being offered as a direct sale to Mr. Richard Castleton.

Mount Diablo Meridian, Nevada

T. 3 S., R. 55 E.,
Section 29, SE¼SW¼,
Section 31, Lot 1.
Containing 81.99 acres more or less.

This land is not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 nonreturnable filing fee for the conveyance of the available mineral interests.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All the oil and gas mineral deposits in the land subject to this conveyance, including without limitation, the disposition of these substances under the mineral leasing laws. Its permittee, licensees and lessees, the right to prospect for, mine and remove the mineral owned by the United States under applicable law and such regulations as the Secretary of the Interior may prescribe. This reservation includes all necessary and incidental activities conducted in accordance with the provisions of the mineral leasing laws in effect at the time such activities are undertaken, including, without limitation, necessary access and exit rights, all drilling, underground, or surface mining operation, storage and transportation facilities deemed necessary and authorized under law and implementing regulations. Unless otherwise provided by separate agreement with surface owner, permittee, licensees and lessees of the United States shall reclaim disturbed areas to the extent prescribed by regulations issued by the Secretary of the Interior. All cause of action brought to enforce the rights of the surface owner under the regulations above referred to shall be instituted against permittee, licensees and lessees of the United States; and the United States shall not be liable for the acts or omissions of its permittee, licensees and lessees.

3. Those rights for an underground telephone cable and appurtenances granted to Lincoln County Telephone System, its successors or assignees, by right-of-way N–22164, pursuant to the Act of October 21, 1976; 43 U.S.C. 1761.

4. Those rights for an overhead 69 Kv three phase power distribution line, granted to Lincoln County Power #1., its successors and assignee, by right-of-way N–16673, pursuant to the Act of October 21, 1976; 43 U.S.C. 1761.

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 leasing under the mineral leasing laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments regarding this action to the Assistant District Manager, Nonrenewable Resources at the address listed above. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA, or other applicable laws. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the Federal Register.

Dated: October 24, 1996.

Gene A. Kolkman,

District Manager.

[FR Doc. 96–28713 Filed 11–7–96; 8:45 am]

BILLING CODE 4310–HC–P

[ID–015–07–1610–00]

Amendment To Extend Public Comment Period on Draft Resource Management Plan and Draft Environmental Impact Statement (RMP/EIS)

AGENCY: Bureau of Land Management—Interior.

SUMMARY: On Tuesday, August 13, 1996 a Notice of Availability was published in the Federal Register for the draft Owyhee Resource Management Plan and draft Environmental Impact Statement (RMP/EIS). That notice indicated that the public comment period provided for in 43 CFR Part 1600 (BLM Planning Regulations) would remain open until November 15, 1996. The comment period has been extended and will remain open until January 3, 1997.

DATES: The public comment period for the draft Owyhee Resource Management Plan and draft Environmental Impact Statement (RMP/EIS) has been extended and will remain open until January 3, 1997.

ADDRESSES: Written comments may be submitted at any time during the comment period to the Boise Field Office and should be sent to: Owyhee Area Manager, Bureau of Land Management, Boise Field Office, 3948 Development Avenue, Boise, ID 83705.

FOR FURTHER INFORMATION CONTACT: Jay Carlson, Area Manager; or Fred Minckler, Team Leader at the address above. Telephone (208) 384–3300.

Dated: October 28, 1996.

David Vail,

Operations Manager.

[FR Doc. 96–28712 Filed 11–7–96; 8:45 am]

BILLING CODE 4310–GG–P

[UT–069–97–1020–00]

Notice of Intent for Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to amend the San Juan Resource Area Resource Management Plan. San Juan County, Utah.

SUMMARY: The Bureau of Land Management (BLM) proposes to amend the San Juan Resource Management Plan (RMP) with three changes. Grazing is proposed to be retired in five side canyons of Comb Wash, a tributary of the San Juan River. The five side canyons are Road, Fish, Owl, Mule, and Arch. The second proposed change is Off-Highway Vehicle (OHV) designations. The area encompassed by the following description is proposed to be changed from open to limited OHV designation.

All areas of public land from Comb Wash road (B235) on the west, to Butler Wash road (B230) on the east, and Highway 163 on the south. The northern boundary follows the old U–95 road alignment from its junction with the Comb Wash road, thence east across Comb Ridge to the Butler Wash drainage, thence south along this drainage to the township line of T. 37 S. and T. 38 S. and thence east along this line to the Butler Wash road.

The third proposed change is that a campsite in Comb Wash would no longer remain a developed site. Two Class A toilets, picnic tables, and grills would be removed. One Class C toilet would remain.

These proposed changes do not conform with the current San Juan RMP, necessitating a plan amendment. These changes are proposed in order to address a number of issues that have been raised in past scoping for the Comb Wash area:

What are the impacts of human uses, including livestock grazing, on upland and riparian vegetation?

How will riparian area functioning conditions be improved?

How will BLM manage activities to protect the watershed and meet state water quality standards?

What recreation opportunities should be provided?

How much are human uses, including livestock grazing, affecting the cultural resources in the watershed, and how can these resources be protected from further deterioration?

How will activities and resources be managed to protect, conserve and enhance wildlife populations and habitat?

There will not be any changes to planning criteria identified in the San Juan RMP as a result of this amendment.

DATES: The comment period for this proposed plan amendment will commence with the date of publication of this notice. Comments must be submitted on or before December 9, 1996.

FOR FURTHER INFORMATION CONTACT: Kent Walter, San Juan Resource Area Manager, 435 N. Main, Monticello, Utah 84535, telephone (801) 587–2141. Existing planning documents and information are available at the above address or at the Moab District Office, 82 E. Dogwood, Moab, Utah, 84532, telephone (801) 259–6111. Comments on the proposed plan amendment should be sent to Kent Walter, San Juan Resource Area Manager, Bureau of Land Management, P.O. Box 7, Monticello, Moab, Utah 84535, telephone (801) 587–2141.

SUPPLEMENTARY INFORMATION: The proposed plan amendment includes three management actions proposed in the Comb Wash Interdisciplinary Plan. There are a number of other management actions in this plan that deal with watershed, cultural resources, recreation, wildlife, livestock, traditional use, and fire management issues. All of the other actions would be in compliance with the San Juan RMP. The Comb Wash Plan and an accompanying environmental assessment will be available for a thirty-day review immediately after the comment period for this Federal Register notice closes. The plan and environmental assessment can be obtained from the Bureau of Land Management's San Juan Resource Area office, P.O. Box 7, Monticello, Utah, 84532, telephone (801) 587–2141.

G. William Lamb,

State Director, Utah.

[FR Doc. 96–28770 Filed 11–7–96; 8:45 am]

BILLING CODE 4310–DQ–P

[NV–930–1430–01; N–59476]

Notice of Public Meeting on Proposed Withdrawal of Public Land; Washoe County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: A public meeting/open house to discuss the proposed withdrawal of approximately 26,000 acres of public land in the Pah Rah Range within southern Washoe County, has been scheduled for December 12, 1996.

SUMMARY: BLM staff will be available at the Carson City District BLM Office at 1535 Hot Springs Road, Suite 300, Carson City, Nevada, to discuss and receive comments on the proposed withdrawal between 3:00 p.m. and 5:00 p.m. on December 12, 1996. This meeting is being held in accordance with regulations set forth in 43 CFR 2300. The withdrawal has been proposed for a period of up to 5 years to protect public land from potential impacts associated with nondiscretionary land and mineral activities while a land use plan amendment addressing future management of the public land is prepared. The lands are currently segregated from entry under the public land and mining laws. Further details can be obtained by contacting Jo Ann Hufnagle, Realty Specialist, at (702) 885–6000.

Dated this 30th day of October, 1996.

Daniel L. Jacquet,

Acting Assistant District Manager, Carson City District.

[FR Doc. 96–28714 Filed 11–7–96; 8:45 am]

BILLING CODE 4310–HC–P

Minerals Management Service

Alaska OCS Region, Beaufort Sea, Oil and Gas Lease Sale 170; Notice of Intent To Prepare Environmental Impact Statement (Comments Due in 45 Days)

Authority

This Notice is published pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as amended, and the regulations issued thereunder (40 CFR Part 1501).

Purpose of Notice of Intent

Pursuant to the regulations (40 CFR 1501.7) implementing the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as amended, MMS is announcing its intent to prepare an Environmental Impact Statement (EIS) regarding the oil and gas leasing proposal known as Sale 170 Beaufort Sea and the beginning of the scoping process for the EIS. Throughout the scoping process, Federal, State, and local governments and other interested parties have the opportunity to aid MMS in determining the significant issues and alternatives to be analyzed in

the EIS and the possible need for additional information.

The EIS analysis will focus on the potential environmental effects of leasing, exploration, and development of the blocks included in the Call area described in the September 30, 1996 Federal Register notice (Vol. 61, No. 190, pages 51123–5). This study (Call) area could be further defined as a result of the Area Identification procedure indicated in the September 30 notice. Alternatives to the proposal that may be considered are to cancel the sale or modify the sale.

Instructions on Notice of Intent

Federal, State, and local governments and other interested parties are requested to send their written comments on the scope of the EIS, significant issues that should be addressed, and alternatives that should be considered to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, room 308, Anchorage, Alaska, 99508–4302. Comments should be enclosed in an envelope labeled ''Comments on the Notice of Intent to Prepare an EIS on the proposed Beaufort Sea Lease Sale 170.'' Comments are due no later than 45 days from publication of this Notice

Dated: November 4, 1996.

Cynthia Quarterman,

Director, Minerals Management Service.

[FR Doc. 96–28790 Filed 11–7–96; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 95–17]

Stanley Alan Azen, M.D.; Grant of Restricted Registration

On January 9, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Stanley Alan Azen, M.D. (Respondent) of Sun Valley, California, notifying him of an opportunity to show cause as to why DEA should not deny his application for registration as a practitioner under 21 U.S.C. 823(f), for reason that such registration would be inconsistent with the public interest.

By letter dated January 31, 1995, the Respondent, through counsel, timely filed a request for a hearing, and following prehearing procedures, a hearing was held in Long Beach, California on November 30, 1995, before Administrative Law Judge Paul A. Tenney. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both sides submitted proposed findings of fact, conclusions of law and argument. On February 22, 1996, Judge Tenney issued his Findings of Fact, Conclusions of Law and Recommended Ruling, recommending that the Respondent's application for a DEA Certificate of Registration should be granted subject to his compliance with the terms of his probation with the Medical Board of California. On March 13, 1996, Government counsel filed exceptions to the Recommended Ruling of the Administrative Law Judge, and on March 27, 1996, Judge Tenney transmitted the record of these proceedings to the Deputy Administrator. Subsequently, on March 29, 1996, Respondent filed exceptions to Judge Tenney's Recommended Ruling. However, Respondent's exceptions have not been considered by the Acting Deputy Administrator, since they were not filed within the time period specified in 21 CFR 1316.66, and Respondent did not request an extension of time within which to file his exceptions.

The Acting Deputy Administrator has considered the record in its entirety, excluding Respondent's exceptions, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts the findings of fact, conclusions of law, and recommended ruling of Judge Tenney, except as noted below.

The Acting Deputy Administrator finds that Respondent previously possessed DEA Certificate of Registration, AA8786329. On May 19, 1992, an Order to Show Cause was issued proposing to revoke that Certificate of Registration, alleging that Respondent had been convicted of a controlled substance related felony offense and that his continued registration would be inconsistent with the public interest. Following a hearing before Administrative Law Judge Mary Ellen Bittner, the then-Acting Administrator revoked Respondent's DEA registration effective March 3, 1994. See, Stanley Alan Azen, M.D., 59 FR 10,168 (1994).

In the prior proceeding, the then-Acting Administrator found that Respondent received his medical degree in 1978. Following an internship and two residencies in emergency medicine and internal medicine, Respondent worked since 1981, as an emergency room physician. Respondent admitted that he first experimented with marijuana and cocaine in the 1970's and became a regular cocaine user during the 1980's. He further admitted that he would share cocaine with his friends, and on September 20, 1990, his girlfriend died of a cocaine overdose. During the course of the investigation into his girlfriend's death, allegations were made that Respondent sold cocaine; a cooperating individual attempted to purchase cocaine from Respondent; and a search warrant executed at Respondent's residence revealed 2 ounces of cocaine, 19 grams of marijuana, and drug paraphernalia. Respondent was arrested and on April 16, 1991, in the Municipal Court of Los Angeles, California, a four-count felony complaint was filed against Respondent charging him with the sale and possession of a controlled substance. On November 15, 1991, the Respondent pled *nolo contendere* to one felony count of simple possession of a controlled substance. In the prior proceeding, Respondent testified that as a result of his arrest he terminated his drug habits and sought treatment for his drug abuse.

In his March 3, 1994 final order, the then-Acting Administrator adopted Judge Bittner's finding that the Government had not proved by a preponderance of the evidence that Respondent sold cocaine to the cooperating individual. However, in revoking Respondent's prior DEA Certificate of Registration, the then-Acting Administrator found that Respondent had a long history of drug abuse and had not demonstrated a life-long commitment to drug rehabilitation.

On April 15, 1994, Respondent submitted an application for a new DEA registration in Schedules IV and V. That application is the subject of these proceedings. The Acting Deputy Administrator concludes that the then-Acting Administrator's March 3, 1994 decision regarding Respondent is *res judicata* for purposes of this proceeding. See, Liberty Discount Drugs, Inc., 57 FR 2788 (1992) (where the findings in a previous revocation proceeding were held to be *res judicata* in a subsequent administrative proceeding.) The then-Acting Administrator's determination of the facts relating to the previous revocation of the Respondent's DEA registration is conclusive. Accordingly, the Acting Deputy Administrator adopts the March 3, 1994 final order in its entirety. The Acting Deputy Administrator concludes that the critical issue in this proceeding is whether the circumstances, which existed at the time of the prior

proceeding, have changed sufficiently to support a conclusion that Respondent's registration would be in the public interest.

According to Respondent, he has not abused drugs since April 1991, when he was admitted to the out-patient program at the Betty Ford Center for treatment of chemical dependency due to cocaine and marijuana abuse. This program required participation in alcohol or cocaine anonymous programs, and random urinalysis. Early in the program, Respondent had two positive drug screens for marijuana and one for cocaine. These results appear to have been from residual amounts of the drugs in his system. From his criminal conviction in November 1991 until his successful completion of probation in November 1994, Respondent has been subjected to approximately 30 random drug screens. All tests have been negative. Since October 1993, Respondent has met approximately once a week with a clinical psychologist, in an effort to cope with the various stresses in his life resulting from the death of his girlfriend, and the loss of professional status and employment opportunities. Respondent testified that he sought this treatment on his own volition and plans to continue the sessions. Respondent continues to be involved with Cocaine Anonymous and Narcotics Anonymous.

Judge Tenney found that in August 1994, the Medical Board of California (Board) revoked Respondent's medical license, stayed the revocation, and placed Respondent on probation for six years subject to, among other things, the following terms and conditions:

(1) Respondent is not to prescribe, administer, dispense, order, or possess any controlled substances as defined by the California Uniform Controlled Substances Act, except for the drugs in Schedules IV and V. However, Respondent is permitted to prescribe, administer, dispense, or order the drugs listed in Schedules II and III for inpatients in hospital settings, but not otherwise.

(2) Respondent is to abstain completely from personal use or possession of controlled substances and dangerous drugs.

(3) Respondent is to maintain a record of all controlled substances prescribed, dispensed, or administered showing the following information: (a) the name and address of the patient, (b) the date, and (c) the character and quantity of the controlled substance furnished. Respondent shall make these records available for inspection by the Board or its designee.

(4) Respondent is to abstain completely from the use of alcoholic beverages.

(5) Respondent shall submit to biological fluid testing upon the request of the Board.

As support for this finding, Judge Tenney relied upon a document admitted into evidence entitled ''Proposed Decision'' signed by a state administrative law judge. However, Respondent testified at the hearing in this matter, and asserted in his post-hearing filing, that there are no restrictions on his ability to prescribe any drug. Nonetheless, the Acting Deputy Administrator adopts the finding of Judge Tenney, since Respondent did not file exceptions regarding Judge Tenney's characterization of the current status of Respondent's medical license or his recommendation to grant Respondent's application subject to continued compliance with the Board's terms and conditions.

As of the date of the hearing before Judge Tenney, Respondent had been in compliance with the Board's terms of probation for 13 months. In addition, all of Respondent's drug screens requested by the Board have tested negative.

Beginning in 1991, Respondent worked as an emergency services doctor at Pacifica Hospital. Under the hospital's bylaws, physicians are required to possess a valid DEA Certificate of Registration as a condition of employment. On or about March 11, 1994, Respondent's attorney received a letter from DEA notifying him that Respondent's previous DEA Certificate of Registration was revoked ''effective immediately''. A few days after the revocation, Respondent, through counsel, filed an appeal of the revocation order, as well as a request for a stay of the final order pending resolution of the appeal, in the United States Court of Appeals for the Ninth Circuit.[1]

In late April 1994, DEA received information from a local newspaper reporter that Respondent was still employed at Pacifica Hospital in spite of the revocation of his DEA registration. A DEA investigator went to Pacifica Hospital on May 13, 1994, and confirmed that Respondent was in fact employed there. While at the hospital, the investigator first spoke to the Executive Director of the hospital, who was unaware that Respondent's DEA registration was revoked effective March 3, 1994. The investigator then called Respondent's direct supervisor who stated that he thought Respondent's revocation was on appeal and therefore his DEA registration was still valid. While still at the hospital, the DEA investigator received a telephone call from DEA's Office of Chief Counsel advising him that Respondent could use his DEA registration while the revocation was on appeal. This information was relayed to the Executive Director and Respondent's supervisor. Soon thereafter, the DEA investigator received another telephone call from DEA's Office of Chief Counsel informing him that Respondent's DEA registration was in fact revoked effective March 3, 1994, and any use thereafter was invalid. The investigator relayed this information to the Executive Director and left a voice mail message for Respondent's supervisor. About a day and a half later, after speaking to the DEA in Washington, the hospital informed Respondent that his number was not valid pending the outcome of the appeal.

Respondent testified that until on or about May 17, 1994, he was under the impression that his DEA registration was valid. He believed that even though his DEA registration appeared to be expired, it was still valid since a renewal application had been timely filed and not finally acted upon by DEA. It was his understanding that the registration was valid until there was a decision as to whether or not the stay of revocation would be granted by the Court of Appeals. Because of this belief, Respondent did not notify the hospital of the March 3, 1994 revocation. Respondent's supervisor testified that he believed that Respondent was very forthcoming regarding his registration status to the best of his understanding. Respondent sent the Credentials Committee of the hospital a letter indicating that his DEA registration had been revoked, but that it was his understanding that he could still use it pending the outcome of the appeal of the revocation.

It is uncontested that Respondent issued controlled substance prescriptions following the revocation of his previous DEA Certificate of Registration until approximately May 17, 1994, when he was informed that his registration was not valid. There is no evidence that Respondent was trying to hide the fact that he was issuing controlled substance prescriptions during this time period. Respondent has not handled controlled substances since approximately May 17, 1994. Respondent resigned from Pacifica Hospital after learning that he was no

[1] There is no evidence in the record regarding the outcome of Respondent's appeal of the March 3, 1994 revocation of his DEA Certificate of Registration filed in the United States Circuit Court of Appeals for the Ninth Circuit.

longer authorized to handle controlled substances.

On August 7, 1995, the Superior Court of the State of California for the County of Los Angeles, set aside and vacated Respondent's conviction for possession of a controlled substance, in light of his fulfillment of the conditions of probation. The order further stated that, ''[Respondent] is required to disclose the above conviction in response to any direct question contained in any questionnaire or application for public office or for licensure by any state or local agency.''

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for a DEA Certificate of Registration if he determines that such registration would be inconsistent with the public interest. In determining the public interest, the following factors are considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety. These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. See Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16,422 (1989).

The Acting Deputy Administrator concludes that all five factors are relevant in determining whether Respondent's registration would be inconsistent with the public interest. As to factor one, in August 1994, the Medical Board of California (Board) placed Respondent's medical license on probation subject to strict terms and conditions for six years. During the probationary period with the Board, Respondent may prescribe, administer, dispense, order, or possess controlled substances in Schedule IV and V, and may only prescribe, dispense, administer or order Schedule II and III controlled substances to inpatients in hospital settings. He must abstain from the use of alcohol and controlled substances, unless prescribed for a bona fide illness by another practitioner. He must maintain a log of his controlled substance handling and must participate in continuing medical education.

As to factor two, Respondent's experience in dispensing controlled substances, it is not disputed that Respondent prescribed controlled substances without a valid DEA registration from on or about March 3 through May 17, 1994. However, Respondent presented credible evidence that he was under the impression that he could use his DEA Certificate of Registration pending the outcome of his appeal of the revocation of his previous DEA registration. There is no evidence in the record that he attempted to hide his use of his DEA registration during that time period. There is also no evidence in the record that Respondent prescribed controlled substances for no legitimate medical purpose. In fact, as Judge Tenney noted, Respondent's former supervisor testified at the earlier proceeding that Respondent's abilities as a doctor were excellent, and that Respondent was one of the best emergency room physicians he has known. At the hearing before Judge Tenney, Respondent's supervisor at Pacifica Hospital testified that he was impressed with Respondent's academic abilities and that Respondent was an invaluable member of his emergency services group.

Unlike Judge Tenney, the Acting Deputy Administrator finds that factor three is relevant in determining the public interest in this matter. Respondent pled *nolo contendere* to one state felony count for possession of a controlled substance. Judge Tenney found that this conviction was set aside and vacated on July 18, 1995, pursuant to California Penal Code § 1203.4, and therefore did not consider the conviction under factor three. The Acting Deputy Administrator concludes however, that Respondent's April 1991 conviction is still a conviction for purposes of determining the public interest. The Acting Deputy Administrator relies upon an earlier case where the then-Administrator of DEA held that a felony conviction dismissed under § 1203.4 is a conviction for purposes of 21 U.S.C. 824. The then-Administrator found:

> that the California court's action under California statute does not ''erase'' the conviction for purposes of 21 U.S.C. 824. This finding is based upon decisions of federal courts interpreting the relationship of California Penal Code section 1203.4 to actions by federal agencies predicated upon dismissed felony convictions, the language of the Penal Code Section itself, and agency precedent affording the term ''conviction'' with the broadest possible meaning. *Donald Patsy Rocco, D.D.S.*, 50 FR 34,210 (1985).

Regarding factor four, the Government contends that Respondent violated 21 U.S.C. 822(a)(1) and 841(a)(1) and 21 CFR 1306.03(a) by prescribing controlled substances without a valid DEA registration. Respondent admits to writing controlled substance prescriptions after the effective date of the revocation of his DEA registration. In his opinion, the Administrative Law Judge cited several cases for the proposition that, ''a physician is exempt from the provisions of the Controlled Substance [sic] Act if dispensing or prescribing controlled substances in good faith to patients in the regular course of professional practice.'' See U.S. v. Carroll, 518 F.2d 187 (1975), U.S. v. DeBoer, 966 F.2d 1066 (1992). These cases dealt with the assessment of criminal liability. The Acting Deputy Administrator agrees that if acting in good faith, a physician would be exempt from criminal liability, because there would be no intent to violate the law. But, this is an administrative proceeding, seeking to protect the public interest, not to assess liability. A physician must possess a valid DEA registration in order to legally prescribe controlled substances. Respondent was not exempt from this requirement when he issued prescriptions using his revoked DEA registration. However, if Respondent issued these prescriptions under the good faith belief that his DEA registration was valid, that certainly is a mitigating factor in determining the public interest.

The evidence clearly shows that Respondent possessed such a good faith belief when he issued controlled substance prescriptions between March 3 and May 17, 1994. Respondent believed that his DEA registration remained valid pending the outcome of the request for a stay and appeal of his earlier revocation. In an attempt to clarify his registration status, Respondent misinterpreted the Federal regulations. He thought that since his renewal application had not been acted upon by the DEA, his expired DEA registration continued pending the outcome of the appeal in the Ninth Circuit. He did not attempt to conceal this belief, and in fact wrote a letter to the Credentials Committee at Pacifica Hospital stating this position. The Acting Deputy Administrator does not find this to be an unreasonable explanation, especially in light of the fact that it appears that DEA was confused as to the status of Respondent's registration pending the outcome of the appeal. The DEA

investigator who testified at the hearing stated that, ''there was some ambiguity.'' Therefore, the Acting Deputy Administrator does not find Respondent's prescribing of controlled substances with his revoked DEA registration to be of significant concern in assessing the public interest. Particularly since Respondent immediately ceased writing controlled substance prescriptions upon being advised that his DEA registration was not valid.

As to factor five, the Acting Deputy Administrator is quite concerned with Respondent's long history of substance abuse. Respondent admitted to using cocaine and marijuana for 20 years. In the prior administrative proceeding, the then-Acting Administrator adopted the Administrative Law Judge's finding that ''there was insufficient evidence to conclude that Respondent has recognized and dealt with the severity of his problem, or that he has progressed in his recovery to the extent that he should be permitted to continue to hold a DEA registration.'' At the time of the hearing in this matter before Judge Tenney, Respondent had been in rehabilitation for five years. He has been randomly drug tested since 1991 and has not tested positive. He continues to participate in Cocaine Anonymous and Narcotics Anonymous and regularly receives psychological counseling. He has successfully completed his criminal probation, and in August 1994, his medical license was placed on probation for six years by the Medical Board of California. As part of this probation, Respondent is subject to random drug testing and his controlled substance handling is restricted. Respondent testified at the hearing before Judge Tenney that, ''I'm extremely remorseful. But I cannot change what happened.''

The Administrative Law Judge concluded that Respondent's registration would not be inconsistent with the public interest. But given his background of drug abuse, Judge Tenney recommended that Respondent's application be granted subject to his compliance with all of the terms of his probation with the Board.

The Government filed exceptions to the Administrative Law Judge's recommendation. First, the Government took exception to Judge Tenney's conclusion that Respondent was ''exempt'' from the provisions of the Controlled Substances Act due to his good faith prescribing of controlled substances when he was without a valid DEA registration. The Acting Deputy Administrator is confused by this exception, since the Government raised this same proposition in its post-hearing filing, but argued that Respondent had not acted in good faith. However, the evidence is clear that Respondent did in fact act in good faith, believing that he had a valid DEA registration. As discussed above, the Acting Deputy Administrator considers Respondent's good faith assumption that he was properly registered when he issued controlled substances prescriptions between March 3 and May 17, 1994, to be a mitigating factor when considering his compliance with Federal laws.

The Government also took exception to Judge Tenney's recommendation that Respondent's registration be conditioned upon compliance with the probationary terms imposed by the Board. The Government argued that such a disposition would be difficult to enforce since DEA would be unaware if, or when, the probationary terms were violated or removed. Therefore, the Government urged that ''should Respondent be granted any DEA registration, that it be restricted to terms and conditions established by DEA, and independent of any probationary terms currently imposed by the California Medical Board.'' The Acting Deputy Administrator finds that Respondent's efforts at rehabilitation are commendable and the controls imposed by the Board are sufficient to monitor Respondent's handling of controlled substances. Consequently, the Acting Deputy Administrator finds that it is in the public interest at this time to issue Respondent a DEA registration conditioned upon his continued compliance with the terms imposed upon his California medical license. The Acting Deputy Administrator further concludes, however, that should the Board terminate Respondent's probation before August 5, 2000, Respondent's DEA registration will continue to be subject to the same terms as set forth in the Board's August 5, 1994 decision.

The Acting Deputy Administrator finds that Respondent only applied for a DEA Certificate of Registration in Schedules IV and V. The Board's probationary terms restrict Respondent's handling of Schedules II and III controlled substances to inpatients in hospital settings. However, since Respondent has not applied for Schedules II and III privileges with DEA and no request to modify his application was made at the hearing in this matter, the Acting Deputy Administrator can only issue Respondent a DEA Certificate of Registration in Schedules IV and V at this time. Nonetheless, the Acting Deputy Administrator finds that should Respondent apply for Schedules II and III in the future, the application should be granted and Respondent's Schedules II and III handling should be restricted to inpatients in hospital settings, to include emergency room patients, and be conditioned upon compliance with the Board's terms and conditions.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the application, submitted by Stanley Alan Azen, M.D., for a DEA Certificate of Registration in Schedules IV and V be granted subject to continued compliance with the terms imposed upon his California medical license. It is further ordered, that should Dr. Azen's probation be terminated early by the Medical Board of California, his DEA Certificate of Registration will continue, until August 5, 2000, to be subject to the same terms imposed by the August 5, 1994 decision of the Medical Board of California. This order is effective December 9, 1996.

Dated: November 4, 1996.

James S. Milford, Jr.,

Acting Deputy Administrator.

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[Docket No. 95–1]

Margaret E. Sarver, M.D., Suspension of Registration; Reinstatement With Restrictions

On September 7, 1994, the Deputy Assistant Administrator (then-Director) of the Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Margaret E. Sarver, M.D. (Respondent) of Beaver Falls, Pennsylvania, notifying her of an opportunity to show cause as to why DEA should not revoke her DEA Certificate of Registration, AS1667623, and deny any pending applications for registration under 21 U.S.C. 823(f) and 824(a)(4), as being inconsistent with the public interest.

By letter dated October 12, 1994, the Respondent, through counsel, timely filed a request for a hearing, and following prehearing procedures, a hearing was held in Pittsburgh, Pennsylvania on August 15 and 16, 1995, before Administrative Law Judge Paul A. Tenney. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both sides submitted proposed findings of fact, conclusions of law and argument. On January 29, 1996, Judge Tenney issued his Findings of Fact, Conclusions of Law and Recommended Ruling, recommending

that the Respondent's DEA registration should be revoked in Schedules II and III. On February 16 and 28, 1996, the Government and Respondent respectively, filed exceptions to the Recommended Ruling of the Administrative Law Judge, and on February 29, 1996, Judge Tenney transmitted the record of these proceedings to the Deputy Administrator. Subsequently, on March 1, 1996, Judge Tenney transmitted to the Deputy Administrator a facsimile from the Respondent for inclusion in the record.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts the findings of fact and conclusions of law of Judge Tenney, except as noted below. However, for reasons explained below, the Acting Deputy Administrator rejects Judge Tenney's recommendation as to the appropriate disposition of this case.

The Acting Deputy Administrator finds that the Respondent is an internist with a general practice in Beaver Falls, Pennsylvania. She was Board Certified in Internal Medicine in 1965, and has maintained an active practice for approximately 31 years. Although, Respondent treats patients with a variety of medical problems, she has a special interest in weight loss.

Sometime prior to November 18, 1991, the Commonwealth of Pennsylvania, Department of Public Welfare, Bureau of Quality Assurance (DPW) identified Respondent as a frequent prescriber of the controlled substances, Seconal, Tuinal, Noludar, Nembutal, and the combination of glutethimide and acetaminophen with codeine. On November 18, 1991, DPW conducted an on-site review at Respondent's office to gather information about her medical practice and to copy 22 patient records. The DPW reviewers found Respondent's office to be ''unclean and unsanitory [sic]'' and discovered that her ''method of record keeping and billing was fragmented and disorganized.'' During the course of the review, Respondent stated that she prescribes sleeping medication upon request and admitted that some patients continue on such medication for months or years. Respondent also admitted that she was aware of the effect of the combination of glutethimide and codeine products, but stated that she prescribes this combination to patients with both legitimate sleeping and pain problems. The combination of glutethimide and codeine products is known as a ''set'' on the streets, and the effect of the two drugs taken together is similar to that of heroin. When asked by the DPW reviewers about her prescribing of this combination, Respondent replied, ''when you get drifters asking for Dilaudid and Demeral [sic], I don't think Tylenol #3 is all that bad.''

Following the on-site review, three physicians conducted a peer review of the 22 medical records copied during the on-site review. This peer review concluded *inter alia* that all of the drug regimens prescribed for these patients by Respondent ''failed to comply with [Medical Assistance] Standards of Practice due to insufficient appropriateness and/or necessity of the drugs prescribed.'' As a result of the investigation, the DPW concluded, in part, that Respondent's treatment for one patient was contrary to medical assistance regulations in that she ''prescribed drugs of high abuse potential . . . in a manner determined after medical record review to be of inferior quality and/or medically unnecessary.'' DPW further concluded that Respondent ''prescribed drug regimens of high abuse potential (Percocet, Vicodin, Tylenol w/codeine, Seconal, Hycotuss, Glutethimide, Tuinal, Noludar) for twenty-two (22) recipients whose medical records failed to sufficiently document the appropriateness and necessity of the drugs prescribed.'' By letter dated June 15, 1992, the DPW proposed to terminate the Respondent as a provider, to preclude Respondent from participation in the Medical Assistance Program for a period of four years. Respondent requested a hearing regarding the proposed sanctions, stating that the DPW did not have the complete medical records on each of the 22 patients whose medical records were reviewed in the course of the investigation. Respondent stated that the DPW reviewer had not told her that they needed all her notes on each patient, and that there was additional patient chart material waiting to be filed in the records. The DPW action against Respondent was settled without sanctions, however, there is no evidence in the record as to the basis for this resolution.

In July 1992, a DEA investigator interviewed a confidential informant who stated that he had once been a patient of Respondent's and had been able to obtain controlled substances, including the combination of glutethimide and Tylenol with codeine, from Respondent without a medical examination. As a result of this information, as well as the DPW investigation, DEA investigators visited approximately 27 area pharmacies to collect prescriptions allegedly written by Respondent. The investigators discovered that some of the pharmacies would no longer fill Respondent's prescriptions due to suspicions that the individuals receiving the prescriptions were drug dependent. At no time did the investigators instruct the pharmacies to stop filling Respondent's prescriptions. Among the concerns expressed by the pharmacists were Respondent's frequent prescribing of the combination of glutethimide and Tylenol with codeine; prescriptions written by Respondent were often from outside the pharmacy's trade area; and Respondent's prescriptions were sometimes post-dated.

In September 1992, the DEA investigators interviewed Respondent, specifically questioning her about her prescribing practices, including the glutethimide and Tylenol with codeine combinations. The investigators informed Respondent of the dangers of taking these medications together, that they produce a heroin-like effect, and that glutethimide should not be taken with narcotics. Respondent stated that if DEA believes that those drugs are dangerous, DEA should take them off the market. Respondent continued to prescribe combinations of glutethimide and codeine products after being warned by both DPW and DEA of the danger and abuse potential.

During the course of the investigation, the DEA investigators interviewed a number of Respondent's patients. In January 1993, they interviewed three of Respondent's patients as they left her office. One indicated that he had been seeing Respondent upon the recommendation of his girlfriend, who informed him that he could get prescriptions for controlled substances from Repondent. Another indicated that she had been a patient of Respondent's for 19 years, and only goes to Respondent now because she is addicted to various controlled substances and is able to get them from Respondent. Each had 4 prescriptions for various Schedule II through IV controlled substances including, glutethimide, Seconal, Tylox, acetaminophen with codeine, Hycodan, Vicodin, Adipex, diazepam and Didrex. One had a prescription written by Respondent for glutethimide for her son. Two indicated that other than being weighed and occasionally having their blood pressure or pulse checked, no other examination was performed during office visits before controlled substance prescriptions were issued. Two indicated that they were not given

instructions on how to take the various medications in combination with one another. Respondent's medical charts on these individuals indicated a variety of medical conditions.

In November 1993, DEA investigators interviewed M.S. and L.O. patients of Respondent. M.S. informed the investigators that he had initially gone to Respondent because he had heard on the street that she would prescribe the drugs people wanted. He admitted that he was addicted to Vicodin, that he was attending a methadone clinic, and that he sometimes sold some of Respondent's prescriptions. In a subsequent affidavit, M.S. denied selling Respondent's prescriptions. M.S. indicated to the investigators that other than having his weight and occasionally his blood pressure and/or pulse checked, Respondent did not perform a physical examination. Records in Respondent's possession indicated that M.S. suffered from dependencies to various drugs, including Dilaudid and Percocet, both Schedule II controlled substances. An investigator testified that L.O. stated that she also was addicted to drugs prescribed by Respondent, including Vicodin and Ativan, a Schedule IV controlled substance. She also was enrolled in a methadone treatment program. However, in a subsequent affidavit, L.O. stated that she did not tell the investigators that she was addicted to her medication. Respondent placed into evidence the medical records for these individuals. The records indicated a variety of medical conditions.

In February 1994, the investigators interviewed a husband and wife who initially went to Respondent for weight loss and back problems. They admitted obtaining prescriptions for controlled substances from Respondent without a medical examination, and sometimes without an office visit. According to the wife, Respondent would sometimes leave them prescriptions behind the office's screen door along with prescriptions for others. They indicated that they were examined on their first visit, but that since then they were only weighed and occasionally their blood pressure was checked. They told the investigators that they received Schedule II through IV controlled substances from Respondent, including Dilaudid, Percocet, Seconal, Hycodan, Vicodin, Adipex, and Soma with codeine. Respondent did tell them that the prescribed drugs were addictive but did not give them any instructions regarding taking the drugs in combination with each other. Respondent's records on these individuals indicated various medical problems/conditions.

In addition to conducting patient interviews, DEA monitored the visits of two of Respondent's patients, B.S. and K.C., who had agreed to cooperate with DEA. On February 16 and March 16, 1993, B.S. went to Respondent's office in an undercover capacity. As was her normal practice, before each visit, B.S. prepared a list of the controlled substances that she wanted Respondent to prescribe for her. On each occasion she obtained prescriptions for 100 dosage units of diazepam, 30 dosage units of Tylox, 60 dosage units of Adipex, 50 dosage units of acetaminophen with codeine (with one refill on the second visit), 60 glutethimide, and 8 ounces of Tussi-Organidin (with five refills on the second visit), a Schedule V cough syrup. On the first visit, B.S. had asked for Hycodan cough syrup, which Respondent did not prescribe, instead substituting Tussi-Organidin, stating that Hycodan was difficult to find at local pharmacies. Other than being weighed, no other physical examination was performed during either visit. On the first visit, B.S. also gave Respondent a list of desired prescriptions, including glutethimide, Darvocet and Vicodin, for her son who would not be present. Respondent did not issue any prescriptions for B.S.'s son since he had not been in for an office visit for quite awhile. At the hearing before Judge Tenney, Respondent admitted, however, that she had issued prescriptions for B.S.'s son without seeing him because he suffers from emotional problems and does not like to go to the office himself.

The second cooperating patient, K.C., went to Respondent's office on January 31 and February 28, 1994. On both occasions, K.C. received several prescriptions for controlled substances. No medical examination was conducted nor was there an inquiry into her medical condition. Respondent merely asked K.C. what prescriptions she needed and how much of each medication she wanted. Respondent put into evidence documents that indicate K.C.'s medical history.

In August 1993, DEA executed a search warrant at Respondent's office authorizing the seizure of 81 patient records. At the hearing before Judge Tenney, Respondent testified that her medical files on each patient consisted of a manila folder stored in a file cabinet, carbon copies of all prescriptions issued to each patient, and a medical card on each patient. During the execution of the warrant, Respondent told the DEA personnel where the medical files were located, and at no time did she indicate that the medical files seized were not the complete medical record on each patient.

A medical doctor, who is a board certified clinical pharmacologist from the University of Pittsburgh Medical School, reviewed seven of the seized patient records, as well as prescription profiles for the seven individuals, and concluded that there did not appear to be a relationship between the drugs prescribed and the established medical problems. He further opined that the drugs were not prescribed in the course of legitimate medical practice and were prescribed in a manner contrary to that utilized by a majority of medical practitioners. Respondent claimed that the reviewer ignored many of the medical diagnoses found in the patients' records. At the hearing, it was revealed that there were several inaccurate dates and amounts/refills noted in the reviewer's report. Respondent further testified that this review was incomplete, and therefore inaccurate, since the reviewer did not have all of Respondent's information regarding the seven patients. The DEA personnel did not seize the card files for each patient when they executed the search warrant. However, she did not inform the DEA personnel about the card files. She testified at the hearing that she knew that the DEA personnel were not getting the complete medical records of the 81 patients, but ''I just let it go.'' In addition, the exhibit that is Respondent's response to the reviewer's report stated that, ''* * * [DEA] did not get my most important records on the patients—they thought they did, and I let them think so. * * *''

Respondent testified that she does not do a complete physical examination of each patient on every visit because many of her patients are long-term patients, that she sees on a regular basis. She also testified that she tells patients how to use prescribed medication and all of her prescriptions have instructions on them. However, if a patient has been receiving prescriptions for a certain medication, she does not explain its use every time she issues a prescription. Respondent was often not aware of the schedule of drugs she regularly prescribed. She admitted at the hearing that she occasionally post-dated controlled substance prescriptions, however, she did not know that that practice violated Federal regulations. See 21 CFR 1306.05(a). Respondent testified before Judge Tenney that she had heard that the combination of glutethimide and Tylenol with codeine was used on the street from one pharmacist and from the DEA

investigators in 1992. She stated that ''I had never heard it from anyone else.''

Respondent also testified that she only prescribes controlled substances if there is a medical indication for the drug. If she suspects that a patient is lying about his or her symptoms, or the patient is abusing or selling the prescribed substances, Respondent will discontinue treatment. In fact, Respondent had terminated the treatment of several of the patients that had been interviewed by DEA or whose medical records were reviewed by the clinical pharmacologist.

In her post-hearing filings, Respondent argues that all or much of the evidence used against her is hearsay, which uncorroborated cannot be substantial evidence. Respondent's Motion to Strike Hearsay Evidence is denied. ''* * * [H]earsay is both admissible and may, standing by itself, constitute substantial evidence in support of an administrative decision.'' Klinestiver v. Drug Enforcement Administration, 606 F.2d 1128 (D.C. Cir. 1979) (citing Richardson v. Perales, 402 U.S. 389 (1971)). It is significant in this case, as it was in Klinestiver and Perales, that Respondent did not subpoena any of the key declarants relied upon by the Government thereby providing herself the opportunity for cross-examination.

Pursuant to 21 U.S.C. §§ 823(f) and 824(a)(4), the Deputy Administrator may revoke or suspend a DEA Certificate of Registration and deny pending applications, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety. These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. See Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16,422 (1989).

In this case, factors two, four, and five are relevant in determining whether the Respondent's retention of her Certificate of Registration would be inconsistent with the public interest. As to factor two, the clinical pharmacologist and the three DPW peer reviewers all criticized Respondent's prescribing practices. While it appears that the DPW has settled its investigation of Respondent with no sanctions, there is nothing in the record to indicate the basis for this resolution. There does however appear to be some question as to whether the DPW peer reviewers had Respondent's complete medical records when rendering their opinions, which will be discussed in detail below. Therefore, unlike Judge Tenney, the Acting Deputy Administrator finds the conclusions of the DPW peer reviewers to be of little relevance in determining Respondent's experience in dispensing controlled substances. Respondent argues that the clinical pharmacologist's review was incomplete based upon his failure to consider the medical diagnoses in the records provided; inaccuracies in dates and amounts of controlled substances prescribed; and most importantly, because the reviewer did not have Respondent's complete medical records when rendering his opinion. The reason that the reviewer did not have the patients' complete medical records will be discussed in connection with factor five. However, while not specifically found by Judge Tenney, the Acting Deputy Administrator concludes that the fact that the reviewer did not have the complete medical records does significantly minimize the weight to be given to his conclusions regarding Respondent's prescribing practices. Nevertheless, there is other evidence that seriously calls into question Respondent's dispensing of controlled substances.

At least three area pharmacists expressed concerns about the combination of drugs prescribed by Respondent, the types of patients bringing in prescriptions written by Respondent, and the fact that some of the prescriptions were post-dated. The Acting Deputy Administrator is extremely troubled by Respondent's frequent prescribing of the highly abused combination of glutethimide and codeine produces which produces a heroin-like effect. As Judge Tenney noted, Respondent was repeatedly advised of the effect of this combination and its potential for abuse. In November 1991, Respondent indicated to DPW that she was aware of the effect of this combination of drugs, but stated that, ''when you get drifters asking for Dilaudid and Demeral [sic], I don't think Tylenol No. 3 is all that bad.'' Respondent indicated at the hearing in this matter that a local pharmacist had also called to her attention the dangers of this combination. Then in September 1992, when DEA investigators questioned Respondent about her prescribing of this combination of drugs, Respondent stated that if the DEA does not want people taking these medications, the drugs should not be on the market. Despite these warnings, Respondent continued to prescribe the combination of these drugs to her patients. As the Government noted, in a recent case, the DEA Administrator concluded that:

> [r]egarding factor two, Respondent's experience in dispensing controlled substances is poor based on his prescribing the combination of Tylenol with codeine and Doriden [the brand name for glutethimide] to an individual, *especially when Respondent was aware that this combination was subject to abuse.* Leonard Merkow, M.D., 60 FR 22,075 (1995) (emphasis added).

Respondent's complete disregard for the warnings about the prescribing of this combination, as well as her statements to DPW and DEA personnel about the drugs, reflects poorly on her experience in dispensing controlled substances. As Judge Tenney noted, ''Respondent's prescribing practices in this situation evidences a disregard to the danger to her patients and the community at large by prescribing such a highly abused combination of drugs.''

The Acting Deputy administrator concurs with the Government's contention that Respondent's lack of knowledge, and apparent disinterest, in the schedule of the substances she was actively prescribing is evidence of her cavalier attitude towards the proper dispensing of controlled substances. In addition, Respondent's careless behavior is further evidenced by her prescribing of glutethimide to patients with sleeping disorders. On most of her prescriptions for glutethimide, Respondent indicated a dosage of 1 or 2 tablets at bedtime, yet one of Respondent's patients received prescriptions for a total of 250 dosage units over a 79 day period. In addition, some of Respondent's prescriptions contained the instructions to take one tablet at bedtime ''PRN'', which according to Respondent means ''as needed for pain''. Glutethimide is not a pain medication, and according to Respondent was meant to be used as a sleeping aid. As argued by the Government, ''Respondent's prescribing of and directions for use for powerful controlled substances demonstrate an

alarming lack of experience and lack of concern for her patients' welfare.''

As further evidence of Respondent's casual approach to the handling of controlled substances is the fact that she seems to allow patients to determine what controlled substances they will be prescribed and in what amount. This behavior was clearly evident during the undercover visits by Respondent's patients. Allowing a patient to dictate the drug and drug quantity is a highly suspicious practice and clearly conduct which threatens the public health and safety. See Robert L. Dougherty, Jr., M.D., 60 Fed. Reg. 55,047 (1995). Also, patients stated, and Respondent admitted at the hearing, that she sometimes issues controlled substance prescriptions without even seeing the patient. The Government argued that Respondent would issue controlled substance prescriptions without conducting a physical examination. Respondent testified that she does conduct a physical examination on the initial visit, and when one is medically indicated. The Acting Deputy Administrator concurs with Judge Tenney that, ''when seeing a patient on a frequent basis, a complete physical examination may not be necessary every time.''

Additionally, Respondent has maintained several patients on controlled substances for prolonged periods of time, in contradiction of information contained in the Physician's Desk Reference (PDR). For example, as Judge Tenney noted, five patients were prescribed Hycodan cough syrup for extended periods of time. However, the PDR warns that ''physical dependence, the condition in which continued administration of the drug is required to prevent the appearance of a withdrawal syndrome, assumes clinically significant proportions only after several weeks of continued . . . use, although some mild degree of physical dependence may develop after a few days of narcotic therapy.'' Respondent admitted to prescribing Hycodan for a few patients for periods of approximately two years.

According to the PDR, Adipex is indicated for the ''management of exogenous obesity as a short-term adjunct (a few weeks) in a regimen of weight reduction based on caloric restriction,'' and ''tolerance to the anorectic effect develops within a few weeks.'' Respondent prescribed Adipex to several of her patients for over a year or two. Regarding Seconal, the PDR states that it is indicated for the ''short term treatment of insomnia, since it seems to lose its effectiveness for sleep induction and sleep maintenance after 2 weeks,'' and ''should not be administered in the presence of acute or chronic pain. . . .'' The recommended dose for sleeping disorders is 100 mg. at bedtime. The record indicates that Respondent issued Seconal prescriptions to several individuals over extended periods of time; she wrote a number of Seconal prescriptions to an individual, who according to Respondent, was suffering from acute back pain; and between May 26, 1992 and September 28, 1992, Respondent prescribed a total of 325 dosage units of Seconal (100 mg.) to an individual, well over the recommended dosage.

The Acting Deputy Administrator is aware that the PDR is a reference tool and that a physician is not bound by its information. However, Respondent's prolonged maintenance of patients on the above-referenced medications, along with the other evidence of Respondent's questionable prescribing practices, raised extremely serious concerns about Respondent's ability to responsibly dispense potentially dangerous and highly abused controlled substances.

As to factor four, ''compliance with applicable State, Federal, or local laws,'' the DPW reviewers concluded that Respondent violated various Pennsylvania Medical Assistance regulations. DPW found that Respondent's prescribing of controlled substances in a manner deemed to be of inferior quality and/or medically unnecessary constituted a violation of 55 Pa. Code 1101.77(a)(10), and that Respondent prescribed drug regimens of high abuse potential for 22 medical assistance recipients whose medical records failed to document sufficiently the appropriateness and necessity of the drugs prescribed in violation of 55 Pa. Code 1101.51(d)(1). However, unlike Judge Tenney, the Acting Deputy Administrator is unable to determine whether Respondent was in fact in violation of these provisions since as discussed above, the DPW reviewers did not appear to have Respondent's complete medical records in rendering their opinions.

The Acting Deputy Administrator does conclude that Respondent violated Federal regulations relating to controlled substances. Respondent admitted that she would on occasion post-date prescriptions which is a violation of 21 CFR 1306.05(a). Respondent testified at the hearing that she was unaware that this was a violation and did it when her patients could not pay for a full month's supply at once or when they would not be available to pick up their prescriptions at a later date.

As to factor five, ''such other conduct which may threaten the public health and safety,'' the Acting Deputy Administrator finds that Respondent's unconscionable failure to turn over her complete medical records during DEA's execution of the search warrant shows a lack of respect for the law. As Judge Tenney found, Respondent was present when the warrant was served. She testified at the hearing that she intentionally did not tell the agents that they were not retrieving the complete records on each patient, and she knew, or should have known that the DEA would require the full medical records in order to complete its investigation. This is especially distressing in light of DPW's earlier review of her prescribing practices, when Respondent complained that the DPW peer reviewers could not accurately review her records for sufficiency, since the reviewers did not have her complete patient records. Nonetheless, Respondent's failure to turn over her complete records to DPW and DEA does in fact call into question the DPW peer reviewers' and the clinical pharmacologist's conclusions that Respondent did not prescribe controlled substances for legitimate medical purposes and that her records were inadequate to justify the prescribing. The Acting Deputy Administrator is not happy that Respondent will benefit from her failure to cooperate with DPW and DEA, but the Acting Deputy Administrator is unable to draw any conclusions as to the legitimacy of Respondent's prescriptions or sufficiency of her medical records based upon the DPW peer reviewers' and the clinical pharmacologist's reviews.

But regardless of the inability of the Acting Deputy Administrator to rely on these reviews, there is ample other evidence in the record that illustrates Respondent's callous disregard for the proper and careful handling of controlled substances. The Acting Deputy Administrator is profoundly troubled by Respondent's unwillingness to recognize the seriousness of her prescribing practices, most significantly regarding the combination of glutethimide and Tylenol with codeine, and allowing patients to dictate what controlled substances they receive. In a previous case, the Administrator found that a pharmacist's ''refusal to acknowledge the impropriety of his dispensing practices . . . even after the initiation of this investigation, give[s] rise to the inference that [he] is not likely to act more responsibly in the future.'' Medic-Aid Pharmacy, 55 FR 30,043 (1990).

In his opinion, Judge Tenney noted as mitigating factors that Respondent has maintained a medical practice for 31 years, during which time the state licensing board has not taken any adverse action against her medical license, and until 1991, neither had DPW or DEA. In addition, Judge Tenney recognized Respondent's efforts to identify and discontinue treatment of patients who she suspected of abusing controlled substances. Judge Tenney recommended that Respondent's DEA registration be revoked in Schedules II and III, the more serious classes of controlled substances.

Both parties filed exceptions to Judge Tenney's recommended decision. In essence, the Government argued that Respondent's DEA registration should be revoked in all schedules, not just in Schedules II and III. In support of its exceptions, the Government contended that Respondent ''indiscriminately prescribed a variety of controlled substances, including Schedule IV and V controlled substances. . . .'' The Government further argued that ''[w]hile revoking Respondent's authority with respect to Schedule II and III controlled substances may prevent the diversion of some dangerous drugs, it will not protect the public from the diversion of Schedule IV and V controlled substances, many of which are highly abused.'' The Acting Deputy Administrator agrees with the Government, that any sanction taken against Respondent's registration should not be limited to Schedule II and III controlled substances, since the practices of Respondent that threaten the public health and safety are not confined to drugs in those schedules.

A significant amount of Respondent's exceptions dealt with the Administrative Law Judge's reliance on the reviews of Respondent's records conducted by DPW and the clinical pharmacologist. As discussed previously, the Acting Deputy Administrator has reluctantly declined to rely on those reviews since they were not based, through no fault of their own, upon Respondent's complete medical records. In addition, Respondent takes exception to Judge Tenney's finding that Respondent knew about the abuse of the combination of glutethimide and Tylenol with codeine prior to November 1991, yet continued to prescribe that combination of drugs to her patients. The Acting Deputy Administrator does not believe that the Administrative Law Judge made such a finding. Instead, Judge Tenney found, and the Acting Deputy Administrator concurs, that the evidence clearly shows that Respondent continued to prescribe this extremely dangerous combination after November 1991, when she acknowledged being aware of its heroin-like effect.

Also as stated in her exceptions, ''[i]t is the Respondent's position that the Administrative Law Judge disregarded the information admitted through her exhibits at hearing.'' The Acting Deputy Administrator has carefully considered all evidence submitted in this proceeding in rendering his decision. Further, Respondent continues to object to the consideration of hearsay evidence. The Acting Deputy Administrator has already addressed and rejected this exception.

The Acting Deputy Administrator concludes that some sanction is necessary against Respondent's DEA Certificate of Registration in order to protect the public interest. This conclusion is based upon Respondent's continued prescribing of the heroin-like combination of glutethimide and codeine products after acknowledging its dangerous nature, her allowing patients to dictate the type and amount of controlled substances to be prescribed, her overprescribing of highly addictive controlled substances in contradiction of the PDR, her refusal to comply with the mandate of a criminal search warrant, and her refusal to acknowledge the impropriety of her prescribing practices. However, the record does not clearly establish that these substances were prescribed for no legitimate medical purposes. Accordingly, the Acting Deputy Administrator does not believe that Respondent's behavior warrants the severe sanction of revocation.

The Acting Deputy Administrator concludes that in order to protect the public interest, Respondent needs to be better educated in the proper handling and effects of controlled substances. Therefore, the Acting Deputy Administrator will suspend Respondent's DEA registration for at least 120 days and until she presents evidence to the Resident Agent in Charge of the DEA Pittsburgh Resident Office, or his designee, of the successful completion of at least 24 hours of training in the pharmacology and/or proper handling of controlled substances. Once Respondent has satisfied this requirement, her DEA Certificate of Registration will be reinstated subject to the following restriction: Respondent shall maintain a separate log of all prescriptions that she issues. At a minimum, the log shall indicate the date that each prescription was written, the name of the patient for whom it was written, the name and dosage of the controlled substance(s) prescribed, and the medical indication for the substance prescribed. The Respondent shall maintain this log for a period of three years from the reinstatement of her DEA Certificate of Registration. Upon request by the Resident Agent in Charge of the DEA Pittsburgh Resident Office, or his designee, the Respondent shall submit or otherwise make available her prescription log for inspection.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. §§ 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, AS1667623, issued to Margaret E. Sarver, M.D., be suspended for at least 120 days and until she presents evidence of the successful completion of 24 hours of training in the pharmacology and/or proper handling of controlled substances. It is further ordered that upon receipt of such evidence, Dr. Sarver's DEA Certificate of Registration will be reinstated subject to the restriction outlined above. This order is effective December 9, 1996.

Dated: November 4, 1996.

James S. Milford, Jr.,

Acting Deputy Administrator.

[FR Doc. 96–28766 Filed 11–7–96; 8:45 am]

BILLING CODE 4410–09–M

Federal Bureau of Investigation

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: Notice of information collection under review; telecommunications carrier reimbursement cost estimate and telecommunications carrier reimbursement request for payment.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published on April 10, 1996, in the Federal Register and allowed 60 days for public comment.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 7, 1996. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk

Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1534.

Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) Evaluate 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;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of 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 (e.g., permitting electronic submission of responses).

Overview of this information collection:

(1) Type of Information Collection: New Collection. Quantitative and qualitative data necessary to evaluate cooperative agreement proposals and subsequent requests for reimbursement.

(2) The title of the information collection: Telecommunications Carrier Reimbursement Cost Estimate and Telecommunications Carrier Reimbursement Request for Payment.

(3) The agency form number, if any, and the applicable component of the Department of Justice sponsoring the collections: No form number; sponsored by the Federal Bureau of Investigation (FBI), United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract; Business or other for profit. Telecommunications carriers will respond. This data collection will be necessary to evaluate cooperative agreement proposals and subsequent requests for reimbursement under the Communications Assistance for Law Enforcement Act (CALEA). This information will be used to determine whether agreement prices are fair and reasonable and to make recommendations to Contracting Officers for approval or disapproval of the carrier's request.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The FBI estimates that approximately three thousand (3,000) telecommunications carriers, with approximately twenty-three thousand (23,000) unique switches, that, over a five (5) year period, may be affected by these rules. The time required to read and prepare information for one switch is estimated at four (4) hours per response.

Public comment on this proposed information collection is strongly encouraged.

Dated: November 4, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96–28703 Filed 11–7–96; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 5, 1996.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley (202) 219–5096 ext. 166. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316, within 30 days from the date of this publication in the Federal Register.

The OMB is particularly interested in comments which:

* Evaluate 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;

* Evaluate 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;

* Enhance the quality, utility, and clarity of the information to be collected; and

* 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, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title: Title 29 CFR Part 29—Labor Standards for the Registration of Apprenticeship Programs.

OMB Number: 1205–0223.

Form Number: ETA 671.

Affected Public: Individuals or households; businesses or other for-profit; not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Section No.	Frequency	Respond-ents	Average time per respond-ent
29.3	One-time	105,000	15 min.
29.6	One-time	99,000	50 min.
29.5	One-time	5,700	2 hrs.
29.7	One-time	40	50 min.

Total Burden Hours: 45,903.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: Title 29 CFR Part 29 sets forth labor standards to safeguard the welfare of apprentices and to extend the application of such standards by prescribing policies and procedures concerning registration of apprenticeship programs.

Agency: Employment and Training Administration.

Title: Title 29 CFR Part 30—Equal Employment Opportunity in Apprenticeship and Training.

OMB Number: 1205–0224.

Form Number: ETA 9039.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; Federal Government; State, Local, or Tribal Government.

Section No.	Respondents	Frequency	Average time per response
29 CFR 30.3	4,950	One-time	30 min.
29 CFR 30.4	550	One-time	1 hr.
29 CFR 30.5	5,000	One-time	30 min.
29 CFR 30.6	50	One-time	5 hrs.
29 CFR 30.8	44,000	One-time	1 min.
29 CFR 30.8	22,000	One-time	5 min.
ETA 9039	30	One-time	30 min.

Total Burden Hours: 8,356.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Decription: Title 29 CFR Part 30 sets forth policies and procedures to promote equality of opportunity in apprenticeship programs registered with the Department of Labor and recognized State apprenticeship agencies.

Agency: Employment and Training Administration.

Title: Worker Adjustment Formula Financial Report.

OMB Number: 1205–0326.

Form Number: ETA 9041.

Affected Public: State, Local or Tribal Government.

Activity	Number of respondents	Frequency	Average time per response (hours)
Data collection.	52	3 quarters	6
Data collection.	52	1 quarter	7
Recordkeeping.	52	one-time	10

Total Burden Hours: 1,820.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The information will be used to assess formula programs under Title III of the Jobs Training Partnership Act, as amended. Participant and financial data will be used to monitor program performance and to prepare reports and budget requests.

Agency: Employment and Training Administration.

Title: Dislocated Worker Special Project Report.

OMB Number: 1205–0318.

Agency Number: ETA 9038.

Affected Public: Business or other for-profit; not for profit institutions; State, Local or Tribal Government.

Report	No. of respondents	Frequency	Average time per response
Data Collection:			
NARA Project	90	4 quarters	4 hrs.
Final NRA Rpt.	90	1 report	1 hr.
Clean Air and Defense:			
Section I	80	4 quarters	4 hrs.
Section II	80	1 report	97 hrs.
Section III	80	1 report	1 hr.
Recordkeeping	.....	4 quarters	1.5 hrs.
NRA Project	90		
Clean Air and Defense:			
Section I & III	80	4 quarters	1.5 hrs.
Section III	80	One-time	2.5 hrs.

Total Burden Hours: 11,870.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The information will be used to assess Defense, Clean Air and Title III National Reserve projects. Participant and financial data will be used to monitor program performance, and to prepare reports and budget requests.

Agency: Occupational Safety and Health Administration.

Title: Vinyl Chloride.

OMB Number: 1218–0010.

Frequency: On occasion.

Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 80.

Estimated Time Per Respondent: 36.6 hours.

Total Burden Hours: 2,928.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): $258,042.

Description: The purpose of this standard and its information collection requirements is to provide protection for employees from the health effects associated with occupational exposure to the carcinogen, vinyl chloride (VC). Employers must monitor employee exposure, reduce employee exposures to within permissible exposure limits and provide medical exams, training and other information.

Agency: Bureau of Labor Statistics.

Title: Contingent Work Supplement to the CPS.

OMB Number: 1220–0153.

Frequency: One-time.

Affected Public: Individuals or households.

Number of Respondents: 60,000.

Estimated Time Per Respondent: 8 minutes.

Total Burden Hours: 8,000.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The contingent work supplement work will gather information on the number and characteristics or workers holding jobs expected to last for a limited time (contingent employment). In addition, the supplement will collect information about workers in several alternative employment arrangements.

Agency: Employment and Training Administration.

Title: Annual Plans for State Employment Service Activities.

OMB Number: 1205–0209.

Frequency: Annually.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 54.

Estimated Time Per Respondent: 90 hours.

Total Burden Hours: 4,860.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: Public Law 97–300, amendments to the Wagner-Peyser Act, and 20 CFR Part 652 require States to submit plans concerning operations and expenditures prescribed by the Secretary of Labor.

Agency: Employment and Training Administration.

Title: Characteristics of the Insured Unemployed.

OMB Number: 1205–0009.

Frequency: Monthly.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 53.

Estimated Time Per Respondent: 20 minutes.

Total Burden Hours: 212.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): $90,000.

Description: This report is the only source of current, consistent demographic information (age, rate/ethnic, sex, occupation, industry) on the UI claimant population. These characteristics identify claimant cohorts for legislative, economic and social planning purposes and evaluation of the Unemployment Insurance program on the Federal and State levels.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 96–28789 Filed 11–7–96; 8:45 am]

BILLING CODE 4510–30–M

Employment and Training Administration

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, 1996.

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–32,633; Holiday Hosiery, Inc., Hudson, NC

TA–W–32,744; UNIFI, Inc., Spun Yarns Div., Mount Pleasant, NC

TA–W–32,693; Decatech Innovations (Formerly Marion Manufacturing), Marion, NC

TA–W–32,641; Robinson Manufacturing Co., Oxford, ME

TA–W–32,641A; Kezar Falls Woolen Co., Kezar Falls, ME

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–32,666; Speco Corp., Springfield, OH

TA–W–32,694; Amtrol/Clayton Mark, Inc., Rogers, AR

TA–W–32,725; Wea Manufacturing, Inc., Olyphant, PA

TA–W–32,709; Penn Mould Industries, Inc., Washington, PA

TA–W–32,821; W.R. Grace & Co—Conn, Grace Construction Products, Fire Protection, New Castle, PA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–32,732; Hotsy Equipment Co., Boyertown, PA

TA–W–32,647 &; Erling Riis Research Laboratory, Mobile, AL and Bel Air Complex, Mobile, AL

TA–W–32,606; Bonaventure Textiles USA, New York, NY

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–32,685; W.W. Henry Co., South River, NJ

TA–W–32,671; Dico Tire, Inc., Clinton, TN

The investigation revealed that criteria (2) and criteria (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 produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA–W–32,716; Tetra/Second Nature, A Div. of Warner-Lambert Co., Oakland, NJ

The investigation revealed that criteria (1) and criteria (2) have not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location for each determination references the impact date for all workers for such determination.

TA–W–32,673; Precision Machining and Polishing, Milwaukee, WI: August 12, 1995

TA–W–32,697; Creative Apparel, Inc., Pollstown, PA and Primrose, PA: August 9, 1995

TA–W–32,728; ASARCO Inc., TMD New Market Mill and Mine, Strawberry Plains, TN: August 23, 1995

TA–W–32,731; Douglas Randall, Inc. A/K/a Crydom Corp., A Subsidiary of Silicon Power Corp., Pawcatuck, CT: August 23, 1995

TA–W–32,812; Petersburg Garment Co., Petersburg, WV: September 27, 1995

TA–W–32,783; Hudson RCI, Temecula, CA: September 11, 1995

TA–W–32,687; William Rifkin & Sons, Philadelphia, PA: August 14, 1995
TA–W–32,680; Florence Eiseman, Inc., Fon Du Lac, WI: August 7, 1995
TA–W–32,678; Modular Devices, Inc., Torrance, CA: August 12, 1995
TA–W–32,668; Vanco Industries, Inc., Eutaw, AL: July 29, 1995
TA–W–32,688; North American Refractories Co., Womelsdorf, PA: August 13, 1995
TA–W–32,663; Cameron Converting, Inc., Elizabethtown, NC: July 16, 1995
TA–W–32,723; Foseco, Inc., Mt. Braddock, PA: August 26, 1995
TA–W–32,700; Summit Technology, Inc., Waltham, MA: August 15, 1995
TA–W–32,657 & A; Forstmann & Co., Inc., New York, NY and Carpini USA Division of Forstmann & Co., Inc., New York, NY; August 5, 1995
TA–W–32,696; Hodge Apparel, Inc., Harrisville, WV: August 6, 1995
TA–W–32,674; Artistic Creations, Roselle, NJ: July 20, 1995
TA–W–32,645; Elkem Metals Co., Niagara Falls, NY: August 6, 1995
TA–W–32,642; Springs/Dundee Bath Fashions Group, Dadeville, AL: July 30, 1995
TA–W–32,653; Premier Edible Oils Corp., Portland, OR: August 5, 1995
TA–W–32,652; The Chas. H. Lilly Co., Portland, OR: July 29, 1995
TA–W–32,650; Wilson Automation Div. of Newcor, Inc., Warren, MI: August 2, 1995
TA–W–32,724; Camco Products & Services, Anchorage, AK: August 22, 1995
TA–W–32,626; Devro-Teepak, Inc., Columbia, SC and Danville, IL: July 26, 1995
TA–W–32,677; Jete' LLC, Jump Apparel Co., New York, NY: August 6, 1995
TA–W–32,734 & A; Tell City Chair Co., Tell City, IN & Leitchfield, KY: August 20, 1995
TA–W–32,714 & A; Goodyear Tire & Rubber Co., Topeka, KS and Goodyear Tire & Rubber Co., Logistic Center, Topeka, KS: August 28, 1995

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, 1996.

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 of 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 of 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–01232; Hoskins Manufacturing Co., New Paris, IN
NAFTA–TAA–01221; UNIFI, Inc., Spun Yarns Div., Mount Pleasant, NC
NAFTA–TAA–01227; Ozark Quilt Supply, Winona, MO
NAFTA–TAA–01220; Trinity Industries, New Ondon, MN Washington

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–01234; Philip Environmental, Inc., Georgetown Facility, Seattle, WA

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations 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–01246; Hudson RCI, Temecula, CA: September 17, 1995
NAFTA–TAA–01269; Syborn International, d/b/a Kerr Manufacturing, Massena, NY: October 8, 1995
NAFTA–TAA–01198; Modular Devices, Inc., Torrance, CA: August 12, 1995
NAFTA–TAA–01203; Rohm and Haas Co., Philadelphia, PA: August 7, 1995
NAFTA–TAA–01230; Pendleton Wollen Mills, Inc., Portland, OR: August 26, 1995
NAFTA–TAA–01249; R & G Sloane Manufacturing Co., Inc., Little Rock, AR: September 30, 1995
NAFTA–TAA–01181; Premier Edible Oils Corp., Portland, OR: August 9, 1995
NAFTA–TAA–01257; Aalfs Manufacturing, Inc., Texarkana, AR: September 18, 1995
NAFTA–TAA–01256; Johnson and Johnson, Personal Products Co., North Little Rock, AR: March 3, 1997
NAFTA–TAA–01229; Amana Refrigeration, Inc., Delaware, OH: August 27, 1995

I hereby certify that the aforementioned determinations were issued during the month of October, 1996. 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: October 28, 1996.

Russell T. Kile,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–28788 Filed 11–7–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,603]

Allergan, Inc., Spincast Division, Waco, TX; Notice of Negative Determination Regarding Application for Reconsideration

By application postmarked October 11, 1996, one of the petitioners requested administrative reconsideration of the Department's negative determination regarding worker eligibility to apply for trade adjustment assistance. The denial notice was signed on September 26, 1996 and published in the Federal Register on October 16, 1996 (61 FR 53936).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The request for reconsideration claims that the Department did not consider Allergan's transfer of the production of contact lenses to a foreign country.

Findings of the investigation showed that workers of Allergan, Incorporated, Spincast Department located in Waco, Texas produced contact lenses. The Department's denial of TAA for workers of the subject firm was based on the fact that the ''contributed importantly'' test of the Group Eligibility requirements of Section 222 of the Trade Act of 1974 was not met. Layoffs at Allergan were attributable to the sale of the Spincast Division to a foreign facility. The corporate decision to sell the Spincast Division is not a basis for worker certification. Other investigation findings show that the new foreign-owned firm will be producing contact lenses at its own foreign location, and will not be exporting the contact lens production to the United States.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C. this 28th day of October 1996.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–28785 Filed 11–7–96; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–32,630 et al.]

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

Conoco Incorporated Exploration and Production, North America, Headquartered in Houston, Texas, operating out of other locations, TA–W–32,630A, Texas, with other operations in the following States: TA–W–32,630B Colorado, TA–W–32,630C Louisiana, TA–W–32,630D North Dakota, TA–W–32,630E New Mexico, TA–W–32,630F Oklahoma and TA–W–32,630G, Conoco Incorporated, Headquarters, Houston, Texas.

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on September 13, 1996, applicable to all workers of Conoco Incorporated, Exploration and Production, North America, headquartered in Houston, Texas and operating at various locations in the United States. The notice was published in the Federal Register on October 1, 1996 (61 FR 51304).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The company reports that Conoco's administrative support staff located in Houston, Texas, providing support services to the subject firm's Exploration and Production, North America, upstream operations, were inadvertently excluded from the worker certification.

The intent of the Department's certification is to include all workers of Conoco, Incorporated who were adversely affected by increased imports of crude oil and natural gas liquids and related petroleum products (upstream). Accordingly, the Department is amending the certification to include Conoco's headquarters staff in Houston, Texas, providing support services to Conoco Incorporated, Exploration and Production, North America (upstream).

The amended notice applicable to TA–W–32,630 is hereby issued as follows:

''All workers of Conoco Incorporated, Exploration and Production, North America (Headquarters), Houston, Texas (TA–W–32,630), and operating out of other locations in Texas (TA–W–32,630A) with other operations in the following states: Colorado (TA–W–32,630B), Louisiana (TA–W–32,630C), North Dakota (TA–W–32,630D), New Mexico (TA–W–32,630E) and Oklahoma (TA–W–32,630F) engaged in employment related to the exploration and production of crude oil, natural gas liquids and related products (upstream) who became totally or partially separated from employment on or after September 26, 1996 through two years from the date of certification are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974'' and

''All workers of Conoco Incorporated, Headquarters, Houston, Texas (TA–W–32,630G) engaged in support service activities for Conoco, Incorporated, Exploration and Production, North America, (upstream) who became totally or partially separated from employment on or after August 1, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed in Washington, D.C. this 30th day of October, 1996.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–28783 Filed 11–7–96; 8:45 am]

BILLING CODE 4510–30–M

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 of 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 show below, not later than November 18, 1996.

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 November 18, 1996.

The petitions filed in this case 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 21st day of October, 1996.

Linda G. Poole,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX—PETITIONS INSTITUTED ON 10/21/96

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
32,832	Fashion Bed Group (Comp)	Chicago, IL	10/10/96	Bed frames.
32,833	TRW Vehicle Safety System (Comp).	Washington, MI	10/04/96	Fabricated metal stampings.
32,834	BP Exploration, Inc (Comp)	Houston, TX	10/04/96	Oil and gas.
32,835	Schuller Manufacturing (Comp)	Vienna, WV	10/07/96	Speciality glass marbles.
32,836	Father and Sons Stores (Wkrs)	Scranton, PA	10/03/96	Sold shoes.
32,837	Haddon Craftsmen Mfg (Wkrs)	Scranton, PA	09/25/96	Books.
32,838	AVX Tantalum Corp (Wkrs)	Biddeford, ME	10/02/96	Tantalum capacitors.
32,839	Lee Company (Wkrs)	Irvington, AL	10/07/96	Jeans.
32,840	Trinity Industries (Wkrs)	New London, MN	09/16/96	Liquid propane tanks and ammonia tanks.
32,841	Kensington Window, Inc (IUESM)	Vandergraft, PA	09/23/96	Vinyl replacement windows.
32,842	Sara Lee Bodywear (Comp)	McAdoo, PA	10/07/96	Ladies' activewear—Distributor.
32,843	Acme Boot Co (Wkrs)	El Paso, TX	09/20/96	Leather boots.
32,844	American Fiber & Finish (Wkrs)	Colrain, MA	10/10/96	Diaper and wiping cloths, cotton balls.
32,845	Ryobi Motor Products Corp (Comp).	Anderson, SC	10/14/96	Table saw.

[FR Doc. 96–28786 Filed 11–7–96; 8:45 am]

BILLING CODE 4510–30–M

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 November 18, 1996.

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 November 18, 1996.

The petitions filed in this case 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 28th day of October, 1996.

Russell T. Kile,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX—PETITIONS INSTITUTED ON 10/28/96

TA–W	Subject firm (petitioners)	Location	Date of Petition	Product(s)
32,846	Litco International (Co.)	Parkersburg, WV	10/03/96	Stock lumber.
32,847	US Natural Resources (Co.)	Portland, OR	10/11/96	Lumber and sawmill machinery.
32,848	Anchor Glass Container (Co.)	Zanesville, OH	10/03/96	Machine mold equipment.
32,849	Fruit of the Loom (Wkrs)	Campbellsville, KY	10/08/96	Pocket tee shirts—fleece wear.
32,850	Craddock-Terry (Co.)	Farmville, VA	10/16/96	Men's dress and work shoes.
32,851	Craddock-Terry (Co.)	Halifax, VA	10/16/96	Ladies' shoes.
32,852	Stitch ''R'' US (Wkrs)	Miami, FL	10/10/96	Children's sportswear.
32,853	STS Apparel (Co.)	Johnson City, TN	10/05/96	Bottom apparel—men's and ladies.
32,854	Advanced Metallurgy, Inc (Wkrs)	McKeesport, PA	10/11/96	Electrical contacts.
32,855	Garan, Inc. (Wkrs)	Corinth, MS	10/09/96	Design T-shirts.
32,856	Tri County Assembly (Wkrs)	Williamburg, KY	10/05/96	Computer keyboards and printer assembly.
32,857	Zenith Goldline Shrevepr (Co.)	Shreveport, LA	10/09/96	Liquid pharmaceutical products.
32,858	Volkswagen of America (IBT)	Wilmington, DE	10/10/96	Automobile processing for dealerships.
32,859	Western Supplies Co (Wkrs)	St. Louis, MO	10/09/96	Cutting dies for shoe manufacturing.
32,860	TNS Mills (Wkrs)	Eufaula, AL	10/10/96	Yarn.
32,861	Keystone Fireworks (Wkrs)	Dunbar, PA	10/14/96	Fireworks.
32,862	Spectro Knit (Wkrs)	Mifflinburg, PA	10/09/96	Ladies' and children's knit tops.
32,863	Hercules, Inc (Co.)	Parlin, NJ	10/11/96	Nitrocellulose.

APPENDIX—PETITIONS INSTITUTED ON 10/28/96—Continued

TA–W	Subject firm (petitioners)	Location	Date of Petition	Product(s)
32,864	National Energy Group (Wkrs)	Oklahoma City, OK	10/09/96	Crude oil and natural gas.
32,865	Warnaco, Inc (Wkrs)	Van Nuys, CA	10/09/96	Ladies' intimate apparel.

[FR Doc. 96–28787 Filed 11–7–96; 8:45 am]
BILLING CODE 4510–30–M

[NAFTA–01259]

Lee Apparel Co., Dalton, Georgia; Notice of Termination of Investigation

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 USC 2273), an investigation was initiated on October 2, 1996 in response to a petition filed on behalf of workers at Lee Apparel Company located in Dalton, Georgia. Workers are engaged in employment related to the production of jeans.

The petitioning group of workers are covered under an existing NAFTA certification (NAFTA–00683D). Consequently, further investigation in this case would service no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 28th day of October 1996.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 96–28784 Filed 11–7–96; 8:45 am]
BILLING CODE 4510–30–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 statues, 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 supersedes 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 Determinations 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, N.W., Room S–3014, Washington, D.C. 20210.

New General Wage Determination Decisions

The number of decisions added to the Government Printing Office document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts'' are listed by Volume and States:

Volume IV

Wisconsin:
WI960066 (November 8, 1996).
WI960067 (November 8, 1996).
WI960068 (November 8, 1996).

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

New York
NY960002 (March 15, 1996).
NY960003 (March 15, 1996).
NY960004 (March 15, 1996).
NY960005 (March 15, 1996).
NY960006 (March 15, 1996).
NY960007 (March 15, 1996).
NY960008 (March 15, 1996).
NY960010 (March 15, 1996).
NY960011 (March 15, 1996).
NY960012 (March 15, 1996).
NY960013 (March 15, 1996).
NY960014 (March 15, 1996).
NY960015 (March 15, 1996).
NY960016 (March 15, 1996).
NY960017 (March 15, 1996).

NY960018 (March 15, 1996).
NY960020 (March 15, 1996).
NY960021 (March 15, 1996).
NY960022 (March 15, 1996).
NY960025 (March 15, 1996).
NY960026 (March 15, 1996).
NY960031 (March 15, 1996).
NY960032 (March 15, 1996).
NY960033 (March 15, 1996).
NY960037 (March 15, 1996).
NY960038 (March 15, 1996).
NY960039 (March 15, 1996).
NY960040 (March 15, 1996).
NY960041 (March 15, 1996).
NY960042 (March 15, 1996).
NY960043 (March 15, 1996).
NY960044 (March 15, 1996).
NY960045 (March 15, 1996).
NY960046 (March 15, 1996).
NY960048 (March 15, 1996).
NY960049 (March 15, 1996).
NY960051 (March 15, 1996).
NY960060 (March 15, 1996).
NY960072 (March 15, 1996).
NY960073 (March 15, 1996).
NY960075 (March 15, 1996).
NY960077 (March 15, 1996).

Volume II

District of Columbia
DC960001 (March 15, 1996).
DC960002 (March 15, 1996).
DC960003 (March 15, 1996).
Maryland
MD960001 (March 15, 1996).
MD960002 (March 15, 1996).
MD960008 (March 15, 1996).
MD960010 (March 15, 1996).
MD960015 (March 15, 1996).
MD960017 (March 15, 1996).
MD960031 (March 15, 1996).
MD960034 (March 15, 1996).
MD960035 (March 15, 1996).
MD960036 (March 15, 1996).
MD960037 (March 15, 1996).
MD960040 (March 15, 1996).
MD960042 (March 15, 1996).
MD960046 (March 15, 1996).
MD960047 (March 15, 1996).
MD960048 (March 15, 1996).
MD960055 (March 15, 1996).
MD960056 (March 15, 1996).
MD960057 (March 15, 1996).
MD960058 (March 15, 1996).
Pennsylvania
PA960018 (March 15, 1996).
PA960022 (March 15, 1996).
PA960042 (March 15, 1996).
PA960065 (March 15, 1996).
Virginia
VA960005 (March 15, 1996).
VA960012 (March 15, 1996).
VA960015 (March 15, 1996).
VA960022 (March 15, 1996).
VA960025 (March 15, 1996).
VA960034 (March 15, 1996).
VA960039 (March 15, 1996).
VA960048 (March 15, 1996).
VA960052 (March 15, 1996).
VA960058 (March 15, 1996).
VA960063 (March 15, 1996).
VA960069 (March 15, 1996).
VA960078 (March 15, 1996).
VA960079 (March 15, 1996).
VA960080 (March 15, 1996).
VA960081 (March 15, 1996).
VA960102 (March 15, 1996).
VA960104 (March 15, 1996).
VA960105 (March 15, 1996).

Volume III

None.

Volume IV

Indiana
IN960001 (May 15, 1996).
IN960002 (March 15, 1996).
IN960003 (March 15, 1996).
IN960004 (March 15, 1996).
IN960005 (March 15, 1996).
IN960006 (March 15, 1996).
Wisconsin
WI960016 (March 15, 1996).
WI960036 (March 15, 1996).

Volume V

Arkansas
AR960003 (March 15, 1996).

Volume VI

Alaska
AK960001 (March 15, 1996).
California
CA9600036 (March 15, 1996).
Oregon
OR960001 (March 15, 1996).
OR960017 (March 15, 1996).
Washington
WA960001 (March 15, 1996).
WA960005 (March 15, 1996).
WA960008 (March 15, 1996).
WA960023 (March 15, 1996).
Wyoming
WY960009 (March 15, 1996).

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 country.

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Signed at Washington, DC, this 1st day of November 1996.

Philip J. Gloss,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 96–28485 Filed 11–7–96; 8:45 am]

BILLING CODE 4510–27–M

LEGAL SERVICES CORPORATION

Meeting of the Board of Directors Presidential Search Committee; Sunshine Act Meeting

TIME AND DATE: The Presidential Search Committee of the Legal Services Corporation Board of Directors will meet on November 22, 1996, from 10:00 a.m. to 5:00 p.m.

LOCATION: Wyndham Bristol Hotel, 2430 Pennsylvania Ave. NW., Washington, DC 20037, (202) 955–6400.

STATUS OF MEETING: Open.

The Committee would appreciate receipt of public comment on items 3 and 4 of the agenda set forth below. Individuals who wish to comment but will be unable to attend the meeting are requested to submit their comments in writing to: Victor M. Fortuno, General Counsel, Legal Services Corporation, 750 First Street NE., Washington, DC 20002, FAX # (202) 336–8954.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Receipt and consideration of presentation on background for presidential searches.
3. Receipt and consideration of public comment regarding the qualifications of applicants for the position of President of the Corporation.
4. Receipt and consideration of public comment regarding the process to be utilized for selecting a new President of the Corporation.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel, (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Barbara Asante, at (202) 336–8800.

Dated: November 6, 1996.

Victor M. Fortuno,

General Counsel.

[FR Doc. 96–28900 Filed 11–6–96; 12:29 pm]

BILLING CODE 7050–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by December 6, 1996. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 306–1033.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the ''Agreed Measures for the Conservation of Antarctic Fauna and Flora'' for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The applications received are as follows:

1. Applicant

Rennie S. Holt, U.S. AMLR Program, Southwest Fisheries Science Center, National Marine Fisheries Service, 8604 La Jolla Shores Drive, La Jolla, California 92038—Permit Application: 97–016

Activity for Which Permit Is Requested

Taking; Enter Site of Special Scientific Interest; and, Import into the U.S. The applicant proposes to enter Byers Peninsula (SSSI #6) and Cape Shirreff (SSSI #32) to study pinnipeds and seabirds. The AMLR Program proposes to establish a semi-permanent camp at Cape Shirreff to conduct these studies. Entry to the site will be by AMLR research personnel, contract support and ship personnel to assist in the set-up of the camp facilities in the first season (1996–97) and resupply of the camp. All activities within the site will comply with the site's management plan.

The seabird research to be conducted consists of ship-supported and land-based studies. The ALMR Program will conduct intermittent censuses of all seabird species at Cape Shirreff. Using established protocols adopted by the CCAMLR, a subset of Chinstrap and Gentoo penguins will be captured, temporarily marked and/or banded, instrumented (subset of adults only), handled (subset of adults only to have stomachs flushed), and then released. During capture, the birds will be weighed and measured. These parameters will be used to examine population dynamics of the various species.

During the census surveys, pinniped and seabird specimens are often found dead and washed ashore. The applicant proposes to salvage up 10 carcasses per year per seabird and pinniped species for importation to the U.S. for research and educational purposes.

Location

SSSI #6—Byers Peninsula, Livingston Island, South Shetland Island; and SSSI #32—Cape Shirreff, Livingston Island, South Shetland Islands.

Dates: December 30, 1996 to April 1, 2001.

2. Applicant

Gary D. Miller and Robert D. Miller, Biology Department, University of New Mexico, Albuquerque, New Mexico 87131—Permit Application: 97–017

Activity for Which Permit Is Requested

Taking and Import into the U.S. The applicant will spend the season as a lecturer onboard a cruise ship visiting many sites repeatedly in the Antarctic Peninsula during the 1996–97 season. He plans to collect tissue samples from carcasses of dead penguins, mostly chicks that have started or were killed by skuas. He will collect 10 to 15 samples from as many sites as possible. Each tissue sample will be homogenized and put into buffer solution to stabilize the DNA. The samples will be returned to the laboratory at the University of New Mexico for processing. The applicant will use the samples to analyze the phylogenetic relationships and the genetic variation of 2 major genera of penguins, the *Spheniscus* and *Pygoscelis* penguins.

Location

Antarctic Peninsula.

Dates: November 15, 1996–March 15, 1997.

3. Applicant

Steven D. Emslie, Department of Sciences, Western State College, Gunnison, Colorado—Permit Application: 97–018

Activity for Which Permit Is Requested

Taking; Enter Specially Protected Area; and Import into the U.S. The applicant proposes to conduct surveys and test excavations of abandoned penguin rookeries on Humble, Christine, Cormorant and Litchfield (SPA #17). The ice-free areas on these islands will be surveyed to locate evidence of former penguin breeding sites. The sites will be mapped and organic remains (penguin and other seabird bones and feathers) will be collected from the surface and subsurface of each rookery. Test pits will be placed in the abandoned rookeries and will be no larger than 1×1 m each. All pits will be refilled on the conclusion of the excavation. Collected sediments will be taken to Palmer Station for washing and sorting in the laboratory. All organic remains will be sorted form sediment and brought back to Western State College for identification and radiocarbon analyses.

Location

Islands in the Palmer LTER region, including Litchfield Island (Specially Protected Area #17).

Dates: February 28, 1997 to June 30, 1997.

Nadene G. Kennedy,

Permit Office, Office of Polar Programs.

[FR Doc. 96–28757 Filed 11–7–96; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–373 and 50–374]

Commonwealth Edison Company; Notice of Withdrawal of Application for Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Commonwealth Edison Company (ComEd, the licensee) to withdraw its June 21, 1996, application for proposed amendment to Facility Operating License Nos. NPF–11 and NPF–18 for the LaSalle County Station, Units 1 and 2, located in LaSalle County, Illinois.

The proposed amendment would have revised the technical specifications (TS) by extending the surveillance interval for testing of the Control Room and Auxiliary Electric Equipment Room Emergency Filtration System from 18 months to 24 months and would have allowed a one-time extension of the allowed outage time for this system from 7 days to 30 days.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the Federal Register on August 14, 1996 (61 FR 42278). However, by letter dated October 8, 1996, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated June 21, 1996, and the licensee's letter dated October 8, 1996, which withdrew the application for license amendment. 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 Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348.

Dated at Rockville, Maryland, this 1st day of November 1996.

For the Nuclear Regulatory Commission.

Donna M. Skay,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 96–28739 Filed 11–7–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–368]

Entergy Operations, Inc.; Notice of Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Entergy Operations, Inc., (licensee) for an amendment to Facility Operating License No. NPR–6 issued to the licensee for operation of the Arkansas Nuclear One, Unit No. 2, located in Pope County, Arkansas. A Notice of Consideration of Issuance of this amendment was not published in the Federal Register.

The purpose of the licensee's amendment request was to revise the Technical Specifications (TSs) to relocate the reactor coolant system (RCS) flow rate limit to the core operating limits report (COLR).

The NRC staff has concluded that the licensee's request cannot be granted. The licensee was notified of the Commission's denial of the proposed change by a letter dated November 1, 1996.

By December 9, 1996, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or 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.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, DC 20005–3502, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated August 23, 1996, and (2) the Commission's letter to the licensee dated November 1, 1996.

These 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 Tomlinson Library, Arkansas Tech University, Russellville, AR 72801.

Dated at Rockville, Maryland, this 1st day of November 1996.

For the Nuclear Regulatory Commission.

William D. Beckner,

Project Director, Project Directorate IV–1, Division of Reactor Projects III/IV Office of Nuclear Reactor Regulation.

[FR Doc. 96–28740 Filed 11–7–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 030–00692]

Indiana University, Environmental Assessment: Finding of No Significant Impact and Notice of Opportunity for Hearing Related to Amendment of Material License Number 13–00108–05

ACTION: The U.S. Nuclear Regulatory Commission (NRC) is considering an amendment to NRC License No. 13–00108–05, for use of carbon-14 (^{14}C) to conduct a field study on mayapple plants in Monroe County, Indiana. A similar project was approved by NRC in 1988 (Amendment 45 to the license).

FOR FURTHER INFORMATION, CONTACT: Sami Sherbini, U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, MS T8F5, Washington DC 20555, telephone (301) 415–7902.

Environmental Assessment

Description of Proposed Action

The proposed action is to amend NRC Byproduct Material License No. 13–00108–05 to authorize Indiana University to conduct field studies using small quantities of ^{14}C to label mayapple plants. The total amount of ^{14}C involved is not to exceed 444 megabequerels (MBq) [12millicuries (mCi)], to be administered over a period of 2 years starting in the spring of 1997.

Experimental Procedure

Indiana University was previously authorized by NRC, in 1988, to conduct field studies similar to those presently being considered. The 1988 studies involved administration of 1260 MBq (34 mCi) of ^{14}C, and the proposed study will use 444 MBq (12 mCi).

The purpose of the project is to assess the use of carbon by the mayapple plant, *Podophyllum Peltatum*. This is achieved by exposing each plant, in the field, to gaseous $^{14}CO_2$ for a period of 30 minutes, during which time some of the gas will be absorbed by the plant. Labeled plants are left in the field for a period of 1 year, after which the plants are harvested. A total of 475 plants are expected to be involved during the study, which is to be conducted over a 2-year period. The first phase is expected to start in the spring of 1997 and end with the harvesting of the labeled plants in 1998, at which time

the second phase will start. The second phase ends in 1999, with the harvesting of the remaining labeled plants. No labeled plant will remain in the field for a period of over 1 year.

The total ^{14}C activity to be authorized for use during the 2-year project is 444 MBq (12 mCi). The ^{14}C is taken to the field in the form of sodium bicarbonate ($NaH^{14}CO_3$). The compound, in liquid form, is pipetted, in the laboratory at Indiana University, into plastic centrifuge tubes, up to 25 microcuries (μCi) (0.93 MBq) per tube, and sealed with screw caps. The amount of liquid in each of the tubes will be very small, usually about a drop. The sealed tubes are to be packed into an insulated box (e.g., a picnic cooler) that has been lined with sufficient absorbent material to absorb any liquids in case of a spill. A maximum of 35 plants will be labeled at any one time, thereby limiting the amount of ^{14}C to be taken to the fieled at any one time to 32.4 MBq (875 μCi).

In the field, a centrifuge tube is attached to the stem of each plant to be labeled, the tube is uncapped, and the plant and tube are sealed in an exposure vessel consisting of a large, clear, plastic bag. Acid is then injected into the centrifuge tube using a hypodermic needle inserted through a sealable port in the plastic bag. The ensuing reaction causes the production of $^{14}CO_2$. The labeling bag is left in this configuration for 30 minutes, and then removed from the plant. The centrifuge tube is recapped and the bag sealed and taken back to the university laboratory. It is expected that about 90 percent of the $^{14}CO_2$ generated in the bag will be absorbed by the plant. Of the activity absorbed, it is estimated that about 90 percent will be released to the atmosphere by the plant within 3 to 4 days in the form of $^{14}CO_2$, with the remaining 10 percent being incorporated into the plant tissues. At the end of a period not to exceed 1 year from the date of labeling, the mayapple plant will be removed from the field, including the roots, and returned to the university laboratory.

Personnel performing the experiments will be trained personnel who have successfully completed the university's radiation safety training program as well as special training for this project. They will wear protective clothing and latex gloves during procedures involving the handling of radioactive materials. Each labeled plant will be posted with a radioactive material sign, and the perimeter of the experimental site will be posted with warning signs.

Site Description

The site of the proposed experiments is on private property, consisting mostly of upland undeveloped forest and lowland meadowland located in a rural area of Monroe County, Indiana. The site is not developed, but part of the lowland meadow is being used as a composting area for lawn waste. The proposed location for the experiment is an 11 acre plot in the upland undeveloped forest section of the property. The owners of the property live on the property, and their house is about 50 meters (160 feet) from the proposed experimental plot. They have given the university written permission to conduct the experiments.

There is no access road to the proposed location of the experiments, and access to the property is through a 1.25 mile-long driveway on the property off a dead-end public road. Although many houses in the general area have wells, the closest of which is about 300 meters (1,000 feet) from the site, the wells are no longer in use because of the recent introduction of a municipal water supply. The closest body of water to the site is Richland Creek, located about 460 meters (1,500 feet) from the closest point of approach to the property. The creek is not used for fishing or drinking because it has been classified by the State of Indiana as a Class 2 polluted waterway, meaning that it should not be used for fishing. The depth of the water table in the area is about 200 meters (640 feet), and is about 230 meters (740 feet) at the study location.

Based on available data and experience gained from conducting similar experiments in the past, it appears that only two types of insect feed on the mayapple plant: stemborers and lepidopteran larvae, but no other animals or birds. The stemborers are known to remain within the plant, and will therefore be collected and returned to the laboratory when the plants are harvested. Only one lepidopteran larva was observed on a mayapple plant during past experiments, and it appears that these larvae are not commonly found in that area. The licensee plans to remove any such larvae that may be found during the proposed experiments and dispose of them as radioactive material. The two insect species identified above are not included in the list of endangered species for the State of Indiana published by the U.S. Fish and Wildlife Service.

Dose Assessments

Use of ^{14}C to label mayapple plants, in the manner proposed by the licensee, presents two possible pathways for exposure to the radioactive material:

1. Inhalation of the $^{14}CO2$, either during application by the workers, or as a result of emission by the labeled plants 3 to 4 days after uptake by the plant.

2. Diffusion of the ^{14}C into soil and subsequent contamination of a drinking water supply. Activity may reach the ground through the plant roots, or through a spill of the radioactive material during labeling.

1. Airborne Pathways

The ^{14}C is taken to the field in the form of sodium bicarbonate liquid contained in sealed plastic tubes. Each tube will contain up to 25 μCi (0.93 MBq) of C–14. Based on past experience, the licensee estimated that 90 percent of the ^{14}C activity to which the plant is exposed is taken up by the plant. Assuming each plant is exposed to the full 0.93 MBq (25 μCi) content of the plastic tube attached to it during labeling, the plant will absorb 25 μCi x 0.9, or about 0.83 MBq (22.5 μCi). Of this activity, 90 percent is estimated to be released to the atmosphere within 3 to 4 days of uptake by the plant. Therefore, the activity released to the atmosphere by each plant will be 22.5 μCi x 0.9, or 0.75 MBq (20.3 μCi). An estimated 475 plants will be labeled during the 2-year period of the experiment. Therefore, the total amount of ^{14}C released to the atmosphere during the proposed study will be 20.3 μCi x 475, or about 370 MBq (10 mCi).

The closest residents to the site of the experiments are the owners of the property, whose house is located about 50 meters (160 feet) from the proposed experimental site. The concentration of ^{14}C at the house is estimated by using standard airborne dispersion methods normally used to estimate the concentrations of materials downwind of a release point. The method chosen for the present purpose is that recommended for use by the U.S. Environmental Protection Agency (EPA) for showing compliance with its air emissions standards (EPA 520/1- 89–001, ''Procedures Approved for Demonstrating Compliance with 40 CFR Part 61, Subpart I,'' Background Information Document, October 1989). According to this model, the average downwind concentration of ^{14}C is given by,

$$C = \frac{fPQ}{u}$$

where:

C=concentration, μCi/m3

f=fraction of time wind is blowing toward receptor = 0.25
Q=release rate, μCi/s=1.6×10^{-4} μCi/s
u=wind speed, m/s=2 m/s

The release rate, Q, was obtained by dividing the total activity released in a 2-year period, namely 370 MBq (10 mCi), by the number of seconds in that period. The values of 0.25 and 2 m/s for ''f' and ''u'', respectively, are conservative values for these parameters. Typical values for ''f' are of the order of 0.15, and typical values for ''u'' are of the order of 4 to 5 m/s. The value of the diffusion function, P, is given by,

$$P = \frac{2.032}{\sigma_z x}\exp\left[-\frac{1}{2}\left(\frac{H}{\sigma_z}\right)^2\right]$$

Where:
P=diffusion function
×=distance from point of release, m=50 m
H=height of release point, m=2 m
Q_z=vertical diffusion parameter, m

$$\sigma_z = 0.06\frac{x}{\sqrt{1+0.0015x}}$$

The release rate is obtained by assuming uniform and continuous emission from the plants over a period of 2 years. A release height of 2 meters (6.6 feet) above ground level is assumed, and the distance to the owner's house is, as noted above, 50 meters (160 feet). The actual pattern of release of ^{14}C will not be uniform, but will in fact occur over a period of 2 months each year, for a total of 4 months during the 2-year period of the experiment. However, assuming uniform emissions over the 2-year period will only affect the rate at which the ^{14}C is inhaled, but not the total quantity inhaled, and therefore will not affect the total committed effective dose. The uniform emission assumption only simplifies the calculations, but does not affect the final outcome.

Using the above formulas, the concentration of ^{14}C at the owner's house is estimated to be about 8.14 mBq/m^3 (2.2×10^{-7} μCi/m^3). This is a conservative estimate because the calculations do not take into account any additional dispersion caused by trees and other obstacles between the plants and the house.

Assuming that the residents will inhale this activity continuously for a period of 2 years, at an inhalation rate of 1.2 m^3/hr (from Publication 30 of the International Commission on Radiological Protection), the total inhaled ^{14}C activity will be about 170 Bq (4.6×10^{-3} μCi). The effective committed dose equivalent per unit intake for ^{14}C, in the form of $^{14}CO_2$, is 6.35 μSv/MBq (0.0235 mrem/μCi) (from Federal Guidance Report No. 11, ''Limiting Values of Radionuclide Intake and Air Concentration and Dose Conversion Factors for Inhalation, Submersion, and Ingestion,'' EPA–520/1–88–020). The total committed effective dose equivalent resulting from inhalation of 179 Bq (4.6×10^{-3} μCi) of $^{14}CO_2$ is therefore less than 0.01 μSv (1 μrem).

In addition to the release to the atmosphere by the plants, some ^{14}C activity will remain in the labeling plastic bag at the end of the labeling period. Each bag will initially contain 0.93 MBq (25 μCi) of $^{14}CO_2$, of which 90 percent, or 0.83 MBq (22.5 μCi) will be taken up by the plant, leaving 0.093 MBq (2.5 μCi) in the bag. If it is conservatively assumed that the person performing the labeling inhales about 25 percent of that remaining activity, and if it is also assumed that the same person performs labeling on all 475 plants, the total ^{14}C activity inhaled will be 2.5 μCi×0.25×475 plants, or about 11.1 MBq (300 μCi). Inhalation of this activity, in the form of $^{14}CO_2$, over a 2-year period, using a dose per unit intake of 6.35 μSv/MBq (0.0235 mrem/μCi) , as above, will result in an occupational committed effective dose equivalent of about 70 μSv (7 mrem).

2. Soil Pathway

The soil pathway is the exposure pathway that starts with introduction of the radioactive material into the soil, followed by diffusion to the water table and contamination of water supplies. Exposure routes would be by drinking contaminated water, eating fish or other marine life living in the contaminated water, eating plants grown in contaminated soil and irrigated using contaminated water, and eating diary products and meat produced from cattle raised on contaminated feed and water.

None of the above pathways is significant in this case. The property on which the experiment is to be conducted is not a working farm, and no food is grown or produced on it. The closest well is 300 meters (1,000 feet) from the experimental site, but the wells in the area are no longer used as a water supply because of the introduction of a municipal water system. There is no fishing in the surrounding area, and the closest body of water, Richland Creek, located 460 meters (1,500 feet) from the site, is polluted and is not used for fishing.

A spill of radioactive material is not expected to have a significant impact on the environment because each plastic centrifuge tube contains only a drop or so of the liquid tracer, with a total activity of 0.93 MBq (25 μCi). However, a potentially larger source of ^{14}C by this pathway are the labeled plants. The plants are estimated to absorb 90 percent of the activity to which they are exposed, which is 25 μCi×0.9×475 plants, or about 407 MBq (11 mCi). About 90 percent of this activity is expected to be released to the atmosphere soon after labeling, leaving 10 percent, or about 37 MBq (1 mCi), in the plant tissue. The licensee stated that all plants, including all roots, will be harvested, and no plant will be left in the ground for more than 1 year. However, if we assume that all the activity in the plant tissue is released to the ground, this will provide an upper bound for any possible effect from the groundwater pathway.

The experimental plot is about 11 acres in area, or about 45,000 m^2. It will be assumed that at the end of the experimental period of two years, the (1 mCi) 37 MBq activity in the plants is uniformly spread out over this area and to a depth of about 1 m, which is the approximate depth within which most of the roots will be located. It is also assumed that a drinking water well is located at the edge of the experimental plot. Using these assumptions, the concentration of ^{14}C in the top soil layer will be 0.022 μCi/m^3 (814 Bq/m^3) . At a soil density of about 1.5 g/cm^3, the concentration will be about 0.015 pCi/g (0.56 mBq/m^3) of soil. Using the computer code RESRAD to perform a pathway analysis, and using the water table depth at the site of about 200 meters (640 feet), the dose from the drinking water pathway is found to be substantially below 0.01 μSv (1 μrem). This is an upper limit for this pathway, because there is no well at the edge of the experimental plot, the nearest well being about 300 meters (1,000 feet) from the site.

Finding of No Significant Impact

Pursuant to the National Environmental Policy Act of 1969 (NEPA) and the Commission's regulations in 10 CFR Part 51, the Commission has determined that there will not be a significant effect on the quality of the human environment resulting from the use of ^{14}C in mayapple plant studies conducted by Indiana University in Monroe County, Indiana. Further, an environmental impact statement is not required for the proposed amendment to Byproduct Material License No.13–00108–05, which will authorize use of ^{14}C-labeled sodium bicarbonate at the experimental

site. This determination is based on the foregoing Environmental Assessment (EA) performed in accordance with the procedures and criteria in 10 CFR Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related regulatory Functions.'' The EA described herein confirms the Finding of No Significant Impact for the proposed studies.

Notice of Opportunity for a Hearing

Any person whose interest may be affected by the issuance of this amendment may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington DC 20555, within 30 days of publication of this notice in the Federal Register and must be served on the NRC staff by mail addressed to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852; and must be served on the applicant by mail or delivery to Indiana University, Department of Environmental Health and Safety, 840 State Road 46 Bypass, Room 160, Bloomington, Indiana 47405. The request for a hearing must comply with the requirements set forth in the Commission's regulations, 10 CFR Part 2, Subpart L, ''Informal Hearing Procedures for Adjudications in Material Licensing Proceedings.'' Subpart L of 10 CFR Part 2 may be examined or copied for a fee in the Commission's Region III Public Document Room at 801 Warrenville Road, Lisle, Illinois 60532–4351, or in the NRC Public Document Room, 2120 L Street, N.W., Lower Level, Washington DC 20555.

As required by 10 CFR Part 2, Subpart L (10 CFR 2.1205), the request for hearing must describe in detail: (1) The interest of the requester in the proceeding; (2) how that interest may be affected by the results of the proceedings, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in paragraph (g) of 10 CFR 2.1205; (3) the requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and (4) the circumstances establishing that the request for a hearing is timely in accordance with paragraph (c) of 10 CFR 2.1205.

The factors in 10 CFR 2.1205(g) that must be addressed in the request for hearing include: (1) the nature of the requester's right, under the Atomic Energy Act of 1954, to be made a party to the proceeding; (2) the nature and extent of the requester's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding, upon the requester's interest.

Dated at Rockville, Maryland this 30th day of October, 1996.

For the U.S. Nuclear Regulatory Commission.

Josephine Piccone,

Chief, Operations Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 96–28737 Filed 11–7–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–245, License No. DPR–21]

Northeast Utilities Millstone Nuclear Power Station, Unit 1; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Acting Director, Office of Nuclear Reactor Regulation, has taken action with regard to a Petition dated January 2, 1995, by Mr. Anthony J. Ross (Petition for action under 10 CFR 2.206). The Petition pertains to Millstone Nuclear Power Station, Unit 1.

In the Petition, the Petitioner asserted that (1) the Petitioner was ''unjustly chastised'' by his first-line supervisor and department manager about absenteeism, and his department manager threatened him in a memorandum; (2) his first-line supervisor willfully falsified nuclear documents in that he signed off on a surveillance of the gas turbine battery as having met acceptance criteria when the requirements had not been met; and (3) the Millstone Unit 1 organization failed to enter into a 4-day Limiting Condition for Operation as required by the Technical Specifications when the Operations Department was notified of the failed surveillance, in violation of 10 CFR 50.5. In addition, the Petitioner asserted that a number of violations have occurred in 1992 and 1993 related to the gas turbine battery, which have not been handled appropriately by the NRC and Northeast Utilities, and that the utility and NRC are engaged in an apparent ''cover-up'' of the problems.

The Petitioner requested that the Nuclear Regulatory Commission (1) assess a Severity Level II violation and a Severity Level III violation against his department manager and his first-line supervisor for their apparent violations of 10 CFR 50.7; (2) institute sanctions against his first-line supervisor, Northeast Utilities, and the Millstone Unit 1 organization for engaging in deliberate misconduct in violation of 10 CFR 50.5; and (3) remove his first-line supervisor from his position until a ''satisfactory solution to the falsifying of nuclear documents'' by this individual can be achieved.

The Acting Director of the Office of Nuclear Reactor Regulation has determined to deny the Petition. The reasons for this denial are explained in the ''Director's Decision Under 10 CFR 2.206'' (DD–96–16), the complete text of which follows this notice and 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 Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and at the temporary local public document room located at the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

A copy of the Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance unless the Commission, on its own motion, institutes a review of the Decision in that time.

Dated at Rockville, Maryland, this 31st day of October 1996.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Acting Director. Office of Nuclear Reactor Regulation.

[DD–96–16]

I. Introduction

On January 2, 1995, Mr. Anthony J. Ross (Petitioner) filed a Petition with the Executive Director for Operations of the Nuclear Regulatory Commission (NRC) pursuant to Section 2.206 of Title 10 of the Code of Federal Regulations (10 CFR 2.206). In the Petition, the Petitioner raised concerns regarding (1) employee harassment and intimidation by Northeast Utilities (NU); (2) the falsification of nuclear documents concerning the gas turbine battery; (3) failure to enter a Technical Specification Limiting Condition for Operation (LCO) after a failed surveillance; and (4) his belief that numerous violations have occurred in 1992 and 1993 regarding the gas turbine battery. Because of these problems, the Petitioner alleges that the gas turbine is still inoperable. In addition, the Petitioner asserts that these problems have not been handled appropriately by the NRC and NU, and that NU and the

NRC are engaged in an apparent ''cover-up'' of problems with surveillances of the gas turbine battery.

The Petitioner requested that the NRC (1) assess a Severity Level II violation and a Severity Level III violation against his department manager and his first-line supervisor for their apparent violations of 10 CFR 50.7; (2) institute sanctions against the Petitioner's first-line supervisor, NU, and the Millstone Unit 1 organization for engaging in deliberate misconduct in violation of 10 CFR 50.5; and (3) remove the Petitioner's first-line supervisor from his position until a ''satisfactory solution to the falsifying of nuclear documents'' by this individual can be achieved.

On February 23, 1995, I informed the Petitioner that the Petition had been referred to me pursuant to 10 CFR 2.206 of the Commission's regulations. I also informed the Petitioner that the NRC would take appropriate action within a reasonable time regarding the specific concerns raised in the Petition. I also stated that the Petitioner's allegations that the NRC has not been appropriately handling certain violations and is engaged in a ''cover up'' of the problems related to the gas turbine battery had been referred to the Office of the Inspector General (OIG). Therefore, this Director's Decision does not address that issue. On the basis of a review of the remaining issues raised by the Petitioner, as discussed below, I have concluded that no substantial health and safety issues have been raised that would require the initiation of additional formal enforcement action.

II. Discussion

A. Background

The Petitioner alleges that during an annual surveillance of the gas turbine battery on September 20, 1994, he identified that some of the intercell bolted connections of the gas turbine battery were greater than 65 micro-ohms, which was greater than the acceptance criteria specified in Procedure SP 779.5, ''Gas Turbine Battery Annual Inspection.'' The Petitioner alleges that although he notified the Operations Department shift supervisor and his first-line supervisor, his first-line supervisor signed the surveillance as ''yes,'' referring to the ''acceptance criteria met,'' when clearly the requirements were not met as specified by Procedure SP 779.5. The Petitioner alleges further that, when the Operations Department was notified by him of the failed surveillance, the Millstone Unit 1 organization willfully failed to enter a four-day LCO as required by the Technical Specifications, in order to keep the unit on-line to produce revenues. In addition, the Petitioner asserts that about a week after this incident, he received copies of the 1992 and 1993 annual gas turbine battery surveillances that indicated a number of problems and violations which have not been handled appropriately by NU and the NRC, and that the gas turbine is still inoperable due to these problems. Finally, the Petitioner alleges that he has been subjected to harassment and intimidation by his first-line supervisor and department manager for raising these concerns.

B. Petitioner's Concern Regarding Falsification of Nuclear Documents

During an inspection held September 27 through November 15, 1994, as documented in Inspection Report (IR) 50–245/94–31; 50–336/94–30; 50–423/94–28 (IR 94–31), dated December 16, 1994, and an inspection held May 15 through June 23, 1995, as documented in IR 50–245/95–22; 50–336/95–22; 50–423/95–22 (IR 95–22), dated July 21, 1995, the NRC reviewed gas turbine battery maintenance and surveillance activities at Millstone Unit 1. The inspection determined that on September 20, 1994, the date the Petitioner alleges the gas turbine battery failed the surveillance, the licensee for Millstone Unit 1 (Northeast Nuclear Energy Company—NNECO) performed the annual surveillance of the gas turbine battery as specified by Procedure SP 779.5. This annual preventive maintenance identified three intercell connection resistance readings that did not meet the surveillance acceptance criterion in that the resistance readings were greater than the accepted values. The electricians notified the shift supervisor and the maintenance foreman of the unsatisfactory readings and documented the results in the surveillance procedure.

The NRC reviewed the completed surveillance and noted that the ''acceptance criteria met'' block was checked ''yes,'' indicating satisfactory surveillance results; however, the resistance readings for the three intercell connections were documented as unsatisfactory. The inspection therefore confirmed that the classification of this surveillance as acceptable was incorrect and, as a result, it bypassed NNECO's administrative control procedures for system operability [1], and procedural review and approval. However, on the basis of interviews and a review of the completed surveillance procedure, the NRC determined that the first-line supervisor documented the high resistance readings on the cover page of the surveillance, discussed the issue with the Electrical Engineering Department to determine if the high resistance readings affected operability of the battery and, on the basis of the discussion with Engineering, determined that Engineering had previously reviewed the effect of the high resistance readings and had found the battery operable. Therefore, the first-line supervisor concluded that the battery was acceptable as is [2]. Further, the inspection confirmed that the licensee's previous operability evaluation was acceptable and that the gas turbine battery was operable. As discussed below, the NRC took enforcement action regarding a number of procedural violations associated with the gas turbine battery surveillance. Therefore, based on the above, the NRC has concluded that the first-line supervisor did not willfully falsify documents.

C. Petitioner's Concern Regarding Failure To Enter Technical Specification LCO

The inspection determined that the classification of the resistance readings as ''unsatisfactory'' (''acceptance criteria block'' checked ''no'') would have ensured that a determination of operability would have been performed by the licensee and the related Technical Specification LCO would have been entered if appropriate. However, since the first-line supervisor documented the high resistance readings, discussed the readings with Engineering, and on the basis of the discussion, determined that the battery was acceptable, the licensee did not willfully fail to enter the LCO in that the licensee determined that the previous operability determination was valid and, therefore, that the surveillance procedure criteria had been met.

In response to the NRC IR results, the Millstone Unit 1 Director issued a memorandum to Millstone Unit 1 personnel to reinforce the expectation that if an acceptance criterion is not met, the ''no'' block must be checked. The Unit Director stated that he held

[1] If the classification of the surveillance had been determined to be ''unsatisfactory'' (''acceptance criteria block'' checked ''no''), a determination of operability would be performed and the related Technical Specification LCO would be entered, if the gas turbine battery was inoperable.

[2] Although the first-line supervisor was technically correct that the gas turbine battery was operable, the determination of battery operability did not follow the licensee's administrative controls as discussed above.

managers and supervisors personally accountable for ensuring that their personnel understood the message in the memorandum. In addition, NNECO held several management team meetings to ensure a full appreciation of the type of performance characteristics that can lead to procedural violations and to reinforce the licensee's expectation concerning the ''acceptance criterion met'' block. NNECO also revised the acceptance criterion within Procedure SP 779.5 for the three connections that have the intercell connection cables with higher resistance because of the cable length. In addition, the official plant record was corrected for the annual battery surveillance that was incorrectly marked as meeting its acceptance criterion. In a subsequent inspection report, IR 50–245/95–31, 50–336/95–31, 50–423/95–31 (IR 95–31), dated September 19, 1995, the NRC reviewed the licensee's corrective actions in the above areas. The NRC staff found the licensee's corrective actions to be timely and thorough.

In summary, on the basis of the above information, the staff found that the Petitioner's first-line supervisor did incorrectly mark the acceptance criterion met block ''yes;'' however, he annotated the high resistance readings on the cover page of the surveillance and marked the block ''yes'' based on his determination that Engineering had previously reviewed the issue and determined the battery to be operable. Further, the staff found that since the licensee determined that this was previously reviewed by Engineering and found acceptable, the licensee erroneously did not follow its administrative control procedures for determining operability and entering of appropriate LCOs. Therefore, the NRC determined that (1) the Petitioner's first-line supervisor did not willfully falsify nuclear documents or deliberately violate NRC regulations or the Millstone Unit 1 operating license; (2) neither he, Northeast Utilities, nor the Millstone Unit 1 organization violated the provisions of 10 CFR 50.5; (3) the requested removal of the first-line supervisor is not warranted based on these concerns; and (4) the licensee's corrective actions were acceptable. As discussed below, the NRC took enforcement action regarding a number of procedural violations associated with the gas turbine battery surveillance.

D. Additional Concerns Regarding Inoperability of the Emergency Gas Turbine

The Petitioner provides a number of examples of what he alleges demonstrate inadequate procedural compliance by the licensee regarding gas turbine battery surveillances which indicate that the gas turbine is inoperable due to battery problems.[3] In IR 94–31, the NRC determined that during implementation of Procedure SP 779.5, there were a number of examples (including the examples the Petitioner provided) in which the Procedure SP 779.5 was not followed, nor was the job stopped and the procedure revised to correct the identified errors. For example, the procedure included a caution statement following step 6.19 that required the generation of a plant information report (PIR) and subsequent determination of operability if the battery acceptance criteria are not met. The PIR was not generated until this issue was questioned by the NRC. Step 6.17 of the procedure requires that if any resistance reading was greater than 65 micro-ohms, then the terminals and straps must be cleaned. The licensee did not clean the terminal and strap connections. Step 6.22 requires that the readings taken during the surveillance be compared with previous battery surveillance readings to determine if there is any deterioration of the battery system. The licensee did not perform this review and evaluate the battery for deterioration until the NRC raised the issue. The NRC determined that these examples in which the procedure steps were not implemented constituted a violation of Technical Specification 6.8.1 and Procedure SP 779.5 and issued a Notice of Violation to the licensee (categorizing this as a Severity Level IV Violation, Violation 50–245/94–31–02). Further, the NRC noted in IR 94–31 that neither the recognition of the procedure errors during two prior implementations of this annual surveillance procedure (1992 and 1993)[4], nor the biennial procedure review completed on December 8, 1993, resulted in revisions to preclude the problems encountered during the 1994 surveillance. As discussed above, in IR 95–31, the NRC reviewed the licensee's corrective actions for this violation and found them acceptable.

In IR 94–31, the NRC concluded that the previous operability evaluation of the gas turbine battery was acceptable and, therefore, that the gas turbine battery was operable at that time due to the previous evaluation. The violation cited in the Notice of Violation included the issues the Petitioner raised, specifically that NNECO failed to perform an operability determination and subsequently did not enter the Technical Specification LCO for the gas turbine. While the NRC staff did not take the actions the Petitioner requested, the staff did take enforcement action based on its findings. Therefore, since the NRC found the licensee's determination of operability acceptable and the NRC took enforcement action for the related violation described above, the NRC has concluded that additional enforcement action is not warranted.

E. Petitioner's Allegations Regarding Harassment and Intimidation

With regard to the Petitioner's assertion of harassment and intimidation, the Petitioner alleges that (1) on October 7, 1994, he was given a memorandum concerning absenteeism; (2) on October 27, 1994, he was unjustly chastised by his first line supervisor and department manager about absenteeism; and (3) on December 14, 1994, he was given a memorandum that threatened him. The Petitioner further alleges that he believes these actions by his supervision illustrate that NU management harasses, intimidates, and retaliates against individuals who raise safety concerns with outside agencies.

As indicated in a letter to the Petitioner dated November 28, 1995, from the NRC Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research, the Petitioner has raised several complaints since 1993 with the NRC or the Department of Labor (DOL) concerning harassment, intimidation, or discrimination by individuals at NU because the Petitioner raised safety concerns to NU or the NRC. As explained in the letter, the NRC conducted investigations into some of the harassment and intimidation allegations that the Petitioner had raised. The NRC did not substantiate that the Petitioner suffered discrimination for raising safety concerns. Further, of the complaints of harassment and intimidation that the Petitioner raised that were investigated by the DOL, none have been substantiated.

The staff has, in addition, reviewed the Petitioner's remaining allegations of harassment and intimidation, including those in the Petition, and has concluded that they do not present sufficient information warranting further investigatory effort. Accordingly, absent a finding of discrimination by the Secretary of Labor or an Administrative Law Judge on any pending complaints, or significant new evidence from the

[3] The Petitioner asserted that these problems have not been handled by the NRC and NU, and that NU and the NRC are engaged in an apparent ''cover-up'' of problems. As explained above, the ''cover-up'' issue has been referred to the OIG.

[4] The NRC noted similar examples in which the procedure was not followed or corrected during the annual surveillance in 1992 and 1993.

Petitioner that would support the allegations that NU has harassed, intimidated, or discriminated against him, the NRC staff plans no further followup of the harassment and intimidation complaints. Based on the above, no further action is warranted.

III. Conclusion

On the basis of the above assessment, I have concluded that some of the Petitioner's concerns were substantiated and resulted in appropriate enforcement action. Other concerns were not substantiated. Therefore, no additional enforcement action is being taken in this matter.

The Petitioner's request for action pursuant to 10 CFR 2.206 is denied. As provided in 10 CFR 2.206(c), a copy of this Decision will be filed with the Secretary of the Commission for the Commission's review. This Decision will constitute the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes review of the Decision in that time.

Dated at Rockville, Maryland, this 31st day of October 1996.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 96–28742 Filed 11–7–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–413 and 50–414]

Duke Power Company, et al.; Catawba Nuclear Station, Units 1 and 2; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has taken action with regard to a Petition for action under 10 CFR 2.206 received from Mr. Charles Morris (Petitioner), dated February 13, 1996, as supplemented May 1, 1996, with regard to the Catawba Nuclear Station.

The Petitioner requested the NRC to suspend the operating licenses for the Catawba Nuclear Station and ''some ten other licensees with uncoordinated breakers'' (not specifically identified in his initial Petition) until the lack of circuit breaker coordination has been remedied. Mr. Morris also requested that enforcement conferences be held on these cases and that Catawba be defueled. Mr. Morris also asked that the NRC take enforcement action against Catawba for operating with a ''known safety deficiency of which they did not inform the NRC.''

The Director of the Office of Nuclear Reactor Regulation has denied the Petition. The reasons for this decision are explained in the ''Director's Decision Pursuant to 10 CFR 2.206'' (DD–96–14), the complete text of which follows this notice and 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 for the Catawba Nuclear Station located at the York County Library, 138 East Black Street, P.O. Box 10032, Rock Hill, South Carolina.

A copy of this Decision has been filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, this Decision will constitute the final action of the Commission 25 days after the date of issuance unless the Commission, on its own motion, institutes review of the Decision within that time.

Dated at Rockville, Maryland, this 10th day of October 1996.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

Director's Decision Under 10 CFR 2.206

I. Introduction

On February 13, 1996, Mr. Charles Morris of Middletown, Maryland, filed a Petition with the U.S. Nuclear Regulatory Commission (NRC) pursuant to Title 10 of the Code of Federal Regulations, Section 2.206 (10 CFR 2.206). In the Petition, the Petitioner requested the NRC to suspend the operating licenses for the Catawba Nuclear Station and ''some ten other licensees with uncoordinated breakers'' (not specifically identified in his initial Petition) until the lack of circuit breaker coordination has been remedied. Mr. Morris also requested that enforcement conferences be held on these cases and that Catawba be defueled. Mr. Morris also asked that the NRC take enforcement action against Catawba for operating with a ''known safety deficiency of which they did not inform the NRC.'' This aspect will be addressed separately as stated in the April 2, 1996, letter to Mr. Morris. On May 1, 1996, Mr. Morris submitted an addendum to his Petition, providing a list of 14 cases involving 9 other nuclear power plants for which lack of protective device coordination had been identified as a concern by electrical distribution system functional inspection (EDSFI) teams; see Section II for information.

II. Discussion

During an EDSFI conducted by the NRC staff from January 13 to February 14, 1992, at the Catawba Nuclear Station, circuit breaker coordination deficiencies were identified for the 600-Vac essential motor control centers (MCCs) and the 125-Vdc system. This circuit breaker coordination issue was addressed in EDSFI Inspection Report 50–413, 414/92–01, dated March 18, 1992, as a deviation from a written commitment. Section 5.3.1 of the Institute of Electrical and Electronics Engineers (IEEE) Standard 308–1974, ''IEEE Standard Criteria for Class 1E Power Systems for Nuclear Power Generating Stations,'' stipulates that protective devices shall be provided to limit the degradation of Class 1E power systems. The Catawba Final Safety Analysis Report (FSAR) states that the system meets the requirements of this standard. The FSAR also states that the protective devices on the 600-Vac essential auxiliary power (EPE) system are set to achieve a selective tripping scheme so that a minimal amount of equipment is isolated for an adverse condition such as a fault.

Contrary to this IEEE Standard, however, the licensee's protective devices may not limit the degradation of the 125-Vdc vital instrumentation and control (I&C) power system distribution center and other main feeder circuit breakers. An analysis performed by the licensee showed that coordination did not exist for fault currents from 3500 amperes (A) up to the maximum fault current of 9500 A. A fault on the battery charger feeder cable could cause both the charger and the battery to be isolated from the remainder of the distribution system and loads.

In addition, the outgoing feeder breakers for the 600-Vac essential MCCs have thermal elements and the incoming MCC breakers have instantaneous elements. The incoming breaker (supply breaker) and the feeder breakers at each of the 600-Vac MCCs were not coordinated for the maximum expected short-circuit current. A fault on any of the MCC outgoing feeders could cause the MCC incoming breakers to trip, resulting in a loss of the MCC.

Enclosed with the letter dated April 16, 1992, Duke Power Company (the licensee) provided a response to this deviation which stated that the 125-Vdc vital I&C power (EPL) system primarily uses molded-case circuit breakers in the 125-Vdc distribution centers and power panelboards for protection. The battery, main, and tie breakers are equipped only with adjustable magnetic trip units. The battery charger breaker is a thermal

magnetic type with an adjustable magnetic trip setting. The rest of the breakers are of a non-adjustable thermal magnetic type.

The licensee's response concluded that this design was acceptable for the following reasons:

1. The EPL system is not a shared system between the two Catawba units; thus, a postulated fault in the EPL system of one unit will not affect the opposite unit.

2. The EPL system for each unit is composed of two completely redundant and separate trains, each consisting of two load channels for a total of four load channels per unit. A postulated fault would, at worst, disable two load channels of the same train, yet the redundant train would remain unaffected.

3. Selected loads such as the diesel load sequencer, essential switchgear and load center controls, and auxiliary feedwater pump turbine controls are not only fed by the EPL system, but are auctioneered with the 125-Vdc diesel auxiliary power (EPQ) system. As a result, if the EPL system was unable to feed these loads, the EPQ system would supply them without interruption. Further, a fault on the EPL system will not affect the EPQ system or vice versa.

The licensee's response further states that the incoming 600-Vac breakers were incorporated in the design to provide a means of local isolation for the 600-Vac Class 1E MCCs. The licensee deemed acceptable the use of circuit breakers having a continuous rating equal to the MCC incoming rating and their instantaneous trip settings at maximum, 10 times their continuous rating.

In the response to the deviation, the licensee committed to perform a detailed study to identify acceptable methods to achieve improved protective device coordination within the EPL system and to evaluate the feasibility of eliminating the incoming 600-Vac MCC breakers. The licensee committed to either update the FSAR to justify the deviation from the IEEE Standard 308–1974 or to modify the system to meet this IEEE standard. Subsequent to completing the detailed study and evaluating the feasibility of making system modifications, the licensee proposed modifying the FSAR.

Deterministic Analysis

To review and evaluate the lack of circuit breaker coordination in the Catawba EPL and EPE circuits, the staff requested the licensee to provide additional information. The licensee's response of March 2, 1994, addressed fault types, fault locations, breakers that are coordinated and breakers that are not coordinated, the impact of the upstream breaker opening, and the safety significance of the loss of a train. The staff also requested additional information regarding the 2-kV-rated interlocking armored cabling; the operating history of faults; the measures provided to detect, locate, and correct faults; and related criteria and practices incorporated to ensure continued system functional performance. The licensee's responses to these requests were enclosed in its letter to the NRC of May 17, 1996.

125-Vdc Vital EPL System

The EPL system is an ungrounded system and therefore can remain operational for a single postulated fault of either positive-to-ground or negative-to-ground. In order to render the system inoperable, postulated faults would have to be either a simultaneous positive-to-ground and negative-to-ground fault or a double-line (positive-to-negative) fault. The former type of fault requires that two failures occur, which is beyond the design basis for the plant. The occurrence of a single line-to-ground fault will not affect the functional capability of the power system. However, upon the occurrence of such a fault, a ground fault detector will alert the control room operator by way of an annunciator and a computer alarm. A program that seeks to maintain a dark control room annunciator board promptly addresses ground faults. The latter type of fault is thought to be unlikely in view of a study performed with information obtained from the Nuclear Plant Reliability Database System (NPRDS) and the Catawba probabilistic risk assessment (PRA). The licensee analyzed failures at Catawba since 1985 and all U.S. plants since 1990. Three reported cases were found in which a double-line fault occurred on a direct current system. One case that occurred at Catawba involved a shorted lamp holder and was attributed to improper installation during maintenance. The two other cases occurred at nuclear plants operated by other utilities and involved component failures within battery chargers; in both of these other cases, the plant status was not affected. No cases were reported that involved double-line faults attributed to cable faults. In addition, no faults of the types that could challenge the EPL system were identified in the NPRDS.

The licensee's circuit breaker coordination analysis for the EPL system postulates faults at selected locations within the system. The analysis was performed in accordance with the guidelines of IEEE Standard 946–1993, ''IEEE Recommended Practice for the Design of DC Auxiliary Power Systems for Generating Stations,'' and included EPL system load groups A and D for both units. These two load groups for both units were analyzed since the 125-Vdc vital batteries associated with them are capable of producing the highest fault current. The coordination analysis postulates faults at nine locations within each of the four EPL load groups. These locations are as follows: (1) Battery charger output; (2) auctioneering diode assembly input; (3) inverter input; (4) auctioneered distribution center bus; (5) load end of 4160-Vac essential switchgear control power feeder breaker and first termination point of associated feeder cable; (6) load end of 600-Vac essential load center control power feeder breaker and first termination point of associated feeder cable; (7) load end of diesel generator load sequencer control power feeder breaker and first termination point of associated feeder cable; (8) power panelboard bus; and (9) load end of the largest breaker used in a power panelboard and the first termination point of the associated feeder cable. These fault locations were chosen to represent a broad cross-section of possible fault locations. At these locations, calculated fault currents for the two A load groups (one A load group per unit) and the two B load groups are very similar, as may be expected since the two units are very similar. The analysis results also show that for faults at locations (2) and (4), the breakers are fully coordinated, while for faults at locations (5), (6), (7), and (9), the breakers are partially coordinated. For postulated faults at locations (1), (3), and (8), the breakers are not coordinated. In the analysis, full breaker coordination is considered to exist if the breaker nearest the fault clears without operating (opening) any upstream breakers, or if the consequences of operating an upstream breaker are no more severe than those associated with operating the breaker nearest the fault. Partial coordination is considered to exist if some of the upstream breakers, except the battery breaker or the load center incoming breaker, could operate before the breaker nearest the fault clears. For those cases in which either the battery compartment breaker or the load center breaker could operate before the breaker nearest the fault operates, coordination is considered not to exist. If an upstream breaker, such as the load center incoming breaker, operates before the breaker nearest the fault opens, one of

the four EPL system load centers would be lost.

The EPL circuit breaker coordination analysis neglects cable faults and credits cable resistances in the fault current calculations. The cabling used in the system is 2-kV-rated interlocking armored cable. This cabling has the same construction as non-armored cable, except that a steel armor covering is applied around the entire outer circumference. This interlocked steel outer covering protects the cable from damage or degradation during loading, unloading, transporting, installation, and while in service at the plant. The cabling was purchased with an insulation system rated at 2000 Vac. The cable conductors were high-potential tested underwater and spark tested at the factory with values required by standards for 2-kV cable. The low voltage of the EPL system does not produce internal ionization or corona that would cause an internal flashover or failure between conductors within the armored cable. Further, the cable insulation system has a greater thickness than the insulation system of standard 600-Vac rated cable and therefore provides higher dielectric capability, enhanced physical protection, and added margin for aging considerations.

In addition, the licensee had an interlocked armored cable fault test performed at the High Power Laboratory of the Westinghouse Electric Corporation. This test did not result in any additional shorts between conductors within the multiconductor cable. Similar interlocking armored cabling is used at the Oconee Nuclear Station, which has an inservice cable monitoring program. For this program, six cable samples were installed inside one of the containment buildings. At 5-year intervals, a 5-foot segment is removed from each cable sample for testing. This testing measures, documents, and trends the mechanical and electrical properties of the cable. Past test results from this program collectively show that cable samples are in good physical condition after 20 years in a reactor building environment. The installed interlocking armored cabling at Catawba is identical or superior to the cable that is installed at Oconee. A similar monitoring program to evaluate and trend cable problems has been in place at Catawba since January 1995. The purpose of this program is to evaluate and record problems or malfunctions of plant cables and, if an adverse trend develops, take corrective actions to address the problem. Deficiencies that would be reported as a result of this program include short circuits, insulation damage, and problems with cable terminations and splices. Since cabling of the same basic specifications and ratings is used in both safety and nonsafety applications at Catawba, all plant cabling is included in the scope of this trending program. Data on failures or problems with cables are collected at the end of each quarter; since January 1995 there has only been one failure.

Neither of the Catawba units has ever experienced a single line-to-ground fault that caused the EPL system to become inoperable. As noted previously, this result is due in part to the ungrounded system design. A complete review of the EPL system work order history revealed that five ground faults have been experienced in the last 5 years. Each of these faults resulted in an alarm both locally and in the control room and was caused by solenoid valve problems. Three cases involved failed solenoid valve components, and the other two cases involved water intrusion into solenoids, which was subsequently corrected. Because of the intermittent nature and high resistance of these faults, it sometimes took an extensive amount of time to specifically locate and correct the ground fault. However, none of these faults caused the EPL system to become functionally inoperable. The licensee has implemented additional measures to aggressively locate and correct ground faults that may occur in the future. These measures include the procurement of an advanced ground-locating device that will allow ground faults of a high-resistance nature to be located more readily. The EPL system work order history search also revealed that only one ground fault detector has failed during the last 5 years. Because the original ground detector was no longer available from the manufacturer, a substitute part had to be located and an evaluation performed to verify its acceptability for use in the application. As a result, it took longer than normal to restore the unit to service. However, the EPL system is checked weekly in accordance with an administrative procedure for ground faults by way of another method that is independent of the ground detector system. Thus, in the unlikely event of a ground fault detector failure, a ground would very likely be detected by way of the independent alternate means before a fault-related problem developed.

To ensure continued functional performance of the EPL system, the following additional criteria and practices are in place at Catawba. Only a minimal amount of cable splicing is permitted, and no cable splicing is allowed in raceways. Safety-related cables routed underground are installed in conduit or cable trenches, and are not directly buried in the earth. Cable ampacities used for cables are based on 70 percent of the standard industry ampacity ratings. Further, for the EPL system, higher rated voltage (2000 Vac versus 125 Vac) cable is used with the steel interlocking armor jacket to provide additional physical protection.

Although the EPL system analysis described above demonstrates that full circuit breaker coordination does not exist for all postulated faults, this fact has no significance for the operational capabilities of the system because the faults that result in lack of breaker coordination are limited. These faults are limited in both type (doubled-sided, solid, low resistance ones) and location (postulating such faults at many locations does not result in a lack of breaker coordination). Monitoring by ground fault detectors further limits such faults since this activity minimizes the potential for bigger problems, such as positive-to-negative faults. In the event that such a fault does result in the loss of an EPL load distribution center, an independent and redundant EPL load distribution center is provided to supply safety-related loads. Further, should a fault-induced transient occur as a result of the loss of one of the two plant transient-inducing EPL load distribution centers, the plant can be safely shut down using only the loads powered from either one of the two EPQ system auctioneered distribution centers. In addition, the safety significance of the loss of one EPL load group is analyzed in the Catawba FSAR. This analysis includes the loss of an EPL load group as a result of any postulated cause. Thus, the loss of an EPL load group as a result of any cause (faults or any other cause) is within the licensing basis (i.e., analyzed in the FSAR) for Catawba Units 1 and 2.

600–Vac EPE System

The licensee also provided additional information on the lack of breaker coordination in the EPE system. This additional information included the analysis performed for the EPE system, fault locations, identification of the breakers that are coordinated and those that are not, the impact of upstream breakers opening, the significance of taking out an EPE train, and measures taken to prevent degrading the installed equipment during modification and maintenance work activities.

The fault current analysis for the EPE system was performed in accordance with the guidelines in IEEE Standard 141–1986, ''IEEE Recommended

Practice for Electric Power Distribution for Industrial Plants.'' For each 600–Vac essential MCC, all load breakers and cables were reviewed to determine which circuit can produce the highest fault current. For each MCC, a coordination evaluation was performed for the worst-case feeder (load) breaker and the incoming (supply) breaker. In this analysis, the feeder breaker fault is modeled at the load or at the first cable termination outside the MCC. For the fault current analysis, the normal load current for all nonfaulted feeder breaker loads is added to the feeder breaker fault current to establish the total current experienced by the incoming breaker during the fault. Also, in this analysis, the feeder breaker fault current is obtained by adding the fault contribution from the incoming breaker and the fault contribution from the large motor loads connected to the bus. The fault currents were determined for both the normal and accident cases. The normal operation case produces the highest postulated fault current and, as such, is used throughout the analysis. The postulated faults in the analysis are three-phase, bolted faults, and all fault currents and load currents are based on the highest bus voltage for the normal operating case.

Fault locations for the Unit 1 Train A and B EPE MCC circuits were established. The Unit 2 Train A and B circuits are similar. Based on the unlikely occurrence of bus faults and/or breaker faults at Catawba, faults were not postulated on the output of the feeder breaker. In addition, because of the 2–kV–rated interlocked armor cable protection and the fact that no faults have occurred on any such cable in service at any of the Duke Power nuclear plants, faults were not postulated along the routes of the cable. Further, the fault current calculations credit cable impedances and postulate faults at the input terminals of the load or at the first cable termination after the cable leaves the MCCs. The 2–kV–rated interlocking armored cabling used in the EPE system is the same as that used in the EPL system. Thus, the cable analysis information previously mentioned for the EPL system is applicable to the EPE system.

The Unit 1 EPE system includes 11 MCCs. Analysis shows that for 10 of these MCCs, the incoming breakers are coordinated for the worst-case postulated fault at the first cable termination outside the MCC. The remaining MCC is provided with two incoming breakers, which can be powered from either a Unit 1 or a Unit 2 load center. The two incoming breakers supplying this MCC are not fully coordinated for a fault at the worst-case load, which is a control room ventilation system air-handling unit. This unit is connected with a 250 MCM cable that is 100 feet long. The other loads powered by this MCC are fed from smaller breakers and cables with lower maximum fault current and thus are coordinated with the incoming breakers.

The two incoming breakers for the one MCC are mechanically interlocked such that one breaker is always locked in the open position. If the incoming breaker in service to this MCC trips to clear a fault, power is lost to some Train A control room ventilation system and nuclear service water system loads. An important function associated with these systems is maintaining pressurization of the control room. If this MCC is deenergized under nonaccident conditions, control room pressurization decreases until the operators manually transfer the system to Train B. This result is not viewed any differently than the result of losing the pressurizing fan alone and has little impact. If the MCC is deenergized under accident conditions, the design is such that pressurization is reestablished automatically from Train B, and this situation has little impact.

To ensure continued fault-free functional operation of the EPE system, modifications and maintenance work are controlled by station procedures. The Catawba inspection and maintenance procedure for MCC breakers addresses much of the work related to the EPE MCCs. This procedure, along with other station procedures, provides strict controls on any changes from the normal system configuration, such as placement of grounding jumpers or test alignments. These types of configuration changes are documented on a circuit alteration/restoration log sheet attached to the procedure. Before the work can be closed out and the equipment reenergized, the proper steps in the restoration section of the procedure must be completed and verified by an independent technician. Typical restoration activities performed at the completion of maintenance work on EPE MCC feeders include removing all test equipment and verifying that the MCC compartment is wired according to the latest wiring diagram. If required, motor phase rotation testing would also be performed. If the feeder breaker has been removed or replaced, a thermography test of the energized breaker will be conducted. Additional specified functional verification requirements, such as verifying proper full-speed operation and normal pressure and flow parameters, may be performed, depending on the type of equipment involved with the work. In addition, the test requirements section of the inspection and maintenance procedure for MCC breakers specifies that megger testing of the load is to be performed if a fault is suspected. The procedure signoff sheet includes a section for recording such megger readings.

The licensee's March 2, 1994 analysis indicated that selected circuit breakers associated with certain EPE MCCs are not coordinated for postulated faults. However, the technical significance of this fact is low, which is due, in part, to such faults being limited in both type (bolted low-impedance faults) and location (postulating such faults in many EPE system locations does not result in lack of breaker coordination). Assurance that such faults are limited is further established by the positive test results obtained for the interlocking armored cabling and the strict adherence to maintenance procedures. In addition, an analysis of the loads powered by each of the 11 600–Vac EPE system MCCs indicates that loss of power to any one of these MCCs because of a fault or for any other reason would not directly result in a reactor transient. Further, Trains A and B of the EPE system are redundant and, as such, loss of functions from any MCC is backed up by the redundant MCC of the other train. Finally, each MCC is provided with a control room alarm for loss of power to facilitate restoration of equipment in a timely manner by operator actions.

Probabilistic Risk Assessment

To further supplement the deterministic engineering analysis results, the staff requested the licensee to consider using PRA techniques to better understand the likelihood and impact of the lack of breaker coordination in the Catawba EPL and EPE systems. The licensee responded in the attachments to a letter dated December 29, 1994, by addressing EPL and EPE system uncoordinated breakers within a PRA framework. Following the review of the submitted PRA information, the staff requested by letter dated April 30, 1996, that the licensee specifically address the uncoordinated breaker issue including the (1) initiating event (IE) frequency; (2) conditional impact of the IE on plant operation; (3) ability to recover from an uncoordinated breaker event; and (4) recovery by way of the standby shutdown facility (SSF). The licensee provided this additional PRA information in the enclosures to a letter dated May 17, 1996. The paragraphs below discuss the PRA and

the lack of breaker coordination in the EPL and EPE systems.

125–Vdc EPL System

In the Catawba PRA, the licensee identified a ''Loss of Vital Instrumentation and Control'' as an initiator-coded T14. With uncoordinated breakers, some line-to-line electrical faults in the 125–Vdc feeders could cause both the loss of a vital I&C power distribution center (T14 initiator) and a subsequent turbine trip and reactor trip.

In Calculation CNC–1535.00–00–0007 enclosed in its December 29, 1994, letter, the licensee established the frequency of the T14 initiating event at 5E–02 per year. This value had also been used in the Catawba PRA, which supported the licensee's individual plant examination (IPE). The IE frequency had been based on the operational experience of one event in 20 reactor-years of operation at the combined Catawba and McGuire units (four units) from 1987 to 1991. The event involved manual tripping of a 125–Vdc vital I&C power distribution center at the McGuire station in 1987. In response to this event, the NRC issued Information Notice 88–45, ''Problems in Protective Relay and Circuit Breaker Coordination.'' Because no other T14 IE occurred since that timeframe, the actual IE frequency would be lower.

In order to establish the fraction of the T14 initiator event frequency that could be associated with breaker miscoordination, the licensee performed an NPRDS search for all dc line-to-line faults. The data search included all U.S. nuclear plants from 1990 (Catawba since 1985) to the present. The NPRDS search identified only one such fault at Catawba and three faults at all U.S. plants. In recognition of the fact that the results of NPRDS searches are dependent on the search commands, the staff requested the Oak Ridge National Laboratory (ORNL) to perform a similar search. ORNL obtained the same results as did the licensee for the Duke Power plants. However, ORNL found a slightly higher rate for the other U.S. plants. In no case did cable failure(s) result in a line-to-line fault or a plant trip.

In order to estimate (bound) the contribution of a cable fault to the T14 initiator event frequency, the licensee assumed that one cable fault occurred out of a combined 46 years of reactor operation at the Catawba and the McGuire units. This assumption resulted in a cable fault frequency of 2E–02 per unit-year. Catawba Unit 1 has about 18,500 cables and about 30 feeders per 125–Vdc vital distribution center. From these data, cable faults causing loss of a single distribution center have an IE frequency of 3E–05 per year ((2E–02)(30)/18,500 = 3E–05 per year). A second (somewhat higher) estimate was obtained by using the IEEE Standard 500–1984, ''IEEE Guide to the Collection and Presentation of Electrical, Electronic, Sensing Component, and Mechanical Equipment Reliability Data for Nuclear-Power Generating Stations,'' which specifies a composite cable failure rate of 7.54E–06 per hour per plant for power, control, and signal cables combined. Line-to-line cable failure rate is a small fraction of this rate. With this cable failure rate, the failure rate of a single distribution center is 1E–04 per year ((7.54E–06)(8760)(30)/18,500 = 1E–04 per year).

The Catawba PRA used a generic value for bus fault probability of 2E–03 per year, where the term bus fault includes distribution center or panel faults, cable faults, and terminal faults. Although this IE is only 4 percent of the T14 initiator frequency, it is obviously higher than the probability figures derived from plant operational experience and IEEE 500–1984 data (i.e., the cable fault contribution was 5 percent of the bus fault probability using IEEE data, and 1.5 percent using operational experience). On the basis of this rationale, the staff concluded that the cable fault contribution was bounded by the distribution center fault probability used in the Catawba PRA.

Unit 1 has six 125-Vdc load distribution centers: 1EDA, 1EDB, 1EDC, 1EDD, 1EDE, and 1EDF. The licensee evaluated the plant response on loss of power for each of the Unit 1 distribution centers. The Unit 2 system is similar to Unit 1, and the evaluation for Unit 1 is applicable to Unit 2.

The licensee's evaluation indicates that a loss of power at 1EDB or 1EDC would result in a loss of a vital I&C power 120-Vac inverter, one solid-state protection system (SSPS) channel, one nuclear instrumentation channel, and a process protection channel. A loss of power at 1EDA or 1EDD would result in similar channel losses, plus a loss of power to process control for associated pressurizer power-operated relief valves (PORVs), to control solenoids for certain main steam isolation valves, and to control solenoids for attendant main feedwater control valves. However, except for the loss of the PORVs, a loss of any of these four distribution centers would not significantly impact the plant's accident mitigation capability. Loss of one channel of the SSPS, process protection channels, main steam isolation valves, and main feedwater control valves would not preclude mitigation unless there were additional faults.

Distribution center 1EDE or 1EDF provides control power for safety equipment. The licensee's breaker coordination analysis indicates that the other four distribution centers lack full coordination. Distribution center 1EDE is powered by two power supplies that are auctioneered. One of these auctioneered power supplies is from 1EDA, and the other is from one of the trains of the 125-Vdc EPQ system. Similarly, 1EDF is powered by two power supplies that are auctioneered. One of these auctioneered power supplies is from 1EDD and the other is from the other train of the 125-Vdc EPQ system. Thus, even though distribution centers 1EDE and 1EDF may be fed from uncoordinated distribution centers 1EDA and 1EDD, respectively, in the event of loss of 1EDA or 1EDD, the distribution centers 1EDE or 1EDF will continue to be powered by the alternate power source. Further, a loss of power at 1EDE or 1EDF would not result in a plant transient and thus would not result in an immediate need for mitigating systems, although the resulting loss of control power to equipment would require resolution within the specified time period of the applicable Technical Specifications Action Statement.

In addition to redundant mitigation capability, Catawba is provided with a manually activated SSF. The SSF is an independent structure with its own ac and dc power supplies, instrumentation, and reactor coolant makeup pump. Upon loss of normal ac or dc power, the SSF can be used to remove core decay heat and provide reactor coolant pump seal protection if the event leads to the loss of all plant-side safety systems. The SSF reduces the contribution of the T14 initiators by more than an order of magnitude, resulting in a total contribution of 6.7E–08 per reactor-year, or less than 0.1 percent to the total core damage frequency (CDF).

Using a T14 IE frequency of 5E–02 per year, the licensee derived a total CDF of 7.76E–05 per year in the Catawba IPE. Applying information from the IEEE standard for cable fault frequency to the four distribution centers lacking full coordination, which is a subset of the T14 initiator, reveals that the contribution to the total CDF from the loss of a 125-Vdc load distribution center is less than 1E–09 per reactor-year. The licensee also performed a sensitivity study by changing the T14 IE frequency from 5E–02 per year to 1.0 per year. The total CDF changed by 1.55 percent (i.e., the total CDF changed from 7.76E–05 per year to 7.88E–05 per year).

The sensitivity study indicates that any increase in the CDF from a lack of breaker coordination would be small.

600-Vac EPE System

As previously mentioned in this report, the licensee's breaker coordination study indicates that out of 11 MCCs in the EPE system, only 1 MCC, 1EMXG, is uncoordinated. This calculation, however, excluded all cable faults from the 600-Vac EPE system MCCs to the first cable termination on the basis that the occurrence of severe cable faults was of low probability. The licensee states that no severe cable faults have been reported in its seven nuclear plants, which have a combined operational experience of 120 reactor-years. On the basis of the IEEE Standard 500–1984 data of 4.8 failures per million hours per plant for power cables, the licensee calculated that a typical plant with 18,500 cables had a probability of a cable failure of 2.3E–06 per year per cable, and the probability of an MCC loss as a result of cable failure is 7E–05 per year for a typical MCC with 30 feeders.

In the Catawba PRA, loss of a 600–Vac MCC is addressed through its plant response characteristics (mission time) because the loss of an MCC does not cause a reactor transient. The Catawba PRA study identified a probability of loss of a 600–Vac MCC as 1.5E–04 for a 24-hour mission time, and the contribution of cable faults to this mission time as 5E–07. Therefore, the Catawba PRA indicates that cable faults did not have any significant impact on the overall MCC failure probability calculated in the PRA.

The licensee's study revealed that a loss of any of the 11 600–Vac EPE system MCCs would not directly lead to a reactor trip. In a review of the 600–Vac EPE system MCC loads, the staff arrived at the same conclusion. Although such an MCC loss would not result in a reactor transient, it would render one train of safety systems inoperable and would require entry into applicable limiting conditions of operation defined in the Technical Specifications. However, a loss of any MCC would only affect one train, and the redundant train would be available for accident mitigation.

The licensee did not provide an analysis of the effect of SSF availability on the CDF from the loss of a 600–Vac MCC. The SSF response for the 600–Vac EPE system is expected to be similar to that previously explained herein for the EPL system.

In Calculation CNC–1535.00–00–0007, enclosed with the licensee's letter of December 29, 1994, the licensee indicated that on the basis of the Catawba PRA, the MCC 1EMXG had a failure probability of 1.4E–04 for a 24-hour mission time. Within this MCC, only one breaker feeding a control room air-handling unit lacked coordination with its upstream breaker. With this uncoordinated breaker, the MCC failure rate would increase by 1E–06 for a 24-hour mission time, or the impact would be approximately two orders of magnitude less than the total MCC failure probability. The licensee's sensitivity study provided in Calculation CNC–1535.00–00–0007 indicates that even if the failure rate of the uncoordinated MCC 1EMXG were increased by an order of magnitude from 1E–06 to 1E–05, the resulting failure probability for the MCC 1EMXG would increase by only 7.1 percent.

On the basis of these considerations, the staff concluded that the lack of breaker coordination in the EPE system has a negligible impact on the MCC failure probability as calculated in the Catawba IPE.

Full circuit breaker coordination is a desirable design feature for ac and dc power distribution systems in a nuclear plant since it assists in minimizing equipment losses if electrical faults occur. The staff has reviewed the licensee's submittals addressing the lack of full circuit breaker coordination within the 125–Vdc EPL and 600–Vac EPE systems. The licensee's circuit breaker coordination analysis shows that the Catawba EPL and EPE systems lack full breaker coordination. However, the faults that must occur to cause a lack of breaker coordination in these systems are limited by type and location. Such faults have a low probability of occurrence because the interlocking armored cabling is unlikely to develop such faults. Further, ongoing measures, such as ground fault detection, incorporating design criteria and practices, and strict adherence to modification and maintenance procedures, tend to minimize the likelihood of the occurrence of faults within the EPL and EPE systems that would result in miscoordinated breakers. Plant operational experience and IEEE Standard 500–1984 data indicate that line-to-line faults are of low probability. The probability of a line-to-line fault is 2E–02 per year and the probability of loss of a 125–Vdc distribution center is 1E–04 per year. In the 600–Vac EPE MCCs, the licensee has never experienced any severe cable fault in 120 reactor-years of operation of the seven Duke Power nuclear plants. The IEEE Standard 500–1984 data indicate a probability of a cable failure of 4.2E–02 per year and a corresponding probability of a loss of an MCC resulting from cable failure of 7E–05 per year. These results further support assumptions used in the licensee's breaker coordination analysis. However, in the unlikely event that such faults should occur in an EPL or EPE system train, a redundant and separate train is provided to perform the safety function.

The Catawba SSF reduces the impact on CDF of a loss of either one of two 125–Vdc distribution centers by more than an order of magnitude. Similar results would be expected for the 600–Vac EPE MCCs. In addition, a calculation by the licensee indicates that increasing the T14 IE frequency from 5E–02 per year to 1.0 per year would increase the total CDF by 1.55 percent from 7.76E–06 per year to 7.88E–05 per year. A similar calculation for the 600–Vac MCCs indicates that with lack of breaker coordination, the failure probability of the worst-case MCC would rise from 1.4E–04 per 24-hour mission time by 1E–06 per 24-hour mission time. The licensee's sensitivity study indicates that when the failure rate of the worst-case uncoordinated MCC was increased from 1E–06 to 1E–05, the resulting failure probability of the MCC would increase by 7.1 percent. Thus, the lack of circuit breaker coordination in the Catawba 125–Vdc EPL and 600–Vac EPE systems has a negligible impact on the CDF.

On the basis of this information, the staff concludes that the licensee has documented adequate technical justification for the lack of breaker coordination in the Catawba 125–Vdc EPL and the 600–Vac EPE systems. Accordingly, the staff concludes that there is no basis to suspend the Catawba operating licenses. The staff will pursue separately the requirement for the licensee to bring the FSAR into conformance with the as-built plant.

Lack of Protective Device Coordination at Other Nuclear Plants

As previously indicated in the introduction section of this Decision, the Petitioner submitted an addendum to his Petition on May 1, 1996. This addendum included a list of 14 cases, involving 9 other nuclear power plants, in which lack of protective device coordination was identified as a concern by EDSFI teams. These 14 cases were addressed by way of the NRC's inspection report item closeout process. As documented in the publicly available closeout inspection reports, these cases were resolved by (1) additional calculations and analyses showing that protective device coordination exists, and/or (2) plant hardware modifications such as replacement circuit breakers or

fuses. The following list identifies each of these 14 cases by an EDSFI inspection follow-up item (IFI) number and the publicly available inspection report in which the lack of protective device coordination issue was closed out.

Plant name	EDSFI IFI No.	Report date	Closeout inspection report	Report date
1. Oyster Creek	219/92–80–11	7/9/92	94–01	3/10/94
2. Nine Mile Point 1	220/91–80–07	1/10/92	94–20	11/4/94
3. Nine Mile Point 1	220/91–80–07A	1/10/92	94–20	11/4/94
4. Nine Mile Point 1	220/91–80–07B	1/10/92	94–20	11/4/94
5. Nine Mile Point 1	220/91–80–07C	1/10/92	94–20	11/4/94
6. Dresden	237/91–201–05	9/20/91	92–21	10/8/92
7. Quad Cities	254/91011–09A	6/24/91	94–26	12/5/94
8. Quad Cities	254/91011–9B	6/24/91	94–26	12/5/94
9. Quad Cities	254/91011–9C	6/24/91	94–26	12/5/94
10. Hatch	321/91–202–07	8/22/91	93–19	11/2/93
11. McGuire	369/91–09–01	2/19/91	94–20	10/12/94
12. Fort Calhoun	285/91–01–03	5/20/91	92–30	12/31/92
13. WNP2	397/92–01–20	5/5/92	93–16	6/4/93
14. Beaver Valley 2	412/91–80–02	4/1/92	93–27	1/24/94

III. Conclusion

The institution of proceedings in response to a request pursuant to 10 CFR 2.206 is appropriate only when substantial health and safety issues have been raised. See *Consolidated Edison Co. of New York* (Indian Point, Units 1, 2, and 3), CLI–75–8, 2 NRC 173, 176 (1975), and *Washington Public Power Supply System* (WPPSS Nuclear Project No. 2), DD–84–7, 19 NRC 899, 923 (1984). This standard has been applied to the concerns raised by the Petitioner to determine if the action he requested is warranted, and the NRC staff finds no basis for taking such actions. Rather, as previously explained herein, the NRC staff believes that the Petitioner has not raised any substantial health and safety issues. Accordingly, the Petitioner's request for action pursuant to 10 CFR 2.206, as specifically stated in his letter of February 13, 1996, and supplemented by a letter dated May 1, 1996, is denied.

A copy of this Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c). This Decision will become the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes review of the Decision within that time.

Dated at Rockville, Maryland, this 10th day of October 1996.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 96–28736 Filed 11–7–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–245, License No. DPR–21]

Northeast Utilities, Millstone Nuclear Power Station, Unit 1; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Acting Director, Office of Nuclear Reactor Regulation, has taken action with regard to a Petition dated December 30, 1994, by Mr. Anthony J. Ross (Petition for action under 10 CFR 2.206). The Petition pertains to Millstone Nuclear Power Station, Unit 1.

In the Petition, the Petitioner asserted that (1) the licensee does not adequately control work and procedure compliance at Millstone, as evidenced by the use of standard commercial-grade lugs in a gas turbine fuel forwarding pump and motor that are quality assurance (QA) subsystems of the emergency gas turbine generator and which had apparently been crimped using diagonal pliers; improper Raychem splices, cable bend radius, and connections in the connection boxes of major safety-related QA equipment; and installation of non-QA lugs and improperly performed crimping in fire protection QA emergency lights and (2) the Petitioner was subjected to ridicule by the gas turbine system engineer for raising concerns regarding the lugs on the gas turbine fuel forwarding pump and motor. The Petitioner requested that the U.S. Nuclear Regulatory Commission (NRC) (1) ''force'' Northeast Utilities (NU) to review all existing work orders for the past 10 or 12 years, with NRC oversight, to ensure that quality assurance motor and connection work does not have certain deficiencies; (2) assess a Severity Level I violation against NU and its managers for apparent violations of 10 CFR 50.7 and a Severity Level III violation against a gas turbine system engineer at Millstone for his apparent violation of 10 CFR 50.7 and NU's ''Code of Conduct and Ethics;'' and (3) institute sanctions against the system engineer and NU and its managers for engaging in deliberate misconduct in violation of 10 CFR 50.5.

The Acting Director of the Office of Nuclear Reactor Regulation has determined to deny the Petition. The reasons for this denial are explained in the ''Director's Decision Pursuant to 10 CFR 2.206'' (DD–96–17), the complete text of which follows this notice and 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 Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and at the temporary local public document room located at the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

A copy of the Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance unless the Commission, on its own motion, institutes a review of the Decision in that time.

Dated at Rockville, Maryland, this 31st day of October 1996.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Acting Director, Office of Nuclear Reactor Regulation.

[DD–96–17]

I. Introduction

On December 30, 1994, Mr. Anthony J. Ross (Petitioner) filed a Petition with

the Executive Director for Operations of the Nuclear Regulatory Commission (NRC) pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206). In the Petition, the Petitioner asserted that (1) inadequate work control and procedure compliance exist at Millstone Unit 1, as evidenced by the use of standard commercial-grade lugs in a gas turbine fuel forwarding pump and motor that are quality assurance (QA)[1] subsystems of the emergency gas turbine generator and which had apparently been crimped using diagonal pliers; improper Raychem splices, cable bend radius, and connections in the connection boxes of major safety-related QA equipment; and non-QA lugs installed, and improperly performed crimping, in fire protection quality assurance (FPQA) emergency lights, and (2) he had been subjected to ridicule by the gas turbine system engineer for raising concerns regarding the lugs on the gas turbine fuel forwarding pump and motor and that the system engineer willfully violated 10 CFR 50.5 and 50.7.

The Petitioner requested that the NRC (1) require Northeast Utilities (NU) to review all existing work orders for the past 10 or 12 years, with NRC oversight, to ensure that QA motor and connection work does not have certain deficiencies; (2) assess a Severity Level I violation against NU and its managers for apparent violations of 10 CFR 50.7 and a Severity Level III violation against the gas turbine system engineer at Millstone for his apparent violation of 10 CFR 50.7 and NU's ''Code of Conduct and Ethics;'' and (3) institute sanctions against the system engineer and NU and its managers for engaging in deliberate misconduct in violation of 10 CFR 50.5.

By letter dated February 23, 1995, the NRC informed the Petitioner that the Petition had been referred to the Office of Nuclear Reactor Regulation pursuant to 10 CFR 2.206 of the Commission's regulations. The NRC also informed the Petitioner that the staff would take appropriate action within a reasonable time regarding the specific concerns raised in the Petition. On the basis of a review of the issues raised by the Petitioner as discussed below, I have concluded that the actions sought by the Petitioner are not warranted.

[1] Quality Assurance comprises those quality assurance actions related to the physical characteristics of a material, structure, component, or system which provide a means to control the quality of the material, structure, component, or system to predetermined requirements.

II. Discussion

A. Inadequate Work Control and Procedural Compliance Issues

The issues raised by the Petitioner regarding the improper crimping and use of commercial grade lugs in the gas turbine fuel forwarding pump and motor; improper Raychem splices, cable bend radius, and connection issues, and improper crimping and use of non-QA lugs in emergency lighting, have been addressed in correspondence between the NRC and NNECO, and have been the subject of evaluations by NNECO and an NRC inspection. Specifically, by letters dated December 5 and 28, 1994, and February 14, 1995, and during a phone conversation on December 15, 1994, the NRC raised these issues and requested NNECO to submit written responses. By letters dated March 6 and April 26, 1995, NNECO responded to these requests and submitted information regarding its evaluation of these issues. On May 15 through June 21, 1995, the NRC conducted a special safety inspection, which focused on these and other maintenance issues. The inspection findings are contained in Inspection Report (IR) 50–245/95–22, 50–336/95–22, 50–423/95–22 (IR 95–22), dated July 21, 1995. Finally, NNECO provided further information regarding these issues in its August 31, 1995, response to the Petition. A broad summary of the resolution of these issues is set forth below.

1. Gas Turbine Fuel Forwarding Pump and Motor Issues

The Petitioner asserts that the licensee inadequately controls work and procedural compliance at Millstone, as evidenced by the use of standard commercial-grade lugs (instead of QA lugs) in a gas turbine fuel forwarding pump and motor that are QA subsystems of the emergency gas turbine generator and which the Petitioner asserts had been crimped with diagonal pliers (instead of the proper crimping tool). In its response to the Petition dated August 31, 1995, NNECO stated that, when the supervisor examined the lugs in question, he concluded that although the lugs were somewhat discolored as a result of age, and may have had an indented crimp, they appeared to the supervisor to be the type of lug that had been installed in the 1971–1972 time-frame, when no procedures were in place with respect to the type of lug required or the method of crimping. NNECO further stated that these lugs are considered acceptable where they have already been installed (i.e., meet original electrical standards); however, when maintenance is performed requiring re-lugging, the lugs are upgraded and installed in accordance with current procedures.

NNECO further stated that the fact that the lugs in question were commercial grade and may have been crimped with diagonal pliers is not indicative of a work control or procedural compliance problem. The lugs appeared to the NNECO supervisor to be the type of lug that had been installed at or near the time of initial plant start-up in accordance with the appropriate electrical standards that existed at that time. Moreover, once the concern was raised about the proper type and crimping of the lugs by the Petitioner, NNECO took prompt action by initiating a work order to replace all the lugs.

The NRC staff discussed the issue of defective lugs with the maintenance department manager and the worker who replaced the lugs during the special safety inspection. Neither individual could remember the work in detail but stated that to ensure reliability, the lugs were replaced.

Based on NNECO's conclusion that (1) the lugs in question had been installed in the 1971–1972 time-frame when no procedures were in place with respect to the type of lug required or the method of crimping, (2) these lugs are considered acceptable where installed, and based on NNECO's prompt action to initiate a work order and replace all the lugs, the NRC concludes that this issue does not indicate an inadequate work control or procedural compliance problem.

2. Improper Raychem Splices, Cable Bend Radius, and Connection Issues

The Petitioner asserts that the licensee is inadequately controlling work and procedural compliance at Millstone, as evidenced by improper Raychem splices, cable bend radius, and connections in the connection boxes of major safety-related QA equipment (low pressure coolant injection (LPCI) and core spray (CS) pumps). In its letter dated April 26, 1995, NNECO informed the NRC that an operability determination had been completed on the issue of the Raychem splice installation, and whether Raychem splice bend radii on the LPCI and CS pumps were less than the recommended limits (five times the Raychem diameter). The operability determination concluded that the motor splices were operable and that an immediate inspection to verify bend radii was not warranted. In addition, NNECO stated that 50 percent of the Raychem splices on the LPCI and CS pump motors had been inspected at that

time with no problems identified. In its followup letter dated August 31, 1995, NNECO stated that a visual inspection of all the LPCI and CS pump motors had been completed and none of the connections exceeded the minimum bend radius. Further, NNECO did not identify any discrepancies in the connection boxes for the LPCI and CS pump motors. NNECO's evaluations validated the determination that the splices are operable.[2]

As a result of its evaluation of NNECO's response and supporting documentation and its independent verification of two of the pump motors in question, the NRC found NNECO's response acceptable and that no further NRC review was needed. Therefore, the NRC staff concludes that the Raychem splices, cable bend radius, and the connections in the connection boxes of major safety-related equipment (LPCI and CS motors) are acceptable.

3. Emergency Lighting Issue

The Petitioner asserts that the licensee does not adequately control work and procedure compliance at Millstone, as evidenced by non-QA lugs and improperly performed crimping in FPQA emergency lights. The NRC staff requested NNECO to review the use of improper lugs for emergency lighting at Millstone Unit 1. Specifically, the NRC requested NNECO to review the concern that all four lugs on emergency light unit (ELU) 1–ELU–21 had Thomas and Betts lugs (non-QA) rather than the required QA AMP lugs, and all four lugs were not crimped properly. In addition, the NRC staff asked NNECO to review the concern that one lug on the emergency light 1–ELU–29 was a Thomas and Betts lug and that three of the four lugs were not properly crimped.

NNECO responded that a review of the revision history for Procedure MP 790.2, ''Emergency Light Inspection,'' determined that the procedure made no reference to a specific lug prior to April 1993. NNECO stated that because the safety classification of these ELUs is FPQA, the lugs utilized in the ELUs must be FPQA. NNECO noted that Thomas and Betts lugs are only stocked as FPQA.

NNECO stated further that an evaluation was performed to determine the consequences of Thomas and Betts lugs in lieu of AMP lugs and to determine if all lug crimps on 1–ELU–21 and 29 were adequate. Additionally, NNECO's evaluation verified the ability of 1–ELU–21 and 29 to perform their design function. NNECO has determined that the lug manufacturer is not a critical issue as long as the lug is compatible with the battery terminal and the wire used. In this case, the Thomas and Betts lug is similar to the AMP lug, and both lugs are compatible with the battery terminals and wire used. A compatibility study has been completed and documented in a Replacement Item Evaluation (RIE).

NNECO performed a review of previous ELU surveillances to determine whether a degraded condition had been observed for the battery terminal lugs in these ELUs; this review did not reveal any degraded conditions. The Millstone Unit 1 Engineering Department inspected the crimping of the battery terminations, and the eight crimps were found to be adequate. Although all battery termination lugs are insulated on these ELUs, one splice on 1–ELU–29 appeared to be crimped by a die for noninsulated lugs. However, this crimp did not affect operability of the ELU since a high-resistance connection was not present, and the insulation was not damaged. Satisfactory completion of a battery discharge test confirmed the adequacy of the crimps. Nonetheless, the lug that appeared to be crimped by a die for noninsulated lugs on 1–ELU–29 has been replaced.

During its special inspection, the NRC staff reviewed the concern about emergency lighting lugs and NNECO's process for lug replacement. The NRC staff verified that specific lugs were not called for in earlier versions of the lug replacement procedure and, therefore, as long as the lug was compatible and classified as FPQA, it could be used. Since Thomas and Betts lugs are stocked as FPQA and are compatible, they could have been used in ELUs. In addition, since AMP lugs are stocked as non-QA, the plant staff would have had to fill out Form SF 486, ''Upgrading FPQA Parts,'' to justify the upgrade of the lugs to FPQA standards.

The NRC staff reviewed an example of a lug changeout with an AMP lug and verified that Form SF 486 was included in the package to properly document the upgrade.

The NRC staff reviewed the RIE form that documented the acceptability of Thomas and Betts lugs as an alternate for AMP lugs. The RIE indicated that the Thomas and Betts lugs are acceptable as an alternate item and that they will not degrade or compromise the original design basis. The NRC staff found the RIE to be properly documented and adequate. The NRC staff reviewed procedure MP 790.2, which was revised on April 12, 1995, and now requires that AMP lugs be used or an equivalent as evaluated and indicated by an RIE. Since an RIE has been completed documenting Thomas and Betts lugs as an alternative, they are acceptable. The NRC staff found the procedure adequate and also verified that the one questionable lug on 1–ELU–29 was replaced. The NRC staff concluded that the lugs on 1–ELU–21 and 29 were adequately designed and qualified and that the ELUs were fully operable.

Based on NRC's findings that (1) the use of standard commercial-grade lugs in a gas turbine fuel forwarding pump and motor that are QA subsystems of the emergency gas turbine generator and which had apparently been crimped with diagonal pliers does not constitute an inadequate work control or procedural compliance problem; (2) the Raychem splices, cable bend radius, and the connections in the connection boxes of major safety-related equipment (LPCI and CS motors) are operable; and (3) the lugs on 1–ELU–21 and 29 were adequately designed and qualified and the ELUs were fully operable, the NRC staff has determined that the licensee adequately controls work and procedure compliance within these areas at Millstone. Therefore, the Petitioner's request to require NU to review all existing work orders for the past 10 or 12 years, with NRC oversight, to ensure that QA motor and connection work does not have certain deficiencies, is not warranted.

B. Harassment and Intimidation Issue

The Petitioner alleges that he was ridiculed by the gas turbine system engineer for raising safety concerns regarding the lugs on the gas turbine fuel forwarding pump and motor and that the system engineer willfully violated 10 CFR 50.5 and 50.7. In addition, the Petitioner alleges that NU and its managers violated 10 CFR 50.5 and 50.7 and NU's ''Code of Conduct and Ethics.''

As indicated in a letter to the Petitioner dated November 28, 1995, from the Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research, the Petitioner has raised several complaints since 1993 with the NRC or the Department of Labor (DOL) concerning harassment, intimidation, or discrimination by individuals at NU because the Petitioner

[2] In addition, NNECO (1) performed a review of all the work orders for the current Raychem splice installation and verified that the procedure specified that a minimum bend radius of five times the Raychem diameter not be exceeded, (2) verified that the training the electricians receive on Raychem splices discusses the requirement of not exceeding five times the minimum bend radius, and (3) requested that Raychem determine what the consequences of exceeding the minimum bend radius would be. The results of the Raychem testing showed that even if one or more splices exceeded the minimum bend radius, a tighter bend radius was acceptable.

raised safety concerns to NU or the NRC. As explained in the letter, the NRC conducted investigations into some of the harassment and intimidation allegations that the Petitioner had raised. The NRC did not substantiate that the Petitioner suffered discrimination for raising safety concerns. Further, of the complaints of harassment and intimidation that the Petitioner raised that were investigated by the DOL, none have been substantiated.

The staff has, in addition, reviewed the Petitioner's remaining allegations of harassment and intimidation, including those in the Petition, and has concluded that they do not present sufficient information warranting further investigatory effort. Accordingly, absent a finding of discrimination by the Secretary of Labor or an Administrative Law Judge on any pending complaints, or significant new evidence from the Petitioner that would support the allegations that NU has harassed, intimidated, or discriminated against him, the NRC staff plans no further followup of the harassment and intimidation complaints. Based on the above, no further action is warranted.

III. Conclusion

The licensee evaluated the technical issues and provided the results to the staff for review. The staff also conducted inspections to independently determine if the licensee's conclusions and corrective actions were acceptable. As explained above, none of the technical issues reflect a lack of procedural compliance or warrant additional action by the staff. Also, as explained above, the Petitioner's assertion of harassment and intimidation does not warrant any action.

On the basis of the above assessment, I have concluded that no issues have been raised regarding Millstone Unit 1 that would require initiation of enforcement action. Therefore, no enforcement action is being taken in this matter.

The Petitioner's request for action pursuant to 10 CFR 2.206 is denied. As provided in 10 CFR 2.206(c), a copy of this Decision will be filed with the Secretary of the Commission for the Commission's review. This Decision will constitute the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes review of the Decision in that time.

Dated at Rockville, Maryland, this 31st day of October 1996.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 96–28741 Filed 11–7–96; 8:45 am]

BILLING CODE 7590–01–P

Notice of Issuance and Availability of NUREG–1567 Standard Review Plan for Spent Fuel Dry Storage Facilities

The United States Nuclear Regulatory Commission has issued a draft report NUREG–1567 entitled ''Standard Review Plan for Spent Fuel Dry Storage Facilities,'' for review and comment.

The Standard Review Plan for Spent Fuel Dry Storage Facilities (FSRP) is prepared for the guidance of staff reviewers in the Spent Fuel Project Office in performing safety reviews of license applications for installations for dry storage of nuclear materials under Title 10 Code of Federal Regulations, Chapter 1, Part 72 (10 CFR 72). The principal purpose of the FSRP is to assure the quality and uniformity of staff safety reviews. It is also the intent of this plan to make information about regulatory matters widely available and to improve communications between the NRC, interested members of the public, and the nuclear power industry, thereby increasing understanding of the review process. The FSRP also defines a basis for evaluating modifications of the review process in the future.

Draft NUREG–1567 is available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, D.C. 20555–0001. A free copy of Draft NUREG–1567 may be requested by writing to Distribution Services, Printing and Mail Services Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001.

Comments on all aspects of this draft document are welcome and will be considered and incorporated into the FSRP, as appropriate. Furthermore, since the staff is considering alternatives to the seismic requirements in § 72.102, for ISFSIs, comments are particularly invited on Sections 2.4.6 and 2.5.6. It is requested that comments be submitted using the form (or a photocopy thereof) contained in Appendix E. Comments on draft NUREG–1567 should be submitted by March 1, 1997. The FSRP is scheduled for publication as an NRC NUREG document in 1997.

A separate Standard Review Plan for Dry Cask Storage Systems (DCSRP) was issued for public comment in February 1996 as draft NUREG 1536. The DCSRP is scheduled to be published as an NRC NUREG document in January 1997. To ensure consistency between the two standard review plans (SRPs), comments on sections common to both SRPs will be considered and incorporated, as appropriate, in both NUREGs.

Mail comments to: Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publication Services, Mail Stop T–6 D59, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001. Comments may be hand-delivered to 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m., on Federal workdays.

Comments may also be submitted electronically, in either ASCII text or WordPerfect format (version 5.1 or later) containing information requested in Appendix E, by calling the NRC Electronic Bulletin Board on FEDWORLD. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet.

If using a personal computer and modem, the NRC subsystem on FEDWORLD can be accessed directly by dialing the toll-free number: 1–800–303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI terminal emulation, the NRC NUREG and Reg Guide Comments subsystem can then be accessed by selecting the ''NRC Rules Menu'' option from the ''NRC Mail Menu.'' For further information about options available for NRC at FEDWORLD, consult the ''Help/Information Center'' from the ''NRC Main Menu.'' Users will find the ''FEDWORLD Online User's Guides'' particularly helpful. Many NRC subsystems and databases also have a ''Help/Information Center'' option that is tailored to the particular subsystem.

The NRC subsystem on FEDWORLD can also be accessed by a direct dial phone number for the main FEDWORLD BBS: 703–321–3339; Telnet via Internet: fedworld.gov (192.239.92.3); File Transfer Protocol (FTP) via Internet: ftp.fedworld.gov (192.239.92.205); and World Web using: http://www.fedworld.gov (this is the Uniform Resource Locator (URL)).

If using a method other than the toll-free number to contact FEDWORLD, the NRC subsystem will be accessed from the main FEDWORLD menu by selecting the ''Regulatory, Government Administration and State Systems,'' the selecting ''Regulatory Information Mall.'' At that point, a menu will be displayed that has an option ''U.S.

Nuclear Regulatory Commission'' that will take you to the NRC Online main menu. The NRC Online area can also be accessed directly by typing ''/go nrc'' at a FEDWORLD command line. If you access NRC from FEDWORLD's main menu, you may return to FEDWORLD by selecting the ''Return to FEDWORLD'' option from the NRC Online Main Menu. However, if you access NRC at FEDWORLD by using NRC's toll-free number, you will have full access to all NRC systems but will not have access to the main FEDWORLD system.

If you contact FEDWORLD using Telnet, you will see the NRC area and menus, including the Rules menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FEDWORLD using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is included. There is a 15-minute time limit for FTP access.

Although FEDWORLD can be accessed through the World Wide Web, like FTP that mode provides access for downloading files and does not display the NRC Rules Menu. For more information on NRC bulletin boards, call Mr. Arthur Davis, Systems Integration and Development Branch, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (301) 415–5780; E-mail AXD3@nrc.gov.

Dated at Rockville, Maryland, this 23rd day of October 1996.

For the Nuclear Regulatory Commission.

Susan Frant Shankman,

Chief, Transportation Safety and Inspection Branch, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 96–28738 Filed 11–7–96; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Data Collection Available for Public Comment and Recommendations

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Repayment of Debt: OMB 3220–0169.

When the Railroad Retirement Board (RRB) determines that an overpayment of Railroad Retirement Act (RRA) benefits has occurred, it initiates prompt action to notify the annuitant of the overpayment and to recover the money owed the RRB. In addition to the customary form of repayment (check, money order, annuity withholding), repayment of a debt owed the RRB can also be made by means of a credit card. To effect payment by credit card, the RRB utilizes Form G–421f, Repayment by Credit Card. One form is completed by each respondent. No changes are being proposed to G–421f. RRB procedures pertaining to benefit overpayment determinations and the recovery of such benefits are prescribed in 20 CFR 320.9, 340.1 and 340.5.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form Number(s)	Annual responses	Time (minutes)	Burden (hours)
G–421f	300	5	25

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 96–28711 Filed 11–7–96; 8:45 am]

BILLING CODE 7905–01–M

Computer Matching and Privacy Protection Act of 1988 RRB Records Used in Computer Matching

AGENCY: Railroad Retirement Board (RRB).

ACTION: Notice of Records Used in Computer Matching Programs; Notification to individuals who are beneficiaries under the Railroad Retirement Act.

SUMMARY: As required by the Computer Matching and Privacy Protection Act of 1988, the RRB is issuing public notice of its intent to furnish through a computer matching program Medicare and benefit rate information to state agencies to adjust amounts of benefits in their public assistance programs as well as to better coordinate Medicare/Medicaid payments for public assistance recipients.

The purpose of this notice is to advise individuals receiving benefits under the Railroad Retirement Act of the disclosure through a computer match that RRB plans to make of certain information about them.

ADDRESSES: Interested parties may comment on this publication by writing to Ms. Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Mr. LeRoy Blommaert, Privacy Act Officer, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092, telephone number (312) 751–4548.

SUPPLEMENTARY INFORMATION: The Computer Matching and Privacy Protection Act of 1988, Pub. L. 100–503, requires a Federal agency participating in a computer matching program with one or more state agencies to publish a notice regarding the establishment of a matching program. The purpose of this notice is to comply with this provision of the Act.

Name of Participating Agencies: Railroad Retirement Board and state public aid/public assistance agencies.

Purpose of the Match: The match has several purposes: to enable the state

agency to (1) accurately identify Qualified Railroad Retirement Beneficiaries; (2) make necessary adjustments required under state law in public aid payments due to cost of living or other adjustments in RRB annuities; and (3) coordinate benefits of dually eligible Medicare and Medicaid beneficiaries and to identify individuals who are eligible for Part B Medicare and not enrolled in order to enroll such individuals in the State Buy-In program.

Authority for Conducting the Match: 42 CFR 435.940 through 435.965.

Categories of Records and Individuals Covered: All beneficiaries under the Railroad Retirement Act who have been identified by a state as a recipient of public aid will have information about their RRB benefits and Medicare enrollment furnished to the state agency.

Inclusive Dates of the Matching Program: It is estimated that the first of these matches will commence in November 1996, and will run for the full 18 months of the agreement.

The notice we are giving here is in addition to any individual notice.

A copy of this notice will be furnished to both Houses of Congress and the Office of Management and Budget.

Dated: October 31, 1996.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 96–28710 Filed 11–7–96; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22312; File No. 812–10086]

First Variable Life Insurance Company, et al.

November 1, 1996.

AGENCY: U.S. Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: First Variable Life Insurance Company (''First Variable''), First Variable Annuity Fund A (''Fund A''), and First Variable Annuity Fund E (''Fund E'').

RELEVANT ACT SECTIONS: Order requested pursuant to Section 26(b) approving the proposed substitution of securities.

SUMMARY OF APPLICATION: Applicants seek an order approving the proposed substitution of securities issued by the Prime Money Fund of the Insurance Management Series for certain securities issued by the Cash Management Portfolio of the Variable Investors Series Trust (''Cash Management Portfolio'') which currently are held by Fund A and Fund E (collectively referred to herein as ''Funds'') to fund certain variable annuity contracts (''Contracts'') issued by First Variable.

FILING DATE: The application was filed on April 16, 1996, and amended and restated on October 4, 1996.

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 Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 26, 1996, 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 Secretary of the SEC.

ADDRESSES: SEC, Secretary, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, c/o Arnold R. Bergman, Vice-President—Legal and Administration, First Variable Life Insurance Company, 10 Post Office Square, 12th Floor, Boston, MA 01209. Copy to: Raymond A. O'Hara III, Blazzard, Grodd & Hasenauer, P.C., P.O. Box 5108, Westport, CT 06881.

FOR FURTHER INFORMATION CONTACT: Edward P. Macdonald, Staff Attorney, or Patrice M. Pitts, Branch Chief (Office of Insurance Products), Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. First Variable is a stock life insurance company which was organized under the laws of the State of Arkansas in 1968. The Company is principally engaged in the annuity business and is licensed in 49 states, the District of Columbia and the U.S. Virgin Islands. First Variable is not licensed in the State of New York.

2. Fund A is a separate account of First Variable registered under the 1940 Act as a unit investment trust and established for the purpose of funding certain variable annuity contracts, including the Contracts.

3. Fund E is a separate account of First Variable registered under the 1940 Act as a unit investment trust and established for the purpose of funding certain variable annuity contracts, including the Contracts.

4. The investment objectives of the Cash Management Portfolio are to preserve shareholder capital, to maintain liquidity, and to achieve maximum current income (consistent with those objectives) by investing exclusively in a diversified portfolio of short-term money market securities. First Variable Advisory Corp. (''Adviser''), a wholly-owned subsidiary of First Variable, is the investment adviser for the Cash Management Portfolio. The Adviser has retained Federated Investment Counselling to serve as the sub-adviser for the Cash Management Portfolio. The Adviser receives a management fee of .50% of the Cash Management Portfolio's net assets for the first $70,000,000 of Portfolio assets.

5. Many of the Cash Management Portfolio's expenses (such as those for accounting and outside auditors) are significant relative to the Portfolio's small asset base. Since the inception of the Cash Management Portfolio, the Adviser has agreed to reimburse operating expenses (exclusive of management fees) in excess of .25% of the Cash Management Portfolio's average net assets. The Cash Management Portfolio has not grown rapidly enough to absorb its actual expenses, and the Adviser continues to reimburse it voluntarily. Over the last three years, the Adviser has reimbursed $280,161 in operating expenses for the Cash Management Portfolio and earned $140,936 in fees for managing the Cash Management Portfolio. Neither state nor federal law requires expense reimbursement, and the Adviser is likely to cease to make expense reimbursements in the future.

6. The investment objectives of the Prime Money Fund of Insurance Management Series (''IMS Prime Money Fund'') are substantially similar to those of the Cash Management Portfolio—*i.e.*, to preserve shareholder capital, to maintain liquidity, and to achieve maximum current income (consistent with those objectives) by investing exclusively in a diversified portfolio of short-term money market securities. Federated Advisers (''Federated''), an affiliate of Federated Investment Counselling, is the investment adviser for the Prime Money Fund, and the investment strategies employed by Federated as the investment adviser to

Prime Money Fund are substantially similar to those employed by Federated Investment Counselling as sub-adviser to the Cash Management Portfolio. In addition, the portfolio manager for the Prime Money Fund is the individual currently responsible for the day to day investment management of the Cash Management Portfolio. The maximum investment advisory fee payable to Federated, .50% of net asset value, currently is being waived.

7. The IMS Prime Money Fund currently offers its shares to six insurance companies and their separate accounts funding variable annuity and variable life insurance contracts. Applicants have determined that there is a great likelihood that IMS Prime Money Fund will be able to achieve economies of scale because of the anticipated inflow of cash from a greater number of sources. The assets of IMS Prime Money Fund have grown from $549,950 on January 1, 1995, to $17,738,508 as of December 31, 1995. Over the same period, the Cash Management Portfolio grew from $8,198,345 to $10,095,723. The expense ratio for the IMS Prime Money Fund steadily declined over this period, while the expense ratio of the Cash Management Portfolio remained relatively constant. During the first two months of 1996, the expense ratio (before reimbursement) of the IMS Prime Money Fund declined further, from 2.31% to 1.55%, while the Cash Management Portfolio expense ratio (before reimbursement) during the same period only declined from 1.72% to 1.68%. Applicants have determined that these trends are likely to continue, and believe that the investment opportunities available to larger money-market funds, such as IMS Prime Money Fund, have historically resulted in larger yields than those obtained by smaller money-market funds, such as the Cash Management Portfolio.

8. In the registration statements filed by the Funds, and under the terms of the Contracts, First Variable expressly retained the right to eliminate sub-accounts, combine two or more sub-accounts, or substitute one or more new underlying mutual funds or portfolios for others in which one or more Fund sub-accounts are invested.

9. Applicants propose to substitute shares of the IMS Prime Money Fund for shares of the Cash Management Portfolio held in sub-accounts of the Funds, and to cease offering shares of the Cash Management Portfolio to Contract owners, in the following manner.

a. The prospectuses for the Contracts have been or will be amended via post-effective amendments and/or prospectus supplements, to describe the proposed substitution as set forth in this application.

b. Affected Contract owners will not incur any fees or charges as a result of the substitution including any applicable brokerage, nor will their rights or the obligations of First Variable under the Contracts be altered in any way. In particular, the proposed substitution will not be considered a ''transfer'' for purposes of calculating any transfer fee that may otherwise be payable under a Contract.

c. The proposed substitution would be affected by a simple accumulation unit exchange at net asset value, so that the total amount of the shares of the Cash Management Portfolio would be redeemed by first Variable at net asset value per share, calculated in accordance with Rule 22c–1 under 1940 Act, and the same dollar amount invested by First Variable in shares of the IMS Prime Money Fund, also calculated in accordance with Rule 22c–1.

d. If the Commission approves the proposed substitution, Contract owners will receive prior written notice of the substitution and a prospectus describing all of the then available investment options. The date of substitution will be within thirty (30) days of the latest of: (1) the effective date of the post-effective amendments (referred to in ''a.'' above); (2) the granting of the requested exemptive relief; and (3) approval, if required, of the state insurance department of the jurisdiction concerned. During such thirty (30) day period, Contract owners may transfer Contract values from the sub-accounts of the Funds holding shares of the Cash Management Portfolio to other investment options then available under a Contract without the imposition of any transfer fee.

Applicants' Legal Analysis and Conditions

1. Section 26(b) of the 1940 Act provides, in pertinent part, that ''[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution.'' The purpose of Section 26(b) is to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate the shares of a particular issuer, and to prevent unscrutinized substitutions which might, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby possibly incurring either a loss of the sales load deducted from initial purchase payments, an additional sales load upon reinvestment of the redemption proceeds, or both. Section 26(b) affords protection to investors by preventing a depositor or trustee of a unit investment trust holding the shares of one issuer from substituting for those shares the shares of another issuer, unless the Commission approves that substitution.

2. Applicants assert that the purposes, terms and conditions of the proposed substitution are consistent with the principles and purposes of Section 26(b) and do not entail any of the abuses that Section 26(b) is designed to prevent. Because the assets invested in the Cash Management Portifolio are, and are likely in the future to be, of insufficient size to promote consistent investment performance or to reduce operating expenses, Applicants further assert that the proposed substitution is an appropriate solution to the limited Contract owner interest or investment in the Cash Management Portfolio.

3. The proposed substitution will not result in the type of costly forced redemption that Section 26(b) was intended to guard against, and is consistent with the protection of investors and the purposes fairly intended by the 1940 Act for the following reasons.

a. The proposed substitution is of shares of the Cash Management Portfolio whose objectives, policies and restrictions are substantially similar to those of the IMS Prime Money Fund so as to continue fulfilling Contract owners' objectives and risk expectations.

b. The investment advisory services and the management fees of the IMS Prime Money Fund make it a reasonable substitute for Contract owners currently invested in the Cash Management Portfolio.[1]

c. The proposed substitution will be at net asset value of the respective shares, without the imposition of any transfer or similar charge.

d. Affected Contract owners will not incur any fees or charges as a result of the proposed substitution, nor will their rights or the obligations of First Variable under the Contracts be altered in any way.

e. Contract owners will be given written notice of the substitution, and an opportunity (at least thirty (30) days)

[1] Applicants assert that it is reasonable to anticipate that Contract owners will not suffer detriment from increases in the levels of unreimbursed advisory fees and other expenses of the IMS Prime Money Fund as compared to those anticipated for the Cash Management Portfolio.

to allocate Contract values among the other investment options in their Contracts.

f. The proposed substutition will not be considered a ''transfer'' for purposes of calculating any transfer fee that may otherwise be payable under a Contract.

g. The proposed substitution will not alter the tax benefits to the Contract owners.

h. Contract owners may choose to withdraw amounts credited to them following the proposed substitution, subject to any applicable deferred sales charge and other restrictions on withdrawal rights currently imposed under their respective contracts.

i. The number of separate accounts investing in the IMS Prime Money Fund make it more likely to achieve economies of scale in operations more quickly than the Cash Management Portfolio. Moreover, Applicants do not expect, and do not believe it is reasonable to expect, that the Adviser will remain forever willing and able to spend large sums of money to maintain the favorable expense ratio that the Cash Management Portfolio has enjoyed so far.

Conclusion

For the reasons set forth above, Applicants represent that the order requested approving the proposed substitution is necessary and appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act and should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–28760 Filed 11–7–96; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 22311; 812–10384]

Freedom Mutual Fund, et al.; Notice of Application

November 1, 1996.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Freedom Mutual Fund (''Freedom Mutual''), on behalf of Freedom Cash Management Fund and Freedom Government Securities Fund (''Freedom Funds''), Freedom Group of Tax Exempt Funds (''Freedom Group''), on behalf of Freedom Tax Exempt Money Fund and Freedom California Tax Exempt Money Fund (''Group Funds''), FundManager Trust (together with Freedom Mutual and Freedom Group, ''Trusts''), on behalf of FundManager Aggressive Growth Fund, FundManager Growth Fund, FundManager Growth & Income Fund, FundManager Bond Fund and FundManager Managed Total Return Fund (together with the Freedom Funds and the Group Funds, ''Funds''), and Freedom Capital Management Corporation (''Adviser'').

RELEVANT ACT SECTION: Exemption requested pursuant to section 6(c) for an exemption from section 15(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order permitting implementation, without formal shareholder approval, of new investment advisory agreements between the Trusts and the Adviser with respect to each Fund for an interim period of not more than 120 days, beginning on the date on which the Adviser's parent is sold to JHFSC Acquisition Corp. and ending no later than March 31, 1997. The requested order also would permit the Adviser to receive all fees earned under the New Agreements following shareholder approval.

FILING DATE: The application was filed on October 8, 1996. Applicants have agreed to file an amendment during the notice period, the substance of which is included in this notice.

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 November 22, 1996, 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 may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, One Beacon Street, Boston, Massachusetts 02108.

FOR FURTHER INFORMATION CONTACT: Harry Eisenstein, Staff Attorney, at (202) 942–0552, or Mercer E. Bullard, 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 Reference Branch.

Applicants' Representations

1. Each Trust is an open-end management investment company registered under the Act. Freedom Mutual and Freedom Group are Massachusetts business trusts, and FundManager Trust is a Delaware business trust. The Adviser, a registered investment adviser under the Investment Advisers Act of 1940, manages the assets of each Fund pursuant to an investment advisory agreement with each Trust (''Existing Agreement''). The Adviser is a wholly owned subsidiary of John Hancock Freedom Securities Corporation (''JHFSC''), which is wholly owned by John Hancock Subsidiaries, Inc. (''Hancock Subsidiaries'').

2. Under a contribution agreement (''Contribution Agreement'') dated October 4, 1996, among Hancock Subsidiaries, JHFSC Acquisition Corp. (''Newco''), Thomas H. Lee Equity Fund III, L.P. (''Lee''), and SCP Private Equity Partners, L.P. (''SCP''), Hancock Subsidiaries will contribute 100% of the issued and outstanding shares of capital stock of JHFSC to Newco in exchange for $180,000,000 (subject to reduction to the extent of certain distributions made prior to closing) and 4.999% of the issued and outstanding capital stock of Newco (''Transaction''). As a result of the Transaction, Lee, a Massachusetts limited partnership, and SCP, a Delaware limited partnership, will hold a majority of the stock of Newco. JHFSC will become a wholly-owned subsidiary of Newco, and the Adviser will remain a wholly-owned subsidiary of JHFSC. Applicants expect to consummate the Transaction on November 26, 1996, assuming the necessary approvals are received or waived.

3. Applicants request an exemption to permit implementation, without shareholder approval, of new advisory agreements between the Trusts and the Adviser with respect to each Fund (''New Agreements''). The requested exemption would cover an interim period of not more than 120 days beginning on the date of the Transaction and continuing through the date a New Agreement is approved or disapproved by the shareholders of the respective Funds (but in no event later than March 31, 1997) (''Interim Period''). The New Agreements are identical to the Trusts' Existing Agreements, except for their effective dates and, with resect to the Freedom Mutual Fund and the Freedom

Group of Tax Exempt Funds, revisions have been made to reflect the change of the names of those Trusts from Tucker Anthony Mutual Fund and Tucker Anthony Group of Tax Exempt Funds, respectively, to their current names.

4. The Trusts' Boards of Trustees held meetings on September 10, 1996, and October 3, 1996, for the purpose of considering approval of the New Agreements in accordance with Section 15(c) of the Act. The Boards received from the Adviser, Hancock Subsidiaries, and Newco such information as the Trustees deemed reasonably necessary to evaluate whether the terms of the New Agreements are in the best interests of the Funds and their shareholders. At the October 3, 1996 meeting, the Trustees voted unanimously (subject to execution of the Contribution Agreement) to approve the New Agreements and recommend that shareholders of each Fund approve the New Agreements.

5. Applicants also request an exemption to permit the Adviser to receive from each Fund all fees earned under the New Agreements (which would be the same as all fees that would have been earned under the Existing Agreements) implemented during the Interim Period if and to the extent the New Agreements are approved by the shareholders of each Fund. The fees to be paid during the Interim Period are at the same rate as the fees currently payable by the Funds.

6. Applicants propose to enter into an escrow arrangement with an unaffiliated financial institution that will serve as escrow agent. The arrangement, in substance, will provide as described below. The fees payable to the Adviser during the Interim Period under the New Agreements will be paid into an interest-bearing escrow account maintained by an escrow agent. Amounts in the escrow account with respect to the Funds (including interest earned on such paid fees) will be paid to the Adviser only if shareholders of the Funds approve the New Agreements. If shareholders of the Funds fail to approve the New Agreements, the escrow agent will pay the Funds the escrow amounts (including any interest earned). The escrow agent will release the moneys as provided above only upon receipt of certificates from officers of the Funds (none of whom is an affiliate of the Adviser) stating, if the moneys are to be delivered to the Adviser, that the New Agreements have received the requisite Fund shareholder vote, or, if the moneys are to be delivered to the Funds, that the Interim Period has ended and the New Agreements have not been approved by the requisite Fund shareholder vote. Before any such certificate is sent, the trustees of the relevant Trust who are hot ''interested persons'' of the Trust within the meaning of Section 2(a)(19) of the Act (''Independent Trustees'') will be notified.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in pertinent part, that it shall be unlawful for any person to serve or act as investment adviser of a registered investment company, except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of such company. Section 15(a) further requires that such written contract provide for automatic termination in the event of its assignment. Section 2(a)(4) of the Act defines ''assignment'' to include any direct or indirect transfer of a contract by the assignor.

2. Applicants state that, upon completion of the Transaction, Hancock Subsidiaries, the Adviser's indirect parent, will no longer control JHFSC. Applicants therefore believe that the Transaction will result in an indirect ''assignment'' of the Existing Agreements within the meaning of section 2(a)(4), terminating the Existing Agreements according with their terms.

3. Rule 15a–4 provides, among other things, that if an investment advisory contract with an investment company is terminated by assignment, the adviser may continue to act as such for 120 days under a written contract that has not been approved by the company's shareholders, if the new contract is approved by the board of directors (or trustees) of the investment company (including a majority of trustees that are not ''interested persons'' of the investment company), the compensation to be paid under the new contract does not exceed the compensation which would have been paid under the contract most recently approved by shareholders of the investment company, and neither the investment adviser nor any controlling person of the investment adviser ''directly or indirectly receives money or other benefit'' in connection with the assignment. Applicants state that they cannot rely on rule 15a–4 because of the benefits to Hancock Subsidiaries arising from the Transaction.

4. Applicants contend that the Trusts have prepared the required proxy materials as expeditiously as possible and shareholder meetings are expected to be held on or about December 16, 1996. Applicants believe that the timing of the shareholder meetings may not provide an adequate solicitation period to obtain approval of the New Agreements by the shareholders of each Fund prior to effecting the Transaction, particularly because shareholders of investment companies frequently do not return proxies.

5. Applicants submit that the scope and quality of services provided for the Funds during the Interim Period will not be diminished. During the Interim Period, each Fund would operate under the New Agreements, which are, except as noted above, the same as the Existing Agreements. Applicants are not aware of any material changes in the personnel who will provide investment management services during the Interim Period.

6. Applicants assert that the best interests of Fund shareholders would be served if the Adviser receives fees for services during the Interim Period as provided in the application. Applicants contend that these fees are a substantial part of the Adviser's total revenues and, thus, are essential to maintaining its ability to provide services to the Funds.

7. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act, 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. For the reasons stated above, applicants believe that the requested relief meets this standard.

Applicants' Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by this application that:

1. The New Agreements will have the same terms and conditions as the Existing Agreements, except for their effective dates and, with respect to the Freedom Mutual Fund and the Freedom Group of Tax Exempt Funds, revisions have been made to reflect the change of the names of those Trusts from Tucker Anthony Mutual Fund and Tucker Anthony Group of Tax Exempt Funds, respectively, to their current names.

2. Fees earned by the Adviser in respect of the New Agreements during the Interim Period will be maintained in an interest-bearing escrow account, and amounts in the account (including interest earned on such paid fees) will be paid: (a) to the Adviser in accordance with the New Agreements, after the requisite approvals are obtained, or (b) to the respective Fund, in the absence of such approvals.

3. The Funds will hold meetings of shareholders to vote on approval of the New Agreements on or before the 120th

day following the termination of the Existing Agreements (but in no event later than March 31, 1997).

4. Newco and/or Hancock Subsidiaries will bear the costs of preparing and filing the application and the costs relating to the solicitation of Fund shareholder approval necessitated by the Transaction.

5. The Adviser will take all appropriate steps so that the scope and quality of advisory and other services provided to the Funds during the Interim Period will be at least equivalent, in the judgment of the Boards, including a majority of the Independent Trustees, to the scope and quality of services previously provided. If personnel providing material services during the Interim Period change materially, the Adviser will apprise and consult with the Boards to assure that they, including a majority of the Independent Trustees of each Trust, are satisfied that the services provided will not be diminished in scope or quality.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–28701 Filed 11–7–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26598]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

November 1, 1996.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 25, 1996, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy of the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Central and South West Corporation (70–8087)

Central and South West Corporation (''CSW''), a registered holding company, 1616 Woodall Rodgers Freeway, Dallas, Texas 75202, has filed a post-effective amendment to its application-declaration under sections 6(a), 7, 9(a) and 10 of the Act and rule 54 thereunder.

By order dated October 4, 1993 (HCAR No. 25902) (''Initial Order''), the Commission authorized CSW to establish a Dividend Reinvestment and Stock Purchase Plan (''Plan'') pursuant to which shares of CSW's common stock, $3.50 par value per share (''Common Stock''), are either newly issued or purchased in the open market with reinvested dividends and optional cash payments made by registered shareholders of CSW, employees and eligible retirees of CSW or its subsidiaries and non-shareholders of legal age who are residents of the States of Arkansas, Louisiana, Oklahoma and Texas.

By supplemental order, dated January 30, 1996 (HCAR No. 26466) (''Supplemental Order''), CSW was authorized to make the following amendments to the Plan: (1) To increase the number of originally issued shares of Common Stock that may be offered pursuant to the Plan from five million to ten million; (2) to permit non-shareholders of legal age who are residents of all fifty states of the United States and the District of Columbia to participate in the Plan; (3) to increase the initial cash investment required for enrollment in the Plan by nonemployees and nonretirees from $100 to $250; and (4) to change the frequency of investment in shares of Common Stock by the Plan from bi-monthly to weekly.

CSW now requests authorization to extend the period of authorization by which it may issue, sell and acquire the Common Stock pursuant to the Plan, under the terms and conditions set forth in the Initial Order and Supplemental Order, through December 31, 2001.

Ohio Valley Electric Corporation (70–8527)

Ohio Valley Electric Corporation (''Ohio Valley''), P.O. Box 468, Piketon, Ohio 45661, an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed a post-effective amendment to its application-declaration filed under sections 6(a) and 7 of the Act and rule 54 thereunder.

By prior Commission order dated December 28, 1994 (HCAR No. 26203), Ohio Valley was authorized to incur short-term indebtedness through the issuance and sale of notes (''Notes'') to banks in an aggregate amount not to exceed $25 million outstanding at any one time from time to time prior to January 1, 1997, provided that no such notes mature later than June 30, 1997.

Ohio Valley now proposes to extend such authorization through December 31, 2001. The Notes will mature not more than 270 days after the date of issuance or renewal thereof, provided that no Notes will mature later than June 30, 2002. Notes will bear interest at an annual rate not greater than the bank's prime commercial rate in effect from time to time. Such credit arrangements may require the payment of a fee that is not greater than ⅕ of 1% per annum of the size of the line of credit made available by the bank and the maintenance of additional balances of not greater than 20% of the line of credit.

The maximum effective annual interest cost under any of the above arrangements, assuming full use of the line of credit, will not exceed 125% of the prime commercial rate in effect from time to time, or not more than 10.625% on the basis of a prime commercial rate of 8.5%.

The proceeds of the short-term debt incurred by Ohio Valley will be added to its general funds and used to pay its general obligations and for other corporate purposes.

Central and South West Corporation, et al. (70–8557)

Central and South West Corporation (''CSW''), a registered holding company, its service company subsidiary, Central and South West Services, Inc. (''Services''), both located at 1616 Woodall Rodgers Freeway, Dallas, Texas 75202, and four of its public utility subsidiaries, Central Power and Light Company (''CPL''), 539 North Carancahua Street, Corpus Christi, Texas 78401–2802, Public Service Company of Oklahoma (''PSO''), 212 East Sixth Street, Tulsa, Oklahoma 74119–1212, Southwestern Electric Power Company (''SWEPCO''), 428 Travis Street, Shreveport, Louisiana 71156–0001 and West Texas Utilities Company (''WTU''), 301 Cypress Street, Abilene, Texas 7960–5820 (together, ''Subsidiaries''), have filed an application-declaration under sections

6(a), 7, 9(a), 10, 12(b) and 12(f) of the Act and Rules 43, 45 and 54 thereunder.

CSW and the Subsidiaries propose to continue, through March 31, 2002, their short-term borrowing program, which includes the sale of commercial paper by CSW to commercial paper dealers and financial institutions and the sale of short-term notes to banks and their trust departments by CSW and the Subsidiaries (''External Program'') and the CSW System Money Pool ('' Money Pool''), as previously authorized by orders dated June 15, 1994, March 18, 1994, September 28, 1993, March 31, 1993 and March 21, 1995 (HCAR Nos. 26066, 26007, 25897, 25777 and 26254, respectively) (''Prior Orders''). In view of certain restrictions on the amount of unsecured short-term debt that CPL, PSO, SWEPCO and WTU may have outstanding under the terms of their respective charters, it is proposed that all borrowing under the Money Pool will be secured by a subordinated lien on certain assets of the borrowing company.

The aggregate principal amounts of short-term borrowing outstanding at any one time requested by CSW and its Subsidiaries are as follows: CSW—$1.2 billion; CPL—$300 million; PSO—$125 million; SWEPCO—$150 million; WTU—$65 million and Services—$110 million. The aggregate principal amount of outstanding borrowings for CSW and its Subsidiaries together will not exceed $1.2 billion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–28702 Filed 11–7–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37916; File No. SR–DTC–96–17]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Relating to the Movement of Securities Positions Within a Collateral Group

November 1, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 4, 1996, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–DTC–96–17) as described in Items I, II, and III below, which items have been prepared primarily by DTC. 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

DTC is filing the proposed rule change to offer a new service to its participants to permit movement of securities positions within a collateral group. In addition, DTC proposes to charge a fee for this new service of $.43 per transaction.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(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 offer a new service to DTC participants that permits movement of securities positions within a collateral group. Rule 15c3–3 under the Act[3] requires, among other things, that broker-dealers maintain control of fully-paid or excess margin securities they hold for the accounts of customers (''customer fully-paid securities''). In 1988, DTC developed the Memo Segregation Service (''Memo Seg'') in order to assist broker-dealer participants in complying with Rule 15c3–3. Using Memo Seg, a participant can create a ''memo'' position within its free account enabling a participant to avoid making an unintended delivery of a designated quantity of customer fully-paid securities that either are in the participant's free account or are expected to be received into that account.

However, some participants prefer to comply with Rule 15c3–3 by moving customer fully-paid securities from their free account to an additional DTC account established by the participant. Several months ago, DTC was asked to consider developing a new service that would accommodate transfers of customer fully-paid securities from a participant's free account to an additional account within the same collateral group and do so using certain procedures that would be less expensive than a regular book-entry delivery.[4]

Since transfers of securities from one account to another within the same collateral group of a participant have no effect on the participant's collateral monitor or net debit position, DTC can eliminate certain processing steps associated with other kinds of book-entry deliveries.[5] The unit cost and proposed fee for this new service is $.43 per transaction.

DTC believes the proposed rule change will help broker-dealer participants protect customer fully-paid securities in order to comply with Rule 15c3–3 under the Act by allowing them to move such securities from participants' free account to an additional DTC account within the same collateral group. This should permit participants to more easily maintain control of customer fully-paid securities they hold. Furthermore, DTC believes the proposed rule change is consistent with the requirements of Section 17A of the Act[6] and the rules and regulations thereunder because DTC will implement the proposed rule change in a manner designed to safeguard the securities and funds in DTC's custody or under its control.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change has been discussed with a limited number of DTC participants. Written comments from DTC participants have not been solicited or received on the proposed rule change.

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[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] 17 CFR 240.15c3–3 (1996).

[4] A participant with multiple accounts may group its accounts into ''families'' (*i.e.,* ''collateral groups'') and instruct DTC to allocate a specified portion of its overall collateral and net debit cap to each family.

[5] For example, because a participant's collateral monitor and net debit position are not affected by transfers within a collateral group, DTC credit and collateral controls need not be checked prior to such transfer.

[6] 15 U.S.C. 78q–1 (1988).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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 DTC 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 in the Commission's Public Reference Room, 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 DTC.

All submissions should refer to the file number SR–DTC–96–17 and should be submitted by November 29, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–28697 Filed 11–7–96; 8:45 am]

BILLING CODE 8010–01–M

[7] 17 CFR 200.30–3(a)(12) (1996).

[Release No. 34–37917; File No. SR–NASD–96–41]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to an Extension of the NASD's Short Sale Rule

November 1, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 29, 1996, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to extend the pilot program for its short sale rule until October 1, 1997. The text of the proposed rule change is as follows. (Additions are italicized; deletions are bracketed.)

* * * * *

NASD Rule 3350

* * * * *

(1) This section shall be in effect until *October 1, 1997* [November 4, 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 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 V below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. § 78s(b)(1).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Background and Description of the NASD's Short Sale Rule

On June 29, 1994, the SEC approved the NASD's short sale rule applicable to short sales[2] in Nasdaq National Market (''NNM'') securities on an eighteen-month pilot basis through March 5, 1996.[3] The NASD's short sale rule prohibits member firms from effecting short sales at or below the current inside bid as disseminated by Nasdaq whenever that bid is lower than the previous inside bid.[4] The Rule is in effect during normal domestic market hours (9:30 a.m. to 4:00 p.m., Eastern Time).

In order to ensure that market maker activities that provide liquidity and continuity to the market are not adversely constrained when the short sale rule is invoked, the Rule provides an exemption to ''qualified'' Nasdaq market makers. Even if a market maker is able to avail itself to the qualified market maker exemption, it can only utilize the exemption from the short sale rule for transactions that are made in connection with bona fide market making activity. If a market maker does not satisfy the requirements for a qualified market maker, it can remain a market maker in the Nasdaq system, although it cannot take advantage of the exemption from the Rule.

[2] A short sale is a sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller. To determine whether a sale is a short sale members must adhere to the definition of a ''short sale'' contained in SEC Rule 3b–3, which rule is incorporated into Nasdaq's short sale rule by NASD Rule 3350(k)(1).

[3] *See* Securitieis Exchange Act Release No. 34277 (June 29, 1994), 59 FR 34885 (July 7, 1994) (''Short Sale Rule Approval Order''). The termination date for the pilot program has subsequently been extended through November 4, 1996. *See* Securities Exchange Act Release Nos. 36171 (August 30, 1995), 60 FR 46651; 36532 (November 30, 1995), 60 FR 62519; and 37492 (July 29, 1996), 61 FR 40693.

[4] Nasdaq calculates the inside bid or best bid from all market makers in the security (including bids on behalf of exchanges trading Nasdaq securities on an unlisted trading privileges basis), and disseminates symbols to denote whether the current inside bid is an ''up bid'' or a ''down bid.'' Specifically, an ''up bid'' is denoted by a green ''up'' arrow and a ''down bid'' is denoted by a red ''down'' arrow. Accordingly, absent an exemption from the rule, a member can not effect a short sale at or below the inside bid for a security in its proprietary account or a customer's account if there is a red arrow next to the security's symbol on the screen. In order to effect a ''legal'' short sale on a down bid, the short sale must be executed at a price at least a 1/16th of a point above the current inside bid. Conversely, if the security's symbol has a green up arrow next to it, members can effect short sales in the security without any restrictions.

To be a ''qualified'' market maker, a market maker must satisfy the Nasdaq Primary Market Maker (''PMM'') Standards. Under the PMM Standards, a market maker must satisfy at least two of the following four criteria to be eligible for an exemption from the short sale rule: (1) The market maker must be at the best bid or best offer as shown on Nasdaq no less than 35 percent of the time; (2) the market maker must maintain a spread no greater than 102 percent of the average dealer spread; (3) no more than 50 percent of the market maker's quotation updates may occur without being accompanied by a trade execution of at least one unit of trading; or (4) the market maker executes 1½ times its ''proportionate'' volume in the stock.[5] If a market maker is a PMM for a particular stock, there is a ''P'' indicator next to its quote in that stock.[6]

The ability of a member firm to achieve and maintain PMM status in 80 percent of the NNM issues in which it is registered can also have the following corollary effects:

a. Existing NNM Securities: if a member firm is a PMM in 80 percent or more of the securities in which it has registered, the firm may immediately become a PMM (*i.e.*, a qualified market maker) in a NNM security by registering and entering quotations in that issue. If the member firm is not a PMM in at least 80 percent of its stocks, it may become a PMM in that stock if it registers in the stock as a regular Nasdaq market maker and satisfies the PMM qualification standards for the next review period.

b. Initial Public Offerings (''IPOs''): if a member firm has obtained PMM status in 80 percent or more of the stocks in which it has registered, the firm may immediately become a PMM in an IPO by registering and entering quotations in the issue. However, if the firm: (1) withdraws from the IPO on an unexcused basis any time during the calendar month in which the IPO commenced trading on Nasdaq, or (2) fails to meet the PMM standards for the month in which the IPO commenced trading on Nasdaq, then the firm is precluded from becoming a PMM in any other IPO for ten business days following the unexcused withdrawal or failure to meet the PMM standards (''10-day rule'').[7]

c. Merger and Acquisition Situations: after a merger or acquisition is announced, a market maker that is a PMM in one stock may immediately become a PMM in the order stock by registering and entering quotations in that issue.

In an effort not to constrain the legitimate hedging needs of options market makers and warrant market makers, the NASD's short sale rule also contains a limited exception for certain standardized options market markers and warrant market makers. The NASD's short sale rule also incorporates seven exemptions contained in SEC Rule 10a–1 that are relevant to trading of Nasdaq.[8]

2. Proposal To Extend the Short Sale Rule[9]

When the Commission approved the NASD's short sale rule on a temporary basis, it made specific findings that the Rule was consistent with Sections 11A, 15A(b)(6), 15A(b)(9), and 15A(b)(11) of the Act. Specifically, the Commission stated that, ''recognizing the potential for problems associated with short selling, the changing expectations of Nasdaq market participants and the competitive disparity between the exchange markets and the OTC market, the Commission believes that regulation of short selling of Nasdaq National Market securities is consistent with the Act.'' [10] In addition, the Commission stated that it ''believes that the NASD's short sale bid-test, including the market maker exemptions, is a reasonable approach to short sale regulation of Nasdaq National Market securities and reflects the realities of its market structure.'' [11]

Nevertheless, in light of the Commission's concerns with adverse comments made about the Rule and the Commission's own concerns with the structure and impact of the Rule,[12] the Commission determined to approve the Rule on a temporary basis to afford the NASD and the SEC an opportunity to study the effects of the Rule and its exemptions. In particular, before considering any NASD proposal to extend, modify, permanently implement or terminate the Rule, the Commission requested that the NASD examine: (1) the effects of the Rule on the amount of short selling; (2) the length of time that the Rule is in effect (*i.e.*, the duration of down bid situations); (3) the amount of non-market maker short selling permitted under the Rule; (4) the extent of short selling by market makers exempt from the Rule; (5) whether there have been any incidents of perceived ''abusive short selling''; (6) the effects of the Rule on spreads and volatility; (7) whether the behavior of bid prices has been significantly altered by the Rule; and (8) the effect of permitting short selling based on a minimum increment of 1/16th.

Accordingly, in July 1996, the NASD's Economic Research Department prepared a study on the economic impact of the NASD's short sale rule that addressed these issues.[13] While the NASD believes the study demonstrates that the short sale rule has not had any adverse market impacts, the NASD believes further study of the impact of the rule, particularly the market maker exemption, is needed in order for the NASD to adequately respond to the SEC's concerns and questions noted in the Short Sale Rule Approval Order.[14]

[5] Specifically, the proportionate volume test requires a market maker to account for volume of at least one-and-a-half times its proportionate share of overall volume in the security for the review period. For example, if a security has 10 market makers, each market maker's proportionate share volume is 10 percent. Therefore, the proportionate share volume is one-and-a-half times 10, or 15 percent of overall volume.

[6] In addition, market makers are able to review their status as PMMs through their Nasdaq Workstation. The review period for satisfaction of the PMM performance standards is one calendar month. If a PMM has not satisfied the threshold standards after a particular review period, the PMM designation will be removed on the next business day following notice of failure to satisfy the standards. Market makers may requalify for designation as a PMM by satisfying the threshold standards in the next review period.

[7] The PMM also has provisions applicable to secondary offerings. Specifically, unless a market maker is registered in a security prior to the time a secondary offering in that stock has been publicly announced or a registration statement has been filed, it cannot become a PMM in the stock unless: (1) the secondary offering has become effective and the market maker has satisfied the PMM standards between the time the market maker registered in the security and the time the offering became effective or (2) the market maker has satisfied the PMM standards for 40 calendar days.

[8] *See* NASD Rule 3350(c)(2)–(8).

[9] The Commission notes that this subsection, as well as the other portions of Section II of this proposed rule change, contains the NASD's statements on the basis and purpose of the short sale rule and its proposal to extend the pilot program, as well as burdens on competition and comments received.

[10] *See* Short Sale Rule Approval Order, *supra* note 3, 59 FR at 34891.

[11] *Id.* 59 FR at 34892.

[12] When the NASD's short sale rule was first considered by the Commission, the SEC received 297 comment letters on the proposal, with 275 comments opposed to the Rule and 122 comments in favor of the Rule. Those comment letters opposed to the Rule argued that: (1) the NASD had failed to provide sufficient evidence of the need for a short sale rule or demonstrate the appropriateness of a short sale rule based on a ''bid'' test instead of ''tick'' test; (2) the PMM standards will have negative effects on both market makers and the Nasdaq market; and (3) the short sale rule is inconsistent with the requirements of the Act.

[13] The Economic Impact of the Nasdaq Short Sale Rule, NASD Economic Research Department (July 1996) (''Short Sale Study'').

[14] In July 1996, The NASD submitted a proposal to adopt the short sale rule on a permanent basis. *See* Securities Exchange Act Release No. 37942 (July 29, 1996), 61 FR 40693 (SR–NASD–96–30). Because the NASD believes additional quantitative analysis is necessary to evaluate the effects of the Rule, the NASD has withdrawn this rule filing.

Continued

Accordingly, the NASD is proposing to extend its short sale rule until October 1, 1997, to afford the NASD the opportunity to conduct further analysis of the impact of the Rule.[15]

The NASD believes the proposed rule change is consistent with Section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market. Specifically, the NASD believes that extending the pilot period for the short sale rule will enhance the quality of studies analyzing the effectiveness of the Rule and help to ensure that future regulatory action taken with respect to the Rule is based on a greater knowledge and understanding of the Rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The NASD believes the primary market maker qualification standards are designed in a manner to permit market makers of all sizes to qualify as primary market makers. Moreover, it is important to note that market makers that do not meet the standards are still permitted to remain registered market makers in the Nasdaq system. In addition, without a short sale rule for the Nasdaq market, Nasdaq would be adversely impacted in its ability to compete for listings with exchange markets.

C. Self-Regulatory Organization's Statement on Comment on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause pursuant to Section 19(b)(2) of the Act [16] for approving the proposed rule change prior to the 30th day after publication in the Federal Register.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposal to extend the short sale rule through October 1, 1997 is consistent with the Act and the rules and regulations promulgated thereunder. Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) [17] which requires that the NASD rules be designed, among other things, to facilitate securities transactions and to protect investors and the public interest.

The Commission approved the NASD short sale rule in 1994, on a pilot basis. The purpose of the pilot was to demonstrate that the rule accomplished its intended purpose and did not impose unnecessary costs on market participants. In July 1996, the NASD submitted an economic report on the pilot. While the Short Sale Study provides some data on the pilot, the Commission believes that the NASD needs to produce additional and more precise data to justify permanent adoption of the rule.[18] Hence the Commission is extending the short sale rule to provide the NASD with ample time to collect significantly more data and to determine if the Rule in its current form is appropriate. The data will aid the NASD and the Commission in determining the benefits and costs of the short sale rule pursuant to Section 15A(b)(6). The Commission finds good cause to approve the extension of the short sale rule pilot prior to the 30th day after the date of publication of the notice of filing because accelerated approval will avoid disrupting the market while the NASD and the Commission consider the supplemental data that will be collected during the extension.

V. Solicitation of Comments

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 such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR–NASD–96–41, and should be submitted by November 29, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NASD–96–41) be, and hereby is, approved on an accelerated basis through October 1, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–28759 Filed 11–7–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37913; File No. SR–PSE–96–33]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to the Automated System Access Privilege Annual Membership Fee

November 1, 1996.

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 6, 1996, the Pacific Stock Exchange, Incorporated (''PSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'')

Letter from Robert E. Aber, Vice President and General Counsel, to Katherine England, Assistant Director, National Market Systems and Over-the-Counter, Commission (October 29, 1996). The Commission received one comment letter in regard to the NASD's proposal to adopt the short sale rule on a permanent basis. Letter from Daniel Parker Odell, Assistant Secretary, New York Stock Exchange, Inc., to Jonathan G. Katz, Secretary, Commission (September 6, 1996). The Commission will consider that letter in connection with any subsequent NASD proposal for permanent adoption of the short sale rule.

[15] Specifically, the Commission has requested that the NASD (1) require exempt market makers to begin reporting short sales, and (2) provide the Commission with a report examining the data collected with regard to this requirement including the number of short sales by exempt market makers and their potential effect on the purposes of the Rule. In this connection, at its meeting in November 1996, the Board of Directors of The Nasdaq Stock Market, Inc. will be considering whether to amend NASD Rule 6301(d)(6) to require market makers exempt from the Rule to mark their Automated Confirmation Transaction Service (''ACT'') reports to denote when they have relied on the market maker exemption.

[16] 15 U.S.C. § 78s(b)(2).

[17] 15 U.S.C. § 78o–3(b)(6).

[18] Among other matters, the NASD needs to collect short sale information from exempt market makers and provide a report to the Commission, as well as measure more precisely the rule's effect on short sale activity.

[19] 17 CFR 200.30–3(a)(12) (1996).

the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend its Schedule of Fees and Charges for Exchange Services by replacing the $4,000 annual flat fee for Automated System Access Privilege (''ASAP'') memberships with an ASAP annual fee based on a calculation of 20% of the average price of PSE membership sales in the three months immediately preceding the activation of ASAP membership or the annual renewal date of ASAP membership. Under the proposal, the minimum annual ASAP membership fee will be $4,000.

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

The PSE proposes to amend its Schedule of Fees and Charges for Exchange Services by replacing the $4,000 annual flat fee for ASAP memberships with an ASAP annual fee based on a calculation of 20% of the average price of PSE membership sales in the three months immediately preceding the activation of ASAP membership or the annual renewal date of ASAP membership. Under the proposal, the minimum annual ASAP membership fee will be $4,000. The ASAP membership fee is a non-refundable, non-transferable fee. However, if the ASAP member becomes a regular members of the Exchange, the ASAP membership fee paid for the current year shall be subject to a rebate prorated to the date of the approval as a full member.[2] The PSE believes that basing the ASAP membership fee on the recent membership seat sales will provide a correlation between the fees for the ASAP membership program and the fees for leased memberships. Accordingly, the PSE believes that the proposed fee provides a more equitable distribution of fees and charges among PSE members.

The PSE believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(4), in particular, in that the proposal provides for the equitable allocation of reasonable charges among the Exchange's members and other persons using its facilities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 under the Act. At any time within 60 days of the filing of such proposed 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. 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 November 29, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 96–28698 Filed 11–7–96; 8:45 am]

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[1] The PSE has been charging the Automated System Access Privilege (''ASAP'') membership fee noticed in this filing since 1994. According to the Exchange, the PSE's Board of Governors approved the current ASAP membership fee in March 1994 and the Exchange inadvertently failed to submit the ASAP membership fee change to the Commission. *See* Letter from Rosemary A. MacGuinness, Senior Counsel, PSE, to Anthony P. Pecora, Attorney, Division of Market Regulation (''Division''), Commission, dated June 7, 1996. Proposed fee changes must be submitted to the Commission and are effective upon filing with the Commission pursuant to Section 19(b)(3)(A) under the Act. Accordingly, the PSE's current ASAP membership fee became effective pursuant to Section 19(b)(3)(A) under the Act on September 6, 1996. The ASAP renewal fee as of October 1996 is $28,188. *See* Letter from Rosemary A. MacGuinness, Senior Counsel, PSE, to Yvonne Fraticelli, Attorney, Division, Commission, dated October 15, 1996.

[2] *See* PSE Rule 1.14(d)(5), which also authorizes the PSE's Board of Governors to amend the fee at its discretion.

[Release No. 34–37897; File No. SR–PSE–96–32]

Self-Regulatory Organizations; the Pacific Stock Exchange Incorporated; Order Granting Approval to Proposed Rule Change Relating to Its Rules on Telephone Solicitations

October 30, 1996.

On August 27, 1996, the Pacific Stock Exchange Incorporated (''PSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC''or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new Rule 9.20(b) and to add a commentary thereunder with respect to

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

the meaning and administration of proposed Rule 9.20(b).

The proposed rule change was published for comment in Securities Exchange Act Release No. 37703 (Sept. 19, 1996), 61 FR 50527 (Sept. 26, 1996). No comments were received on the proposal.

I. Background

In 1994, an industry Task Force, comprised of representatives from industry regulatory and self-regulatory organizations, was formed to review broker-dealer telemarketing practices and compliance with the Telephone Consumer Protection Act of 1991 (''TCPA''), as well as with the FCC rules and regulations which implemented that law. The TCPA and FCC rules address telemarketing practices and the rights of telephone consumers. One of the requirements contained in this regulatory framework is that businesses, including broker-dealers, that make telephone solicitations to residential telephone subscribers institute written policies and have procedures in place for maintaining ''do-not-call'' lists.

II. Description of the Proposal

The proposed rule would require members and member organizations that engage in telephone solicitations to maintain a centralized list of persons who do not wish to receive telephone solicitations, and to refrain from making telephone solicitations to persons named on such list. The NYSE, NASD, the CBOE, and the AMEX also adopted similar rules.[3] The proposal also would add a commentary to serve as a reminder that members and member organizations are subject to compliance with the relevant Federal Communications Commission (''FCC'') and Commission Rules relating to telemarketing practices.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[4] In particular, the Commission believes that the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public, by addressing the practices of Exchange members and member organizations who make telemarketing calls. The purpose of the proposal is to prevent members and member organizations from engaging in manipulative acts, such as persistently calling investors who have expressed a desire not to receive telephone solicitations. The Commission believes that by requiring members and member organizations to maintain centralized do-not-call lists, members of the public who have indicated a desire not to receive telemarketing calls will be protected against abusive telemarketing practices. The Commission also believes that the proposed commentary reminds members and member organizations that they are subject to the requirements of the rules of the FCC and the Commission relating to telemarketing practices and the rights of telephone consumers.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[5] that the proposed rule change (SR–PSE–96–32) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–28699 Filed 11–7–96; 8:45 am]

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[3] *See* Securities Exchange Act Release Nos. 35821 (June 7, 1995), 60 FR 31337 (approving File No. SR–NYSE–95–11); 35831 (June 9, 1995), 60 FR 31527 (approving File No. SR–NASD–95–13); and 36588 (Dec. 13, 1995), 60 FR 56624 (approving File No. SR–CBOE–95–63); and 36748 (Jan. 19, 1996), 61 FR 2556 (approving File No. SR–AMEX–96–01).

[4] 15 U.S.C. § 78s(b).

[5] 15 U.S.C. § 78f(b)(2).

[6] 17 CFR 200.30–3(a)(12).

[Release No. 34–37918; File No. SR–Philadep–96–17]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change To Appoint the Canadian Depository for Securities as a Correspondent Depository

November 1, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 17, 1996, the Philadelphia Depository Trust Company (''Philadep'') 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 primarily by Philadep. On October 28, 1996, Philadep filed an amendment to the proposed rule change to amend its procedures and to attach as an exhibit to its original filing a copy of the correspondent depository agreement.[2] On October 31, 1996, Philadep filed an amendment to the proposed rule change to make certain technical changes.[3] The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change through April 30, 1997.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to allow Philadep to appoint The Canadian Depository for Securities Limited (''CDS'') as Philadep's nonexclusive agent and custodian in receiving securities deposited by CDS-sponsored participants for delivery to Philadep. Currently, the West Canada Depository Trust Company (''WCDTC'') serves as Philadep's correspondent depository.[4] On November 1, 1996, CDS will assume the operations of WCDTC and the West Canada Clearing Corporation (''WCCC''), WCDTC's affiliated clearing corporation.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Philadep 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. Philadep has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[5]

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from J. Keith Kessel, Compliance Officer, Philadep, to Jerry Carpenter, Assistant Director, Division of Market Regulation (''Division''), Commission (October 28, 1996).

[3] Letter from J. Keith Kessel, Compliance Officer, Philadep, to Jerry Carpenter, Assistant Director, Division, Commission (October 31, 1996).

[4] Securities Exchange Act Release No. 36782 (January 26, 1996), 61 FR 3956 [File No. SR–Philadep–96–01] (order granting accelerated approval on a temporary basis of a proposed rule change to appoint the WCDTC as a correspondent depository); Securities Exchange Act Release No. 37383 (June 28, 1996), 61 FR 35292 [File No. SR–Philadep–96–09] (order granting accelerated approval on a temporary basis through December 31, 1996 of a proposed rule change seeking permanent approval of the designation of the WCDTC as a correspondent depository).

[5] The Commission has modified the text of the summaries prepared by Philadep.

(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 allow Philadep to authorize CDS to act as a nonexclusive agent and custodian for Philadep in receiving securities deposited by certain CDS–sponsored participants for credit to their respective subaccounts in CDS's omnibus account at Phkladep. The custodial arrangement will be effectuated by contracts executed between Philadep and CDS, and CDS will become a participant of Philadep pursuant to Philadep's rules and procedures.

At or before 12:45 p.m. (Eastern Standard Time) on any business day Philadep is open, CDS will notify Philadep by facsimile transmission or through Philadep's Automated Deposit System of initiated and pending instructions to Canadian transfer agents to transfer various Canadian securities held by CDS into Philadep's nominee name. Philadep will credit CDS's account(s) for Canadian issues at the time of this notification. Philadep will credit CDS's account(s) for incoming deposits of U.S. issues (received by CDS and designated for physical delivery and deposit to its Philadep account) at the time of their physical receipt by Philadep. Philadep has the functionality whereby CDS can enter certificate details into Philadep's Automated Deposit System in order to reduce the processing time upon receipt of U.S. issues. As a result Philadep is able to grant CDS credit upon receipt of the U.S. securities.

With regard to Canadian issues, CDS will instruct Canadian transfer agents to reregister the issues in Philadep's nominee name and to deliver them to CDS as agent and custodian of Philadep. With respect to acting as Philadep's agent for interfacing with Canadian transfer agents, CDS has more direct knowledge of and familiarity with Canadian transfer agents. CDS has a Canadian address and is expected to obtain receipt of certificates faster than Philadep would obtain receipt through the international postal system. Earlier receipt of certificates means earlier certainty with respect to the value and validity of deposited certificates. This is a benefit to Philadep because the earlier Philadep receives notice of defects in a certificate, the sooner it can reverse the credit to the CDS account and the better it can limit the risk that the securities will have been transferred out of the account before the reversal of the credit can take place.

For Canadian issues returning to CDS from the Canadian transfer agent, CDS will safeguard the deposited securities and will hold them with deposit tickets attached and segregated from other securities held by CDS until forwarded to Philadep by licensed air courier or by other carrier agreed upon by the parties. Securities held overnight will be deposited in CDS's value. If CDS fails to deliver these securities to Philadep, Philadep will institute certificate replacement procedures. For fails to deliver resulting from settled CNS transactions, Philadep will short CDS's CNS account with Stock Clearing Corporation of Philadelphia (''SCCP''), Philadep's affiliated clearing corporation. SCCP will mark to market all short positions and collect marks daily.

If the deposited securities are U.S. securities, CDS will forward the securities directly to Philadep on the day the securities were reported to Philadep. Securities will be shipped to Philadep by licensed air courier or by other carrier agreed upon by the parties.

CDS and Philadep have agreed that securities placed within the custody and control of CDS on behalf of Philadep will not be subject to any right, charge, security interest, lien, or claim of any kind in favor of CDS or any person claiming through CDS. CDS and Philadep have further agreed that CDS will have no legal or equitable right, title, or interest in or to such securities, including, but not limited to, any right, title, or interest in or to any principal or interest coupons, redemption proceeds, payments, or payable mounts relating to any securities. In addition, CDS will maintain adequate insurance coverage with respect to any securities which are in custody on behalf of Philadep. Furthermore, CDS will make a participants fund contribution of $1 million, which is in excess of the minimum amount required under the applicable participants fund formula, and CDS will maintain a letter of credit in the amount of $5 million (Canadian) issued to Philadep securing CDS's guaranty obligations.

Philadep believes the proposed rule change is consistent with the requirements of Section 17A of Act and the rules and regulations thereunder because the rule proposal fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and further assures the safeguarding of securities and funds which are in the custody or control of Philadep or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Philadep does not believe that the proposed rule change will impact or impose a burden on competition.

(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 with respect to the proposed rule change. Philadep will notify the Commission of any written comments received by Philadep.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.[6] The Commission believes that Philadep's designation of CDS as Philadep's non-exclusive agent and custodian in receiving securities deposited by CDS-sponsored participants for delivery to Philadep is consistent with Philadep's obligations under Section 17A(b)(3)(F) because the proposed rule change should help foster cooperation and coordination between the U.S. and Canadian clearance and settlement systems by facilitating a link between Philadep and CDS.

On January 26, 1996, the Commission granted approval to Philadep's proposal that it be allowed to appoint WCDTC as its nonexclusive agent and custodian in receiving certain securities deposits.[7] In connection with this proposed rule filing to allow Philadep to appoint CDS as its nonexclusive agent and custodian in order to allow CDS to continue the correspondent depository activities of WCDTC, Philadep has requested that the Commission grant Philadep the latitude to modify the extra financial protections that are currently being applied to the WCDTC account (*i.e.*, $1 million participants fund deposit and $5 million (Canadian) in a letter of credit). Philadep contends that a decrease in the financial protections Philadep receives from CDS is justified given (1) Philadep's belief that the short selling activity in the account may decrease when CDS assumes the operations of WCDCT and WCCC; (2) that SCCP filed a proposed rule change with the Commission to modify the participant's fund formula to account for short selling activity; (3) Philadep's belief that CDS is

[6] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[7] *Supra.* note 4.

better capitalized than WCDTC and WCCC; and (4) Philadep's belief that CDS has comprehensive and formalized risk management controls. However, Philadep has not provided the Commission with any supporting documentation regarding its assertion that there will be a reduction in short selling activity, that CDS is better capitalized than WCDTC and WCCC, or that CDS has comprehensive and formalized risk management controls. Additionally, the Commission is currently reviewing SCCP's proposed rule change to modify its participants fund formula and has not granted its approval to the proposal.[8] Therefore, it is the Commission's position that the extra financial protections that are currently being applied to the WCDTC account (*i.e.*, $1 million participants fund deposit and $5 million (Canadian) in a letter of credit) should remain in place at the same levels.

Philadep has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because accelerated approval will allow Philadep to immediately appoint CDS as its nonexclusive agent and custodian thus allowing CDS to continue the correspondent depository activities currently being performed by WCDTC. Effective November 1, 1996, CDS will assume the operations of WCDTC and WCCC. The staff of the Board of Governors of the Federal Reserve System have concurred with the Commission's granting of accelerated approval.[9]

On June 28, 1996, the Commission extended the temporary approval of Philadep's custodial arrangement with WCDTC until December 31, 1996, so that Philadep and the Commission could further monitor, review, and analyze this custodial arrangement.[10] Accordingly, the Commission is granting temporary approval of the proposed rule change through April 30, 1997, so that the Commission can continue to monitor and analyze the development of CDS as Philadep's nonexclusive agent and custodian. During this period, Philadep will monitor the nonexclusive agent and custodian arrangement between Philadep and CDS to ensure that proper risk management procedures are in place. In this regard, the Commission requests that Philadep continue to file monthly reports analyzing activity in CDS's omnibus account and subaccounts. Therefore, the Commission is temporarily approving the proposed rule change through April 30, 1997.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, 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, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available for inspection and coping at the principal office of Philadep. All submissions should refer to file number SR–Philadep–96–17 and should be submitted by November 29, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–Philadep–96–17) be, and hereby is, approved through April 30, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Jonathan G. Katz,

Secretary.

[FR Doc. 96–28696 Filed 11–7–96; 8:45 am]

BILLING CODE 8010–01–M

[8] File No. SR–SCCP–96–08.

[9] Telephone conversation between John Rudolph, Supervisory Trust Analyst, Board of Governors of the Federal Reserve Board, and Chris Concannon, Staff Attorney, Division, Commission (October 31, 1996).

[10] *Supra.* note 4.

[11] 17 CFR 200.30–3(a)(12) (1996).

[Release No. 34–37914; File No. SR–Phlx–96–41]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Designating Options as Tier I Securities

November 1, 1996.

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 11, 1996, 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. 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, pursuant to Rule 19b–4 of the Act, proposes to include equity options, index options and other option like products issued, cleared and guaranteed by the Options Clearing Corporation (''OCC'') as Tier I securities under Exchange Rule 803.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Exchange Rule 803 to include equity options, index options and other OCC issued products as Tier I securities in order to allow these options to take advantage of the blue sky exemptions afforded the Phlx's Tier I securities.

In 1994, the Exchange received approval to adopt a two tier listing criteria program for equity and debt securities.[1] The Exchange originally adopted its Tier I listing standards in conjunction with the signing of a Memorandum of Understanding (''MOU'') with the North American Securities Administrators Association

[1] *See* Securities Exchange Act Release No. 34235 (June 17, 1994), 59 FR 32736 (June 24, 1994).

(''NASAA'').[2] The Phlx MOU is modeled after the MOU between the National Association of Securities Dealers (''NASD'') and NASAA,[3] which is entitled ''A Model Uniform Marketplace Exemption.'' In the order approving the Exchange's new Tier I listing standards, the Commission noted that the Exchange was adopting the MOU standards in an effort to provide issuers whose securities were listed under Tier I, a greater opportunity to obtain blue sky exemptions.[4] Since adopting that MOU, the Exchange has received blue sky exemptions for its Tier I listed securities from a number of states. The Exchange did not, however, include equity and index options as Tier I securities. Since the Exchange's equity/debt security listing standards are provided in a separate rule from its option listing standards[5], the exclusion of the options as Tier I securities were merely an oversight rather than an intentional exclusion.

The OCC, which is considered the issuer of all Phlx listed options, has the responsibility of registering these options. OCC has indicated to the Exchange that because it is not able to take advantage of the blue sky exemptions accorded to the Phlx's Tier I securities, it must register Phlx listed options in numerous states in which it would not otherwise be required to register if the options were considered Tier I securities. The Exchange, therefore, proposes to include its equity options, index options and any other OCC issued, cleared and guaranteed products as Tier I securities.

This proposal is not without precedent. The Pacific Stock Exchange (''PSE'') includes equity and index options as Tier I securities[6] under its MOU with NASAA. Since the PSE's Tier I securities listing standards and its equity and index option listing standards[7] are virtually identical to those of the Phlx, the Exchange does not believe that NASAA will object to the Phlx making this amendment to its MOU.

2. Statutory Basis

The proposed rule change 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, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any 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 publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the 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, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. 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–96–41 and should be submitted by November 29, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 96–28700 Filed 11–7–96; 8:45 am]

BILLING CODE 8010–01–M

[2] NASAA is an association of securities administrators from each of the 50 states, the District of Columbia, Puerto Rico and ten Canadian provinces.

[3] *See* Securities Act Release No. 6810 (Dec. 16, 1988), 53 FR 52550 (Dec. 28, 1988).

[4] *See supra* note 1 n. 12.

[5] *See* Rules Phlx 803 through 805 for equity and debt security listing standards; Phlx Rules 1009 and 1009A for listing standards applicable to options on equities and indexes respectively.

[6] *See* PSE Rule 3.2(b).

[7] *See* PSE Rules 3.6 and 7.

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending 11/1/96

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–96–1914.
Date filed: October 29, 1996.
Parties: Members of the International Air Transport Association.
Subject:
PTC23 EUR–SEA 0005 Dated October 1, 1996
Europe-Southeast Asia Resolutions R1–23
MINUTES—PTC23 EUR–SEA 0008 dated October 25, 1996
TABLES—PTC23 EUR–SEA FARES 0003 dated October 18, 1996
CORRECTION—PTC23 EUR–SEA 0006 dated October 18, 1996
Intended effective date: April 1, 1997.

Docket Number: OST–96–1917.
Date filed: October 31, 1996.
Parties: Members of the International Air Transport Association.
Subject:
PTC31 N/C 0008 dated October 11, 1996 r1–6
PTC31 N/C 0009 dated October 11, 1996 r7–23
PTC31 N/C 0010 dated October 11, 1996 r24–37
PTC31 N/C 0011 dated October 11, 1996 r38–51
PTC31 N/C/0012 dated October 11, 1996 r52
North & Central Pacific Resolutions
PTC31 N/C 0013 dated October 29, 1996
PTC31 N/C Fares 0003 dated October 18, 1996
PTC31 N/C Fares 0004 dated October 18, 1996
PTC31 N/C Fares 0005 dated October 18, 1996
Intended Effective date: April 1, 1997.

Paulette V. Twine,

Chief Documentary Services Division.

[FR Doc. 96–28779 Filed 11–7–96; 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 1, 1996

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–96–1916.

Date Filed: October 30, 1996.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 27, 1996.

Description: Application of CityLink Airlines, Inc., d/b/a CityLink, pursuant to 49 U.S.C. 41102 and Subpart Q of the Regulations, requests a certificate of public convenience and necessity to enable it to perform interstate scheduled air transportation of persons, property and mail. CityLink proposes to provide low-cost, convenient scheduled passenger/combination service between the Chicago metropolitan area, through the Gary Regional Airport, and a number of U.S. cities.

Docket Number: OST–96–1920.

Date Filed: November 1, 1996.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 29, 1996.

Description: Application of Challenge Air Cargo, Inc., pursuant to 49 U.S.C. 41101 and 41108, and Subpart Q of the Regulations, requests renewal of the certificate of public convenience and necessity for Route 626 that was granted to it by DOT Order 92–5–3, pursuant to which Challenge operates scheduled all-cargo service between the United States and Brazil.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 96–28778 Filed 11–7–96; 8:45 am]

BILLING CODE 4910–62–P

Maritime Administration

[Docket No. MSP–002]

Sea-Land Services, Inc.; Notice of Application Pursuant to Section 656 of the Merchant Marine Act, 1936, as Amended

Sea-Land Services, Inc. (Sea-Land), by application received November 1, 1996, applied under section 651, Subtitle B, of the Merchant Marine Act, 1936, as amended (Act) for participation in the Maritime Security Program (MSP). In support of its application Sea-Land submitted information pertaining to its level of noncontiguous domestic trade service. Pursuant to section 656 of the Act, the Maritime Administration must determine Sea-Land's level of noncontiguous domestic trade service should it become party to a MSP operating agreement.

Sea-Land's submittal of noncontiguous domestic trade service was provided as follows in Table I:

TABLE I.—LEVEL OF SERVICE PROVIDED BY SEA-LAND VESSELS IN NONCONTIGUOUS DOMESTIC TRADE AS OF AUGUST 9, 1995

Vessel name	TEU capacity [1]	Itinerary	Frequency of sailing	Grandfathered annual level of service
Alaska Trade				
ANCHORAGE	1668.0	TAC–ANC–KDK	Twice a week service, each ship makes 2 sailings every 21 days—one 9-day itinerary, one 12-day itinerary including Dutch Harbor or 34.762 sailings/yr.	100%(1668)(34.762)=57,983
KODIAK	1668.0	TAC–ANC–KDK–DUT		100%(1668)(34.762)=57,983
TACOMA	1668.0			100%(1668)(34.762)=57,983
				Alaska total=173,949
Hawaii Trade				
DISCOVERY	1442.5	OAK–LBC–HON	Wkly service, each ship on 14-day rotation or 26.071 sailings/yr.	100%(1442.5)(26.071)=37,607
CHALLENGER	1424.5			100%(1424.5)(26.071)=37,138
				74,745
ENTERPRISE	2407.5	TAC–OAK–HON–	Wkly service, each ship on 35-day rotation or 10.429 sailings/yr.	(75%)(2407.5)(10.429)=18,831
NAVIGATOR	2386.5	GUAM–KAO		(75%)(2386.5)(10.429)=18,667
PACIFIC	2407.5			(75%)(2407.5)(10.429)=18,831
TRADER	2386.5			(75%)(2386.5)(10.429)=18,667
RELIANCE	2653.0			(75%)(2653) (10.429)=20,751
				95,747
				Hawaii total=170,492
Puerto Rico Trade [2]				
SHINING STAR	1096.0	ELIZ–SJU–ELIZ	Wkly-every 7-days	100%(1096)(52.143)=57,149
CRUSADER	1376.0	ELIZ–SJU–HAINA	Wkly service, each ship on 28-day rotation or 13.036 sailings/yr.	(75%)(1376)(13.036)=13,453
EXPEDITION	1520.0			(75%)(1520)(13.036)=14,861
HAWAII	1420.0			(75%)(1420)(13.036)=13,883
CONSUMER	1751.5			(75%)(1751.5)(13.036)=17,124
				59,321

TABLE I.—LEVEL OF SERVICE PROVIDED BY SEA-LAND VESSELS IN NONCONTIGUOUS DOMESTIC TRADE AS OF AUGUST 9, 1995—Continued

Vessel name	TEU capacity [1]	Itinerary	Frequency of sailing	Grandfathered annual level of service
CRUSADER	1376.0	Jacksonville-San Juan-Kingston.	Wkly service, each ship on 28-day rotation or 13.036 sailings/yr.	(75%)(1376)(13.036)=13,453
EXPEDITION	1520.0			(75%)(1520)(13.036)=14,861
HAWAII	1420.0			(75%)(1420)(13.036)=13,883
CONSUMER	1751.5			(75%)(1751.5)(13.036)=17,124
				59,321
CRUSADER	1376.0	New Orleans-San Juan-Haina.	Wkly service, each ship on 28-day rotation or 13.036 sailings/yr.	(75%)(1376)(13.036)=13,453
EXPEDITION	1520.0			(75%)(1520)(13.036)=14,861
HAWAII	1420.0			(75%)(1420)(13.036)=13,883
CONSUMER	1751.5			(75%)(1751.5)(13.036)=17,124
				59,321
				Puerto Rico total = 235,112

[1] For the purposes of TEU capacity calculations: 20 ft=1 teu, 40 ft=2 teu, 45 ft=2.5 teu's in locations with fittings for 45′ high cube containers.
[2] The four vessels (CRUSADER, EXPEDITION, HAWAII and CONSUMER) are involved in three separate services as described above, with each ship making three different U.S.-Puerto Rico calls every 28 days—namely Elizabeth-San Juan, Jacksonville-San Juan, and New Orleans-San Juan.

* * * * * * *

The methodology for the above calculations is taken from the legislative history of the Maritime Security Act, which states, inter alia, that the ''level of service'' ''is the sum of two figures: 100 percent of the capacity of the vessels operated by or for the contractor and participating solely in that trade; and 75 percent of the capacity of the vessels operated by or for the contractor and participating in both that trade and another trade. In each case capacity would be determined by taking the relevant vessels' container capacity and sailing frequency as of the grandfather date. Also, capacity would be the service's physical capacity not the extent to which it is utilized''. See pages 18–19 of S. Rept. No. 104–167.

Any person, firm or corporation having any interest in the application for section 656 consent and desiring to submit comments concerning Sea-Land's request must by 5:00 p.m. (30 days after the date of publication) file comments in triplicate to the Secretary, Maritime Administration, Room 7210, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

Dated: November 5, 1996.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 96–28774 Filed 11–7–96; 8:45 am]

BILLING CODE 4910–81–P

Saint Lawrence Seaway Development Corporation

Privacy Act of 1974; Notice To Amend and Delete Systems of Records

AGENCY: Saint Lawrence Seaway Development Corporation, Department of Transportation.

ACTION: Notice to amend and delete systems of records.

SUMMARY: The Department of Transportation is amending one system of records notice and deleting two in its existing inventory of records subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

EFFECTIVE DATE: November 8, 1996.

FOR FURTHER INFORMATION CONTACT: Crystal M. Bush, Privacy Act Coordinator, U.S. Department of Transportation, Washington, DC 20590. Telephone: (202) 366–9713.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, the Department of Transportation conducted a review of several of its Privacy Act systems of records. It has been determined that DOT/SLS 152 is covered by DOT/ALL 11 and GSA/GOVT–4 and DOT/SLS 153 is covered by DOT/ALL 6. The specific changes to DOT/SLS 151 are set forth below by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974, as amended, which requires the submission of a new or altered system report.

Dated: October 30, 1996.

Crystal M. Bush,

Privacy Act Coordinator, Department of Transportation.

Deletions

System No.	System name
DOT/SLS 152	Data Automation Program Records.
DOT/SLS 153	Employees' Compensation Records.

Amendment

DOT/SLS 151

SYSTEM NAME:

Claimants Under Federal Tort Claims Act.

SYSTEM LOCATION:

Office of the Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Room 5424, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals presenting claims for damages to personal property, or personal injuries, or death resulting in connection with Corporation activities, other than claims by Federal Government employees under the Federal Employees' Compensation Act (5 U.S.C. 8102).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 28 U.S.C. 2675 and 33 U.S.C. 5984(a)(4).

PURPOSE(S):

Information will be used in evaluating claims.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim documents on which are recorded name, address, age and marital status of claimants and details of claims, documented evidence relevant to the claims provided by claimants, and relevant, internal Corporation investigation documents.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Used by Chief Counsel and other Federal government officials to determine allowability of claims. See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Records are kept in locked file cabinets and are accessible only to the Chief Counsel and his paralegal specialist and persons specifically authorized by either.

RETENTION AND DISPOSAL:

Records are retained indefinitely since they are not extensive and are used for reference.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW, Room 5424, Washington, DC 20590.

NOTIFICATION PROCEDURE:

An individual may inquire, in writing, to the system manager.

RECORD ACCESS PROCEDURES:

An individual may gain access to his/her records by written request to: Chief Counsel, Saint Lawrence Seaway Development Corporation, PO Box 44090, Washington, DC 20026–4090.

CONTESTING RECORD PROCEDURES:

Contest of these records will be directed to the following: Director, Office of Finance, Saint Lawrence Seaway Development Corporation, PO Box 520, Massena, New York 13662–0520.

RECORD SOURCE CATEGORIES:

Information is obtained directly from claimants on Standard Form 95 and supporting documentation provided by claimants and relevant, internal Corporation investigation documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 96–28687 Filed 11–7–96; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Federal Law Enforcement Training Center

AGENCY: Advisory Committee to the National Center for State, Local, and International Law Enforcement Training.

ACTION: Notice of meeting.

SUMMARY: The agenda for this meeting includes a brief visit by Attorney General Janet Reno and by Under Secretary (Enforcement) Raymond Kelly; remarks by John Schmidt, Associate Attorney General; Charles Rinkevich, Director of the Federal Law Enforcement Training Center (FLETC); Elizabeth Bresee and Laurie Robinson, Committee Co-chairs; reports from Offices of the Department of Justice (DOJ)—Bureau of Justice Assistance, National Institute of Justice, Office of Juvenile Justice and Delinquency Prevention, Office for Victims of Crime, Community Oriented Police Services, and a FLETC briefing on Export Training Sites.

DATES: November 13, 1996.

ADDRESS: Department of Justice Main Building, 10th and Constitution Ave., NW., Washington, DC 31524.

FOR FURTHER INFORMATION CONTACT: Hobart M. Henson, Director, National Center for State, Local, and International Law Enforcement Training, Federal Law Enforcement Training Center, Glynco, Georgia 31524, 1–800–743–5382.

Dated: October 31, 1996.

Franklin R. Graves,

Acting Director, National Center for State, Local, and International Law Enforcement Training.

[FR Doc. 96–28693 Filed 11–7–96; 8:45 am]

BILLING CODE 4810–32–M

Federal Register

Friday
November 8, 1996

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

Type and Number of Passenger Emergency Exits Required in Transport Category Airplanes; Interim Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 26140; Amendment No. 25–88]

RIN 2120–AC43

Type and Number of Passenger Emergency Exits Required in Transport Category Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment defines two new types of passenger emergency exits in transport category airplanes, provides more consistent standards with respect to the passenger seating allowed for each exit type and combination of exit types, and requires escape slides to be erected in less time. These changes allow more flexibility in the design of emergency exits and reflect recent improvements in escape slide technology. They will enable more cost-effective emergency exit arrangements and, in the case of escape slides, enable more rapid egress of passengers under emergency conditions.

EFFECTIVE DATE: December 9, 1996.

FOR FURTHER INFORMATION CONTACT: Gary L. Killion, Manager, Regulations Branch (ANM–114), Transport Standards Staff, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Ave. SW., Renton, WA 98055–4056; telephone (206) 227–2194.

SUPPLEMENTARY INFORMATION:

Background

This amendment is based on Notice of Proposed Rulemaking (NPRM) No. 90–4 which was published in the Federal Register on February 22, 1990 (55 FR 6344). In that notice, the FAA proposed amendments to 14 CFR part 25 that would revise the current requirements for the passenger emergency exits of transport category airplanes and define two new exit types. In addition, the FAA also proposed to require escape slides to be erected in less time, a reflection of improvements in escape slide state-of-the-art.

Since the time Notice No. 90–4 was published, a number of amendments were adopted. The changes adopted with Amendment 25–72 (55 FR 29781, July 20, 1990) are largely nonsubstantive in nature; however, the editorial structure of the sections involved in the proposals of Notice No. 90–4 was changed considerably. The changes adopted with Amendment 25–76 (57 FR 19220, May 4, 1992) do not have any substantive bearing on those proposed in Notice 90–4; however, they also affect the editorial structure of those sections. Where pertinent, the effect of those amendments on the changes proposed in Notice 90–4 is discussed below. None of the other amendments adopted during this period have any bearing on the proposals of Notice No. 90–4.

Current Requirements of Part 25

Part 25 currently defines seven types of passenger emergency exits for transport category airplanes—Type A, Types I through IV, tail cone and ventral. As defined in § 25.807, exits in fuselage sides range in size from large Type A exits, which must be a minimum of 42 inches wide by 72 inches high, to Type IV exits, which must be a minimum of 19 inches wide by 26 inches high. Although an exit may exceed the minimum dimensions specified for a particular type, it is considered to be of that type unless it qualifies in all respects as one of the larger exit types. Typically, the larger exits are hinged or translating doors while the smaller exits are typically removable hatches.

Section 25.809(b)(2) requires that each emergency exit must be capable of being opened, when there is no fuselage deformation, within 10 seconds measured from the time when the opening means is actuated to the time when the exit if fully opened.

It must be emphasized that, except for tail-cone or ventral exits, all references to the types and numbers of required passenger emergency exits in part 25 and this final rule refer to the exits required in each side of the fuselage, not the total for the airplane. Although they are not required to be symmetrical, corresponding exits on opposite sides of the fuselage are usually referred to as ''exit pairs'' to preclude confusion between the total number of exits and the number of exits on each side. The number of additional passenger seats that may be installed for each additional exit pair of a specific type is sometimes referred to as the ''exit rating'' for that type. When an ''exit pair'' consists of two different types of exits, the exits are both considered to be of the type with the smaller exit rating. Generally, no credit is given for an exit on one side with no corresponding exit on the other side. (Even though no credit is given to such exits, they are required to meet all applicable exit design requirements because they may be used by occupants under emergency conditions.)

Note that the standards of part 25, including those for emergency evacuation demonstrations as well as those concerning types and numbers of exits, are based on the assumption that only half of the exits will be usable during an actual emergency due to fire, structural damage or other adverse circumstance.

Section 25.807(d) currently specifies the type and number of emergency exits required for three ranges of passenger seating capacities. The first range, passenger seating configurations of one to 179, is addressed in § 25.807(d)(1) in a table that outlines the specific type and number of exits that must be provided. Those standards have been in effect for several decades and were based more on industry practice during the reciprocating-engine transport airplane era than on any particular testing.

For the second range, passenger seating configurations of 180 to 299, § 25.807(d)(1) uses a different approach. Instead of specifying the type and number of exits required for those airplanes, a second table supplements the first by specifying the number of passenger seats, in addition to 179, that may be installed for various types of additional exits. For example, the first table specifies that an airplane with 179 passenger seats must have two pairs of Type I exits and two pairs of Type III exits. The second table specifies that the seating may be increased by 45 passengers for each additional pair of Type I exits installed. An airplane with three pairs of Type I exits and two pairs of Type III exits would, therefore, be permitted, insofar as the type and number of exits is concerned, to have a passenger seating configuration of 224.

For the third range, passenger seating configurations greater than 299, § 25.807(d)(2) simply states that each exit installed in the side of the fuselage must be either a Type I or Type A exit and that seating configurations of 45 and 110 are allowed for each pair of Type I exits and each pair of Type A exits, respectively.

Section 25.807(d)(3) specifies the number of additional passenger seats that may be provided when creditable ventral or tail-cone exits are installed. In order to receive any credit as a passenger emergency exit, a ventral or tail-cone exit must provide the same rate of egress as a Type III exit with the airplane in the most adverse exit opening condition that would result from the collapse of one or more landing gear legs.

As amended recently by Amendment 25–72, § 25.807(d)(5) provides flexibility in the type and number of exits required by stating that an alternate emergency exit configuration may be approved in lieu of that specified in either § 25.807(d) (1) or (2) provided the

overall evacuation capability is shown to be equal to or greater than that of the specified emergency exit configuration. This means, for example, that one pair of larger exits could be substituted in some cases for two pairs of smaller exits.

Providing the type and number of exits specified for a given number of passenger seats does not, in itself, ensure that an airplane can be approved with that many seats. Other requirements, such as uniform distribution of passenger seats and exits and the demonstrated emergency evacuation capability, may actually limit seating to fewer passengers.

Part 25 specifies that a means must be provided to assist passengers in descending to the ground for each exit, other than an overwing exit, that is more than six feet from the ground when the airplane is on the ground with the landing gear extended. Section 25.810(a)(1)(i) specifies that the assist means must be deployed automatically and that deployment must begin during the interval between the time the exit opening means is actuated from inside the airplane and the time the exit is fully opened. As noted above, that time interval must be no more than 10 seconds. Section 25.810(a)(1)(ii) further specifies that the assist means must be automatically erected within 10 seconds after deployment is begun. Taking the maximum time intervals permitted, the assist means must be erected and usable no more than 20 seconds after the exit opening means is actuated. Generally, inflatable slides are used for this purpose.

For an overwing exit, § 25.810(d) specifies that a means must be provided to assist passengers in descending to the ground whenever the place on the airplane structure at which the escape route terminates (typically the trailing edge of a wing flap) is more than six feet from the ground. Inflatable slides are generally used for this purpose also. Part 25 currently contains no specific maximum erection time for off-wing slides; however, Technical Standard Order (TSO) C69b, which contains design standards for inflatable escape slides, specifies that off-wing escape slides must be fully erect within 10 seconds after actuation of the inflation controls. (TSO–C69a, which was superseded by TSO–C69b on August 17, 1988, had previously a maximum erection time of 15 seconds.)

Because the large Type A emergency exits are expected to accommodate parallel lines of evacuees simultaneously, § 25.810(a)(1) specifies that the means provided for those exits to assist the occupants in descending to the ground must also be capable of carrying two parallel lines of evacuees simultaneously.

Section 25.813(b) requires adequate space next to one side of each emergency exit, other than a Type A exit, that is required by § 25.810(a) to have an assist means to allow crewmembers to assist in the evacuation. Because there are two parallel lines of evacuees to assist, each Type A emergency exit is required to have an assist space on each side of the exit. Unlike other exit types, Type A exits must have such assist space regardless of whether the exit is required to have an assist means. At the time Notice 90–4 was issued, the latter requirement was contained in § 25.807(a)(7)(vii); however, it has since been consolidated with the former in § 25.813(b) (Amendment 25–72).

Amendments Proposed in Notice 90–4

The FAA held a public technical conference in Seattle, Washington, in September 1985, to review the existing safety regulations and practices regarding the emergency evacuation of transport airplanes. As a result of the conference, it was recommended, in part, that the regulations relative to passenger emergency exits be revised to provide design flexibility, and those concerning escape slide inflation time be revised to reflect the current state-of-the-art. Subsequent to this public conference, the following changes were proposed in Notice 90–4:

Type and Number of Emergency Exits

Unlike the standards for airplanes with more than 299 seats, the number of additional passenger seats allowed for smaller passenger capacities is not uniform. For example, the first table of § 25.807(d)(1) (§ 25.807(c) prior to Amendment 25–72) requires a pair of Type I exits and a pair of Type III exits for a maximum passenger seating capacity of 79. Adding another pair of Type I exits, resulting in a total of two pairs of Type I exits and one pair of Type III exits, would allow up to 139 passenger seats—an increase of 60 attributable to the additional pair of Type I exits. In contrast, one pair of Type I exits and two pairs of Type III exits are required for a maximum seating configuration of 109. Adding another pair of Type I exits in that case, resulting in a total of two pairs of Type I exits and two pairs of Type III exits, would allow up to 179 passengers—an increase of 70 attributable to the additional pair of Type I exits. For configurations beyond 179 passengers, the second table of § 25.807(d)(1) allows an increase of only 45 for each additional pair of Type I exits. Thus the increase in the number of passenger seats allowed, if one additional pair of Type I exits were installed, varies from 45 to 70, depending on the initial airplane exit configuration and the total passenger seating capacity.

The additional passenger seating capacity gained by adding a pair of Type III exits varies in a similar manner. The first table of § 25.807(d)(1) currently allows 79 passenger seats if one pair of Type I and one pair of Type III exits are installed. If one more pair of Type III exits were installed, the allowable number of passenger seats would be increased by 30 to a total of 109 passenger seats. In contrast, two pair of Type I exits and one pair of Type III exits are currently required for a maximum seating capacity of 139. Adding a pair of Type III exits would allow a maximum seating capacity of 179, an increase of 40 passenger seats. For configurations beyond 179 passengers, the second table of § 25.807(d) allows an increase of 35 passenger seats for each additional pair of Type III exits.

When the exit configurations and maximum passenger capacities specified in the first table of § 25.807(d)(1) are compared with the combined ratings specified in the second table of § 25.807(d)(2) for the same combination of exit types, it can be seen that the maximum capacities for the first two configurations (19 and 39 passengers) are conservative when compared to the assigned ratings. They are in close agreement for the next two configurations (79 and 109) and generous for the two largest configurations (139 and 170). A similar comparison can not be made for Type IV exits since no ratings are established for those exits in the second table.

As proposed in Notice 90–4, § 25.807 would be revised to provide one simple, consistent set of standards while still retaining an equivalent level of safety. The exit ratings for Type I, Type II, Type III and Type A exits would be the same as those currently shown in the second table of § 25.807(d)(1) for those types. Type IV exits would be assigned a passenger rating of nine to be consistent with the maximum passenger capacity currently shown in the first table of § 25.807(d)(1). Replacing the exiting tables with specific ratings for each type of exit would enable the airplane manufacturer to design an airplane with any combination of exits the manufacturer chooses, subject to specific constraints. The following constraints, which would be contained in § 25.807(g), were proposed to ensure that the margin of safety currently

associated with passenger capacities of approximately 40 and fewer passenger seats would be retained and that there would be no significant increases in passenger seating permissible with the various combinations of exit types. In addition, unacceptable alternative combinations of exits, such as one pair of Type A exits and three pairs of Type III exits for a maximum passenger seating of 215 are precluded.

The first table of § 25.807(d)(1) currently places several limitations on the passenger emergency exit configuration. For example, the table does not permit the use of Type IV exits in airplanes with more than 9 seats. There must be at least two pairs of exits for any passenger seating configuration above 19, and there must also be at least one pair of Type I or larger exits for passenger seating capacities of 40 or more. As proposed in Notice 90–4, these and other limitations concerning the type and number of exits required for specific passenger seating configurations would be retained. The existing requirement that there must be at least one pair of Type I or larger exits in each side of the fuselage for passenger seating configurations of 40 or more would be retained except that it would apply to passenger seating configurations of 41 or more rather than 40 or more. The existing requirement that there must be at least two Type I or larger exits in each side of the fuselage for passenger seating configurations of 110 or more would also be retained except that it would apply to passenger seating configurations of 111 or more.

The FAA reviewed the results of previous evacuation demonstrations involving airplanes with two adjacent Type III exits on each side of the fuselage. From this review, it was noted that two adjacent Type III exits consistently fail to provide a rate of egress that is double that of a single Type III exit. Typically, some evacuees fail to bypass one exit in order for there to be a steady flow through the adjacent exit. The rate of egress through the exit that some evacuees must bypass is generally equal to that through a single similar exit, but the rate of egress through the second exit is consistently less. The FAA, therefore, proposed in Notice 90–4 that the combined passenger rating of two adjacent pairs of Type III exits would be limited to 65. For purpose of compliance with this requirement, two Type III exits separated by fewer than three passenger seat-rows would be considered to be adjacent (i.e. fewer than three seat-rows plus two passageways located between adjacent vertical edges of the two exits). The pertinent parameter is the number of seat rows; however, with typical row spacing this would be about 80 to 90 inches between adjacent vertical edges of the two exits. (Notice 90–4 quoted 90 to 100 inches; however, 80 to 90 inches is more likely.) It was also proposed that the combined passenger rating for all Type III exits would not exceed 70. Depending on whether the first two pairs were eligible for the full 70 passenger rating, no or very little additional credit would be given for any additional pairs of Type III exits. An additional conservatism in Type III exits because the widths of the accesses to the Type III exits in the studied evacuation demonstrations were far less than that required today because of recent safety regulatory changes.

Taking both the exit ratings and the specific constraints proposed in § 25.807(g), the practical effect of the proposed changes on airplanes with 179 or fewer passenger seats would be as follows:

(a) With 1 through 9 passenger seats, the table of § 25.807(d)(1) specifies at least one Type IV exit in each side. That requirement would remain unchanged. The table of § 25.807(d)(1) notwithstanding, § 25.807(d)(4) currently specifies that an exit meeting at least the dimensions of a Type III exit must be installed in each side if the vertical location of the wing does not allow the installation of overwing exits. That requirements would be retained in proposed § 25.807(g)(1).

(b) With 10 through 19 passenger seats, the table of § 25.807(d)(1) specifies at least one Type III exit in each side. That requirement would remain unchanged.

(c) With 20 through 39 passenger seats, the first table of § 25.807(d)(1) specifies at least one Type II and one Type III exit in each side even though the combined ratings shown in the second table of that section would total 75 passenger seats. The combined ratings of proposed § 25.807(g) would also total 75 passenger seats for this combination of passenger seats; however, the number of passenger seats permissible with this combination of exit types would be limited to 40 by proposed § 25.807(g)(5). That would be one more passenger seat than currently permitted by this combination of exit types. The margin of safety provided by the current rule would be maintained since 40 passenger seats is only 53% of the combined ratings of that combination of exit types.

(d) With 40 through 79 passenger seats, the table of § 25.807(d)(1) specifies at least one Type I and one Type III exit in each side. As proposed, the exit combination currently specified for airplanes with 20 to 39 seats could also be used for one with 40 passenger seats. As in the case described above, a number of different combinations of smaller exit types might provide sufficient combined passenger ratings for airplanes with 41 through 79 passengers; however, those combinations would be precluded by the constraints contained in proposed § 25.807(g). Proposed § 25.807(g)(5) would specify that, for more than 40 seats, there must be at least two exits in each side and that one of those must be at least a Type I exit. That would preclude for example, an alternative configuration of one smaller Type II exit and two Type III exits in each side even though the combined passenger ratings show in proposed § 25.807(g) for that combination of exits would total 105 or 110 passenger seats. It would also preclude an arrangement with only one large Type A or Type B exit in each side in lieu of the Type I and Type III exits. As proposed, the combination of exit types currently specified for airplanes with 41 through 79 passenger seats could also be used for an airplane with 80 passenger seats.

(e) With 80 through 109 passenger seats, the table of § 25.807(d)(1) specifies at least one Type I and two Type III exits in each side. As proposed, the combination of exit types for airplanes with 40 through 79 passenger seats could also be used for those with 80 passenger seats. Although the specific constraints of proposed § 25.807(g) would preclude certain undesirable combinations of exit types, the proposed changes would allow a degree of flexibility in the 81 through 109 passenger seat range. For example, two of the newly proposed Type C exits could be used in lieu of one Type I and two III exits. Also, two Type I exits could be used in lieu of one Type I and two Type III exits provided the number of passenger seats did not exceed 90. As proposed, the combination of exit types currently specified for 80 through 109 seats could also be used for airplanes with up to 110 passenger seats; or 115 passenger seats if the Type III exits were separated sufficiently to enhance their effectiveness.

(f) With 110 through 139 seats, the table of § 25.807(d)(1) specifies at least two Type I exits and one Type III exit in each side. As proposed, the combination of exits currently specified for airplanes with 80 through 109 passenger seats, could be used for those with 110 passenger seats. The combined passenger ratings of proposed § 25.807(g) would limit the exit combination currently specified for 110 through 139 passenger seats to 125

seats. Proposed § 25.807(g)(6) would specify that, for more than 110 seats, there must be at least two Type I or larger exits in each side. For airplanes with 111 through 125 there would be considerable additional flexibility in the combination of exit types used; however, the specific constraints of § 25.807(g) would preclude certain undesirable combinations of exit types. For example, proposed § 25.807(g)(6) would require the emergency exits of airplanes with more than 110 passengers to include at least two Type I exits in each side. For airplanes with more than 125 passenger seats, there would have to be more or larger exit types than those currently required for airplanes with 110 through 139 passenger seats. The choice of additional or larger exit types would, of course, be subject to the combined passenger ratings and specific constraints of proposed § 25.807(g).

(g) With 140 through 179 passenger seats, the table of § 25.807(d)(1) specifies at least two Type I exits and two Type III exits in each side. The combined passenger rating of proposed § 25.807(g) would limit this exit combination to 160 seats. Proposed § 25.807(g)(7) would further limit this exit combination to 155 seats if the Type III exits were not separated sufficiently to enhance their effectiveness. Proposed § 25.807(g)(6) would specify that there must be at least two Type I exits or larger in each side. That would preclude an alternative configuration in which no exits are larger than Type II. It would also preclude a combination of exits involving only one exit larger than Type I and several smaller Type III exits in each side. For airplanes with more than 160 passenger seats, larger or additional exits would have to be provided. The choice of additional or larger exit types would be subject to the combined passenger ratings and specific constraints of proposed § 25.807(g); however, this range of passenger seats would be afforded the greatest flexibility in the choice of exit type combinations.

In summary, the number of passenger seats permissible with one pair of Type II and one pair to Type III exits would be increased from 39 to 40. Similarly, the number permissible with one pair of Type I and one pair of Type III exits would be increased from 79 to 80. The increase would be negligible in either case insofar as the egress capability of the exits is concerned; however, it would be more than compensated for by the proposed improvement in escape slide deployment time in any event. The number permissible with one pair of Type I exits and two pairs of Type III exits would be increased from 109 to either 110 or 115, depending on the proximity of the Type III exits. Those increases would also be negligible insofar as the egress capability of the exits is concerned, but they too would be more than compensated by the proposed improvement in escape slide deployment time. With two pairs of Type I exits and one pair of Type III exits, the permissible number would be significantly decreased from 139 to 125; with two pairs of Type I exits and two pairs of Type III exits, it would be significantly decreased from 179 to either 155 or 160, again depending on the proximity of the Type III exits. The permissible number of passenger seats would remain unchanged for other exit combinations. As stated above in the preamble, these new maximum passenger capacities are calculated by summing the number of passengers rated for the specific types of exit pairs; these ratings are identical to those in the former § 25.807(d)(1) for increases in seating configurations beyond 179.

As noted above, § 25.807(d)(2) currently specifies that each exit must be a Type A or Type I exit for passenger seating capacities over 299. That limitation was introduced, along with the definition of Type A exits, with Amendment 25–15 (32 FR 13255, September 20, 1967), when the first wide-body airplanes were being proposed. Because those airplanes were to have twin aisles, the large Type A exits were adopted to permit simultaneous side-by-side egress of passengers from both aisles. Although there was no operational experience at that time with such airplanes, it was considered that they should not have a large number of small exits. The requirement that all exits be Type A or Type I was intended to discourage interior arrangements with numerous Type III exits and fewer large exits. Subsequently, the Boeing Model 767 and certain configurations of the Airbus Model A310 were both approved with one or two pairs of Type III exits under the equivalent level of safety provisions of § 21.21(b)(1). Evacuation demonstrations and actual evacuations under emergency conditions with those airplanes have shown that a limited number of Type III overwing exits can be effective in twin-aisle airplanes. The FAA, therefore, proposed in Notice 90–4 to permit limited use of Type III exits in airplanes with passenger seating capacities greater than 299. Subsequent to Notice 90–4, § 25.807(d)(5) was adopted with Amendment 25–72 to permit an alternate emergency exit configuration provided the overall evacuation capability is shown to be equal or greater than that specified. As a result, the proposed change is no longer substantive.

To ensure that adequate evacuation capability is maintained if a primary exit becomes unusable, the FAA proposed in Notice 90–4 that at least two pairs of the larger exits (Type A or, as described below, Type B or Type C) would have to be installed to receive full passenger seating credit for those exits. If only one pair of Type A, B, or C exits were installed, the exits would be considered to be Type I exits and credited accordingly.

In order to provide greater flexibility in passenger emergency exit design, two new exit types, Type B and Type C, were proposed in Notice 90–4. Both types would be larger than Type I exits but smaller than Type A exits. They would be similar to exits that have been previously approved by exemption or under the equivalent level of safety provisions of § 21.21(b)(1).

The proposed Type B exits would be required to meet the same criteria as those for Type A exits except that their minimum width would be 32 inches in lieu of 42 inches, and the maximum allowable corner radii would be six inches in lieu of seven inches. Like Type A exits, Type B exits would have to have passageways at least 36 inches wide leading from each main aisle and be equipped with dual-lane escape slides. Based on the egress rate demonstrated by the petitioner, Exemption No. 1573 was granted to permit a passenger rating of 80 for a pair of these exits in the McDonnell Douglas Model DC–10. Similar exit pairs installed later in one configuration of the Boeing Model 757 were given a passenger rating of 75 based on the egress rate demonstrated at that time. That installation was approved under the equivalent safety provisions of § 21.21(b)(1).

The passenger flow to, through and from the proposed Type B exits is similar to that through the wider Type A exits except that the two parallel lines of evacuees typically twist their shoulders a few degrees for the moment in which they are passing through the exit side-by-side. The proposed passenger rating of Type B exits would be 68% that of the larger Type A exits. In essence, the difference between the proposed passenger rating of Type B exits and that of Type A exits reflects this momentary partial merging of the two parallel lines of evacuees as they pass through Type B exits.

In a report entitled Study of FAR 25.807(c) Emergency Exits dated May 1975, the FAA Civil Aeromedical Institute (CAMI) recommended adding

several exit sizes to the regulations, including two that correspond to the proposed Type B and C exits.

Based on a series of passenger evacuation rate tests conducted with exit widths of 26 to 42 inches, CAMI recommended a passenger rating of 80 for an exit that is 32 inches wide and equipped with a dual-lane escape slide. Because of the differences in motor skills and reaction to situations typically exhibited in testing involving people, there is some variation in the data presented in the CAMI report concerning evacuation rate versus exit size.

Considering the variation in the CAMI test data and the data in which approvals of the DC–10 and Boeing Model 757 doors were based, a passenger rating of 75 was proposed in Notice 90–4 for Type B exits. This would ensure that the passenger rating is appropriate for all such exits regardless of the size of the airplane in which they are installed or minor differences among the exits of different airplane models.

The CAMI testing showed that other exits, similar to Type I exits but with additional width, provide greater passenger egress rates than those with the minimum width of 24 inches. CAMI, therefore, recommended that exit pairs at least 30 inches wide should have a passenger rating of 50—five greater than that for Type I exit pairs with the minimum width of 24 inches. Their recommendation was based on the time of 20 seconds currently allowed for door opening and erection of the assist means. The exits defined as Type C in Notice 90–4 evolved from these CAMI recommendations.

The FAA previously proposed to increase the minimum height of Type I exits to 60 inches; however, as discussed in the preamble to Amendment 25–15 (32 FR 13255, September 20, 1967), the proposal was withdrawn in light of test data showing that the greater height would provide no material improvement in passenger egress rate. This finding was corroborated by later CAMI testing.

As proposed in Notice 90–4, Type C exits would be similar to the existing Type I exits, except that their minimum width, would be 30 inches in lieu of 24 inches. In light of the earlier test results, no increase in minimum height was proposed for Type C exits. In addition, Type C exits would be required to have assist means regardless of how high they are above the ground. (Exits of this size without assist means would be considered Type I exits even though they meet the dimensional requirements for Type C exits.) The maximum time allowed for door opening and erection of the assist means (exit preparation time) would be reduced from 20 seconds to 10 seconds. In addition, the 10-second exit preparation time would have to be demonstrated for non-overwing exits in each of the attitudes corresponding to collapse of one or more legs of the landing gear. Such exits would not be required to have power-assisted means for opening in an emergency, nor automatically deployed slides; however, they would have to be so-equipped, as a matter or practicality, in order to comply with the proposed 10-second preparation time. Nevertheless, such features would not be required, nor needed, if the door could be opened and the assist means erected within 10 seconds without them.

In order to arrive at the passenger rating proposed in Notice 90–4, experience with similar exits was considered. Exemption No. 3639, which was granted for the British Aerospace Model BAe.146, allows a maximum passenger seating capacity of 109 with two exit pairs, or a passenger rating of 54.5 per exit pair. These exits are all 30.5 inches wide, and those on the left side are 58 inches high. Due to considerations other than emergency egress, those on the left side are 72 inches high. They are equipped with assist means in the form of automatically deployed, inflatable, self-supporting escape slides.

In another configuration, the Boeing Model 757 was approved for as many as 219 passenger seats, with four exits on each side of the airplane, or approximately 55 passenger seats per exit. Three of the four exits on each side are similar to the proposed Type C exits. Exits Nos. 1, 2, and 4 are over 30 inches in width and have power assist means for opening in an emergency. It was demonstrated during full-scale demonstrations that these exits could be opened and ready to accept evacuees in approximately 8.2 seconds. The No. 3 exit is less than 30 inches in width; however it does exceed the minimum width for a Type I exit. That exit was demonstrated to be usable within 12 seconds.

In view of the testing conducted by CAMI and the consistency of those test results with the approvals of British Aerospace BAe.146 and Boeing 757 airplanes, a passenger rating of 55 was proposed in Notice 90–4 for Type C exits.

A number of conforming changes to other sections were also proposed to include references to Types B and C exits as well as the existing types.

The FAA also proposed in Notice 90–4 to make extensive non-substantive changes to enhance the clarity of those sections involved with emergency exits. In light of the changes already adopted by Amendment 25–72, some are no longer relevant; those remaining would not impose any additional burden on any persons.

Escape Slide Deployment

The FAA proposed in Notice 90–4 to revise § 25.809 to require that the assist means at all Type C exits must be erected within 10 seconds from the time the exit opening means is actuated. The FAA also proposed to reduce the maximum permissible erection times for the assist means serving other exit types. For non over-wing exits, the assist means would have to be fully erected within 6 seconds. This would reduce the time available to prepare the escape system to accept evacuees in any emergency by 4 seconds. For off-wing assist means, the FAA proposed that they must be fully erected within 10 seconds. This would be consistent with the interval currently specified in TSO C69b. As noted above, these erection times are in addition to the interval permitted by § 25.809(b)(2) for exit opening.

Discussion of Comments Received in Response to Notice 90–4

Fourteen commenters responded to the invitation in Notice 90–4—five foreign airworthiness authorities; five airplane or equipment manufacturers, or organizations representing such manufacturers; two airline employee unions; an international airline organization; and an individual.

Two foreign airworthiness authorities support the proposed rulemaking without further comment.

The individual commenter recommends that no passenger seat be installed adjacent to an overwing exit. (By ''overwing exit,'' the commenter is undoubtedly referring to a Type III exit since unobstructed passageways were already required for Type II and larger exits at the time the comment was made.) The recommendation is unrelated to the rulemaking proposed in Notice 90–4; however, the subject was fully addressed by recently adopted Amendments 25–76, 121–228 and 135–43 (57 FR 19220, May 4, 1992) which specify unobstructed passageways leading to Type III exits.

Some commenters suggest that any rulemaking resulting from Notice 90–4 should be deferred to the Aviation Rulemaking Advisory Committee (ARAC). The ARAC is a committee of safety experts chartered by the FAA on

February 5, 1991, to develop future proposed safety standards by using a systems-type analysis. Although much of the future proposed rulemaking of this nature will be developed by ARAC, it is not considered appropriate to defer this particular subject to ARAC since the proposed rulemaking has already been developed and published for public comments.

The international airline organization forwarded comments from two foreign airlines. One airline supports the proposed rulemaking, stating that it clarifies the existing rules and has the potential for increased flexibility in aircraft design. The other airline has reservations concerning the proposed slide erection times but supports the other aspects of the proposed rulemaking. The latter airline did not elaborate on its reservations.

Three commenters support the proposed change concerning assist space in the apparent belief that it introduced a new requirement for assist space at exits other than Type A exits. Actually, all exits other than Type A are already required to have such assist space if they are required by § 25.810(a) to have assist means. The only change proposed in this regard was simply a conforming change to add consideration of Type B emergency exits. The recent consolidation of all assist space requirements in § 25.813(b) should preclude further confusion in that regard.

The three commenters also propose that the dimensions of the required assist space should be defined more precisely. Any change of that nature would be beyond the scope of Notice 90–4 and could not be considered at this time; nevertheless, it is being considered for future rulemaking.

Type and Number of Emergency Exits

One commenter believes the passenger ratings of all exit types should be reconsidered. According to the commenter, the ratings are based on obsolete assumptions and are not verified with data from actual evacuations. In particular, the commenter notes that the egress rate of an exit is dependent on the presence and type of assist means. In the same vein, another commenter believes that additional credit should be given for exits not requiring assist means. In light of the successful evacuations that have been accomplished under actual emergency conditions, the FAA does not concur that the present passenger ratings of all exit types are inappropriate as suggested by the first commenter. The FAA does, however, concur that the egress rate of an exit type may be dependent on the presence and type of assist means. Although not specifically stated by either commenter, the egress rate for exit types not requiring assist means is undoubtedly dependent also on the distance from the exit sill to the ground. Nevertheless, any changes beyond those proposed in Notice 90–4 would have to be deferred for future rulemaking. It must be recognized that extensive additional testing would have to be conducted before any changes of this nature could be proposed.

The commenter also suggests that credit should be given for unpaired exits because, according to the commenter, it is quite rare that one side of the airplane is blocked by fire, and usable exits are distributed in a less predictable manner over both sides and the length of the airplane. The FAA does not consider any change in that regard to be appropriate. The unpredictability of fire or other circumstance that might render an exit unavailable is the very reason why credit can not be given for an exit that does not have a counterpart on the opposite side of the airplane. Whether one complete side would be likely to be blocked by fire is not relevant. It is necessary to have a corresponding exit on the opposite side if only one exit is blocked. Contrary to the first commenter's assertion, there have been many instances in which an exit on one side was blocked by fire while its counterpart on the opposite side was clear and usable. The commenter also implies that exits should be distributed over the length of the airplane. It is recognized that there is a practical limit to the lengthwise distribution of exits in smaller airplanes; however, exits are already required to be distributed along the length of the cabin, as well as on either side, to the greatest extent practicable. In regard to the second comment, part 25 does not require the number of exits on both sides to be equal. Due to practical considerations, such as normal passenger entry, service access, etc., the designer may choose to install more openings in one side than the other; however, any opening that does not have a counterpart on the other side is not credited as an emergency exit.

Section 25.807(f)(2) presently states that, unless another location affords a more effective means of passenger evacuation or the airplane has a ventral or tail cone exit, an airplane is only required to have one pair of floor-level exits must have that exit pair located in the rearward part of the passenger compartment. The commenter believes that § 25.807(f)(2) should be removed or amended to emphasize locating the sole pair of floor-level exits in the forward part of the passenger cabin. The FAA concurs that there are some circumstances in which that would be preferable, but not that the forward end of the cabin is a preferable location in general. Several factors must be considered for any particular design, including proximity of the propeller plane, engine inlet or engine exhaust, potential sources of fires, potential fuselage impact damage, etc. Another consideration is that the flight attendant must be stationed near those exits to direct the evacuation. Having the exit pair, and the associated flight attendant, at the rear of the cabin is advantageous in situations where the flightcrew can assist the flight attendant by directing the evacuation from the forward end of the cabin. The FAA does not concur that the commenter's proposed change is appropriate since the rule already permits locating the exits at the forward end of the cabin when that location would, in fact, afford a more effective means of evacuation. Furthermore, it is arguable whether the forward end is predominantly the preferable location, as the commenter believes. In any event, a change of this nature would be beyond the scope of Notice 90–4 and could not be adopted at this time even if it were deemed to have merit.

The same commenter asserts that ventral and tail-cone exits have not contributed to the rapid evacuation of occupants from airplanes during life-threatening situations and questions whether they should remain in part 25 as creditable emergency exits. Contrary to the commenter's assertion, service experience has shown that ventral and tail-cone emergency exits can provide valuable means of emergency egress and should remain as creditable exits.

The commenter further questions whether the current passenger ratings for those exits are appropriate. Another commenter recommends that the passenger rating of ventral emergency exits should be reduced by 50%. That commenter assets the ventral exit would probably be usable only half the time because of possible landing gear failure. This too would go beyond the scope of the notice; however, it must be noted that a change of this nature would be based on flawed logic. The percentage of emergency evacuations in which an exit is usable has no bearing on how many persons can safely pass through it when it is usable. Nevertheless, the commenter's apparent concern is already addressed by current § 25.807(d)(3). That section, which now becomes § 25.807(g)(9), specifies that a ventral exit must provide the same rate of egress as a Type III exit with the airplane in the most adverse exit

opening condition that would result from the collapse of one or more landing gear legs. If the geometry of the airplane is such that the exit would not provide this rate of egress with the most adverse landing-gear failure-condition, no credit is given for the exit.

There is, of course, no assurance that any particular exit, regardless of its type and location, will be available for use in every accident that may occur. As noted above, the standards of part 25 are based on the assumption that only half of the required exits will be usable due to fire, crash damage or other adverse circumstance. There is no need evident at this time to change the passenger rating of either ventral or tail-cone exits, nor any basis on which to establish new ratings. Any future change involving either an increase or a decrease in the passenger ratings for those exit types would have to be based on considerable additional testing.

One commenter expresses concern that the requirement of § 25.807(c)(7) concerning the maximum distance between exits would be removed. (This requirement was contained in § 25.807(d)(7) at the time Notice 90–4 was published; however, it was moved to § 25.807(c)(7) with the adoption of Amendment 25–72.) The omission of this requirement from proposed § 25.807 was actually inadvertent. There was no intention to remove this requirement, and the final rule has been corrected accordingly.

Another commenter recommends that all non-floor level passenger emergency exits should be eliminated (i.e., Types III and IV, ventral and some tail cone exits) and that, in particular, Type III exits should not be used in airplanes with more that 299 passenger seats. The FAA does not concur with the commenter that they should be eliminated altogether. Type III exits were previously permitted in airplanes with as many as 299 seats; and, as discussed above, they can now be used in larger airplanes provided the overall evacuation capability is not diminished. They have proven to be effective means of egress. Due to structural weight and cabin space considerations, it would be impractical to require the use of larger exit types exclusively in lieu of those exits.

As noted above, service experience has shown that ventral and tail-cone exits can provide valuable means of emergency egress and should remain as creditable exits.

As also noted above, Type IV exits are permitted in airplanes with nine or fewer passengers; however, § 25.785(h) requires each passenger entry door in the side of the fuselage to qualify as a Type II or larger emergency exit. Although it can only be considered a Type IV exit when the corresponding exit on the opposite side is also at least a Type IV exit, the opening in one side of the fuselage of an airplane with nine or fewer seats is already required by § 25.783(h) to meet the requirements of at least a Type II exit. It would be extremely impractical from the standpoints of structural weight and lost cabin space to require the exits on both sides of the cabins of airplanes with nine or fewer seats to be Type II or larger exits. Furthermore, the FAA is not aware of any service history indicating that these small exits are not satisfactory for the smaller transport category airplanes.

The rationale given by the commenter for not permitting the use of Type III exits in airplanes with more than 299 passengers is that the floor-level exits may be unusable and that it would be necessary to evacuate more than 299 passengers through a Type III exit. As noted above, the largest passenger rating for any exit pair (Type A) is 110 passengers. An airplane with more than 299 passengers would, therefore, have to have a minimum of three floor-level exit pairs in addition to the pair of Type III exits. As noted earlier, the standards of part 25 are based on the assumption that half of the required exits may be unusable due to fire or crash damage. It is unrealistic to believe that not half, but all six floor-level exits would be rendered unusable in an otherwise survivable crash, as the commenter suggests, leaving only a pair of Type III exits usable. As noted above, the original concern was not the use of Type III exits in the larger airplanes per se; it was actually whether they would be effective in airplanes with twin aisles. As also noted above, experience with Airbus Model A310 and Boeing Model 767 airplanes has shown that Type III exits can be effective in twin-aisle airplanes. (Another commenter states that those exits in the Airbus Model A310 are derated Type I exits rather than Type III exits. Actually the exits provided at the same location in some A310 airplanes are fully qualified as Type I exits. Those provided at that location in other A310 airplanes can only be considered Type III by definition since they fail to meet all of the qualifications of a larger exit type. In any event, the experience gained with those exits is pertinent regardless of how they are identified.)

The commenter supports the establishment of the new Type B exit, but questions whether it is effective enough to support the proposed passenger rating of 75. The commenter expresses concern that the exit may cause a bottleneck in passenger flow, since it could be four inches narrower than the passageway leading to it, and suggests that the passengers rating should be reduced from 75 to 65. Another commenter believes that the difference would cause a bottleneck but, instead of recommending that the passenger rating be reduced, suggests that the width of the passageway should be reduced to 30 inches.

As noted above, the effectiveness of Type B exits has already been demonstrated with such passageways to support passenger ratings of 80 and 75 for Douglas DC–10's and Boeing 757's, respectively; and the more conservative passenger rating of the two was selected for the proposed rule. As shown by previous tests, the effectiveness of a Type B exit is maintained by having two uniform parallel lines of evacuees leading to the exit. Although the exit is not as wide as a Type A exit, the two parallel lines merge at the exit only to the limited extend needed to pass through the exit before continuing as two parallel lines down the assist means (i.e. the inflatable slide). Typically, the evacuees twist their shoulders a few degrees for the moment in which they are passing through the exit side-by-side. The delay due to this momentary merging is reflected in the proposed passenger rating of 75–68% of that of Type A exits. There is no basis to support arbitrarily reducing it further to 65.

Contrary to the second commenter's assertion, reducing the width of the passageway to less than 36 inches would actually be counterproductive. The evacuees could not be expected to maintain two uniform parallel lines in a narrow passageway if doing so would necessitate keeping their shoulders twisted for the entire length of the passageway. The use of a narrower passageway would, therefore, disrupt the orderly flow of parallel lines of evacuees to the exit and result in greatly reduced flow through it.

One commenter believes that an additional exit type should be defined. The proposed additional type would be similar to proposed Type B exits except for the use of a single-lane slide. In the absence of additional test data showing otherwise, it appears that an exit of this nature might provide egress capability no greater than that of the proposed Type C exit. In any event, defining this or any other additional exit type would be beyond the scope of Notice 90–4 and could not be implemented at this time.

A commenter requests that the capacity of a Type B exit be demonstrated by any air carrier

requesting an increase in the number of passenger seats. Compliance with the emergency evacuation requirements of § 25.803 is already required for any increase in maximum seating capacity over that previously shown satisfactory in accordance with that section.

One commenter notes that the proposed maximum corner radii of six inches is inconsistent with the corresponding requirements for other exit types that are functions of the exit width. The commenter further questions whether the maximum corner radii for other exit types is based on the actual width of the exit or on the minimum required width for that particular exit type. The commenter then raises the possibility that the standards should be expressed in terms of minimum sill width, i.e. door width less the corner radii.

In answer to the commenter's question, the corner radii currently specified for other exit types are based on the minimum required width rather than the actual width of the exit. The FAA recognizes that the current presentation could be misinterpreted in that regard and concurs that expressing the maximum corner radii in absolute dimensions is preferable. Although the pertinent parameters are actually the sill width, as the commenter suggests, and corresponding dimension at the top of the exit, it appears that requirements expressed in those terms could easily be misinterpreted, particularly if the door is a nonstandard oval or trapezoidal shape. After carefully considering the three methods of presentation, the FAA has concluded that expressing the requirement in terms of actual corner radii is preferable because it is least likely to be misinterpreted. Accordingly, § 25.807(a) is amended to specify maximum corner radii of 8 inches for Type I exits, 7 inches for Type II, Type III and Type A exits, and 6.3 inches for Type IV exits. For the same reason, § 25.807(g)(9)(ii) specifies corner radii of 7 inches for tail cone exits. The maximum corner radii for Type B exits is 6 inches as proposed and 10 inches for Type C exits. There changes are nonsubstantive because they simply state the same values in a way less likely to be misinterpreted.

The same commenter asserts that maximum corner radii based on the minimum exit width are not consistent with structural design principles (i.e. corner radii should be increased for large cutouts in order to reduce the stress levels). It must be emphasized that the dimensions specified in § 25.807 describe the minimum openings. As stated in § 25.807(d)(5), openings larger than those specified, whether or not of rectangular shape, may be used if the specified rectangular opening can be inscribed within the actual opening. The designer can, therefore, increase corner radii as much as needed for structural or other considerations simply by increasing the overall size of the exit opening sufficiently to allow an opening with the specified length, width and corner radii to be inscribed within the actual opening.

One commenter asserts that the testing conducted by CAMI to support the passenger rating of proposed Type C exit pairs is invalid because a dual lane slide was used. As discussed above, Type B exits are wide enough for the two parallel lines of evacuees to partially merge momentarily while passing through the exit, then continue down the assist means in two parallel lines. Type C exits, on the other hand, are not wide enough for evacuees to form two parallel lines after passing through the exit. No matter how wide the slide is, evacuees continue down the slide in one single file. The width of the assist means, i.e. the slide, used in the CAMI testing of Type C exits is, therefore, irrelevant.

Three commenters do not believe there is justification for requiring Type C exits to have assist means regardless of how close they are to the ground. All of the data presently available to support the passenger rating for Type C exit pairs are based on tests conducted with assist means. In the absence of additional test data showing otherwise, it appears that exits of the dimensions of proposed Type C exits without assist means would not perform any better than Type I exits. In any event, defining exits of those dimensions without assist means would be beyond the scope of Notice 90–4 and could not be undertaken at this time. Designers would be free to install exits of those dimensions without assist means; however, the exits would be considered Type I exits and credited accordingly.

Another commenter supports the development of the Type C exit, but recommends that the passenger rating be reduced from 55, as proposed, to 50. The commenter bases this recommendation on the assertion that more than half of the emergency exits would probably be unavailable in an actual emergency. As noted earlier, the standards in part 25, and those proposed in Notice No. 90–4, are based on the assumption that half of the exits are unusable due to fire, structural damage or other adverse circumstance. The validity of the commenter's assertion that more than half would be unusable has not been established: however, it would be an issue common to all emergency exit types. There is, therefore, no reason to single out Type C exits and to arbitrarily reduce the rating of those exits. Any change based on the assertion that more than half of the exits would be unavailable would be beyond the scope of Notice 90–4 and could not be adopted at this time.

The commenter also makes a number of recommendations in other areas that are beyond the scope of this rulemaking, such as minimizing jamming of exits, dispatch with inoperative doors, optimal width of passageways to exits and assist space for flight attendants. The commenter's recommendation concerning width of passageways leading to exits was addressed, in part, by recently adopted Amendments 25–76, 121–228 and 135–43 (57 FR 19220, May 4, 1992). Any other recommendations, if found to have merit, would have to be the subject of future rulemaking.

One commenter believes that the passenger ratings should be increased for several combinations of Type I, Type II and Type III exits. The commenter cites consistency with the rest of the proposed changes in passenger ratings, apparently in the belief that any exit type should be given the highest passenger rating previously permitted for that type under any circumstances or with any combination of other exit types. The FAA does not concur. The fact that ratings would be changed to remove inconsistencies does not imply that the inconsistencies must be resolved by simply granting the highest rating previously given for an exit type under any circumstance. By the same token, this does not imply that the inconsistencies must be resolved by arbitrarily granting the lowest rating previously given, as other commenters seem to believe.

In order to resolve the inconsistencies, preference was generally given to the more reliable passenger ratings contained in the second table of § 25.807(d)(1). Where substituting the passenger ratings of the second table would have resulted in significant increases for certain combinations of exit types shown in the first table, specific constraints on their use were proposed in § 25.807(g). As a result, there was no significant increase in any instance, an insignificant increase of one passenger seat in three instances, and significant decreases of 14 and 24 seats in two others. As noted above, the increase of one seat would be negligible insofar as the egress capability of the exits is concerned; however, it would be more than compensated for by the proposed

improvement in escape slide deployment time in any event. Although most transport category airplanes are required to have escape slides, some have exits located close enough to the ground that slides are not needed. For those, even more time would be afforded for egress since no time would be needed for slide deployment. No supporting data were presented to justify either greater or lower passenger ratings; therefore, the various exit types are rated as proposed.

Two commenters support the proposed reduction in passenger ratings of closely located Type III exits in proposed § 25.807(g)(7). Another commenter opposes the proposed reduction and believes that the primary considerations are integrity of the access and optimized opening mechanism and hatch weight. The FAA concurs that those are both important considerations; however, they are not relevant to the proposal. As noted above, actual demonstrations show that the rate of egress through one exit is consistently less because some evacuees must bypass the first exit they reach to use that exit.

A third commeter does not support the proposed reduction in passenger ratings of closely located Type III exits because, according to the commenter, extensive full scale evacuation tests have justified the 70 passenger rating of Type III exits regardless of their spacing and the exit flow is determined by the exit opening rather than the aisle flow rate. Again, the comments are not relevant to the proposal. The issue is not whether the aisle is capable of feeding enough evacuees to maintain maximum flow nor whether the rating for Type III exits in general is justified. Instead, the proposed reduction recognizes that some persons, who must bypass the first exit they reach and egress through the other exit for maximum total flow to occur, choose to join the line of evacuees waiting to use the first exit. Spacing exits farther apart and having more passengers seated between them reduces or eliminate altogether the number of passengers who must bypass an exit for maximum total flow.

One commenter believes that the criteria for reduction in the ratings should be 84 inches between exit centerlines rather than three passenger seat rows, based on an assumed minimum seat row pitch of 28 inches. As noted above, three passenger seat rows would typically result in approximately 80 to 90 inches between adjacent vertical edges of the two exits, or 100 or 120 inches between exit centerlines. Regardless of the value chosen, the FAA does not concur because the pertinent parameter is not the measured distance between the exits, per se, but the number of rows (i.e., the number of passengers) located between the exits. The comment does, however, raise the possibility that the phrase ''* * * two Type III exits located within three passenger seat rows of each other * * *'' could be misinterpreted. To preclude any confusion in that regard, § 25.807(g)(7), as adopted, reads'' * * * two Type III exits that are separated by fewer than three passenger seat rows * * *''

One commenter does not concur that the combined credit for all Type III exits should be limited to 70 passengers, i.e., no or very limited credit given for more than two pairs of Type III exits. The commenter notes that it is possible to distribute more than two pairs of Type III exits in airplanes with exceptionally long wing chord, such as supersonic transports.

The FAA is not aware of any previously type-certificated transport category airplane with more than two pairs of Type III exits. Generally, designers have elected to utilize Type III exits only when they can be located over the wing, inherently limiting airplanes to only two such exits because of the limited wing chord length available. As the commenter suggested, it is possible that there may be future airplanes with extremely long wing chords over which more than two pairs of Type III exits could be distributed. Also, it is possible to utilize Type III exits at non-overwing locations. Nevertheless, the use of more than two pairs of Type III exits would be a novel or unusual design feature not envisioned at the time the standards for such exits were developed. Based on information presently available, there are serious doubts as to the viability of multiple pairs of such exits in regard to both access within the cabin and orderly escape from them outside the airplane. In addition, the advisability of fewer larger exits in favor of having more than two pairs of Type III exits is questionable. In the absence of extensive additional testing, the FAA does not concur that the combined credit for all Type III exit pairs should exceed 70 passengers.

One commenter believes that a 42 inch wide escape route is needed for two adjacent Type III exits only when the two exits share a common escape route. (This requirement was proposed as § 25.803(e)(1); however, it would become § 25.810(c)(1) due to the change in editorial structure that resulted from Amendment 25–72.) That was, in fact, the intent of the proposal; however, it appears in light of the comment that ''adjacent'' may result in varying interpretations. To preclude any confusion in this regard, § 25.810(c)(1) refers to a common escape route from two Type III exits rather than an escape route from adjacent Type III exits.

A commenter believes that there is confusion in proposed § 25.785(h) between ''near'' and ''adjacent'' in regard to the proximity of flight attendant seats to Type B exits. Actually, the proposed rule is the same as current § 25.785(h) insofar as use of those terms is concerned.

Contrary to the commenter's assertion that the terms are presently considered interchangeable, the distinction in terminology is used because Type A and, as proposed, Type B exits must meet a higher standard than other floor-level exits. Any flight attendant seats provided must be located in the general vicinity of required floor-level exits; however, there is no requirement to provide a separate flight attendant seat for each floor-level exit other than a Type A exit or, as proposed, a Type B exit. In some instances, the number of required floor-level exits may exceed the number of flight attendant seats provided; in that case, one seated flight attendant would be expected to serve more than one exit, e.g., exits located on opposite sides of the cabin. The seat provided for that flight attendant can be located ''near,'' i.e., in the general vicinity of, both exits, but it would not generally be considered to be located ''adjacent,'' or next to, both exits—particularly if the exits are located on opposite sides of the cabin. For Type A and, as proposed, Type B exits, a flight attendant seat must be provided for each exit and must generally be located next to the exit, not just in the general vicinity. The distinction provided by the terms ''near'' and ''adjacent'' is, therefore, correct.

The same commenter note that proposed § 25.807(e) would require exits to be distributed as uniformly as 'possible,' while earlier language required them to be distributed as uniformly as practicable.'' Actually, the word ''practicable'' was replaced with ''practical'' when the requirement was moved to § 25.813 in Amendment 25–72. The FAA has carefully considered the definition of each of the three terms, as well as the intent of the rule, and has concluded that the present term ''practical'' is appropriate and should be retained. Advisory Circular 25.807–1 provides guidance material concerning compliance with this section.

One commenter objects to the proposed requirement that if a Type A, Type B or Type C exit is installed, there must be at least two Type C or larger exits installed in each side of the

fuselage. The commenter asserts that the requirements for uniformity of passenger exit distribution and the ''certification process'' would ensure that the loss of one exit would not have a critical impact on the evacuation capability of the airplane. As noted above, this requirement was proposed to ensure that adequate evacuation capability would be maintained in the event a primary exit became unusable. In the absence of this proposal, it would be possible for a 145 passenger airplane, for example, to be type certificated with one Type A exit and one Type III exit in each side of the fuselage. If one of the Type A exits was unusable due to fire, structural damage or other adverse circumstance, 38% of the total egress capability would be lost. Similarly, if both Type A exits were unusable, only 24% of the egress capability would remain. Contrary to the commenter's assertion, the requirements for uniformity of passenger exit distribution would not ensure that the loss of one exit would not have a critical impact on the evacuation capability of the airplane.

Escape Slide Deployment

Several commenters object to the times specified for erection of the assist means serving proposed Type C exits; however, none present any factual data to support their apparent contention that more time should be permitted for erection. As discussed above, the proposed erection time is based on the demonstrated capability of current state-of-the-art devices.

One commenter supports the proposed reduction in erection times, but notes that essential equipment should not be relocated to the airplane to achieve those reductions. Since the assist means remains attached to the airplane, there would be no reason to require any essential equipment to be attached to the device insofar as it functions as an assist means. It appears, however, that the commenter is actually referring to dual-purpose inflatable devices, sometimes referred to as slide rafts. Slide rafts are designed to remain attached to the airplane and serve as assist means during an emergency evacuation on land, or to be detached from the airplane and serve as liferafts following a ditching. Section 25.1415(c) currently requires approved survival equipment to be attached to each liferaft, and that requirement would not be affected by any of the changes proposed in Notice 90–4.

Some commenters also object to initiating the measurement of erection time when the means for opening the exit is actuated rather than when erection is begun, as is currently specified for other exit types. It is not clear whether their intent is to achieve a more relaxed total deployment interval by specifying that the device must be fully erect within 10 seconds after erection is begun, or whether they simply object to including exit opening in the time interval regardless of the total time permitted. In contrast, another commenter, a foreign airworthiness authority, recommends that the erection duration and starting time requirements for other types of exits should also be consistent with those proposed for new Type C exits.

As noted above, the proposed erection time is based on current state-of-the-art, and the FAA does not concur that a more relaxed total deployment interval is justified. Including exit actuation time in the total deployment interval actually provides the designer more flexibility in achieving the desired goal. If the exit opening time is especially rapid, there would be more time available for erection of the assist device. On the contrary, if the erection time is especially rapid, there would be more time available for exit opening. The other commenter's recommendation that the erection duration and starting time requirements for other types of exits should be consistent with those proposed for Type C exits appears to have merit. Although it is beyond the scope of Notice 90–4, it will be considered for possible future rulemaking.

One commenter, a manufacturer of inflatable assist means, questions what constitutes when ''deployment is begun'' and suggests the phrase ''actuation of the inflation controls is begun'' be used instead. The commenter notes that the latter phrase is used in Technical Standard Order (TSO) C69b which contains design standards for off-wing escape slides.

Generally, the two phrases are interchangeable since the assist means are inflatable devices. Since TSO–C69b pertains specifically to inflatable devices, the phrase ''actuation of the inflation controls is begun'' is appropriate in that document. Unlike the TSO, part 25 does not require the assist means to be an inflatable device. It would, therefore, be inappropriate to use that phrase in part 25 since the assist means may, in fact, not be an inflatable device. For the same reason, the FAA concurs with another commenter that the phrase ''actuation of the inflation system'' in proposed § 25.809(h) is inappropriate. This requirement, now contained in § 25.810(d)(4), has been changed to read, ''actuation for the erection system.''

Adoption of the Final Rule

As noted above, the editorial structure of certain portions of part 25 was changed considerably subsequent to the publication of Notice 90–4. Except for the substantive changes discussed above and a number of non-substantive changes made for conformity with part 25 as it is not structured, the amendments are adopted as proposed in Notice 90–4.

Final Regulatory Evaluation, Final Regulatory Flexibility Determination, and Trade Impact Assessment

Proposed changes to Federal Regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule: (1) will generate benefits that justify its costs but because of the public interest is a ''significant regulatory action'' as defined in the Executive Order; (2) is ''significant'' as defined in DOT's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; and (4) will not constitute a barrier to international trade. These analyses, available in the docket, are summarized below.

Regulatory Evaluation Summary

Exits

Overall, changes to the types and number of required passenger emergency exits will not likely result in significant modifications to cabin interiors nor result in significant cost differentials, either positive or negative. Part 25 airplane exit configurations are variable and are seldom at the maximum limit in terms of passengers per exit. Any increases in costs would be far outweighed by the benefits of enhanced design flexibility, consistency in standards, and improved evacuation capabilities.

The addition of Type B and Type C exits will provide manufacturers with increased design flexibility. Configurations with Types B and C exits will likely cost no more, and potentially less, than configurations without these exits since manufacturers will most

likely not utilize them unless it is cost-effective to do so.

The revisions relating to Type I exits could increase costs in certain instances. The current standards allow an increase in passenger seating configuration ranging from 45 to 70 for each additional Type I exit pair, depending on airplane exit configuration and total passenger seating capacity. The revisions will limit the allowed increase for Type I exit pairs to 45 passengers for all exit configurations and seating capacities.

Limiting Type I exit pairs to 45 passengers will improve safety. It is clear that 45 passengers can evacuate through a pair of Type I exits more expeditiously than can a greater number. An aircraft having two pairs of Type I exits and two pairs of Type III exits can have 179 passengers under the current standards but only 155 passengers under the revised standards, a reduction of 13 percent. However, a manufacturer of a design which includes 179 passengers (with two pairs each of Type I and Type III exits) that desires to maintain that capacity could, under the revised standards, replace the two Type I exit pairs with Type C exit pairs (the two new Type C pairs allow 110 passengers and the two Type III pairs another 70 for a total of 180 passengers). Evacuation from an airplane with the modified configuration would be easier since the Type C exit is six inches wider than the Type I exit. Benefits resulting from this safety enhancement would easily exceed any incremental design/manufacturing costs.

While it is difficult to estimate the number of fatalities or injuries that might be avoided by the revised rule, studies have shown that exit flow rates are proportional to exit widths within the 24 to 42 inch range. In one study, the evacuation rate increased by one occupant every 12 seconds for each six inch increase in exit width (''Study of FAR § 25.807(c) Emergency Exits,'' FAA Aeronautical Center, May 1975, Project Report No. 70–597–120A). In another study, the National Bureau of Standards (NBS) (since renamed the National Institute for Standards and Technology), analyzed accidents involving fire and fatalities that occurred between 1965 and 1982 and estimated the number of fatalities that could have been avoided if passengers had additional time to escape as a result of reduced seat cushion flammability ('Decision Analysis Model for Passenger-Aircraft Fire Safety with Application to Fire Blocking of Seats,'' National Bureau of Standards, March 1984, NBSTR 84–2817, DOT/FAA/CT/84–8). NBS estimated that of 712 fire fatalities during the period analyzed, 109 could have been avoided if there had been 20 additional seconds of evacuation time (a rate of 3 lives saved per 100 million passenger enplanements). While having more time to evacuate an airplane is not the same as being able to evacuate an airplane faster, it can nevertheless serve as a proxy for estimating benefits, because the end result is the same—more passengers can egress before fire or explosion makes egress impossible. Reduced crowding at exits and the consequent decrease in evacuation time resulting from the revised exit standards could potentially save several lives in just one accident.

Escape Slides

The reduced time allowed for escape slide erection will provide faster emergency evacuation rates and potentially prevent some fatalities or injuries that otherwise might be sustained. The technology to meet the revised standard is available and will not add to the cost of slides. The rule changes basically update slide requirements to current technology. Since costs will be unaffected and safety enhanced, the revisions are cost beneficial.

Regulatory Flexibility Determinations

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The FRA requires agencies to assess whether rules would have ''a significant economic impact on a substantial number of small entities,'' and in cases where they would, to conduct a Regulatory Flexibility Analysis. The FAA size threshold for a small aircraft manufacturer is 75 or fewer employees (per FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance). Since there are no manufacturers of part 25 airplanes with 75 or fewer employees, the rule will not have ''a significant economic impact on a substantial number of small entities.''

International Trade Impact Assessment

The rule will have no effect on the sale of U.S. airplanes in foreign markets or the sale of foreign airplanes in the U.S.

Federalism Implications

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

Conclusion

For the reasons given earlier in the preamble, the FAA has determined that this is a ''significant'' regulation as defined in Executive Order 12866 and is ''significant'' as defined in Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) because of the public interest involved. In addition, it is certified under the criteria of the Regulatory Flexibility Act that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Adoption of Amendment

Accordingly, the FAA amends 14 CFR part 25 of the Federal Aviation Regulations (FAR), as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702 and 44704.

2. By amending § 25.783 by revising paragraph (h) to read as follows:

§ 25.783 Doors.

* * * * *

(h) Each passenger entry door in the side of the fuselage must meet the applicable requirements of §§ 25.807 through 25.813 for a Type II or larger passenger emergency exit.

* * * * *

3. By amending § 25.785 by revising paragraph (h)(1) to read as follows:

§ 25.785 Seats, berths, safety belts, and harnesses.

* * * * *

(h) * * *

(1) Near a required floor level emergency exit, except that another location is acceptable if the emergency egress of passengers would be enhanced with that location. A flight attendant seat must be located adjacent to each Type A or B emergency exit. Other flight attendant seats must be evenly distributed among the required floor-

level emergency exits to the extent feasible.

* * * * *

4. By amending § 25.807 by revising paragraphs (a)(1) through (a)(4), (a)(7), and (d) through (f) and by adding paragraphs (a)(8), (a)(9), and (g) through (i) to read as follows:

§ 25.807 Emergency exits.

(a) * * *

(1) *Type I.* This type is a floor-level exit with a rectangular opening of not less than 24 inches wide by 48 inches high, with corner radii not greater than eight inches.

(2) *Type II.* This type is a rectangular opening of not less than 20 inches wide by 44 inches high, with corner radii not greater than seven inches. Type II exits must be floor-level exits unless located over the wing, in which case they must not have a step-up inside the airplane of more than 10 inches nor a step-down outside the airplane of more than 17 inches.

(3) *Type III.* This type is a rectangular opening of not less than 20 inches wide by 36 inches high with corner radii not greater than seven inches, and with a step-up inside the airplane of not more than 20 inches. If the exit is located over the wing, the step-down outside the airplane may not exceed 27 inches.

(4) *Type IV.* This type is a rectangular opening of not less than 19 inches wide by 26 inches high, with corner radii not greater than 6.3 inches, located over the wing, with a step-up inside the airplane of not more than 29 inches and a step-down outside the airplane of not more than 36 inches.

* * * * *

(7) *Type A.* This type is a floor-level exit with a rectangular opening of not less than 42 inches wide by 72 inches high, with corner radii not greater than seven inches.

(8) *Type B.* This type is a floor-level exit with a rectangular opening of not less than 32 inches wide by 72 inches high, with corner radii not greater than six inches.

(9) *Type C.* This type is a floor-level exit with a rectangular opening of not less than 30 inches wide by 48 inches high, with corner radii not greater than 10 inches.

* * * * *

(d) *Asymmetry.* Exits of an exit pair need not be diametrically opposite each other nor of the same size; however, the number of passenger seats permitted under paragraph (g) of this section is based on the smaller of the two exits.

(e) *Uniformity.* Exits must be distributed as uniformly as practical, taking into account passenger seat distribution.

(f) *Location.* (1) Each required passenger emergency exit must be accessible to the passengers and located where it will afford the most effective means of passenger evacuation.

(2) If only one floor-level exit per side is prescribed, and the airplane do not have a tail-cone or ventral emergency exit, the floor-level exits must be in the rearward part of the passenger compartment unless another location affords a more effective means of passenger evacuation.

(3) If more than one floor-level exit per side is prescribed, and the airplanes does not have a combination cargo and passenger configuration, at least one floor-level exit must be located in each side near each end of the cabin.

(g) *Type and number required.* The maximum number of passenger seats permitted depends on the type and number of exits installed in each side of the fuselage. Except as further restricted in paragraphs (g)(1) through (g)(9) of this section, the maximum number of passenger seats permitted for each exit of a specific type installed in each side of the fuselage is as follows:

Type A	110
Type B	75
Type C	55
Type I	45
Type II	40
Type III	35
Type IV	9

(1) For a passenger seating configuration of 1 to 9 seats, there must be at least one Type IV or larger overwing exit in each side of the fuselage or, if overwing exits are not provided, at least one exit in each side that meets the minimum dimensions of a Type III exit.

(2) For a passenger seating configuration of more than 9 seats, each exit must be a Type III or larger exit.

(3) For a passenger seating configuration of 10 to 19 seats, there must be at least one Type III or larger exit in each side of the fuselage.

(4) For a passenger seating configuration of 20 to 40 seats, there must be at least two exits, one of which must be a Type II or larger exit, in each side of the fuselage.

(5) For a passenger seating configuration of 41 to 110 seats, there must be at least two exits, one of which must be a Type I or larger exit, in each side of the fuselage.

(6) For a passenger seating configuration of more than 110 seats, the emergency exits in each side of the fuselage must include at least two Type I or larger exits.

(7) The combined maximum number of passenger seats permitted for all Type III exits is 70, and the combined maximum number of passenger seats permitted for two Type III exits in each side of the fuselage that are separated by fewer than three passenger seat rows in 65.

(8) If a Type A, Type B, or Type C exit is installed, there must be at least two Type C or larger exits in each side of the fuselage.

(9) If a passenger ventral of tail cone exit is installed and that exit provides at least the same rate of egress as a Type III exit with the airplane in the most adverse exit opening condition that would result from the collapse of one or more legs of the landing gear, an increase in the passenger seating configuration is permitted as follows:

(i) For a ventral exit, 12 additional passenger seats.

(ii) For a tail cone exit incorporating a floor level opening of not less than 20 inches wide by 60 inches high, with corner radii not greater than seven inches, in the pressure shell and incorporating an approved assist means in accordance with § 25.810(a), 25 additional passenger seats.

(iii) For a tail cone exit incorporating an opening in the pressure shell which is at least equivalent to a Type III emergency exit with respect to dimensions, step-up and step-down distance, and with the top of the opening not less than 56 inches from the passenger compartment floor, 15 additional passenger seats.

(h) *Excess exits.* Each emergency exit in the passenger compartment in excess of the minimum number of required emergency exits must meet the applicable requirements of § 25.809 through § 25.812, and must be readily accessible.

(i) *Ditching emergency exits for passengers.* Whether or not ditching certification is requested, ditching emergency exits must be provided in accordance with the following requirements, unless the emergency exits required by paragraph (g) of this section already meet them:

(1) For airplanes that have a passenger seating configuration of nine or fewer seats, excluding pilot seats, one exit above the waterline in each side of the airplane, meeting at least the dimensions of a Type IV exit.

(2) For airplanes that have a passenger seating configuration of 10 of more seats, excluding pilot seats, one exit above the waterline in a side of the airplane, meeting at least the dimensions of a Type III exit for each unit (or part of a unit) of 35 passenger seats, but no less than two such exits in the passenger cabin, with one on each side of the airplane. The passenger seat/

exit ratio may be increased through the use of larger exits, or other means, provided it is shown that the evacuation capability during ditching has been improved accordingly.

(3) If it is impractical to locate side exits above the waterline, the side exits must be replaced by an equal number of readily accessible overhead hatches of not less than the dimensions of a Type III exit, except that for airplanes with a passenger configuration of 35 or fewer seats, excluding pilot seats, the two required Type III side exits need be replaced by only one overhead hatch.

5. By amending § 25.810 by revising paragraphs (a) introductory text, (a)(1) introductory text, (a)(1)(ii), (b), (c)(1), and (d) to read as follows:

§ 25.810 Emergency egress assist means and escape routes.

(a) Each non over-wing Type A, Type B or Type C exit, and any other non over-wing landplane emergency exit more than 6 feet from the ground with the airplane on the ground and the landing gear extended, must have an approved means to assist the occupants in descending to the ground.

(1) The assisting means for each passenger emergency exit must be a self-supporting slide or equivalent; and, in the case of Type A or Type B exits, it must be capable of carrying simultaneously two parallel lines of evacuees. In addition, the assisting means must be designed to meet the following requirements—

* * * * *

(ii) Except for assisting means installed at Type C exits, it must be automatically erected within 6 seconds after deployment is begun. Assisting means installed at Type C exits must be automatically erected within 10 seconds from the time the opening means of the exit is actuated.

* * * * *

(b) Assist means from the cabin to the wing are required for each type A or Type B exit located above the wing and having a stepdown unless the exit without an assist-means can be shown to have a rate of passenger egress at least equal to that of the same type of non over-wing exit. If an assist means is required, it must be automatically deployed and automatically erected concurrent with the opening of the exit. In the case of assist means installed at Type C exits, it must be self-supporting within 10 seconds from the time the opening means of the exits is actuated. For all other exit types, it must be self-supporting 6 seconds after deployment is begun.

(c) * * *

(1) The escape route from each Type A or Type B passenger emergency exit, or any common escape route from two Type III passenger emergency exits, must be at least 42 inches wide; that from any other passenger emergency exit must be at least 24 inches wide; and

* * * * *

(d) Means must be provided to assist evacuees to reach the ground for all Type C exits located over the wing and, if the place on the airplane structure at which the escape route required in paragraph (c) of this section terminates is more than 6 feet from the ground with the airplane on the ground and the landing gear extended, for all other exit types.

(1) If the escape route is over the flap, the height of the terminal edge must be measured with the flap in the takeoff or landing position, whichever is higher from the ground.

(2) The assisting means must be usable and self-supporting with one or more landing gear legs collapsed and under a 25-knot wind directed from the most critical angle.

(3) The assisting means provided for each escape route leading from a Type A or B emergency exit must be capable of carrying simultaneously tow parallel lines of evacuees; and, the assisting means leading from any other exit type must be capable of carrying as many parallel lines of evacuees as there are required escape routes.

(4) The assisting means provided for each escape route leading from a Type C exit must be automatically erected within 10 seconds from the time the opening means of the exit is actuated, and that provided for the escape route leading from any other exit type must be automatically erected within 10 seconds after actuation of the erection system.

6. By amending § 25.811 by revising the introductory texts of paragraphs (e)(2) and (e)(4) to read as follows:

§ 25.811 Emergency exit marking.

* * * * *

(e) * * *

(2) Each Type A, Type B, Type C or Type I passenger emergency exit operating handle must—

* * * * *

(4) Each Type A, Type B, Type C, Type I, or Type II passenger emergency exit with a locking mechanism released by rotary motion of the handle must be marked—

* * * * *

7. By amending § 25.812 by revising paragraph (g)(1)(ii) to read as follows:

§ 25.812 Emergency lighting.

* * * * *

(g) * * *

(1) * * *

(ii) Not less than 0.05 foot-candle (measured normal to the direction of incident light) along the 30 percent of the slip-resistant portion of the escape route required in § 25.810(c) that is farthest from the exit for the minimum required width of the escape route; and

* * * * *

8. By amending § 25.813 by revising paragraphs (a) introductory text, (a)(1), and (b) to read as follows:

§ 25.813 Emergency exit access.

* * * * *

(a) There must be a passageway leading from the nearest main aisle to each Type A, Type B, Type C, Type I, or Type II emergency exit and between individual passenger areas. Each passageway leading to a Type A or Type B exit must be unobstructed and at least 36 inches wide. Passageways between individual passenger areas and those leading to Type I, Type II, or Type C emergency exits must be unobstructed and at least 20 inches wide. Unless there are two or more main aisles, each Type A or B exit must be located so that there is passenger flow along the main aisle to that exit from both the forward and aft directions. If two or more main aisles are provided, there must be unobstructed cross-aisles at least 20 inches wide between main aisles. There must be—

(1) A cross-aisle which leads directly to each passageway between the nearest main aisle and a Type A or B exit; and

* * * * *

(b) Adequate space to allow crewmember(s) to assist in the evacuation of passengers must be provided as follows:

(1) The assist space must not reduce the unobstructed width of the passageway below that required for the exit.

(2) For each Type A or Type B exit, assist space must be provided at each side of the exit regardless of whether a means is required by § 25.810(a) to assist passengers in descending to the ground from that exit.

(3) Assist space must be provided at one side of any other type exit required by § 25.810(a) to have a means to assist passengers in descending to the ground from that exit.

* * * * *

Issued in Washington, D.C., on November 1, 1996.

David R. Hinson,

Administrator.

[FR Doc. 96–28650 Filed 11–7–96; 8:45 am]

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November 8, 1996

Part III

Department of Housing and Urban Development

24 CFR Part 245

Tenant Participation in Multifamily Housing Projects; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 245

[Docket No. FR–4136–F–01]

RIN 2502–AG83

Tenant Participation in Multifamily Housing Projects

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule consolidates into one subpart the nearly identical provisions concerning tenant participation in certain mortgagor initiated actions that require HUD approval. Currently, these procedures are found in four subparts. The rule also provides an easier to follow statement of applicability.

EFFECTIVE DATE: December 9, 1996.

FOR FURTHER INFORMATION CONTACT: Barbara D. Hunter, Director, Program Management Division, Office of Multifamily Housing Development, Room 6184, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–4162. (This is not a toll-free telephone number.) Hearing- or speech-impaired individuals may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, the Department of Housing and Urban Development conducted a page-by-page review of its regulations to determine which can be eliminated, consolidated, or otherwise improved.

As a result of this review the Department determined that 24 CFR part 245 could be streamlined to make it more understandable and easier to use. Part 245 implements various provisions of section 202 of the Housing and Community Development Amendments of 1978 (42 U.S.C. 1715z-1b). It contains provisions on tenants' right to organize, on noninterference with tenants' efforts to obtain assistance, and the procedures for tenant participation in several mortgagor initiated actions that require HUD approval.

Part 245 applies to certain types of multifamily housing projects, each of which is or has been subsidized by HUD. This includes assisted projects that are or were insured by HUD under the National Housing Act, projects with direct loans from HUD under section 202 of the Housing and Urban Development Act of 1965, and State and local housing agency financed projects that receive section 236 or Rent Supplement assistance.

This rule revises § 245.10 to make it easier for the user to move from the information known to the user, namely, type of project and financing and get the information the user seeks from the section, namely, which subparts apply to a specific project.

Under the current rule there are five subparts containing tenant participation procedures. Subparts D through H concern, respectively, approvals of: (1) Increase in maximum permissible rents, (2) conversion from project-paid utilities to tenant paid utilities, (3) conversion of residential units to a nonresidential use, or to cooperative housing or condominiums, (4) partial release of mortgage security, and (5) major capital additions to the project.

This rule consolidates into one subpart (subpart E) the procedures for the actions described in items (2) through (5), above. It does not substantively alter the procedures. Rather, it reflects the fact that each of the current separate procedures are substantially the same and lend themselves to being consolidated. The Department has retained a separate subpart (subpart D) for tenant rent increase procedures. While the overall rent increase process is similar to the other tenant participation procedures, it is sufficiently different in detail that it would not be helpful to the user to consolidate it with the other procedures.

The rule also makes a conforming amendment to § 245.15(a) and updates cross-references in § 245.205.

Justification for Final Rulemaking

The Department generally publishes a rule for public comment before issuing a rule for effect, in accordance with its regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1). The Department finds that good cause exists to publish this rule for effect without first soliciting public comment. This rule clarifies and consolidates regulatory provisions and does not establish or affect substantive policy. Therefore, prior public comment is unnecessary.

Findings and Certifications

Paperwork Reduction Act Statement

This rule does not alter existing information collection requirements. The information collection requirements contained in §§ 245.416, 245.417, 245.418, 245.419, and 245.425 of this rule were previously submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995 (42 U.S.C. 3501–3520) and have been approved under the control number 2502–0310. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless the collection displays a valid control number.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule streamlines the 24 CFR part 245 by removing redundant provisions. The rule will have no adverse or disproportionate economic impact on small businesses.

Environment

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 implementing section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m., weekdays, at the Office of the Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

Unfunded Mandates Reform Act

The Secretary has reviewed this rule before publication and by approving it certifies, in accordance with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule do not have federalism implications and, thus, are not subject

to review under the Order. No programmatic or policy changes result from its promulgation which would affect the existing relationship between the Federal government and State and local government.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule as those policies and programs relate to family concerns.

List of Subjects in 24 CFR Part 245

Condominiums, Cooperatives, Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies, Reporting and recordkeeping requirements, Utilities.

Accordingly, part 245 of title 24 of the Code of Federal Regulations is amended as follows:

PART 245—TENANT PARTICIPATION IN MULTIFAMILY HOUSING PROJECTS

1. The authority citation for part 245 is revised to read as follows:

Authority: 12 U.S.C. 1715z–1b; 42 U.S.C. 3535(d).

2. Section 245.10 is revised to read as follows:

§ 245.10 Applicability of part.

(a) Except as otherwise expressly limited in this section, this part applies in its entirety to a mortgagor of any multifamily housing project that meets the following—

(1) *Project subject to HUD insured or held mortgage under the National Housing Act.* The project has a mortgage that—

(i) Has received final endorsement on behalf of the Secretary and is insured or held by the Secretary under the National Housing Act (12 U.S.C. 1701—1715z–20); and

(ii) Is assisted under:

(A) Section 236 of the National Housing Act (12 U.S.C. 1715z–1);

(B) The Section 221(d)(3) BMIR Program;

(C) The Rent Supplement Program;

(D) The Section 8 Loan Management Set-Aside Program following conversion to such assistance from the Rent Supplement Program assistance;

(2) *Section 202 project.* The project has a direct mortgage loan from HUD at a below-market interest rate under the Section 202 Loans for the Elderly or Handicapped BMIR Program. This part applies in its entirety to the mortgagor if the project is assisted under the Rent Supplement Program or under the Section 8 LMSA Program following conversion to such assistance from Rent Supplement Program assistance. If the project is not so assisted, only subparts A, D, and E of this part apply to the mortgagor;

(3) *Formerly HUD-owned project.* The project—

(i) Before being acquired by the Secretary, was assisted under:

(A) Section 236 of the National Housing Act (12 U.S.C. 1715z–1);

(B) The Section 221(d)(3) BMIR Program;

(C) The Rent Supplement Program; or

(D) The Section 8 LMSA Program following conversion to such assistance from assistance under the Rent Supplement Program; and

(ii) Was sold by the Secretary subject to a mortgage insured or held by the Secretary and an agreement to maintain the low- and moderate-income character of the project; or

(4) *State or local housing finance agency project.* The project receives assistance under section 236 of the National Housing Act (12 U.S.C. 1715z–1) or the Rent Supplement Program administered through a State or local housing finance agency, but does not have a mortgage insured under the National Housing Act or held by the Secretary. Subject to the further limitation in paragraph (b) of this section, only the provisions of subparts A and C of this part and of subpart D of this part for requests for approval of a conversion of a project from project-paid utilities to tenant-paid utilities or of a reduction in tenant utility allowances, apply to a mortgagor of such a project.

(b) *Limitation for cooperative mortgagor.* Only the provisions of subparts A and C of this part apply to a mortgagor of any multifamily housing project described in paragraph (a) of this section if the mortgagor is a cooperative housing corporation or association.

(c) *Definitions.*

Rent Supplement Program means the assistance program authorized by section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s).

Section 8 LMSA Program means the Section 8 Loan Management Set-Aside Program implemented under 24 CFR part 886, subpart A.

Section 202 Loans for the Elderly or Handicapped BMIR Program means the below-market interest rate loan program authorized under section 202 of the Housing Act of 1959, as in effect before August 22, 1974 (12 U.S.C. 1701q).

Section 221(d)(3) BMIR Program means the below-market interest rate mortgage insurance program under section 221(d)(3) and the proviso of section 221(d)(5) of the National Housing Act (12 U.S.C. 1715l(d)(3) and 1715l(d)(5)).

3. In § 245.15, paragraph (a) is revised to read as follows:

§ 245.15 Notice to tenants.

(a) Whenever a mortgagor is required under subparts D or E of this part to serve notice on the tenants of a project, the notice must be served by delivery, except, for a high-rise project, the notice may be served either by delivery or by posting. If service is made by delivery, a copy of the notice must be delivered directly to each unit in the project or mailed to each tenant. If service is made by posting, the notice must be posted in at least three conspicuous places within each building in which the affected dwelling units are located and, during any prescribed tenant period, in a conspicuous place at the address stated in the notice where the materials in support of the mortgagor's proposed action are to be made available for inspection and copying. Posted notices must be maintained intact and in legible form during any prescribed notice period.

* * * * *

§ 245.205 [Amended]

4. In § 245.205:

a. Paragraph (b) is amended by removing the words ''under part 215 of this chapter'' and adding, in their place, the words ''under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s)''; and

b. Paragraph (c) is amended by removing the words ''part 882'' and adding, in their place, the words ''part 982''.

5. Subpart E is revised to read as follows:

Subpart E—Procedures for Requesting Approval of a Covered Action

Sec.

Subpart E—Procedures for Requesting Approval of a Covered Action

§ 245.405 Applicability of subpart.

The requirements of this subpart apply to any request by a mortgagor, as provided by § 245.10, for HUD approval of one or more of the following covered actions:

(a) Conversion of a project from project-paid utilities to tenant-paid utilities, or a reduction in tenant utility allowances.

(b) Conversion of residential units in a multifamily housing project to a nonresidential use or to condominiums, or the transfer of the project to a cooperative housing mortgagor corporation or association. Conversion of a project to a cooperative or of a portion of a project to nonresidential use does not constitute a change of use requiring mortgagee approval.

(c) A partial release of mortgage security. The requirements of this subpart, however, do not apply to any release of property from a mortgage lien with respect to a utility easement or a public taking of such property by condemnation or eminent domain.

(d) Making major capital additions to the project. For the purposes of this subpart, the term ''major capital additions'' includes only those capital improvements that represent a substantial addition to the project. Upgrading or replacing existing capital components of the project does not constitute a major capital addition to the project.

§ 245.410 Notice to tenants.

At least 30 days before submitting a request to HUD for approval of an action described in § 245.405, the mortgagor must serve notice of the proposed covered action on the project tenants, as provided in § 245.15. The notice shall state that—

(a) The mortgagor intends to submit a request to HUD for approval of the covered action or actions specified in the notice;

(b) The tenants have the right to participate as provided in § 245.420, and what those rights are, including the address at which the materials required to be made available for inspection and copying under that section are to be kept;

(c) Tenant comments on the proposed covered action may be sent to the mortgagor at a specified address or directly to the local HUD office, and comments sent to the mortgagor will be transmitted to HUD, along with the mortgagor's evaluation of them, when the request for HUD's approval is submitted;

(d) HUD will approve or disapprove the proposed action, based upon its review of the information submitted and all tenant comments received. In the case of a proposed reduction in tenant-paid utilities, the notice must also state that HUD may adjust the proposed reduction upward or downward;

(e) In the case of a proposed conversion of residential units, partial release of mortgage security, or major capital additions to the project, the proposed action may require the owner to request HUD approval of a rent increase; and

(f) The mortgagor will notify the tenants of HUD's decision and it will not begin to effect any approved action (in accordance with the terms of existing leases) until at least 30 days from the date of service of the notification.

§ 245.415 Submission of materials to HUD: Timing of submission.

(a) *Initial submission.* The mortgagor must submit the materials applicable to the covered action, as specified in §§ 245.416 through 245.419, to the local HUD office when the notice required under § 245.410 is served on the tenants.

(b) *Subsequent submission.* If additional notice under § 245.420(c) is required, the mortgagor must submit to HUD any changes to the materials required under §§ 245.416 through 245.419 when the notice required under § 245.420(c) is served on the tenants.

§ 245.416 Initial submission of materials to HUD: Conversion from project-paid utilities to tenant-paid utilities or a reduction in tenant utility allowances.

In the case of a conversion from project-paid utilities to tenant-paid utilities or a reduction in tenant utility allowances, the mortgagor must submit the following materials to the local HUD office:

(a) A copy of the notice to tenants;

(b) In the case of a proposed conversion from project-paid utilities to tenant-paid utilities—

(1) A statement indicating:

(i) The type of utility or utilities involved;

(ii) The number of units in the project by type and size;

(iii) The average utility consumption data by unit type and size for comparable projects, and utility rate information, as obtained from the utility supplier;

(iv) The estimated monthly cost of the utilities to be paid by the tenants by unit type and size, based upon the consumption data and rate information described in paragraph (b)(1)(iii) of this section;

(v) The monthly cost for the past year of paying for the utility or utilities involved on a project basis (actual cost) and by unit type and size (estimated breakdown);

(vi) An estimate of the cost of conversion, as obtained from the utility supplier or from bids from contractors;

(vii) The source and terms of financing for the conversion (to the extent known); and

(viii) The estimated effect of the conversion on the total housing costs of the tenants by unit type and size, taking into account the estimated cost of conversion (including the cost of its financing), the estimated monthly cost of utilities to be paid by the tenants by unit type and size, the proposed utility allowances, and the estimated change in the rents paid to the mortgagor resulting from the conversion; and

(2) A copy of the portion of the project's Energy Conservation Plan which addresses the cost-effectiveness determination associated with converting the project to tenant-paid utilities; and

(c) In the case of a proposed reduction in tenant utility allowances, a statement indicating the information described in paragraphs (b)(1)(i), (b)(1)(ii), (b)(1)(iii) and (b)(1)(iv) of this section, the utility allowances proposed for reduction, and a justification of the proposed reduction.

(Approved by the Office of Management and Budget under control number 2502–0310)

§ 245.417 Initial submission of materials to HUD: Conversion of residential units to a nonresidential use, or to cooperative housing or condominiums.

In the case of a conversion of residential units to a nonresidential use, or to cooperative housing or condominiums, the mortgagor must submit the following materials to the local HUD office in accordance with §§ 245.415 and 245.419:

(a) In the case of a proposed conversion of residential rental units to nonresidential use:

(1) A statement describing the proposed conversion;

(2) A statement describing the estimated effect of the proposed conversion on the value of the project, the project rent schedule, the number of dwelling units in the project, a list of the units to be converted and their occupancy, the amount of subsidy available to the project, and the project income and expenses (including property taxes);

(3) A statement assessing the compatibility of the proposed nonresidential use with the residential character of the project;

(4) Written approval of the mortgagee if required;

(5) An undertaking by the mortgagor to pay all relocation costs that may be required by HUD for tenants required to vacate the project because of the conversion; and

(6) A copy of the notice to tenants.

(b) In the case of a proposed transfer of the project to a cooperative housing mortgagor corporation or association (conversion of residential rental units to residential cooperative housing), the materials specified in paragraphs (a)(1), (a)(2) and (a)(3) of this section and the following additional materials:

(1) An estimate of the demand for cooperative housing, including an estimate of the number of present tenants interested in purchasing cooperative housing;

(2) Estimates of downpayments and monthly carrying charges that will be required; and

(3) Copies of proposed organizational documents, including By-Laws, Articles of Incorporation, Subscription Agreement, Occupancy Agreement, and Sale Document.

(c) In the case of a proposed conversion of residential rental units to condominium units, the materials specified in paragraphs (a)(1), (a)(4), and (a)(6) of this section and the following additional materials:

(1) An estimate of the demand for condominium housing, including an estimate of the number of present tenants interested in purchasing units;

(2) Estimates of downpayments, monthly mortgage payments and condominium association fees that will be required; and

(3) A list of the units to be converted and their occupancy.

(Approved by the Office of Management and Budget under control number 2502–0310)

§ 245.418 Initial submission of materials to HUD: Partial release of mortgage security.

In the case of a partial release of mortgage security, the mortgagor must submit the following materials to the local HUD office:

(a) A statement describing the portion of the property that is proposed to be released and the transaction requiring the release;

(b) A statement describing the estimated effect of the proposed release on the value of the project, the number of dwelling units in the project, the project income and expenses (including property taxes), the amount of subsidy available to the project, and the project rent schedule;

(c) A statement describing the proposed use of the property to be released and the persons who will have responsibility for the operation and maintenance of that property, and assessing the compatibility of that use with the residential character of the project;

(d) A statement describing the proposed use of any proceeds to be received by the mortgagor as a result of the release; and

(e) A copy of the notice to tenants.

(Approved by the Office of Management and Budget under control number 2502–0310)

§ 245.419 Initial submission of materials to HUD: Major capital additions.

In the case of major capital additions, the mortgagor must submit the following materials to the local HUD office:

(a) The general plans and sketches of the proposed capital additions;

(b) A statement describing the estimated effect of the proposed capital additions on the value of the project, the project income and expenses (including property taxes), and the project rent schedule;

(c) A statement describing how the proposed capital additions will be financed and the effect, if any, of that financing on the tenants;

(d) A statement assessing the compatibility of the proposed capital additions with the residential character of the project; and

(e) A copy of the notice to tenants.

(Approved by the Office of Management and Budget under control number 2502–0310)

§ 245.420 Rights of tenants to participate.

(a) The tenants (including any legal or other representatives acting for tenants individually or as a group) must have the right to inspect and copy the materials that the mortgagor is required to submit to HUD pursuant to § 245.415, for a period of 30 days from the date on which the notice required under § 245.410 is served on the tenants. During this period, the mortgagor must provide a place (as specified in the notice) reasonably convenient to tenants in the project where tenants and their representatives can inspect and copy these materials during normal business hours.

(b) The tenants have the right during this period to submit written comments on the proposed conversion to the mortgagor and to the local HUD office. Tenant representatives may assist tenants in preparing these comments.

(c) If the mortgagor, whether at HUD's request or otherwise, makes any material change during a tenant comment period in the materials submitted to HUD pursuant to § 245.415, the mortgagor must notify the tenants of the change, in the manner provided in § 245.15, and make the materials as changed available for inspection and copying at the address specified in the notice for this purpose. The tenants have a period of 15 days from the date of service of this additional notice (or the remainder of any applicable comment period, if longer) in which to inspect and copy the materials as changed and to submit comments on the proposed covered action, before the mortgagor may submit its request to HUD for approval of the covered action.

§ 245.425 Submission of request for approval to HUD.

Upon completion of the tenant comment period, the mortgagor must review the comments submitted by tenants and their representatives and prepare a written evaluation of the comments. The mortgagor must then submit the following materials to the local HUD office:

(a) The mortgagor's written request for HUD approval of the covered action;

(b) Copies of all written tenant comments;

(c) The mortgagor's evaluation of the tenant comments on the proposed conversion or reduction;

(d) A certification by the mortgagor that it has complied with all of the requirements of § 245.410, § 245.415, §§ 245.416 through 245.419, as applicable, § 245.420, and this section; and

(e) Such additional materials as HUD may have specified in writing.

(Approved by the Office of Management and Budget under control number 2502–0310)

§ 245.430 Decision on request for approval.

(a) After considering the mortgagor's request for approval and the materials submitted in connection with the request, HUD must notify the mortgagor in writing of its approval or disapproval of the proposed covered action, including, if applicable, its adjustment

upward or downward of the proposed reduction in tenant-paid utilities. HUD must provide its reasons for its determination.

(b) The mortgagor must notify the tenants of HUD's decision in the manner provided in § 245.15. If HUD has approved the proposed covered action, the notice must state:

(1) The effective date of the covered action (which must be at least 30 days from the date of service of the notice and in accordance with the terms of existing leases);

(2) In the case of HUD's approval of a conversion from project-paid utilities to tenant-paid utilities or a reduction in tenant utility allowances, the amount of the rent to be paid to the mortgagor and the utility allowance for each unit; and

(3) In the case of HUD's approval of a conversion of residential units in a multifamily housing project to a nonresidential use or the transfer of the project to a cooperative housing mortgagor corporation or association, which residential rental units are to be converted and whether the conversion is to nonresidential use or to cooperative or condominium units.

§ 245.435 Non-insured projects: Conversion from project-paid utilities to tenant-paid utilities or a reduction in tenant utility allowances.

(a) In the case of a proposed conversion from project-paid utilities to tenant-paid utilities or a reduction in tenant utility allowances involving a project that is assisted under section 236 of the National Housing Act (12 U.S.C. 1715z–1) or section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) but that does not have a mortgage insured by HUD or held by the Secretary, the provisions of this section and of §§ 245.405 through 245.425 apply to the mortgagor (project owner), except that—

(1) The notice to tenants required under § 245.410 must be modified to reflect the procedural changes made by this section;

(2) The materials (including tenant comments) required to be submitted to HUD under §§ 245.415 and 245.425 must be submitted to the State or local agency administering the Section 236 assistance or rent supplement assistance contracts, rather than to HUD; and

(3) The State or local agency must certify that the mortgagor has complied with the requirements of §§ 245.410, 245.415, 245.416, 245.420, and 245.425.

(b) After the State or local agency has considered the request for approval of a conversion or reduction that meets the requirements of § 245.425, it must make a determination to approve or disapprove the conversion, or to approve, adjust upward or downward, or disapprove the reduction. If the agency determines to approve the conversion or reduction (as originally proposed or as adjusted), it must submit to the appropriate local HUD office the mortgagor's request for approval of the conversion or reduction, along with the comments of the tenants and the mortgagor's evaluation of the comments, and must certify to HUD that the mortgagor is in compliance with the requirements of this subpart. HUD must review the agency's determination and certification and notify the agency of its approval or disapproval of the proposed conversion or of its approval, adjustment upward or downward, or disapproval of the proposed reduction. HUD will not unreasonably withhold approval of a conversion or reduction approved by the State or local agency.

(c) If the agency determines to disapprove the conversion or reduction, there is no HUD review of the agency's determination.

(d) The agency must notify the mortgagor of the final disposition of the request, and it must furnish the mortgagor with a written statement of the reasons for its approval or disapproval. The mortgagor must make the reasons for approval or disapproval known to the tenants, by service of notice on them as provided in § 245.15. If the agency has approved the proposed conversion or a reduction, the notice must set forth the information prescribed in § 245.430(b) (1) and (2).

Subparts F, G, and H [Removed]

6. Subpart F (§§ 245.505 through 245.530), subpart G (§§ 245.605 through 245.630), and subpart H (§§ 245.705 through 245.730) are removed.

Dated: October 31, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 96–28716 Filed 11–7–96; 8:45 am]

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Friday
November 8, 1996

Part IV

Department of Commerce

National Telecommunications and Information Administration

15 CFR Part 2301

Public Telecommunications Facilities Program; Final Rule and Notice of Availability of Funds

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

15 CFR Part 2301

[Docket No. 960524148–6243–02]

RIN 0660–AA09

Public Telecommunications Facilities Program

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Final rule.

SUMMARY: This document revises and clarifies the rules governing administration of the Public Telecommunications Facilities Program (PTFP). The PTFP is authorized to provide matching grants to plan and construct public telecommunications facilities.[1]

EFFECTIVE DATE: November 8, 1996.

FOR FURTHER INFORMATION CONTACT: Dennis Connors, Director, Public Broadcasting Division, NTIA, Department of Commerce, 14th Street and Constitution Avenue, NW., Room 4625, Washington, DC 20230. Telephone: (202) 482–5802; Fax (202) 482–2156. Internet address: dconnors@ntia.doc.gov.

SUPPLEMENTARY INFORMATION: In 61 FR 27230, the National Telecommunications and Information Administration (NTIA) announced proposed revisions of the rules that govern the PTFP and requested public comments on those revisions. In response to the notice of proposed rulemaking NTIA received comments from 7 different organizations.[2]

There was general support for the overall direction of the proposed revision. APTS, NPR, and NFCB supported the general thrust of the proposed clarifications and the reorganization of the rules. No opposition was received to many of NTIA's proposed changes to the rules including the incorporation of the priorities from the Appendix into the body of the rules and the changes proposed in the following sections: § 2301.1 *Program Purposes*; § 2301.3 *Applicant Eligibility;* § 2301.6 *Amount of Federal Funding*; § 2301.7 *Eligible and Ineligible Project Costs*; § 2301.9 *Deferred Applications;* § 2301.12 *Federal Communications Commission Authorizations*; § 2301.13 *Public Comments*; § 2301.14 *Supplemental Application Information*; § 2301.15 *Withdrawal of Applications*; § 2301.16 *Technical Evaluation Process*; § 2301.18 *Selection Process*; § 2301.19 *General Conditions Attached to the Federal Award*; § 2301.20 *Schedules and Reports*; § 2301.21 *Payment of Federal Funds*; § 2301.22 *Protection, Acquisition and Substitution of Equipment*; § 2301.23 *Completion of Projects*; § 2301.24 *Final Federal Payment*; § 2301.25 *Retention of Records and Annual Status Reports*; and § 2301.26 *Waivers.*

Comments on the proposed rules were mainly focused on two sections: § 2301.4 *Scope of Projects and* § 2301.17 *Evaluation Criteria.* The subject that prompted the most public comments, however, was not a section of the proposed rules, but rather a discussion in the Supplemental Information section of the Notice regarding the conversion of public broadcasting to advanced digital technologies.[3] We discuss each of these three subjects and several other issues raised by the public in the following sections.

Section 2301.4 Scope of Projects

Section 2301.4 relates to the scope of projects eligible for PTFP funding and moved a section that was an Appendix in prior years into the body of the Rules. APTS supported the incorporation of the priorities in the Rules as part of its general support for the reorganization of the PTFP Rules.

There were several comments on the proposed changes to this section. RMCPB suggested that the title of this section was nondescriptive of the content. RMCPB recommended this section be titled ''Types of Projects, Priorities.'' We agree that this is an improvement and so have modified the title to ''Types of Projects and Broadcast Priorities'' in the Final Rules.

Three organizations, NFCB, NTU and RMCPB, commented on NTIA's proposal to place all broadcast applications within the five funding priorities and revise the scope of the *Special Applications* category to consist solely of nonbroadcast projects. NFCB supported NTIA's proposal and thought that reserving the Special Applications category for non-broadcast would be useful for considering applications utilizing new technologies. NTU hoped that the proposed reorganization did not change the priority status that PTFP has developed for distance learning projects over the past decade. RMCPB questioned whether, under the proposed rules, NTIA continued to possess the discretionary authority to award grants to eligible *broadcast* as well as nonbroadcast applicants with unique/innovative proposals. NTIA encourages the submission of applications that propose unique and innovative telecommunications projects, whether using broadcast or nonbroadcast technologies. We have therefore clarified this position through the creation of § 2301.4(b)(6) *Other Cases* within the Broadcast Applications section. This section provides broadcast applicants the same opportunities for submission of unique or innovative applications as contained in the *Special Applications* § 2301.4(a) for nonbroadcast applicants.

RMCPB proposed that, if NTIA were to place broadcast and nonbroadcast applications in different categories, NTIA should establish a set of priority distinctions for the nonbroadcast applications similar to that of the broadcast applications. While NTIA has established specific priorities for broadcast applications and continues to refine those priorities in the current regulations, we have chosen not to establish a fixed set of priorities for nonbroadcast applications for two reasons. The first reason is that under the Act, NTIA can only fund construction applications that establish or expand a nonbroadcast facility,[4] which are comparable to Priority 1A and 1B broadcast applications. Nonbroadcast applications are not eligible for equipment replacement, improvement or augmentation, which are Priorities 2, 4 and 5 of the broadcast applications. Priority 3 in the broadcast priorities, first local origination, is not applicable for nonbroadcast since NTIA considers the service provided by a nonbroadcast facility rather than the service area and recognizes that different technologies and services may provide a unique service in a particular service area. In effect, nonbroadcast applications are already grouped into a single category, Special Applications, which is comparable to Priority 1. NTIA has not broken the Special Applications category into different priorities for a second reason. We recognize that nonbroadcast applicants propose many

[1] See 47 U.S.C. §§ 390–393, and 397–399b (1994), The Communications Act of 1934, as amended. Unless otherwise noted, all statutory citations are to title 47 of the United States Code.

[2] Comments were submitted by the following organizations: Association of America's Public Television Stations (APTS); Indiana University Radio and Television Services, operator of WFIU–FM/WTIU–TV (IURTS); the National Federation of Community Broadcasters (NFCB); National Public Radio (NPR); the National Technological University, Ft. Collins, CO (NTU); the Public Broadcasting Service (PBS); and the Rocky Mountain Corporation for Public Broadcasting, Albuquerque, NM (RMCPB).

[3] See *NPRM* at 27230.

[4] Section 390 of the Act, which is included as § 2301.1 of these final rules.

different technologies, each technology with its own strengths in meeting the needs of a particular community, whether that community is a city, state, region or the nation. In encouraging the submission of innovative and unique applications, NTIA prefers not to establish rigid priorities but to let applicants propose projects which identify and serve needs in their chosen service area. We have, therefore, not published a set of priorities for Special Applications but have made minor changes to the Special Applications category to further clarify the intent of this category.

NFCB and APTS commented on NTIA's proposal to consider projects to construct public broadcast stations to address underserved needs in an area already served by other public broadcasting facilities within the Priority 4A, *Improvement of Public Broadcasting Services.* APTS supported the proposal to place these ''second station'' applications within the broadcast priorities but suggested that a lower priority—Priority 5A—would be more appropriate. APTS noted that given limited Federal funding, it was important to support existing public broadcasting facilities that are serving distinct and unserved needs before supporting new facilities. APTS indicated that stations in multi-station markets are treated as Priority 4A and that treating applicants for new second stations under Priority 5A would insure that existing facilities receive support before applications for new facilities to serve underserved needs.

NFCB, however, supported NTIA's placement of projects to construct public broadcast stations to address underserved needs in an area already served by other public broadcasting facilities within the Priority 4A. NFCB noted that public radio is a targeted medium and that even the best stations can only hope to serve a portion of their communities of license. NFCB felt that placement of second stations within Priority 4A recognized the need for such stations in an increasingly multicultural American society.

In the Notice of Proposed Rulemaking, NTIA proposed that projects to construct public broadcast stations to address underserved needs in an area already served by other public broadcasting facilities would be considered in Priority 4A so they could be considered with other applications from stations in areas already served by another public broadcasting facility. NTIA believes that not only is it important to maintain the existing services of second stations, but it is also important that communities with underserved needs have the opportunity to receive additional service from new facilities. We expect that new second service stations will be radio facilities that serve demonstrated needs in their community, and we do not anticipate that this provision will have a major impact on television facilities. We recognize that there is a delicate balance between supporting applications for new such services and maintaining those second stations already in place, but we believe that there is no clear reason to favor one type of application over the other. Therefore, we believe that Priority 4A is the appropriate placement for these applications.

In a related matter, RMCPB raised an issue under §§ 2304.4(b) (2) and (4), regarding those instances where two full-service public radio stations serve the same area with two discrete and distinct program services. RMCPB noted that even when utilizing different national program services and distinctive local programming, neither station can qualify as ''essential'' (existing broadcast stations that provide either the only public telecommunications signal or the only locally originated public telecommunications signal to a geographical area) and therefore neither may be eligible for Priority 2 replacement. These applications are accordingly placed in Priority 4A. RMCPB suggested that ''PTFP discretionary consideration differing from that given either of two such stations without discrete service'' be given.[5] NTIA appreciates RMCPB's concern regarding the priority of stations in multi-station areas. NTIA notes that some stations in a multi-station area may in fact qualify for Priority 2 as an ''essential'' station as the term is used in the PTFP regulations. Applicants are encouraged to provide information as part of their applications documenting whether they provide either the only public telecommunications signal or the only locally originated public telecommunications signal to a geographical area. NTIA, however, is reluctant to distinguish between stations on the basis of their programming services as proposed by RMCPB. NTIA has been able to fund Priority 4A applications in the past and expects to be able to do so in the future, dependent on the availability of funds.

RMCPB supported NTIA's clarification of how PTFP considers the presence of AM daytime only stations in determining the Priority for proposed FM facilities serving a similar coverage area. RMCPB raised the question regarding the priority for a public radio FM station serving an area covered by a student noncommercial educational station that does not operate full-time or year-round. NTIA's long-time practice is not to consider student noncommercial educational stations that do not operate full-time or year-round as providing a public telecommunications service. The presence of a student noncommercial educational radio station in an area, therefore, does not preclude Priority 1 consideration of an application for a public radio FM station proposing to provide a public telecommunications service.

Section 2301.17 Evaluation Criteria for Construction and Planning Applications.

Four organizations addressed the issue of evaluation criteria and each supported the combination of construction and planning into a single set of evaluation criteria.[6] The four organizations supported the criteria proposed by NTIA, though APTS and IURTS both opposed deleting the community support criterion from the past evaluation criteria.

APTS noted that public broadcasting stations exist to serve their local communities and that NTIA should not make grants to applicants who cannot demonstrate significant ties to their community. APTS suggested that financial support is the clearest objective evidence that an applicant is providing service valued by their community and that NTIA continue to require that applicants demonstrate that they receive local financial support. IURTS suggested that demonstration of community support is a good check to insure that the purposes of the PTFP program are being served.

NTIA agrees with the thrust of both the APTS and IURTS comments. We believe that demonstration of community support is an important element in the evaluation of an application. Indeed, we intend to incorporate demonstration of community support into the evaluation of several of the evaluation criteria proposed. As noted by APTS, community support is an important element in an applicant's ability to raise funds. This is true both for determining whether an applicant can raise both the short-term local match required by the PTFP application and the long-term funds necessary to operate the system

[5] Comments of RMCPB, p. 3.

[6] APTS, and NPR specifically supported a common set of criteria for evaluation of planning and construction applications and NFCB and RMCPB supported the common evaluation criteria by reference.

during the Federal interest period. NTIA believes that demonstration of community support, therefore, is important for the financial qualifications criterion but also believes the demonstration of community support will be useful in evaluating other criteria as well. In most applications, demonstration of community support will be useful in documenting an applicant's fulfillment of the project objectives criterion. In many applications, demonstration of community support can be used to document urgency, applicant qualifications and special consideration. Rather than making community support an independent criterion, we have chosen to give applicants the opportunity to document community support for those criteria that are most appropriate to their application. Information on how this documentation can be included in the application will be contained in the Application Guidelines distributed to each applicant.

In a similar manner, we will include information within the Guidelines on another matter which was not included on the list of new criteria in the proposed rules—coordination of the application with other telecommunications organizations. NTIA continues to believe that coordination of a project with other telecommunications organizations is an important issue but as with demonstration of community support, this information could support several evaluation criteria, depending on the nature of the applicant's project.

The four organizations each addressed the question raised by NTIA in the Notice which solicited comments on the appropriate weight to be assigned to each criteria.[7] Three of the four organizations presented suggestions on how the criteria should be weighted and all three suggested that ''project objectives'' and ''urgency'' be given the greatest weight.[8] NFCB and RMCPB each suggested that ''urgency'' and ''project objectives'' be given the greatest weight. NPR indicated that ''urgency'' and ''project objectives'' (proposed criteria #3 and #1) have traditionally distinguished the most worthy applications. NPR cautioned, however, that ''the most urgent need may not warrant a grant if the applicant lacks sufficient financial or other qualifications to implement the project.''[9] Likewise, RMCPB suggested that the ''financial qualifications'' and ''applicant qualifications'' (proposed criteria #2 and #4) are in effect threshold criteria and should be given minimal weight but that NTIA might disqualify applications that did not meet a minimum on these two criteria. NFCB also felt that these two criteria would have to be met for a project to succeed but cautioned that there should be some evaluative process on these criteria which enables small public radio stations with limited staff and budget to compete equally for PTFP funds against larger stations. NFCB indicated that the ''technical/planning qualification'' (criterion 5(a) or 5(b)) should be a criterion that indicates whether a project is a go or a no-go. RMCPB recommended that criterion 5 and ''special consideration'' (criterion 6) should be equally weighted.

NTIA appreciates the thoughtful responses received on this issue. We agree that ''project objectives'' and ''urgency'' are the most significant of the criteria and so these criteria will be given the greatest weight during evaluation. We also agree that NTIA should not award a grant for a proposal, no matter how well the application meets the ''project objectives'' and ''urgency'' criteria, if the applicant is not financially qualified or otherwise able to complete the project. Therefore, the applicant's qualifications and financial qualifications will each serve as qualifying criteria. An application must meet a minimum threshold as defined in each of these criteria for further consideration during the evaluation process. The two remaining criteria, technical/planning qualifications and special consideration will be given lesser weight in evaluation than that awarded to ''urgency'' and ''project objectives.''

NTIA has, therefore, modified this section to reflect the evaluation weighting adopted. The criteria in § 2301.17(b) have been reordered to list first the two qualifying criteria, ''applicant qualifications'' and ''financial qualifications'' as numbers 1 and 2. ''Project objectives'' will be criterion number 3 and ''urgency'' has been placed as criterion number 4. Since the financial qualification criterion has been made a qualifying criterion, the requirement that applicants ''adequately justify the need for Federal funds in excess of fifty (50) percent of total project costs (see § 2301.6(b)(2)), if requested for equipment replacement, improvement, or augmentation projects'' has been relocated to the project objectives criterion. The justification for more than 50% Federal funding only relates to the level of potential Federal funding and should not be a part of a criterion which is used to qualify the application for further consideration. A sentence has also been added to the project objective criterion which clarifies that evaluation of the applicant's proposal includes evaluation of the applicant's ability to implement the proposal, if funded. A sentence reading ''that the condition of existing equipment justifies its prompt replacement'' has been relocated from criterion 5(a) ''technical qualifications'', to criterion 2 ''urgency'' to reflect the weight given this criterion. Several new phrases have been added to clarify the ''urgency'' and ''applicant qualifications'' criteria. Finally, new language has been added to § 2301.17(a) which incorporates the weighting adopted by NTIA.

Conversion to Digital Technology

Although not a part of the proposed rules itself, six of the seven organizations commented on the statement in NTIA's Notice which welcomed applications which will assist in planning for the digital conversion of public broadcasting facilities.[10] Five of these six organizations supported NTIA's interest in supporting projects to plan for digital conversion of public broadcasting facilities. NFCB supported the concept in general, as did NPR, which cautioned that NTIA should bear in mind the program's broader objectives so that the funding of digital conversion planning projects promotes, rather than undermines, the availability of public telecommunications services, particularly in rural areas. RMCPB was supportive of NTIA's recognition of the issue of conversion to digital technologies but suggested that public broadcasters capable of practicable conversion are also capable of planning without PTFP grants. RMCPB concluded that NTIA funds might better be devoted to funding acquisition of digital components through construction grants.

Both APTS and PBS suggested changes in NTIA policy to encourage digital conversion. APTS expressed concern that the number of applications for planning grants for ATV conversion could swamp the PTFP funds if a large number of public television stations seek planning grants. APTS noted that

[7] See *NPRM* at 27230.

[8] APTS opposed giving the criteria different weights, indicating it was not clear which criterion was more important than the others. APTS also felt NTIA had already decided what factors it considers most significant by establishing priorities for grants and that applicants would tailor their proposals to match the weighting.

[9] Comments of National Public Radio, p. 3.

[10] See *NPRM* at 27230. The only organization not addressing this issue was NTU.

it and PBS have launched efforts to coordinate public television's transition to digital technology. APTS urged NTIA to clarify that these coordinated efforts, such as reducing the cost of digital transition by pooling engineering resources, establishing model planning programs for different types of stations, and consolidating buying power in order to obtain volume discounts, would be eligible for PTFP planning funds. APTS requested that these coordinated efforts be afforded a high priority in receiving Federal grants. APTS also urged that NTIA make it clear that planning for capital campaigns to finance the transition to ATV at individual public television stations will be eligible for planning grants. APTS noted that for a number of stations, the cost of planning capital campaigns will itself be a significant drain on their finances.

PBS addressed two issues in its comments regarding digital conversion: fund allocation priority and the percentage of costs that may be funded. Because digital television is intended to replace, rather than to supplement, analog television and because the FCC plans to mandate a transition to digital and abandonment of analog operation, PBS urged that NTIA consider the coordinated planning of digital facilities as a first service to an unserved area, with no diminution of priority because of the existence of analog service. PBS also urged that such applications be considered new or extended service, thereby qualifying the proposals for 75% rather than only 50% funding.

PBS also suggested that some aspects of the proposed regulations may require modification after the FCC adopts its digital television regulations. PBS noted as an example that the FCC may not require the filing of applications for digital conversion or may establish timetables which may not conform to that required under the PTFP regulations. NTIA recognizes that the FCC has the lead in establishing policy regarding television's transition to digital technology and will indeed be mindful of FCC requirements for digital conversion. NTIA will ensure that the PTFP regulations do not restrict public television's ability to seek Federal funding or FCC authorizations during the conversion to digital technology. NTIA will also keep an open mind on the use of ancillary data streams on NTIA-funded facilities.

PBS suggested that NTIA should be flexible in releasing the Federal interest in analog equipment that becomes obsolete because of the transition to digital equipment. PBS further noted that a ten-year Federal interest period may be inappropriate for digital equipment, since the useful life span of this equipment is as yet unknown. In a similar comment, IURTS noted that even traditional broadcast-grade products cannot remain current for the duration of the ten-year Federal interest period. IURTS commented that PTFP should consider reducing the federal interest period from ten years. IURTS is concerned that due to the rapid advancements in computer platforms and operating systems in today's market, the hardware and software will be obsolete in about half the Federal interest period described by PTFP. IURTS recommended that NTIA expand its support of computer-based PC-type technology in place of traditional broadcast products. Specific reference was made to PC based character generators, still-store devices, digital special effects devices, replacement for audio carts, digital audio workstations, etc. With the development of PC-based technology, IURTS noted that these less-expensive solutions can reduce station's costs while still providing service to the community. Acknowledging that these PC-based solutions will not last the ten-year Federal interest period, IURTS recommended both a shortening of the Federal interest period and a corresponding reduction in the recommended funding level. IURTS gave an example of a dual channel still-store normally funded by PTFP at a $50,000 level which could be reduced to $25,000 and provide many stations with digital options they could not otherwise afford or support.

NTIA acknowledges the problem in a rapidly changing technical environment that some analog or digital broadcast equipment may not have a useful life of ten years. PTFP is mandated by statute to maintain a ten-year Federal interest period. See 47 U.S.C. 392(g). While we appreciate the concerns expressed by PBS and IURTS, until such time as the statute is changed, NTIA is bound to maintain this requirement. NTIA notes that grantees may have alternatives in satisfying NTIA's Federal interest in equipment and calls grantees attention to § 2301.22(g) *Transfer of Federal interest to different equipment* of the final rules. Under this provision, a grantee may request that the Agency transfer the remaining Federal interest in a piece of equipment to another item of equipment presently owned or to be purchased by the grantee with non-Federal funds. Grantees may also dispose of the equipment at any time in accordance with the Uniform Administrative Requirements under OMB Circular A–110, section 34 and 15 CFR 24.32. The recipient may request disposition of the equipment from the agency; and, if the fair market value of the equipment at the time of disposition is under $5,000, there is no further obligation to the Federal Government.

NTIA appreciates the support shown by the public comments for its interest in participating in the digital conversion of public broadcasting facilities. We have carefully considered the suggestions for changes in the proposal offered by the respondents, including changes to priorities and funding levels. We believe that it is premature to make those changes at this time since so much about the transition to digital technology is still unknown. The FCC has neither adopted technical standards for digital television nor established its digital television regulations. It has yet to set a timetable for the transition of television facilities from analog to digital technology. NTIA will work with the public broadcasting community and closely monitor the development and transition to digital technologies. As conditions warrant, NTIA can revise its policies towards digital conversion through publication of the annual closing date notice or through other publications. For the moment, we will adopt the suggestion of RMCPB, which noted that, despite the Agency's recognition of the issue of digital conversion, there was no provision in the proposed rules for addressing the issue or welcoming applications to plan for conversion. We have modified the language in § 2301.4(b)(6) *Other Cases* within the Broadcast Applications section to specifically reference planning applications for digital conversion as a unique or innovative project. NTIA has been routinely funding digital equipment for replacement which is compatible with the proposed standards for digital television. Under *Other Cases*, NTIA would also accept applications for construction of digital facilities that could be considered unique or innovative.

In addition to the comments on these three major sections, there were public comments on several other changes in the Notice of Proposed Rulemaking.

Section 2301.2 Definitions

APTS expressed concern about its perceived change to the Federal interest period to the useful life of the equipment under the definition contained in § 2301.2 of the proposed rule. We did not change the federal interest period, as mandated in 47 U.S.C. 392(g), from ten years to the useful life. The federal interest period remains at ten years and is primarily a

financial interest within which PTFP must collect a proportionate share of the Federal funds expended under an award if a grantee ceases to be a public telecommunications entity or the facilities cease to be used for the provision of public telecommunications services. We intended to clarify that Federal Constitutional interests, for example, the First Amendment's protections under the Establishment of Religion and the Freedom of Speech Clauses, and the Fourteenth Amendment's equal rights protections, extend for the useful life of the facilities. Even where a grant program statute establishes a federal interest period, the Supreme Court has ruled that certain Constitutional guarantees remain for the useful life of Federally-funded facilities.[11] We have inserted ''Constitutional'' to clarify what federal interests extend for the useful life of property.

RMCPB suggested we define the term ''useful life.'' A definition of ''useful life'' has been added as the last defined term in § 2301.2.

Section 2301.5 Special Consideration

As mandated by Congress under § 392(f) of the Act, the Agency will give special consideration to applications that foster ownership of, operation of, and participation in public telecommunications entities by minorities and women. This statutory provision remains and over the past nine years, the Corporation for Public Broadcasting has assembled a report to Congress on the provision of services to minority and diverse audiences by public telecommunications entities, which evidences the continued need for these services. NTIA is particularly concerned with the provision of services to minorities, women, and diverse audiences by public telecommunications entities. Therefore, NTIA will continue to evaluate how well applicants demonstrate significant diversity in the ownership of, operation of, and participation in public telecommunications facilities. Special consideration, therefore, remains as one of several evaluation criteria contained in the regulation, specifically, at 15 CFR 2301.17(b)(6).

NFCB expressed concern over the elimination of the 50% minimum participation of minorities an/or women in order to qualify for special consideration. NFCB argued that the elimination of the 50% minimum requirement may open up special consideration to such a degree that it becomes useless as a factor in evaluating applications. NTIA does not believe that it is necessary to establish any minimum minority or women participation requirements for special consideration in PTFP evaluations in order to carry out the objectives of the statute. Rather, NTIA believes that the congressional intent can be achieved in a fair and flexible manner by taking into account all factual circumstances that might lead to special consideration.

PTFP applies special consideration to encourage all applicants to assist the program to achieve one of its statutory purposes, to increase the amount of public telecommunications facilities owned by, operated by and participated in by minorities and women. Employment of minorities or women is not the only way in which NTIA may assess whether an application promotes significant diversity in the ownership of, operation of, and participation in by minorities and women. NTIA is also interested in outreach efforts, audience development, and programming strategies. One stated purpose of this program is to respond to the educational, cultural and related programming needs of diverse groups. If an applicant can demonstrate to the NTIA that its application is furthering the statutory objective, that application will be more highly rated under the special consideration factor.

The language of this section has been modified to clarify NTIA's policy on special consideration and an accompanying modification has been made in the *Special Consideration* evaluation criterion in § 2301.17(b)(6). To the degree there is any discrepancy of interpretation, this final rule will take precedence and is intended to describe special consideration as required by 47 U.S.C. 392(f).

Section 2301.6 Amount of Federal Funding

RMCPB observed that § 2301.6(a) permits 100% Federal funding of planning grants and noted that this provision is permissive and not obligatory. Since NTIA has limited funds for the PTFP program, RMCPB suggested that 75% be the general presumption for planning purposes. NTIA appreciates this suggestion and notes that most of the planning grants awarded by PTFP in recent years include matching in-kind services and funds contributed by the grantee. Modifying § 2301.6(a) as suggested by RMCPB would codify what already has become PTFP practice. We are, however, mindful that planning grants are sometimes the only resource that emerging community groups have with which to initiate the planning of new facilities in unserved areas. We have, therefore, included a provision at § 2301.(6)(a)(2) that NTIA will continue to award up to 100% of total project costs in cases of extraordinary need. We have also modified the evaluation criteria with a new section at § 2301.17(b)(3) to reflect the need for applicants to justify a request for more than 75% Federal funding for planning projects.

Section 2301.8 Submission of Applications

RMCPB expressed concern in a change in the proposed § 2301.8(d) which removed the number of copies of applications required by NTIA from the specific number ''2'' to the more flexible ''the number of copies specified by the Agency.'' RMCPB pointed out that any increase in the number required will be an added burden on the small station and community broadcaster applicants. We note that under 5 CFR 1320.5(d)(2)(iii), an agency can only require an original plus two copies of an application. Any request for additional copies would have to be justified to and cleared by the Office of Management and Budget. The flexibility in the number of applications which NTIA can request is, therefore, extremely limited. For the first time in FY 1996, NTIA requested three copies of an application to permit concurrent processing of the applications by NTIA reviewers and thereby enable issuance of timely awards.

APTS expressed its concern about NTIA's proposal to delete from the rules the specific showings required of applicants and to specify those requirements in the application form in the bid solicitation. APTS indicated that, while the deletion of this information is intended to give NTIA flexibility to reduce application burdens, the proposal can create uncertainty as to the showing required of applicants. APTS continued that the flexibility conferred would also permit NTIA to impose additional burdensome requests without affording public broadcasters the opportunity to comment meaningfully.

NTIA appreciates the concerns expressed by APTS. It was NTIA's intention in removing the specific requirements from the Rules to give NTIA the flexibility of future reductions in requirements on the application form to lessen the burden on applicants. We believe that this flexibility will be beneficial to applicants in several ways. First, it will permit NTIA to lessen the burden on applicants during the FY 97 grant cycle while using the existing PTFP application form. These

[11] See *Tilton v. Richardson*, 403 U.S. 672 (1971).

improvements will include several changes supported by APTS which are contained in the proposed rules, such as the proposal to modify the requirement that an applicant report changes in its board structure and to require applicants to provide only summaries of their application to the State Single Point of Contact rather than complete copies of the application. Second, flexibility in these final rules will permit NTIA to further lessen the burden on applicants through modification of the PTFP application form in 1997 without having to promulgate another set of accompanying PTFP rules.[12] Promulgation of a set of PTFP rules is a lengthy administrative process and one that cannot be done every year. The average PTFP rules are in force for a period of three to five years. Therefore, removing the specific application requirements from the final rules also gives NTIA the flexibility of continually making improvements in lessening applicant burdens during the periods between formal revisions of the PTFP rules. NTIA supports a continuing dialog with members of the public telecommunications community to improve the responsiveness of the PTFP. PTFP continually solicits comments on the application process from those who are sent the application packet, both from applicants and those who choose not to submit an application.[13] NTIA will also discuss application guidelines with members of NTIA's National Advisory Panel of Public Broadcasting Organizations at its annual meetings.

APTS felt that NTIA's proposal could create uncertainty as to the showing required of applicants since, ''the solicitation of bids is typically published with only a few weeks notice before applications are due.'' [14] NTIA has typically published formal announcements of the acceptance of applications approximately 3 months before the closing date.[15] We believe that this is sufficient time for preparation of applications since the major objectives and priorities of the program are well known and have not significantly changed in these final rules. PTFP distributes a detailed set of Guidelines to assist applicants in the preparation of applications, and applicants may contact PTFP for technical assistance in the preparation of application during the period prior to the application deadline.

APTS also commented on the financial responsibility requirements contained in §§ 2301.8 (g), (h) and (i). APTS believes that the financial responsibility requirements ''confers virtually unfettered discretion on NTIA as to which applicants will be subject to the request for data,'' ''the scope of the inquiry is astonishingly broad,'' can be ''potentially burdensome'' and contain ''vague provisions''.[16]

Sections 2301.8 (g) and (h) are based on the ''Department of Commerce Financial Assistance Name Check Procedures.'' This policy has been in effect since 1988, has served as a reasonable attempt to protect the public interest, and has not proven to be overburdensome. NTIA does not intend to use the ''responsibility determination'' process in a punitive or detrimental manner against potential award recipients. As an agency which has been provided authority to make discretionary decisions for the Federal Government, it is reasonable for NTIA to make every effort to determine that potential award recipients are responsible. To the extent possible, the regulation is intended to ensure that there are no matters facing potential award recipients that might significantly and negatively impact on their business honesty, financial integrity and/or ability to successfully perform the proposed grant activity. We think that the trust vested in NTIA demands that it makes a reasonable attempt to protect the public interest by trying to ensure that it deals with only responsible parties. Therefore, no changes have been made to this section.

Based on ''a reasonable person'' standard which is employed throughout these regulations, we feel that § 2301.8(i) is clear. Unsatisfactory performance essentially means that one does not substantially achieve his or her project goals and objectives. As project goals and objectives vary from one project to another, unsatisfactory performance must, to some extent, be situationally determined. It would be unreasonable to attempt to precisely define ''unsatisfactory performance'' in the regulation for all projects, all circumstances and for all times.

Section 2301.10 Applications Resulting From Catastrophic Damage or Emergency Situations

APTS and RMCPB commented on NTIA's addition of a phrase regarding ''complete equipment failure'' to this section on applications resulting from catastrophic damage or emergency situations. RMCPB characterized the proposal as being ''a box of Pandoras''. APTS warned that NTIA may inadvertently create a loophole in the funding priorities by creating incentives for applicants to claim that the imminent loss of an essential piece of equipment warrants an immediate grant. APTS continued that unlike a catastrophic loss, a clearly defined unanticipated event, the complete loss of essential equipment lacks any clearly defining moment. APTS concluded that, in many cases, the ''loss'' may have been avoided by a timely request for funding.

NTIA believes that APTS and RMCPB raise valid concerns, which are shared by the Agency. NTIA's intent in making this proposal was to be able to quickly respond to the emergency of a complete failure of basic equipment essential to a station's continued operation, whether that failure was caused by natural or manmade causes. This section is limited to equipment essential to a station's continued operation. We do not believe this section would include most program origination equipment but rather would be applicable to equipment such as transmitters, tower, antennas, STL's or similar equipment which, if the equipment failed, would result in a complete loss of service to the community. For example, NTIA recently received an emergency request from an applicant regarding the strengthening of a tower. A recent engineering study on the tower indicated that the tower was dangerously overloaded and in danger of imminent collapse. NTIA felt that it was both prudent and good business sense to make the modest investment in strengthening the tower on an emergency grant basis rather than risking loss of service to a community and incur the greater expense of replacing a collapsed tower.

NTIA will, therefore, retain the originally proposed language in this section but will add clarifying language in regarding the nature of the equipment eligible for emergency applications, as well as language indicating that an applicant claiming complete equipment failure must document the circumstances of the equipment failure and demonstrate that the equipment has

[12] The current PTFP application form expires October 1, 1997. The new form will be adopted after public comment in conjunction with Office of Management and Budget review pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501., *et. seq.*

[13] See for example the ''Special Note'' on the inside back cover of the FY 96 PTFP *Guideline for Preparing Applications.*

[14] Comments from APTS, p. 4.

[15] For fiscal year 1996, the Department of Commerce did not receive a final appropriation until April 26, 1996. *See* Department of Commerce and Related Agencies Appropriations Act, 1966, P.L. 104–134. This, in turn, left PTFP with five months to review, evaluate and make awards.

[16] Comments from APTS, p. 5–7.

been maintained in accordance with standard engineering practice.

Section 2301.11 Service of Applications

NPR and RMCPB supported NTIA's proposal in § 2301.11 that the applicant's notification to the SPOC, the FCC and the state telecommunications agencies need only be a summary of the application, rather than the full application required in prior PTFP Rules. Both organizations cautioned, however, that if selecting/compiling excerpt materials is too complicated, it will be an added burden on applicants instead of a benefit. RMCPB noted that the New Mexico Commission on Public Broadcasting only needs to review pages 1 and 2 of the PTFP application form and the narrative. NTIA's intent in proposing that applicants submit a summary of the application rather than the full application to the SPOC and other appropriate agencies was intended to reduce the paperwork burden on applicants. We did not intend this summary to be a burdensome exercise and the information suggested by RMCPB appears to be reasonable notification. In making notification to the appropriate agencies, applicants should make clear that additional information regarding their PTFP application is available upon request. Future application materials will provide guidance as to what should be included in the summary to provide adequate notification to the requisite agencies while reducing the notification burden on all applicants.

Section 2301.18 Selection Process

NTIA is making two revisions to this section to clarify internal procedures in the selection process for the public. At § 2301.18(a) and the new § 2301.18(b), we have added language which clarifies that the PTFP Director presents recommendations to the OTIA Associate Administrator for review and approval prior to their submission to the NTIA Administrator. We have also clarified in the new § 2301.18(a)(4) that NTIA may consider in the selection of a grant recipient whether the applicant has any current NTIA grants. This provision recognizes that in some instances the presence of a current NTIA grant is relevant in the decision to make a new award and does not prohibit the award of new grants to current grant recipients.

Restatement of Existing Policies

We are also taking this opportunity to restate several long-standing PTFP policies which were published in the preambles of previous PTFP rules or as a separate policy statement. The following policies remain in effect:

Evidence of Tax-exempt Status

Applicants who are eligible for a section 501(c)(3) exemption from the IRS or the equivalent exemption from the Commonwealth of Puerto Rico must submit a copy of that exemption. Applicants who are ineligible for section 501(c)(3) exemption but who can demonstrate nonprofit status by showing an applicable State tax exemption will be considered on a case-by-case basis. They must submit: (a) Evidence of their State tax-exempt status; (b) citation to, and a copy of, the State statutory provisions governing that exemption; and (c) a brief statement explaining why they lack a section 501(c)(3) exemption. (Fed. Reg. Vol. 44, No. 104, p. 30899)

Equipment Which Becomes Obsolete Before the End of the Ten-year Period of Federal Interest

In the case of equipment which becomes obsolete or wears out before the ten-year period of Federal interest expires, we will permit the trade-in or sale of the equipment and application of the remaining portion of the ten-year period to the new equipment. (Fed. Reg. Vol. 44, No. 104, p. 30910)

Selection of Priority

In preparing the narrative portions of its application, each applicant should state under which priority it desires NTIA to consider its application. In doing so, each applicant makes sure that its application contains sufficient documentation to justify its qualification under the selected priority. NTIA will then evaluate the application with the selected priority unless the Agency determines that the priority selected by the applicant is not supported by the documentation provided. Each applicant will be notified of any change in the priority under which its application is to be considered. Such notifications will be in writing and will not be subject to appeal. (Fed. Reg. Vol. 47, No. 228, p. 53653)

Award of Deferred Applications

The Administrator retains the discretion to award grants to deferred applications at any time where the Administrator can determine with reasonable certainty that the particular project is exceptionally meritorious (on the basis of the Agency's preliminary determination of all other applications within the priority) and that the Agency would fund the project after completing the evaluation of all the applications in the priority (on the basis of the Agency's prior experience in making grants.) Under this process, the Agency will be able to fund applications that the Agency had deferred in the prior year because of technical problems (such as the inability to obtain the necessary FCC authorizations) which have since been eliminated. (Fed. Reg. Vol. 47. No. 50, p. 11232.)

Support for Salary Expenses

NTIA regards its primary mandate to be funding the acquisition of equipment and only secondarily the funding of salary expenses, even when allowed by law. Moreover, NTIA notes that the competition for PTFP funding remains intense. To ensure that PTFP monies are distributed as effectively as possible in this competitive atmosphere, NTIA must weigh carefully its support for any project cost not directly involved with the purchase of equipment.

Therefore, NTIA generally will not fund salary expenses, including staff installation costs, pre-application legal and engineering fees, and pre-operational expenses of new entities. NTIA will support such costs only when the applicant demonstrates that exceptional need exists or that substantially greater efficiency would result from the use of staff installation instead of contractor installation.

As regards the installation of transmission equipment, NTIA strongly favors the use of either manufacturer or professional contractor personnel and commonly funds these costs. NTIA believes that the value of transmission equipment and the complicated nature of its installation require expertise beyond that normally found on station staffs.

NTIA will rarely support requests for assistance for the installation of studio and test equipment, whether that installation is by staff or by contract employees. Such installation is normally of minimum difficulty, and the associated installation costs should be absorbed in the recipient's normal operating budget. Again, NTIA will take into account demonstrations of exceptional need. (Fed. Reg. Vol. 56, No. 226, p. 59172)

Sectarian Activities

Applicants are advised that on December 22, 1995, NTIA issued a notice and an amendment to the PTFP regulations in the Federal Register on its policy with regard to sectarian activities. Under NTIA's prior policy, NTIA funds could not be used for any sectarian purposes. Under the revised policy, while religious activities cannot be the essential thrust of a grant, an

application will not be ineligible where sectarian activities are only incidental or attenuated to the overall project purposes for which funding is requested. (60 Fed. Reg. 66491).

It has been determined that this rule is not significant for purposes of Executive Order (E.O.) 12866.

A Regulatory Flexibility Analysis is not required under The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the rules were not required to be promulgated as proposed rules before issuance as final rules by section 553 of the Administrative Procedures Act (5 U.S.C. 553) or by any other law. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

The Department has determined that these rules will not significantly affect the quality of the human environment. Therefore, no draft or final Environmental Impact Statement has been or will be prepared.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

The Office of Management and Budget has approved the information collection requirements contained in these rules pursuant to the Paperwork Reduction Act under OMB Control Nos. 0660–0003, 0660–0001 and 0605–0001. The public reporting burden for the application requirements vary from 16 hours to 200 hours with an estimated average of 125 hours per application, including associated exhibits; the reporting and record keeping burden for the grant monitoring reports vary from 1 to 24 hours depending on the respective requirement; and, the reporting burden for the name-check form (CD–346) is estimated at 15 minutes. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates, or any other aspects of the collections of information, including suggestions for reducing this burden, to the Office of Policy and Coordination and Management, NTIA, U.S. Department of Commerce, Washington, DC 20230; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NTIA Desk Officer).

(Catalogue of Federal Domestic Assistance No. 11.550)

List of Subjects in 15 CFR Part 2301

Administrative procedure, Grant programs-communications, Reporting and recordkeeping requirements, Telecommunications.

Larry Irving,

Administrator.

For the reasons set out above, part 2301 of title 15, Code of Federal Regulations, is revised to read as follows:

PART 2301—PUBLIC TELECOMMUNICATIONS FACILITIES PROGRAM

Authority: 47 U.S.C. 390–393 and 397–399b.

Subpart A—General

§ 2301.1 Program Purposes.

Pursuant to section 390 of the Act, (The Communications Act of 1934, as amended), the purpose of the Public Telecommunications Facilities Program (PTFP) is to assist, through matching grants, in the planning and construction of public telecommunications facilities in order to achieve the following objectives:

(a) Extend delivery of public telecommunications services to as many citizens in the United States as possible by the most efficient and economical means, including the use of broadcast and nonbroadcast technologies;

(b) Increase public telecommunications services and facilities available to, operated by, and owned by minorities and women; and

(c) Strengthen the capability of existing public television and radio stations to provide public telecommunications services to the public.

§ 2301.2 Definitions.

Act means Part IV of Title III of the Communications Act of 1934, 47 U.S.C. 390–393 and 397–399b, as amended.

Administrator means the Assistant Secretary for Communications and Information of the United States Department of Commerce who is also Administrator of the National Telecommunications and Information Administration.

Agency means the National Telecommunications and Information Administration of the United States Department of Commerce.

Broadcast means the distribution of electronic signals to the public at large using television (VHF or UHF) or radio (AM or FM) technologies.

Closing date means the date and time which the Administrator sets as the deadline for the receipt of applications during a grant cycle.

Construction (as applied to public telecommunications facilities) means acquisition (including acquisition by lease), installation, and improvement of public telecommunications facilities and preparatory steps incidental to any such acquisition, installation or improvement.

Department means the United States Department of Commerce.

FCC means the Federal Communications Commission.

Federal interest period means the period of time during which the Federal government retains a reversionary interest in all facilities constructed with Federal grant funds. This period begins with the purchase of the facilities and

continues for ten (10) years after the official completion date of the project. Although OMB Circular A–110, sections 33 and 34 (58 FR 62992, Nov. 29, 1993) and 15 CFR 24.31 and 24.32, specify that the Federal government maintains a reversionary interest in the facilities for as long as the facilities are needed for the originally authorized purpose, PTFP's authorizing statute (47 U.S.C. 392(g)) limits the reversionary period for ten years for purposes of this program. However, Federal Constitutional limitations on the use of the facilities survive for the useful life of the facilities whether or not this period extends beyond the ten-year Federal interest period.

Minorities means American Indians, Alaska Natives, Asian or Pacific Islanders, Hispanics, and Blacks, not of Hispanic Origin.

Nonbroadcast means the distribution of electronic signals by a means other than broadcast technologies. Examples of nonbroadcast technologies are Instructional Television Fixed Service (ITFS), satellite systems, and coaxial or fiber optic cable.

Noncommercial educational broadcast station or *public broadcast station* means a television or radio broadcast station that is eligible to be licensed by the FCC as a noncommercial educational radio or television broadcast station and that is owned (controlled) and operated by a state, a political or special purpose subdivision of a state, public agency or nonprofit private foundation, corporation, institution, or association, or owned (controlled) and operated by a municipality and transmits only noncommercial educational, cultural or instructional programs.

Noncommercial telecommunications entity means any enterprise that is owned (controlled) and operated by a state, a political or special purpose subdivision of a state, a public agency, or a nonprofit private foundation, corporation, institution, or association; and that has been organized primarily for the purpose of disseminating audio or video noncommercial educational, cultural or instructional programs to the public by means other than a primary television or radio broadcast station, including, but not limited to, coaxial cable, optical fiber, broadcast translators, cassettes, discs, satellite, microwave or laser transmission.

Nonprofit (as applied to any foundation, corporation, institution, or association) means a foundation, corporation, institution, or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

Operational cost means those approved costs incurred in the operation of an entity or station such as overhead labor, material, contracted services (such as building or equipment maintenance), including capital outlay and debt service.

Planning (as applied to public telecommunications facilities) means activities to form a project for which PTFP construction funds may be obtained.

Pre-operational costs means all nonconstruction costs incurred by new public telecommunications entities before the date on which they began providing service to the public, and all nonconstruction costs associated with the expansion of existing stations before the date on which such expanded capacity is activated, except that such costs shall not include any portion of the salaries of any personnel employed by an operating public telecommunications entity.

PTFP means the Public Telecommunications Facilities Program, which is administered by the Agency.

PTFP Director means the Agency employee who recommends final action on public telecommunications facilities applications and grants to the Administrator.

Public telecommunications entity means any enterprise which is a public broadcast station or noncommercial telecommunications entity and which disseminates public telecommunications services to the public.

Public telecommunications facilities means apparatus necessary for production, interconnection, captioning, broadcast, or other distribution of programming, including but not limited to studio equipment, cameras, microphones, audio and video storage or processors and switchers, terminal equipment, towers, antennas, transmitters, remote control equipment, transmission line, translators, microwave equipment, mobile equipment, satellite communications equipment, instructional television fixed service equipment, subsidiary communications authorization transmitting and receiving equipment, cable television equipment, optical fiber communications equipment, and other means of transmitting, emitting, storing, and receiving images and sounds or information, except that such term does not include the buildings to house such apparatus (other than small equipment shelters that are part of satellite earth stations, translators, microwave interconnection facilities, and similar facilities).

Public telecommunications services means noncommercial educational and cultural radio and television programs, and related noncommercial instructional or informational material that may be transmitted by means of electronic communications.

Sectarian means that which has the purpose or function of advancing or propagating a religious belief.

State includes each of the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

System of public telecommunications entities means any combination of public telecommunications entities acting cooperatively to produce, acquire or distribute programs, or to undertake related activities.

Useful life means the normal operating life of equipment.

Subpart B—Application Requirements

§ 2301.3 Applicant eligibility.

(a) To apply for and receive a PTFP Construction or Planning Grant, an applicant must be:

(1) A public or noncommercial educational broadcast station;

(2) A noncommercial telecommunications entity;

(3) A system of public telecommunications entities;

(4) A nonprofit foundation, corporation, institution, or association organized primarily for educational or cultural purposes (see also 60 FR 66491 (Dec. 22, 1995)); or

(5) A state, local, or Indian tribal government (or agency thereof), or a political or special purpose subdivision of a state.

(b) An applicant whose proposal requires an authorization from the FCC must be eligible to receive such authorization.

(c) If an applicant does not meet the above eligibility requirements, the application may be rejected and returned without further consideration.

(d) An applicant may request a preliminary determination of eligibility any time prior to the closing date.

§ 2301.4 Types of Projects and Broadcast Priorities.

An applicant may file an application with the Agency for a planning or construction grant. To achieve the objectives set forth at 47 U.S.C. 393(b), the Agency has developed the following categories. Each application shall be identified as a broadcast or nonbroadcast project and must fall

within at least one of the following categories:

(a) Special applications. NTIA possesses the discretionary authority to recommend awarding grants to eligible nonbroadcast applicants whose proposals are unique or innovative and which address demonstrated and substantial community needs (*e.g.*, service to the blind or deaf and nonbroadcast projects offering educational or instructional services).

(b) Broadcast applications. The Broadcast Priorities are set forth in order of priority for funding.

(1) *Priority 1—Provision of Public Telecommunications Facilities for First Radio and Television Signals to a Geographic Area.* Within this category, NTIA establishes three subcategories:

(i) *Priority 1A—Projects that include local origination capacity.* This subcategory includes the planning or construction of new facilities that can provide a full range of radio and/or television programs, including material that is locally produced. Eligible projects include new radio or television broadcast stations, new cable systems, or first public telecommunications service to existing cable systems, provided that such projects include local origination capacity.

(ii) *Priority 1B—Projects that do not include local origination capacity.* This subcategory includes projects such as increases in tower height and/or power of existing stations and construction of translators, cable networks, and repeater transmitters that will result in providing public telecommunications services to previously unserved areas.

(iii) *Priority 1C—Projects that provide first nationally distributed programming.* This subcategory includes projects that provide satellite downlink facilities to noncommercial radio and television stations that would bring nationally distributed programming to a geographic area for the first time.

(iv) Priority 1 and its subcategories apply only to grant applicants proposing to plan or construct new facilities to bring public telecommunications services to geographic areas that are presently unserved, *i.e.*, areas that do not receive public telecommunications services. (It should be noted that television and radio are considered separately for the purposes of determining coverage. In reviewing applications from FM stations that propose to serve, or that already serve, areas covered by AM-daytime only stations, PTFP will evaluate the amount of service provided via the AM-daytime only station in determining whether the FM proposal qualifies for a Priority 1 or Priority 2, as appropriate.)

(v) An applicant proposing to plan or construct a facility to serve a geographical area that is presently unserved should indicate the number of persons who would receive a first public telecommunications signal as a result of the proposed project.

(2) *Priority 3—Replacement of Basic Equipment of Existing Essential Broadcast Stations.* (i) Projects eligible for consideration under this category include the urgent replacement of obsolete or worn out equipment at ''essential stations'' (*i.e.*, existing broadcast stations that provide either the only public telecommunications signal or the only locally originated public telecommunications signal to a geographical area).

(ii) To show that the urgent replacement of equipment is necessary, applicants must provide documentation indicating excessive downtime, or a high incidence of repair (*i.e.*, copies of repair records, or letters documenting non-availability of parts). Additionally, applicants must show that the station is the only public telecommunications station providing a signal to a geographical area or the only station with local origination capacity in a geographical area.

(iii) The distinction between Priority 2 and Priority 4 is that Priority 2 is for the urgent replacement of basic equipment for essential stations. Where an applicant seeks to ''improve'' basic equipment in its station (*i.e.*, where the equipment is not ''worn out''), or where the applicant is not an essential station, NTIA would consider the applicant's project under Priority 4.

(3) *Priority 3—Establishment of a First Local Origination Capacity in a Geographical Area.* (i) Projects in this category include the planning or construction of facilities to bring the first local origination capacity to an area already receiving public telecommunications services from distant sources through translators, repeaters, or cable systems.

(ii) Applicants seeking funds to bring the first local origination capacity to an area already receiving some public telecommunications services may do so, either by establishing a new (and additional) public telecommunications facility, or by adding local origination capacity to an existing facility. A source of a public telecommunications signal is distant when the geographical area to which the source is brought is beyond the grade B contour of the origination facility.

(4) *Priority 4 Improvement of Public Broadcasting Services.*

(i) Projects eligible for consideration under this category are intended to improve the delivery of public broadcasting services to a geographic area. These projects include the establishment of a public broadcast facility to serve a geographic area already receiving public telecommunications services, projects for the replacement of basic obsolete or worn-out equipment at existing public broadcasting facilities and the upgrading of existing origination or delivery capacity to current industry performance standards (*e.g.*, improvements to signal quality, and significant improvements in equipment flexibility or reliability). As under Priority 2, applicants seeking to replace or improve basic equipment under Priority 4 should show that the replacement of the equipment is necessary by including in their applications data indicating excessive downtime, or a high incidence of repair (such as documented in repair records). Within this category, NTIA establishes two subcategories: Priority 4A and Priority 4B.

(ii) *Priority 4A.* (A) Applications to replace urgently needed equipment from public broadcasting stations that do not meet the Priority 2 criteria because they do not provide either the only public telecommunications signal or the only locally originated public telecommunications signal to a geographic area. NTIA will also consider applications that improve as well as replace urgently needed production-related equipment at public radio and television stations that do not qualify for Priority 2 consideration but that produce, on a continuing basis, significant amounts of programming distributed nationally to public radio or television stations.

(B) The establishment of public broadcasting facilities to serve a geographic area already receiving public telecommunications services. The applicant must demonstrate that it will address underserved needs in an area which significantly differentiates its service from what is already available in its service area.

(C) The acquisition of satellite downlinks for public radio stations in areas already served by one or more full-service public radio stations. The applicant must demonstrate that it will broadcast a program schedule that does not merely duplicate what is already available in its service area.

(D) The acquisition of the necessary items of equipment to bring the inventory of an already-operating station to the basic level of equipment requirements established by PTFP. This

is intended to assist stations that went on the air with a complement of equipment well short of what the Agency considers as the basic complement.

(iii) *Priority 4B.* The improvement and non-urgent replacement of equipment at any public broadcasting station.

(5) *Priority 5 Augmentation of Existing Broadcast Stations.* Projects in this category would equip an existing station beyond a basic capacity to broadcast programming from distant sources and to originate local programming.

(i) *Priority 5A Projects to equip auxiliary studios at remote locations, or to provide mobile origination facilities.* An applicant must demonstrate that significant expansion in public participation in programming will result. This subcategory includes mobile units, neighborhood production studios, or facilities in other locations within a station's service area that would make participation in local programming accessible to additional segments of the population.

(ii) *Priority 5B—Projects to augment production capacity beyond basic level in order to provide programming or related materials for other than local distribution.* This subcategory would provide equipment for the production of programming for regional or national use. Need beyond existing capacity must be justified.

(6) *Other cases.* NTIA possesses the discretionary authority to recommend awarding grants to eligible broadcast applicants whose proposals are so unique or innovative that they do not clearly fall within the five Priorities listed in this section. Innovative projects submitted under this category must address demonstrated and sub stantial community needs or must address issues related to the conversion of public broadcasting facilities to advanced digital technologies.

(c) An applicant may request a preliminary determination of whether a proposed project fits within at least one of the above listed categories any time prior to the closing date.

(d) All applications will be reviewed after the closing date. If an application does not fall within one of the listed categories, it may be rejected and returned without further consideration.

§ 2301.5 Special consideration.

In accordance with section 392(f) of the Act, the Agency will give special consideration to applications that foster ownership of, operation of, and participation in public telecommunications entities by minorities and women. Ownership and operation of includes the holding of management and other positions in the entity, especially those concerned with programming decisions and day-to-day operation and management. Participation may be shown by the entity's involvement of women and minorities in public telecommunications through its programming strategies as meeting the needs and interests of those groups. Minorities include American Indians or Alaska natives; Asian or Pacific Islanders, Hispanics, and Blacks, not of Hispanic Origin. The special consideration element is provided as one of several evaluation criteria contained in the regulations at 15 CFR 2301.17(b)(6).

§ 2301.6 Amount of Federal funding.

(a) *Planning grants.* The Agency may provide up to one hundred (100) percent of the funds necessary for the planning of a public telecommunications construction project.

(1) Seventy-five (75) percent Federal funding will be the general presumption for projects to plan for a public telecommunications construction project.

(2) A showing of extraordinary need (*e.g.*, small community group proposing to initiate new public telecommunication service) will be taken into consideration as justification for grants of up to 100% of the total project cost.

(b) *Construction grants.* (1) A Federal grant for the construction of a public telecommunications facility may not exceed seventy-five (75) percent of the amount determined by the Agency to be the reasonable and necessary cost of such project.

(i) Seventy-five (75) percent Federal funding will be the general presumption for projects to activate stations or to extend service.

(ii) Fifty (50) percent Federal funding will be the general presumption for the replacement, improvement or augmentation of equipment. A showing of extraordinary need (*i.e.* small community-licensee stations or a station that is licensed to a large institution [*e.g.*, a college or university] documenting that it does not receive direct or in-kind support from the larger institution), or an emergency situation will be taken into consideration as justification for grants of up to 75% of the total project cost for such proposals.

(2) Since the purpose of the PTFP is to provide financial assistance for the acquisition of public telecommunications facilities, total project costs do not normally include the value of eligible apparatus owned or acquired by the applicant prior to the closing date. Inclusion of equipment purchased prior to the closing date will be considered on a case-by-case basis only when clear and compelling justifications are provided to PTFP. Obligating funds—either in whole or in part—for equipment before the closing date is considered ownership or acquisition of equipment. In like manner, accepting title to donated equipment prior to the closing date is considered ownership or acquisition of equipment.

(c) No part of the grantee's matching share of the eligible project costs may be met with funds:

(1) Paid by the Federal government, except where the use of such funds to meet a Federal matching requirement is specifically and expressly authorized by the relevant Federal statute; or

(2) Supplied to an applicant by the Corporation for Public Broadcasting, except upon a clear and compelling showing of need.

(d) No funds from the Federal share of the total project cost may be obligated until the award period start date. If an applicant or recipient obligates anticipated Federal Award funds before the start date, the Department may refuse to offer the award or, if the award has already been granted, disallow those costs of the grant. After the closing date, the applicant may, at its own risk, obligate non-Federal matching funds for the acquisition of proposed equipment.

§ 2301.7 Eligible and ineligible project costs.

(a) Each year the Agency reviews its list of eligible and ineligible equipment, supplies, and costs. The list is published in the Federal Register as part of the solicitation for applications and a copy is provided with every application package for PTFP grants.

(b) All broadcast equipment that a grantee acquires under this program shall be of professional broadcast quality. An applicant proposing to utilize nonbroadcast technology shall propose and purchase equipment that is compatible with broadcast equipment wherever the two types of apparatus interface.

(c) Total project costs do not include the value of eligible apparatus owned or acquired by the applicant prior to the closing date unless approved by PTFP on a case-by-case basis in writing pursuant to § 2301.6(b)(2).

§ 2301.8 Submission of applications.

(a) Applications can be obtained from the following address: Public Telecommunications Facilities Program,

NTIA/DOC, 14th Street and Constitution Avenue, NW., Room H–4625, Washington, DC 20230.

(b) The Administrator shall select and publish in the Federal Register a closing date by which applications for funding in a current fiscal year are to be filed.

(c) All applications, whether mailed or hand delivered, must be received by the Agency at the address listed in the annual Federal Register announcement requesting applications at or before 5:00 P.M. on the closing date. Applications received after the closing date shall be rejected and returned without further consideration (but see § 2301.26).

(d) A complete application must include all of the information required by the Agency application materials and must be submitted in the number of copies specified by the Agency.

(e) Each copy of the Agency application must contain an original signature of an officer of the applicant who is legally authorized to sign for the applicant.

(f) Applicants must certify whether they are delinquent on any Federal debt.

(g) Applicants may be required to submit Name Check forms (Form CD–346) which may be used to ascertain background information on key individuals associated with potential grantees as part of the application, per Department Pre-Award Administrative Requirements and Policies.

(h) Applicant organizations may also be subject to a responsibility determination by the Department which may include but not be limited to reviews of financial and other business activities. Responsibility determinations are intended to ascertain whether potential grantee organizations or their key personnel have been involved in or are facing any matters that might significantly and negatively impact on their business honesty, financial integrity and/or ability to successfully perform the proposed grant activities.

(i) Unsatisfactory performance by the applicant under prior Federal awards may result in the application not being funded.

§ 2301.9 Deferred applications.

(a) An applicant may reactivate an application deferred by the Agency in a prior year during the two consecutive years following the application's initial filing with the Agency; provided the applicant has not substantially changed the stated purpose of the application.

(b) To reactivate a deferred application, the applicant must file an updated application, whether mailed or hand delivered, at or before 5:00 P.M. on the closing date.

(c) An updated application must include all of the information required by the Agency application materials and must be submitted in the number of copies specified by the Agency.

(d) Deferred applications that are resubmitted under this section and contain substantial changes will be considered as new applications.

(e) All deferred applications may be subject to a determination of eligibility during subsequent grant cycles.

§ 2301.10 Applications resulting from catastrophic damage or emergency situations.

(a) An application may be filed with a request for a waiver of the closing date, as provided in § 2301.26, when an eligible broadcast applicant suffers catastrophic damage to the basic equipment essential to its continued operation as a result of a natural or manmade disaster, or as the result of complete equipment failure, and is in dire need of assistance in funding replacement of the damaged equipment. This section is limited to equipment essential to a station's continued operation such as transmitters, tower, antennas, STL's or similar equipment which, if the equipment failed, would result in a complete loss of service to the community.

(b) The request for a waiver must set forth the circumstances that prompt the request and be accompanied by appropriate supporting documentation.

(c) A waiver will be granted only if it is determined that the applicant either carried adequate insurance or had acceptable self-insurance coverage.

(d) Applicants claiming complete failure of equipment must document the circumstances of the equipment failure and demonstrate that the equipment has been maintained in accordance with standard broadcast engineering practices.

(e) Applications filed and accepted pursuant to this section must contain all of the information required by the Agency application materials and must be submitted in the number of copies specified by the Agency.

(f) The application will be subject to the same evaluation and selection process followed for applications received in the normal application cycle, although the Administrator may establish a special timetable for evaluation and selection to permit an appropriately timely decision.

§ 2301.11 Service of applications.

On or before the closing date, all new or deferred applicants must serve a summary copy of the application on the following agencies:

(a) In the case of an application for a construction grant for which FCC authorization is necessary, the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554;

(b) The state telecommunications agency(-ies), if any, having jurisdiction over the development of broadcast and/or nonbroadcast telecommunications in the state(s) and the community(-ies) to be served by the proposed project; and

(c) The state office established to review applications under Executive Order 12372, 47 FR 30959, 3 CFR, 1982 Comp., p. 197, as amended by Executive Order 12416, 48 FR 15587, 3 CFR, 1983 Comp., p. 186, in all states where equipment requested in the application will be located and where the state has established such an office and wishes to review these applications.

§ 2301.12 Federal Communications Commission authorizations.

(a) Each applicant whose project requires FCC authorization must file an application for that authorization on or before the closing date. NTIA recommends that its applicants submit PTFP-related FCC applications to the FCC at least 60 days prior to the PTFP closing date. The applicant should clearly identify itself to the FCC as a PTFP applicant.

(b) In the case of FCC authorizations where it is not possible or practical to submit the FCC license application with the PTFP application, such as C-band satellite uplinks, low-power television stations and translators, remote pickups, studio-to-transmitter links, and Very Small Aperture Terminals, a copy of the FCC application as it will be submitted to the FCC, or the equivalent engineering data, must be included in the PTFP application.

(c) Applications requesting C-band downlinks are not required to submit the FCC application or equivalent engineering data as part of the PTFP application. When such a project is funded, however, grantees will be required to submit evidence of FCC registration of the C-band downlink prior to the release of Federal funds.

(d) Any FCC authorization required for the project must be in the name of the applicant for the PTFP grant.

(e) If the project is to be associated with an existing station, the FCC operating authority for that station must be current and valid.

(f) For any project requiring new authorization(s) from the FCC, the applicant must file a copy of each FCC application and any amendments with the Agency.

(g) If the applicant fails to file the required FCC application(s) by the closing date, or if the FCC returns, dismisses, or denies an application required for the project or any part thereof, or for the operation of the station with which the project is associ ated, the Agency may reject and return the application.

(h) No grant will be awarded until confirmation has been received from the FCC that any necessary authorization will be issued.

§ 2301.13 Public comments.

(a) After the closing date, the Agency will publish a list of all applications received.

(b) The applicant shall make a copy of its application available at its offices for public inspection during normal business hours.

(c) A copy of the application will be available in the PTFP offices for public inspection during normal business hours.

(d) Any interested party may file comments with the Agency supporting or opposing an application and setting forth the grounds for support or opposition. Any opposing comments must contain a certification that a copy of the comments has been delivered to the applicant. Comments must be sent to the address listed in § 2301.8(a).

(e) The Agency shall incorporate all comments from the public and any replies from the applicant in the applicant's official file for consideration during the evaluation of the application.

§ 2301.14 Supplemental application information.

(a) The Agency may request from the applicant any additional information that the Agency deems necessary to clarify the application. Applicants must provide to the Agency additional information that the Agency requests within fifteen (15) days of the date of the Agency's notice. Applicants must submit a copy of the requested information for each copy of the application submitted by the closing date.

(b) Applicants must immediately provide to the Agency information received after the closing date that materially affects the application, including:

(1) State Single Point of Contact and State Telecommunications Agency comments on applications;

(2) FCC file numbers and changes in the status of FCC applications necessary for the proposed project;

(3) Changes in the status of proposed local matching funds, including notification of the passage (including reduction or rejection) of a proposed state appropriation or receipt (or denial) of a proposed substantial matching gift;

(4) Changes that affect the applicant's eligibility under § 2301.3;

(5) Changes in the status of proposed production, participation, or distribution agreements (if relevant to the proposed project);

(6) Changes in lease or site rights agreements; and

(7) Complete failure of major items of equipment for which replacement costs have been requested or changes in the status of the need for the equipment requested.

(c) Applicants must place copies of any additional information submitted to the Agency in the copy of the application made available for public inspection pursuant to § 2301.13.

(d) Neither the Department nor the Agency will discuss the merits of an application when it is under review.

§ 2301.15 Withdrawal of applications.

(a) Applicants may request withdrawal of an application from consideration for funding without affecting future consideration. Withdrawn applications will be returned by the Agency.

(b) A request that the Agency defer an application for consideration in a subsequent year will be treated as a request for withdrawal.

Subpart C—Evaluation and Selection Process

§ 2301.16 Technical evaluation process.

(a) In determining whether to approve or defer a construction or planning grant application, in whole or in part, and the amount of such grant, the Agency will evaluate all the information in the application file.

(b) PTFP grants are awarded on the basis of a competitive review process. The evaluation of the applications is based upon the evaluation criteria provided under § 2301.17.

(c) The competitive review process may include the following: evaluation by PTFP staff; technical assessment by engineers; an evaluation by outside reviewers, all of whom have demonstrated expertise in either public broadcasting or distance learning; and rating by a national advisory panel, composed of representatives of major national public radio and television organizations.

(d) In acting on applications and carrying out other responsibilities under the Act, the Agency shall consult (as appropriate) with the FCC, the Corporation for Public Broadcasting, state telecommunications agencies, public broadcasting agencies, organizations, and other agencies administering programs that may be coordinated effectively with Federal assistance provided under the Act; and, the state office established to review applications under Executive Order 12372, as amended by Executive Order 12416.

(e) Based upon the evaluation criteria contained in § 2301.17, the PTFP program staff will prepare summary evaluations. These will incorporate the outside reviewers' recommendations, engineering assessments, and program staff evaluations.

§ 2301.17 Evaluation criteria for construction and planning applications.

(a) For each application that is filed in a timely manner by an applicant, is materially complete, and proposes an eligible project, the Agency will consider the evaluation criteria listed in § 2301.17(b):

(1) The criteria in paragraphs (b)(1), *Applicant qualifications,* (b)(2), *Financial qualifications,* of this section are qualifying criteria. Applications meeting the minimum qualifications on these criteria will be considered for further review.

(2) The remaining four criteria listed in § 2301.17(b) will be weighted in the evaluation as follows:

(i) Criteria in paragraph (b)(3), *Project objectives,* and (b)(4), *Urgency,* of this section will be given the most weight in the evaluation.

(ii) The remaining criteria in paragraph (b)(5), *Technical/Planning qualifications,* and (b)(4), *Special consideration,* of this section will be given less weight and are listed in descending order.

(b) Evaluation criteria

(1) *Applicant qualifications:* Documentation that the applicant has or will have the ability to complete the project, including having sufficient qualified personnel to operate and maintain the facility, and to provide services of professional quality.

(2) *Financial qualifications:* Documentation reflecting the applicant's ability to provide non-Federal funds required for the project, including funds for the local match and funds to cover any ineligible costs required for completion of the project; and to ensure long-term financial support for the continued operation of the facility during the Federal interest period.

(3) *Project objectives:* The degree to which the application documents that the proposed project fulfills the objectives and specific requirements of one or more of the categories set forth

in § 2301.4, documents the applicant's ability to implement the proposed project and adequately justify the need for Federal funds in excess of fifty (50) percent of total project costs (see § 2301.6(b)(2)), if requested for equipment replacement, improvement, or augmentation projects; and, in the case of planning, adequately justifies the need for Federal funds in excess of seventy five (75) percent of total project costs (see § 2301.6(a)(2)), if requested.

(4) *Urgency:* Documentation that justifies funding the proposed project during the current grant cycle or, when appropriate, that the condition of existing equipment justifies its prompt replacement.

(5)(i) *Technical qualifications* (construction applicants only). Documentation that the eligible equipment requested is necessary to achieve the objectives of the project; that the proposed costs reflect the most efficient use of Federal funds in achieving project objectives; that the equipment requested meets current industry performance standards (and FCC standards, if appropriate) and that an evaluation of alternative technologies has been completed that justifies the selection of the requested technology (where alternative technologies are possible).

(ii) *Planning Qualifications* (planning applicants only). Documentation of the feasibility of the proposed planning process and timetable for achieving the expected results; that costs proposed reflect the most efficient use of Federal funds; that the applicant has sufficient qualified staff or consultants to complete the planning project with professional results; and that an evaluation of alternative technologies will be incorporated into the plan, if appropriate.

(6) *Special Consideration:* For this evaluation criterion, applicants should demonstrate that its broadcast or non-broadcast application will achieve significant diversity in the ownership of, operation of, and participation in public telecommunications facilities. Applicants may demonstrate how their project will better serve the characteristics, values and attitudes of diverse listeners by promoting the development of more effective programming strategies, conducting station outreach projects, through audience development efforts, and through the participation of minorities and women on the Board of Directors, and in other policy making positions.

(c) The Agency will provide each applicant with guidance in the application materials on the type of documentation necessary to meet each of the above evaluation criteria.

§ 2301.18 Selection process.

(a) The PTFP Director will consider the summary evaluations prepared by program staff, rank the applications, and present recommendations to the OTIA Associate Administrator for review and approval. The Director's recommendations and the OTIA Associate Administrator's review and approval will take into account the following selection factors:

(1) The program staff evaluations, including the outside reviewers.

(2) The type of projects and broadcast priorities set forth at § 2301.4.

(3) Whether the application is for broadcast or a nonbroadcast project.

(4) Whether the applicant has any current NTIA grants.

(5) The geographic distribution of the proposed grant awards.

(6) The availability of funds.

(b) Upon approval by the OTIA Associate Administrator, the Director's recommendations will then be presented to the Selecting Official, the NTIA Administrator.

(c) The Administrator makes final award selections taking into consideration the Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the program's stated purposes set forth at § 2301.1 (a) and (c).

(d) No grant will be awarded until confirmation has been received from the FCC that any necessary authorization will be issued.

(e) After final award selections have been made, the Agency will notify the applicant of one of the following actions:

(1) Selection of the application for funding, in whole or in part;

(2) Deferral of the application for subsequent consideration;

(3) Rejection of the application with an explanation and the reason, if an applicant is not eligible or if the proposed project does not fall within at least one of the categories enumerated at § 2301.4; or

(4) Return of applications that were deferred by the Agency after consideration during three grant cycles.

(f) The Agency will notify the following organizations of those applications selected for funding:

(1) The state educational telecommunications agency(ies), if any, in any state any part of which lies within the service area of the applicant's facility;

(2) The FCC; and

(3) The Corporation for Public Broadcasting and, as appropriate, other public telecommunications entities.

Subpart D—Post-Award Requirements

§ 2301.19 General conditions attached to the Federal award.

(a) During the project award period and the remainder of the Federal interest period, the grantee must:

(1) Continue to be an eligible organization as described in § 2301.3;

(2) Obtain and continue to hold any necessary FCC authorization(s);

(3) Use the Federal funds for which the grant was made for the equipment and other expenditure items specified in the application for inclusion in the project, except that the grantee may substitute other items where necessary or desirable to carry out the purpose of the project *if approved in advance by the Department in writing.* These changes include but are not limited to the following:

(i) Costs (including planning costs);

(ii) Essential specifications of the equipment;

(iii) The engineering configuration of the project;

(iv) Extensions of the approved grant award period; and

(v) Transfers of a grant award to a successor in interest, pursuant to § 2301.19(c);

(4) Use the facilities and any monies generated through the use of the facilities primarily for the provision of public telecommunications services and ensure that the use of the facilities for other than public telecommunications purposes does not interfere with the provision of the public telecommunications services for which the grant was made;

(5) Not make its facilities available to any person for the broadcast or other transmission intended to be received directly by the public, of any advertisement, unless such broadcast or transmission is expressly and specifically permitted by law or authorized by the FCC; and

(6) State when advertising for bids for the purchase of equipment that the Federal government has an interest in facilities purchased with Federal funds under this program that begins with the purchase of the facilities and continues for ten (10) years after the completion of the project.

(b) During the period in which the grantee possesses or uses the Federally funded facilities, the grantee may not use or allow the use of the Federally funded equipment for purposes the essential thrust of which are sectarian for the useful life of the equipment even when this extends beyond the ten-year Federal interest period. (See NTIA's policy on sectarian activities at 60 FR 66491, Dec. 22, 1995.)

(c) If necessary to further the purpose of the Act, the Agency may reassign a grant to a successor in interest or subsidiary corporation of a grantee in cases where a similar operational entity remains in control of the grant and the original objectives of the grant remain in effect. Each party must provide, in writing, its assent to the substitution. Any substituted party must meet the eligibility requirements.

§ 2301.20 Schedules and reports.

(a) Within thirty (30) calendar days of the award date the grantee shall submit to the Agency, in duplicate, a construction schedule or a revised planning timetable that will include the information requested in the grant terms and conditions in the award package.

(b) During the project period of this grant, the grantee shall submit performance reports, in duplicate, on a calendar year quarterly basis for the period ending March 31, June 30, September 30, and December 31, or any portions thereof. The Quarterly Performance Reports should contain the following information:

(1) A comparison of actual accomplishments during the reporting period with the goals and dates established in the Construction or Planning Schedule for that reporting period;

(2) A description of any problems that have arisen or reasons why established goals have not been met;

(3) Actions taken to remedy any failures to meet goals; and

(4) Construction projects must also include a list of equipment purchased during the reporting period compared with the equipment authorized. This information must include manufacturer, make and model number, brief description, number and date of the items purchased, and cost.

§ 2301.21 Payment of Federal funds.

(a) The Department will not make any payment under an award, unless and until the recipient complies with all relevant requirements imposed by this Part. Additionally:

(1) The Department will not make any payment until it receives confirmation that the FCC has granted any necessary authorization;

(2) The Department may not make any payment under an award unless and until all special award conditions stated in the award documents that condition the release of Federal funds are met; and

(3) An agreement to share ownership of the grant equipment (*e.g.*, a joint venture for a tower) must be approved by the Agency before any funds for the project will be released.

(b) As a general matter, the Agency expects grantees to expend local matching funds at a rate at least equal to the ratio of the local match to the Federal grant as stipulated in the grant award.

§ 2301.22 Protection, acquisition, and substitution of equipment.

(a) To assure that the Federal investment in public telecommunications facilities funded under the Act will continue to be used to provide public telecommunications services to the public during the Federal interest period, the Agency may require a grantee to:

(1) Execute and record a document establishing that the Federal government has a priority lien on any facilities purchased with funds under the Act during the period of continuing Federal interest. The document shall be recorded where liens are normally recorded in the community where the facility is located and in the community where the grantee's headquarters are located; and

(2) File a certified copy of the recorded lien with the Administrator ninety (90) days after the grant award is received.

(b) The grantee shall maintain protection against common hazards through adequate insurance coverage or other equivalent undertakings, except that, to the extent the applicant follows a different policy of protection with respect to its other property, the applicant may extend such policy to apparatus acquired and installed under the project. The grantee shall purchase flood insurance (in communities where such insurance is available) if the facilities will be constructed in any area that has been identified by the Federal Emergency Management Agency as having special flood hazards.

(c) The grantee shall not dispose of or encumber its title or other interests in the equipment acquired under this grant during the Federal interest period.

(d) The grantee shall demonstrate that the grantee has obtained appropriate title or lease satisfactory to protect the Federal interest to the site or sites on which apparatus proposed in the project will be operated. The grantee must have the right to occupy, construct, maintain, operate, inspect, and remove the project equipment without impediment to assure the sufficient continuity of operation of the facility; and nothing must prevent the Federal government from entering the property and reclaiming or securing PTFP-funded property.

(e) The Agency will allow the acquisition of facilities by lease; however, the following requirements apply:

(1) The lease must be of benefit to the Federal government;

(2) The actual amount of the lease must not be more than the outright purchase price would be; and

(3) The lease agreement must state that in the event of anticipated or actual termination of the lease, the Federal government has the right to transfer and assign the leasehold to a new grantee for the duration of the lease contract.

(f) *Transfer of equipment.* Where the grant equipment is no longer needed for the original purposes of the project, the Department may transfer the equipment to the Federal government or an eligible third party, in accordance with Office of Management and Budget guidelines.

(g) *Transfer of Federal interest to different equipment.* The Department may transfer the Federal interest in PTFP-funded equipment to other eligible equipment presently owned or to be purchased by the grantee with non-Federal monies, provided the following conditions are met:

(1) If the Federal interest is to be transferred to other equipment presently owned or to be purchased by a grantee, the Federal interest in the new equipment must be at least equal to the Federal interest in the original equipment.

(2) Equipment previously funded by PTFP that is within the Federal interest period may not be used in a transfer request as the designated equipment to which the Federal interest is to be transferred.

(3) The same item can be used only once to substitute for the Federal interest. However, the Federal interest in several items of equipment from different grants may be transferred to a single item if the request for all such transfers is submitted at the same time.

(4) A lien on equipment transferred to the Federal interest may be required by PTFP and must be recorded in accordance with § 2301.23(b)(8). A copy of the lien document must be filed with the PTFP within sixty (60) days of the date of approval of the transfer of Federal interest.

(h) *Termination by buy-out.* A grantee may terminate the Federal revisionary interest in a PTFP grant by buying out the Federal interest with non-Federal monies. Buy-outs may be requested at any time.

Subpart E—Completion of Projects

§ 2301.23 Completion of projects.

(a) Upon completion of a *planning* project, the grantee must promptly provide to the Agency two copies of any

report or study conducted in whole or in part with funds provided under this program.

(1) This report shall meet the goals and objectives for which the grant is awarded and shall follow the written instructions and guidance provided by the Agency. The grant award goals and objectives are stated in the planning narrative as amended and are incorporated by reference into the award agreement.

(2) The Agency shall review this report for the extent to which those goals and objectives are addressed and met, for evidence that the work contracted for under the grant award was in fact performed, and to determine whether the written instructions and guidance provided by the Agency, if any, were followed.

(3) If the Agency determines that the report fails to address or meet any grant award goals or objectives, or if there is no evidence that the work contracted for was in fact performed, or if this report clearly indicates that the written instructions and guidance provided by the Agency, if any, were disregarded, then the Agency may pursue remedial action.

(4) An unacceptable final report may result in the disallowance of claimed costs and the establishment of an account receivable by the Department.

(b) Upon completion of a *construction* project, the grantee must:

(1) Certify that the grantee has acquired, installed, and begun operating the project equipment in accordance with the project as approved by the Agency, and has complied with all terms and conditions of the grant as specified in the Grant Award document;

(2) Certify that the grantee has obtained any necessary FCC authorizations to operate the project apparatus following the acquisition and installation of the apparatus and document the same;

(3) Certify and document that the facilities have been acquired, that they are in operating order, and that the grantee is using the facilities to provide public telecommunications services in accordance with the project as approved by the Agency;

(4) Certify that the grantee has obtained adequate insurance to protect the Federal interest in the project in the event of loss through casualty;

(5) Certify, if not previously provided, that the grantee has acquired all necessary leases or other site rights required for the project;

(6) Certify, if appropriate, that the grantee has qualified for receipt of funds from the Corporation for Public Broadcasting;

(7) Provide a complete and accurate final inventory of equipment acquired under the project and a final accounting of all project expenditures, including non-equipment costs (*e.g.*, installation costs); and

(8) Execute and record a final priority lien, if required by PTFP, reflecting the completed project and assuring the Federal government's reversionary interest in all equipment purchased under the grant project for the duration of the Federal interest period.

(c) When an applicant completes a construction project, the Agency will assign a completion date that the Agency will use to calculate the termination date of the Federal interest period. The completion date will usually be the date on which the project period expires unless the grantee certifies in writing prior to the project period expiration date that the project is complete and in accord with the terms and conditions of the grant, as required under § 2301.23(b)(1). If the PTFP Director determines that the grantee improperly certified the project to be complete, the PTFP Director will amend the completion date accordingly.

§ 2301.24 Final Federal payment.

If the total allowable, allocable, and reasonable costs incurred in completing the planning or construction project are less than the total project award amount, the Agency shall reduce the amount of the final Federal share on a pro rata basis. If, however, the actual costs incurred in completing the project are more than the estimated total project costs, in no case will the final Federal funds paid exceed the grant award.

§ 2301.25 Retention of records and annual status reports.

(a) All grantees shall keep intact and accessible all records specified in Office of Management and Budget Circular A–110 (for educational institutions, hospitals, and nonprofit organizations), or 15 CFR part 24 (for State and Local Governments).

(b) Recipients of construction grants:

(1) Are required to submit an Annual Status Report for each grant project that is in the Federal interest period. The Reports are due no later than April 1 in each year of the Federal interest period. Information about what is to be included in the Annual Status Report is supplied to grant recipients at the time grants are closed out.

(2) Shall retain an inventory of the equipment for the duration of the ten-year Federal interest period and shall mark project apparatus in a permanent manner to assure easy and accurate identification and reference to inventory records. The marking shall include the PTFP grant number and an inventory number assigned by the grantee.

(3) May also be required to take whatever steps may be necessary to ensure that the Federal government's reversionary interest continues to be protected for the 10-year period by recording, when and where required, a lien continuation statement and reporting that fact in the Annual Status Report.

Subpart F—Waivers

§ 2301.26 Waivers.

It is the general intent of NTIA not to waive any of its regulations. However, under extraordinary circumstances and when it is in the best interests of the Federal government, NTIA, upon its own initiative or when requested, may waive the regulations adopted pursuant to section 392(e) of the Act. Waivers may only be granted for regulatory requirements that are discretionary.

[FR Doc. 96–28771 Filed 11–7–96; 8:45 am]

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DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 960205021–6309–03]

RIN 0660–ZA01

Public Telecommunications Facilities Program: Closing Date

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of availability of funds.

SUMMARY: Subject to the authority of Title III of the Department of Commerce, Justice and State, the Judiciary and Related Agencies Appropriations Act, (set out in Division A, Title I of the Omnibus Consolidated Appropriations Act, 1997, Pub. L. 104–208), the National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, announces that applications are available for planning and construction grants for public telecommunications facilities under the Public Telecommunications Facilities Program (PTFP).

Applicants for matching grants under the PTFP must file their applications on or before Wednesday, February 12, 1997. NTIA anticipates making grant awards by September 30, 1997. NTIA shall not be liable for any proposal preparation costs.

Approximately $15.25 million is available for FY 1997 for PTFP grants pursuant to Pub. L. 104–208 the ''Department of Commerce and Related Agencies Appropriations Act of 1997.'' The amount of a grant award by NTIA will vary, depending on the approved project. For fiscal year 1996, NTIA awarded $13.4 million in funds to 96 projects. The awards ranged from $3,592 to $791,727.

The applicable Rules for the PTFP were published on November 8, 1996. These rules, 15 CFR Part 2301 et seq. will be in effect for FY 1997 PTFP applications. Copies of these new Rules will be distributed as part of the PTFP Application Kit and applicants are cautioned not to use older versions of the PTFP Rules which they may have on hand. Parties interested in applying for financial assistance should refer to these rules and to the authorizing legislation (47 U.S.C. §§ 390–393, 397–399b) for additional information on the program's goals and objectives, eligibility criteria, evaluation criteria, and other requirements.

DATES: Pursuant to 15 CFR § 2301.8(b), the Administrator of NTIA hereby establishes the closing date for the filing of applications for grants under the PTFP. The closing date selected for the submission of applications for 1997 is Wednesday, February 12, 1997. Applications delivered by mail or by hand must be received at the address referenced below by 5 p.m. on or before Wednesday, February 12, 1997. Applicants whose applications are not received by the deadline are hereby notified that their applications will not be considered in the current grant cycle and will be returned to the applicant. See 15 CFR § 2301.8(c); but see also § 2301.26. NTIA will also return any application which is substantially incomplete, or when the Agency finds that either the applicant or project is ineligible for funding under 15 CFR § 2301.3 and § 2301.4. The Agency will inform the applicant the reason for the return of any application.

ADDRESSES: To obtain an application package, submit completed applications, or send any other correspondence, write to: Office of Telecommunications and Information Applications, NTIA/DOC, 14th Street and Constitution Ave., NW, Room H–4625, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Dennis R. Connors, Director, Public Broadcasting Division, telephone: (202) 482–5802; fax: (202) 482–2156. Information about the PTFP can also be obtained electronically via Internet (send inquiries to http://www.ntia.doc.gov) or through the NTIA BBS at (202) 482–1199 (set computer modems for 8 stop bits, 0 polarity).

SUPPLEMENTARY INFORMATION:

I. Application Forms and Regulations

To apply for a PTFP grant, an applicant must file an original and two copies of a timely and complete application on a current form approved by the Agency. The current application form will be provided to applicants as part of the application package. This form expires on October 31, 1997, and no previous versions of the form may be used. (In accordance with the Paperwork Reduction Act, the current application form has been cleared under OMB control no. 0660–0003.) Applications submitted by facsimile or electronic means are not acceptable.

All persons and organizations on the PTFP's mailing list will be sent a copy of the current application form and the Final Rules. Those not on the mailing list may obtain copies by contacting the PTFP at the address or telephone, fax, computer bulletin board, or Internet numbers noted above. Prospective applicants should read the Final Rules carefully before submitting applications. Applicants whose applications were deferred in FY 1996 will be mailed pertinent PTFP materials and instructions for requesting reactivation of their applications.

Applicants should note that they must comply with the provisions of Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' The Executive Order requires applicants for financial assistance under this program to file a copy of their application with the Single Points of Contact (SPOC) of all states relevant to the project. Applicants are required to provide a copy of their completed application to the appropriate SPOC on or before February 12, 1997. Applicants are encouraged to contact the appropriate SPOC well before the PTFP closing date.

NTIA requires that all applicants whose proposed projects need authorization from the Federal Communications Commission (FCC) tender an application to the FCC for such authority on or before February 12, 1997. (An application is tendered to the FCC when it has been received by the Secretary of the FCC.) However, applicants are urged to submit it with as much lead time before the PTFP closing date as possible. The greater the lead time, the better the chance the FCC application will be processed to coincide with NTIA's grant cycle. NTIA will return the application of any applicant that fails to tender an application to the FCC for any necessary authority on or before February 12, 1997.

Indirect costs for *construction* applications are not supported by this program. The total dollar amount of the indirect costs proposed in a *planning* application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying,'' and the following explanations are hereby provided:

(1) *Nonprocurement Debarment and Suspension.* Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies;

(2) *Drug Free Workplace.* Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, ''Government-wide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

(3) *Anti-lobbying.* Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applicants/bidders for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

(4) *Anti-lobbying Disclosures.* Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR Part 28, Appendix B.

Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the grant award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to the Department. SF–LLL submitted by any tier recipient or subrecipient should be submitted to the Department in accordance with the instructions contained in the award document.

If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department.

Recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal assistance awards. In addition, unsatisfactory performance by the applicant under prior Federal awards may result in the application not being considered for funding.

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that they have received, there is no obligation on the part of the Department to cover preaward costs.

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either: (1) the delinquent account is paid in full; (2) a negotiated repayment schedule is established and at least one payment is received, or (3) other arrangements satisfactory to the Department are made.

Applicants are reminded that a false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Special Note: NTIA has established a policy which is intended to encourage stations to increase from 25% to 50% the matching percentage for those proposals that call for equipment replacement, improvement, or augmentation (PTFP Policy Statement, (56 FR 59168 (1991))). The presumption of 50% funding will be the general rule for the replacement, improvement or augmentation of equipment. Exceptions to this general policy direction are as follows: small community-licensee stations will not be subjected to this policy. The same is true of a station that is licensed to a large institution (e.g., a college or university) documenting that it does not receive direct or in-kind support from the larger institution. Also, a showing of extraordinary need or an emergency situation will be taken into consideration as justification for grants of up to 75% of the project cost for such proposals.

A point of clarification is in order: NTIA expects to continue funding projects to activate stations or to extend service at up to 75% of the total project cost. NTIA will do this because applicants proposing to provide first service to a geographic area ordinarily incur considerable costs that are not eligible for NTIA funding. The applicant must cover the ineligible costs including those for construction or renovation of buildings and other similar expenses.

Since NTIA has limited funds for the PTFP program, the PTFP Final Rules published November 8, 1996 modifies NTIA's policy regarding the funding of planning applications. Our policy now includes the general presumption to fund planning projects at no more than 75% of the project costs. NTIA notes that most of the planning grants awarded by PTFP in recent years include matching in-kind services and funds contributed by the grantee. The new NTIA policy therefore codifies what already has become PTFP practice. NTIA, however, is mindful that planning grants are sometimes the only resource that emerging community groups have with which to initiate the planning of new facilities in unserved areas. We therefore will continue to award up to 100% of total project costs in cases of extraordinary need.

We wish to take this opportunity to restate the policy published in the November 22, 1991, PTFP Policy Statement (56 FR 59168 (1991)), regarding applicants' use of funds from the Corporation for Public Broadcasting (CPB) to meet the local match requirements of the PTFP grant. NTIA continues to believe that the policies and purposes underlying the PTFP requirements could be significantly frustrated if applicants routinely relied upon another Federally supported grant program for local matching funds. Accordingly, NTIA has limited the use of CPB funds for the non-Federal share of PTFP projects to circumstances of ''clear and compelling need'' (15 CFR § 2301.6(c)(2)). NTIA intends to maintain that standard and to apply it on a case-by-case basis.

The November 22, 1991, PTFP Policy Statement (56 FR 59168 (1991)) also discussed a number of issues of particular relevance to applicants proposing nonbroadcast educational and instructional projects and potential improvement of nonbroadcast facilities. These policies remain in effect and will be distributed to all PTFP applicants as part of the Guidelines for preparing FY 1997 PTFP applications.

II. Eligible and Ineligible Costs

Eligible equipment for the 1997 grant round includes apparatus necessary for the production, interconnection, captioning, broadcast, or other distribution of programming, including but not limited to studio equipment; audio and video storage, processing, and switching equipment; terminal equipment; towers, antennas, transmitters, remote control equipment, transmission line, translators, microwave equipment, mobile equipment, satellite communications equipment, instructional television fixed service equipment, subsidiary communications authorization transmitting and receiving equipment, cable television equipment, and optical fiber communications equipment.

NTIA recognizes that digital technology will be an important means for the more efficient creation and distribution of programming in the future. Consequently, public broadcasters seeking to replace, upgrade, and buy new equipment that employs digital technology will be

permitted, when appropriate, to use PTFP funds for such purposes.

The following list provides clarification regarding several equipment and other cost areas that will be helpful in preparing applications. NTIA also reserves the right to eliminate any costs, whether specified here or not, that it determines are not appropriate prior to the awarding of a grant.

A. Equipment and Supplies

(1) Buildings and Modifications to Buildings. (a) Eligible: Small equipment shelters that are part of satellite earth stations, translators, microwave interconnection facilities, and similar facilities. (b) Ineligible: Purchase or lease of buildings and modifications to buildings, including the renovation of space for studios intended to house eligible equipment; costs associated with removing old equipment.

(2) Land and Land Improvements. (a) Eligible: Site preparation necessary to construct towers and guy anchors for transmission and interconnection equipment. (b) Ineligible: Purchase or lease of land.

(3) Moving Costs. (a) Ineligible: Moving costs required by relocation of any facilities. (b) Eligible: Shipping and delivery charges for equipment acquired within the award.

(4) Reception Equipment. (a) Eligible: Fixed frequency demodulator, as required by good engineering practice for monitoring the off-air transmission of signals; subcarrier demodulator; telemetry transmitters and receivers; satellite receivers; and subcarrier decoders for the handicapped. (b) Ineligible: Consumer-type TV sets and FM receivers.

(5) Tower Modifications. (a) Eligible: Strengthening or modifying a commercial entity's tower to accommodate a public broadcasting entity (structural modifications on towers and/or antenna changes must meet EIA (Electronic Industries Association) and any required local standards). (b) Ineligible: Modifying or strengthening the applicant's tower to accommodate a commercial entity.

(6) Production and Control Room Equipment. (a) Eligible: Standard production studio and control room equipment for TV or radio program production. (b) Ineligible: Consumer-type mixers, tape recorders, turntables, CD players, etc; ancillary production devices such as stopwatches and stop-clocks, building lights, sound effects, scenery and props, cycloramas, sound insulation devices and materials, draperies and related equipment for production use, film and still photography processing, film sound synchronization editing.

(7) Video Equipment. (a) Eligible: Videotape editing and processing equipment that conforms to broadcast-standard quality equipment for field recording and production editing. (b) Ineligible: Consumer level videotape recording formats not accepted in the industry as broadcast-standard quality.

(8) Furniture and Office Equipment. (a) Eligible: Consoles required to mount equipment such as audio consoles and video switchers. (b) Ineligible: Such items as office furniture, office equipment, studio clocks and systems, blackboards, office intercoms, equipment inventory labels and label-makers, word processors, telephone systems, and printing and duplication equipment.

(9) Expendable Items and Spare Parts. (a) Eligible: A transmitter spare parts kit and one set of final and driver tubes for a transmitter awarded in the grant; a spare parts kit for video tape recorders awarded in the grant. (b) Ineligible: Spare lenses, spare circuit components, spare parts kits for studio equipment, except as noted above; recording tape, film, reels, cartridge tapes, records, compact discs, and record or tape cleaning equipment; art and graphics supplies; maintenance supplies, including replacement final and driver tubes normally considered in the industry as normal maintenance-budget-provided items and similar items.

(10) Backup Equipment. (a) Eligible: Hot standby or backup microwave for the main studio-to-transmitter link only; a backup or spare exciter for a television transmitter, as required by good engineering practice. (b) Ineligible: Redundant equipment, such as spare transmitters, or costs associated with them, as well as backup microwave equipment (except as noted above).

(11) Electric Power. (a) Eligible: Generally, all primary power costs from the output of the main power meter panel; regulators and surge protectors, as required by good engineering practice, to stabilize transmitter RF output. Where primary power is not available or is unusable for broadcast, then PTFP may provide funding for those devices needed to power the facility if the need for that equipment is fully documented in the application. (b) Ineligible: Costs of installing primary power to the facility, including transformers, power lines, gasoline or diesel powered generators, and related equipment.

(12) Test and Maintenance Equipment. (a) Eligible: Required test equipment, as indicated by good engineering practice for the maintenance of the project equipment. (b) Ineligible: Maintenance equipment such as hand and power tools, storage cabinets, and maintenance services.

(13) Air Conditioning and Ventilation. (a) Eligible: The costs to provide ventilation of eligible project equipment, such as ducting for transmitters, as required by good engineering practice. Transmitter air conditioning can be applied for and will be supported if the need is well-documented in the application. (b) Ineligible: Unless exceptionally well-documented, air conditioning for transmitters, control rooms, or equipment rooms, studios, mobile units, and other operational rooms and offices.

(14) Remote Vans. (a) Eligible: Items to equip a remote van for audio/video production. (b) Ineligible: All vehicles.

B. Other Costs

(1) Construction Applications: NTIA generally will not fund salary expenses, including staff installation costs, and pre-application legal and engineering fees. Certain ''pre-operational expenses'' are eligible for funding. (See 15 CFR § 2301.2.) Despite this provision, NTIA regards its primary mandate to be funding the acquisition of equipment and only secondarily funding of salaries. A discussion of this issue appears in the PTFP Final Rules under the heading Support for Salary Expenses in the introductory section of the document.

(2) Planning Applications. (a) Eligible: Salaries are eligible expenses for all planning grant applications, but should be fully described and justified within the application. Planning grant applicants may lease office equipment, furniture and space, and may purchase expendable supplies under the terms of Section 392 (c) of the Act. (b) Ineligible: Planning grant applications cannot include the cost of constructing or operating a telecommunications facility.

(3) Audit Costs. Organization-wide audits shall be performed in accordance with the Single Audit Act Amendments of 1996, for audits of state and local governments; and Office of Management and Budget Circular A–133, Audits of Institutions of Higher Education and Other Non-Profit Institutions for recipients that are educational institutions or nonprofit organizations. Additionally, when required under a special award condition, a project audit shall be performed in accordance with Federal Government Auditing Standards in lieu of an organization-wide audit.

Federal guidelines allow NTIA to include an amount for audit costs as part of a grant award. NTIA policy permits non-profit organizations to

include up to $5,000 for audit costs in an application. Because audit costs may vary depending on the size and scope of an organization's operations, NTIA recommends that applicants obtain estimates from auditors to determine the appropriate amount to include in their applications. Construction Grant Applicants should list the amount requested for audit costs in Part II, Section D—Other Project Costs, 1. Outside Services of the PTFP Application Form. Planning Grant Applicants should include the amount on line 7, Other, in Part III—Budget Information for Planning Grant Applicants of the PTFP Application Form.

III. Notice of Applications Received

In accordance with 15 CFR § 2301.13, NTIA will publish a notice in the Federal Register listing all applications received by the Agency. Listing an application in such a notice merely acknowledges receipt of an application to compete for funding with other applications. Publication does not preclude subsequent return of the application for the reasons discussed under the Dates section above, or disapproval of the application, nor does it assure that the application will be funded. The notice will also include a request for comments on the applications from any interested party.

IV. Evaluation Process

See 15 CFR § 2301.16 for a description of the Technical Evaluation and 15 CFR § 2301.17 for the Evaluation Criteria.

V. Selection Process

Based upon the above cited evaluation criteria, the PTFP program staff prepares summary evaluations. These incorporate the outside reviewers recommendations, engineering assessments, and program staff evaluations. The PTFP Director will consider the summary evaluations prepared by program staff, rank the applications, and present recommendations to the OTIA (Office of Telecommunications and Information Applications) Associate Administrator for review and approval. The PTFP Director ranks the applications into three categories: ''Recommended for Funding,'' ''Recommended for Funding if Funds Available,'' and ''Not Recommended for Funding.'' See 15 CFR § 2301.18 for a description of the selection factors retained by the Director, OTIA Associate Administrator, and the Assistant Secretary for Telecommunications and Information.

Upon review and approval by the OTIA Associate Administrator, the Director's recommendations will then be presented to the Selection Official, the NTIA Administrator. The NTIA Administrator selects the applications to be negotiated for possible grant award taking into consideration the Directors recommendations and the degree to which the slate of applications, taken as a whole, satisfies the program's stated purposes set forth at 15 CFR § 2301.1(a) and (c). These applications are negotiated between PTFP staff and the applicant. The negotiations are intended to resolve whatever differences might exist between the applicant's original request and what PTFP proposes to fund. During negotiations, some applications may be dropped from the proposed slate, due to lack of Federal Communications Commission licensing authority, an applicant's inability to make adequate assurances or certifications, or other reasons. Negotiation of an application does not ensure that a final award will be made. When the negotiations are completed, the PTFP Director recommends final selections to the NTIA Administrator applying the same factors as listed in 15 CFR § 2301.18. The Administrator then makes the final award selections from the negotiated applications taking into consideration the Director's recommendations and the degree to which the slate of applications, taken as a whole, satisfies the program's stated purposes in 15 CFR § 2301.1(a) and (c).

VI. Project Period

Planning grant award periods customarily do not exceed one year, whereas construction grant award periods commonly range from one to two years. Although these time frames are generally applied to the award of all PTFP grants, variances in project periods may be based on specific circumstances of an individual proposal.

Authority: The Public Telecommunications Financing Act of 1978, as amended, 47 U.S.C. §§ 390–393, 397–399(b) (Act). (Catalog of Federal Domestic Assistance No. 11.550)

Bernadette McGuire-Rivera,

Associate Administrator, Office of Telecommunications and Information Applications.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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COMMERCE DEPARTMENT

National Telecommunications and Information Administration

Public telecommunications facilities program:

Federal regulatory reform; published 11-8-96

FEDERAL COMMUNICATIONS COMMISSION

Practice and procedure:

Public utility holding companies; entry into telecommunications industry without prior SEC approval; published 10-9-96

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Food and Drug Administration

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Blood and blood components; consignee notification of increased HIV infection transmission risk; published 9-9-96

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Health Care Financing Administration

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Federal Aviation Administration

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Bering Sea and Aleutian Islands groundfish; comments due by 11-12-96; published 9-19-96

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EDUCATION DEPARTMENT

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ENERGY DEPARTMENT

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FARM CREDIT ADMINISTRATION

Farm credit system:

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FEDERAL DEPOSIT INSURANCE CORPORATION

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