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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 75

[Docket No. 94–061–2]

Equine Infectious Anemia

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning the interstate movement of horses that test positive for equine infectious anemia to allow the horses to be moved interstate directly to slaughter under a permit and in a sealed conveyance, as an alternative to the horses being officially identified prior to the interstate movement with a hot iron or chemical brand, freezemarking, or a lip tattoo. This change in the regulations will provide owners of equine infectious anemia reactors with an alternative means of handling their animals while preventing the spread of this communicable disease.

EFFECTIVE DATE: April 19, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Tim Cordes, Senior Staff Veterinarian, Animal and Plant Health Inspection Service, Veterinary Services, Sheep, Goat, Equine and Poultry Staff, 4700 River Road Unit 43, Riverdale, MD 20737–1228, (301) 734–3279.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 75 (referred to below as the regulations) contain provisions for the interstate movement of horses, asses, ponies, mules, and zebras that test positive for communicable diseases, including equine infectious anemia (EIA). The purpose of those provisions is to prevent the spread of communicable diseases, including EIA. EIA, also known as swamp fever, is a viral disease of equines that may be characterized by sudden fever, swelling of the legs and lower parts of the body, severe weight loss, and anemia.

Section 75.4(a) of the regulations defines an EIA reactor as any horse, ass, mule, pony, or zebra that is subjected to an official test and found positive. Under § 75.4(b) of the regulations, no EIA reactor may be moved interstate unless the reactor is officially identified and meets certain other requirements. Section 75.4(a) of the regulations defines ''officially identified'' as the permanent identification of a reactor with markings permanently applied by an Animal and Plant Health Inspection Service (APHIS) representative, a State representative, or an accredited veterinarian using a hot iron or chemical brand, freezemarking, or a lip tattoo.

On October 6, 1994, we published in the **Federal Register** (59 FR 50860–50861, Docket No. 94–061–1) a proposal to amend the requirements for interstate movement in § 75.4(b) by adding a provision stating that ''Official identification is not necessary if the animal is moved directly to slaughter, traveling under a permit and in a sealed conveyance.'' We also proposed to add definitions of ''official seal'' and ''permit'' to § 75.4(a).

We solicited comments concerning our proposal for 60 days ending December 5, 1994. We received six comments by that date. They were from State agriculture agencies, animal rights organizations, and a horse industry association. Three of the commenters supported the proposed rule, although two of those commenters suggested additional provisions be included in the regulations. The remaining three commenters opposed the proposed rule. We carefully considered all of the comments we received. They are discussed below.

Comment: Horse owners may be unwilling to part with their animals for sentimental or economic reasons. If EIA reactors are not permanently identified, some horse owners may attempt to substitute a different horse for an EIA reactor prior to the reactor's movement to slaughter in a sealed conveyance.

Response: We do not believe that the substitution scenario envisioned by the commenter will present a problem. First, we believe that it is unlikely that a horse owner would attempt to substitute a healthy horse for a horse infected with a debilitating disease such as EIA. Second, when a horse is identified as an EIA reactor, that horse is tested for EIA at least two more times, once by State animal health authorities and once by APHIS. The APHIS and State representatives who deal with the retests will likely be the same APHIS and State representatives who are present at the time the reactor is sealed aboard the conveyance on which it will be transported to slaughter, and they would be able to recognize a horse that they had recently handled. Additionally, the horse would be identified, in writing, for the purposes of the tests and again when the required forms for its interstate movement were completed. Given those factors, it is unlikely that a horse owner could effect a substitution even if he or she desired to do so. Finally, a reactor does not necessarily have to be moved interstate to slaughter; a horse owner would have other options. The regulations in § 75.4(b) allow, under certain conditions, a reactor to be moved interstate to its farm of origin or to a diagnostic or research facility, where the reactor would remain quarantined under State authority until natural death, slaughter, or until disposed of by euthanasia.

Comment: APHIS should consider regulations to prohibit needlessly cruel identification procedures such as hot-iron and chemical branding for those EIA reactors that are not moved directly to slaughter in a sealed conveyance. In that vein, APHIS should research and encourage the use of microchip technology and its global standardization.

Response: Under the current regulations, the owner of a reactor is not required to use either of the identification methods that the commenter views as being needlessly cruel. Freezemarking and lip tattoos are approved for use in addition to hot-iron and chemical branding, and this final rule makes available a method by which the owner of a reactor could move the animal interstate without permanently identifying the animal.

With regard to microchips, we acknowledge that useful information can be readily stored on and retrieved from microchips but, as alluded to by

the commenter, there is no universal chip reader that can access the information stored on chips produced by different manufacturers. That lack of standardization currently prevents our use of microchips in nationwide disease control programs. APHIS will, however, continue to research the potential uses of microchips in its disease control programs.

Comment: The proposed rule does not specify who is authorized to open a sealed conveyance. Because there are only nine equine processing plants in the United States, EIA reactors may have to travel several hundred miles to slaughter. How will the feeding, watering, and resting of EIA reactors being transported to slaughter over long distances be accomplished if the operator of the conveyance is not authorized to break the seal? Will an authorized person be available to open and reseal the conveyance and ensure that all EIA reactors are returned to the conveyance after a stop?

Response: As we stated in the proposed rule, moving EIA reactors interstate to slaughter under a permit and in a sealed conveyance would ensure that the animals are not diverted for other uses. Because the seal is intended to provide evidence that the reactors have not been removed from the conveyance during the course of the interstate movement to the destination slaughtering establishment, it is necessary that the seal remain unbroken until the conveyance arrives at the destination slaughtering establishment, where an APHIS or State representative would remove the seal. The provisions of this final rule are presented as an alternative to officially identifying reactors prior to an interstate movement; we understand that this alternative may not be viable in all situations. If the interstate movement to the destination slaughtering establishment cannot be completed without a stop for resting, feeding, and watering a reactor, the owner of the reactor would still be able to move the reactor interstate to slaughter. Specifically, the owner of the reactor could choose to have the animal officially identified and, under the regulations in § 75.4(b)(4), would be able to move the reactor interstate through no more than one approved stockyard for sale for immediate slaughter if the reactor is accompanied by a certificate during the interstate movement and is moved within 5 days of its arrival at the approved stockyard directly to slaughter.

Comment: Without permanent identification, how will the identity of EIA reactors be maintained in the event that the conveyance in which they are being moved has a mechanical breakdown or is involved in an accident?

Response: The operator of the conveyance in which the reactors are being transported will have been furnished with the telephone numbers of APHIS representatives in the States of origin and destination prior to his or her departure from the State of origin. If, for any reason, the operator is unable to reach the slaughtering establishment in the State of destination as planned, the operator will be able to contact an APHIS representative, who will make the necessary arrangements for APHIS or State personnel to travel to the location of the conveyance and take whatever actions may be necessary to ensure that the reactors are maintained in isolation sufficient to prevent the transmission of EIA to other animals until such time as the movement to the slaughtering establishment can be completed.

Comment: When the nearest equine processing plant is several hundred miles away, it is not cost effective to transport a single EIA reactor to slaughter and it may take several weeks to gather enough animals to make the journey economically practical. If an EIA reactor is not officially identified as such, there is an increased chance that the animal could be diverted while waiting to be transported to slaughter.

Response: At the time an animal is confirmed as an EIA reactor, the APHIS representative handling the case will make arrangements for the animal to be officially identified or moved directly to slaughter under permit in a sealed conveyance, depending on the owner's preference. As envisioned by the commenter, the owner of a reactor may believe that it is not in his or her best economic interests to move the reactor interstate directly to slaughter under a permit and in a sealed conveyance. In such a case, the owner of the reactor would choose to have the animal officially identified and, under the regulations in § 75.4(b)(4), could then move the reactor interstate through no more than one approved stockyard for sale for immediate slaughter if the reactor is accompanied by a certificate during the interstate movement and is moved within 5 days of its arrival at the approved stockyard directly to slaughter.

Comment: Without official identification, some reactors may be diverted from slaughter. If APHIS' proposal to allow EIA reactors to be moved interstate to slaughter in a sealed conveyance without official identification is motivated by its concern that branding causes undue distress to horses, then freezemarking, which does not cause evident distress in horses, should be required for reactors being moved interstate to slaughter in a sealed conveyance. Although a freeze brand would not be immediately visible, the mark would become visible within 2 to 3 weeks, thus allowing for the identification of any EIA reactors that may have been diverted from slaughter while being moved in a sealed conveyance.

Response: The provisions of this final rule are intended as an alternative to official identification. In practical terms, if we were to require freezemarking in addition to the permit and seal requirements, there would be no real alternative at all. Indeed, the seal requirement would become an additional condition not found in the other provisions of § 75.4(b) regarding interstate movement to slaughter. As stated above and in the proposed rule, we believe that moving EIA reactors interstate to slaughter under a permit and in a sealed conveyance will ensure that the animals are not diverted for other uses.

Comment: Because of the incidence and nature of EIA, it is better to expend the time and expense involved in permanently identifying an EIA reactor than to risk its being diverted during movement and exposing other horses to the disease.

Response: We took into account factors such as the incidence and nature of EIA, as well as other considerations, during the development of the proposed rule. After considering those issues, we concluded that EIA reactors could be moved interstate to slaughter without official identification if they were moved under a permit and in a sealed conveyance. We believed, and continue to believe, that the permit and seal requirements will ensure that the animals will not be diverted for other uses or pose a greater risk of spreading EIA than reactors moved under the other interstate movement provisions of § 75.4(b).

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Because this rule provides an alternative, the economic impact to

horse owners will be minimal. The horse owners that will be affected by this rule change are those that have horses that test positive for EIA and voluntarily choose to transport their horses interstate to slaughter under an official seal. APHIS estimates that, annually, between 500 and 1,000 horse operations have horses that become infected with EIA. Although it is not known how many of these operations are ''small'' entities (less than $0.5 million in annual sales, according to Small Business Administration size criteria), it is likely that most are in that category.

Current estimates put the number of horses in the United States between 6 and 10 million. In 1993, about 1 million horses were tested for EIA. Of these, 1,859 (about 0.18 percent) tested positive for EIA.

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

Executive Order 12372

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

Executive Order 12778

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

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0051.

List of Subjects in 9 CFR Part 75

Animal diseases, Horses, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 75 is amended as follows:

PART 75—COMMUNICABLE DISEASES IN HORSES, ASSES, PONIES, MULES, AND ZEBRAS

1. The authority citation for part 75 continues to read as follows:

Authority: 21 U.S.C. 111–113, 115, 117, 120, 121, 123–126, and 134–134h; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 75.4, paragraph (a) is amended by adding two new definitions, in alphabetical order, and in paragraph (b), the introductory text is amended by adding a statement immediately following the colon, to read as follows:

§ 75.4 Interstate movement of equine infectious anemia reactors and approval of laboratories, diagnostic facilities, research facilities, and stockyards.

(a) * * *

Official seal. A serially numbered metal or plastic strip, or a serially numbered button, consisting of a self-locking device on one end and a slot on the other end, which forms a loop when the ends are engaged and which cannot be reused if opened. It is applied by an APHIS representative or State representative.

* * * * *

Permit. An official document (VS Form 1–27 or a State form which contains the same information, but not a ''permit for entry'') issued by an APHIS representative, State representative, or accredited veterinarian which lists the owner's name and address, points of origin and destination, number of animals covered, purpose of the movement, and one of the following: The individual animal registered breed association registration tattoo, individual animal registered breed association registration number, or similar individual identification, including name, age, sex, breed, color, and markings.

* * * * *

(b) * * * *Provided that* official identification is not necessary if the reactor is moved directly to slaughter under a permit and in a conveyance sealed with an official seal:

* * * * *

Done in Washington, DC, this 14th day of March 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–6762 Filed 3–17–95; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–SW–22–AD; Amendment 39–9177; AD 95–06–07]

Airworthiness Directives; Robinson Helicopter Company Model R22 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Robinson Helicopter Company (RHC) Model R22 helicopters, that currently requires an initial dye penetrant inspection of the main rotor drive forward flexplate (flexplate), and repetitive visual inspections of certain installed flexplates. This amendment is prompted by three accidents reported by the airworthiness authority of Australia involving failure of the flexplate, located between the main rotor gearbox and clutch assembly. The actions specified by this AD are intended to prevent failure of the flexplate, failure of the main rotor drive system, and subsequent loss of control of the helicopter.

DATES: Effective April 4, 1995.

Comments for inclusion in the Rules Docket must be received on or before May 19, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–SW–22–AD, 2601 Meacham Boulevard, Room 663, Fort Worth, Texas 76137–4298.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Bumann, Aerospace Engineer, Los Angeles Aircraft Certification Office, Propulsion Branch, FAA, 3960 Paramount Blvd., Lakewood, California 90712, telephone (310) 627–5265, fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: On May 18, 1994, the FAA issued Priority Letter AD 94–11–01, applicable to RHC Model R22 helicopters, to require an initial dye penetrant inspection of the flexplate on all RHC Model R22 helicopters, and repetitive visual inspections of flexplates that have been in service for 2 or more years or 500 or more hours time-in-service (TIS). That action was prompted by three accidents reported by the airworthiness authority of Australia involving failure of the flexplate. In one accident, the flexplate fractured during

normal cruise flight releasing several fragments, some of which punctured the fuel tank. A metallurgical report issued by the airworthiness authority of Australia suggests that the failures resulted from fatigue cracking that initiated at areas of intergranular pitting corrosion on the edge of the flexplates. The FAA has determined that any crack, nick, or corrosion in the flexplate creates an unsafe condition and should be corrected. That condition, if not corrected, could result in failure of the flexplate, failure of the main rotor drive system, and subsequent loss of control of the helicopter.

Since the issuance of that AD, the FAA has received information indicating that flexplates, part number (P/N) A193–1 without bonded washers, and P/N A947–1 with bonded washers, may have been subjected to paint overspray at Robinson Helicopter Company when they were painting hardware adjacent to the flexplate. Damage to flexplate edges with paint overspray could result in corrosion due to the retention of contaminants under the paint. Robinson Helicopter Company has revised their inspection procedures to ensure that subsequently-produced flexplates are not subject to the paint overspray. This corrective procedure was implemented with the production of flexplate, P/N A947–1E. In addition, flexplate, P/N A947–1E is stronger and more resistant to corrosion damage than the previously-designed flexplates. Therefore, the initial dye penetrant inspection for cracks and repetitive visual inspections for nicks, cracks, or corrosion may be terminated upon installation of this improved flexplate or a subsequent FAA-approved revision to P/N A947–1E.

The reference to the flexplate's TIS in paragraph (b) of the Priority Letter AD has been clarified to require that the repetitive visual inspections in paragraph (d) of the AD be conducted upon reaching 2 years or 500 hours TIS on the flexplate. If the flexplate TIS cannot be determined through a review of the log book, the helicopter TIS must be used to determine the TIS of the flexplate.

Paragraph (c) has been revised to delete the reference to the repetitive visual inspections for flexplates used to replace those that were determined to have cracks as a result of the inspection of paragraph (a) of the Priority Letter AD. This deletion changes the lettering of the subsequent paragraphs. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Since an unsafe condition has been identified that is likely to exist or develop on other Robinson Helicopter Company Model R–22 helicopters of the same type design, this AD supersedes Priority Letter AD 94–11–01, to require a one-time dye penetrant inspection of the flexplate, P/N A193–1 without bonded washers and P/N A947–1 with bonded washers, for cracks within the next 25 hours TIS, and replacement if a crack is found. Additionally, for flexplates that have been in service for 2 or more years or 450 or more hours TIS, repetitive visual inspections of the flexplate for nicks, cracks, or corrosion are required at intervals not to exceed 50 hours TIS. This AD also provides for repair of the flexplate if a nick or corrosion is found, or replacement if a crack is found. The flexplate connects the gearbox and the clutch shaft, and failure of the flexplate could lead to failure of the driveshaft and loss of power to the rotor system. Due to the critical need for the flexplate to ensure the continued safe flight of the affected helicopters, this rule must be issued immediately to correct an unsafe condition in aircraft.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on 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 in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD 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 AD 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 Number 94–SW–22–AD.'' The postcard will be date stamped and returned to the commenter.

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 an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD), Amendment 39–9177, to read as follows:

AD 95–06–07 Robinson Helicopter Company: Amendment 39–9177. Docket Number 94–SW–22–AD. Supersedes Priority Letter AD 94–11–01, issued May 18, 1994.

Applicability: Model R22 helicopters, with forward flexplate (flexplate), part number (P/N) A947–1 with bonded washers, or P/N A193–1 without bonded washers, installed, certificated in any category. Flexplate, P/N A947–1E and subsequent FAA-approved revisions to P/N A947–1, is exempt from the requirements of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the flexplate, failure of the main rotor drive, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within the next 25 hours time-in-service (TIS) after the effective date of this airworthiness directive (AD), accomplish the following:

(1) With the clutch disengaged, support the forward end of the clutch shaft, P/N A166–1, remove the flexplate, and record the shim locations for use during reinstallation.

(i) Replace any flexplate that does not have eight bonded washers (two per arm) with an airworthy flexplate, P/N A947–1E or a subsequent FAA-approved revision to P/N A947–1.

(ii) For those flexplates that have eight bonded washers (two per arm), comply with the following:

(2) Remove all coating down to bare metal from the outer edges of the flexplate to approximately 0.125 inches inward, but in no case within 0.50 inches of the bonded washers, using Scotch Brite or 600 grit sand paper. Do not use a chemical paint stripper since it may adversely affect the adhesive that bonds the washers to the flexplate.

(3) Inspect the outer edges of the flexplate for cracks, avoiding the bonded washers, using a dye penetrant inspection method in accordance with Appendix I of this AD. If the dye penetrant contacts the bonded washers, remove the solution from the bonded washers within 1 minute since longer exposure may adversely affect the adhesive.

(i) If a crack is found, replace the flexplate with an airworthy flexplate, P/N A947–1E or a subsequent FAA-approved revision to P/N A947–1.

(ii) If no crack is found, paint the bare edge area of the flexplate with an even coat of zinc-chromate or epoxy primer. Do not paint the bare metal surface of the bonded washers.

(4) Reinstall the flexplate and ensure sheave and clutch shaft angle are properly aligned in accordance with the applicable maintenance manual.

(b) For those helicopters with flexplates that have less than 2 years or 450 hours TIS, accomplish the following prior to or upon reaching 2 years or 500 hours TIS, and thereafter at intervals not to exceed 50 hours TIS from the last inspection; for those helicopters with flexplates that have 2 years or more or 450 hours or more TIS, accomplish the following at intervals not to exceed 50 hours TIS from the last inspection. (If the flexplate TIS cannot be determined through a review of the maintenance records, then use the helicopter TIS as the TIS of the flexplate).

(1) Remove the flexplate in accordance with the applicable maintenance manual.

(2) Clean the flexplate using a solvent (e.g., methyl-ethyl ketone or naphtha).

(3) Inspect the flexplate for nicks, cracks, or corrosion using a 10-power or higher magnifying glass, paying close attention to the edges of the flexplate.

(i) If a crack is found, replace the flexplate with an airworthy flexplate, P/N A947–1E or a subsequent FAA-approved revision to P/N A947–1, in accordance with the applicable maintenance manual.

(ii) If a nick or corrosion is found, repair the flexplate in accordance with the applicable maintenance manual.

(iii) Paint any bare edges of the flexplate with an even coat of zinc-chromate or epoxy primer. Do not paint the bare metal surface of the bonded washers.

(iv) If any nick or corrosion cannot be repaired within the rework limits specified in the applicable maintenance manual, replace the flexplate with an airworthy flexplate, P/N A947–1E or a subsequent FAA-approved revision to P/N A947–1, in accordance with the applicable maintenance manual.

(4) Reinstall the flexplate and ensure sheave and clutch shaft are properly aligned in accordance with the applicable maintenance manual.

Note 1: Robinson Helicopter Company R22 Maintenance Manual, Change 14, dated March 14, 1994, pertains to this AD.

(c) If a crack, nick, or corrosion is found on the flexplate as a result of the inspections required by this AD, report a description of the crack, nick, or corrosion, the total TIS, and the operating conditions to the Manager, Propulsion Branch, Los Angeles Aircraft Certification Office, FAA. Reporting requirements have been approved by the Office of Management and Budget and assigned control number 2120–0056.

(d) Installation of a flexplate, P/N A947–1E or a subsequent FAA-approved revision to P/N A947–1, constitutes terminating action for the requirements of this AD.

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

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

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

(g) This amendment becomes effective on April 4, 1995.

Appendix I—Dye Penetrants

Several dye penetrant type inspection kits are now available that will reveal the presence of surface cracks or defects and subsurface flaws that extend to the surface of the part being inspected. These penetrant type inspection methods are considered acceptable, provided the part being inspected has been thoroughly cleaned, all areas are readily accessible for viewing, and the manufacturer's recommendations as to the method of application are closely followed.

a. Cleaning. An inspection is initiated by first cleaning the surface to be inspected of dirt, loose scale, oil, and grease. Precleaning may usually be accomplished by vapor degreasing or with volatile cleaners. Use a volatile cleaner as it will evaporate from the defects before applying the penetrant dye. Sand blasting is not as desirable a cleaning method, since surface indications may be obscured. It is not necessary to remove anodic films from parts to be inspected, since the dye readily penetrates such films. Special procedures for removing the excess dye should be followed.

b. Application of Penetrant. The penetrant is applied by brushing, spraying, or by dipping and allowing to stand for a minimum of 2 minutes. Dwell time may be extended up to 15 minutes, depending upon the temperature of the part and fineness of the defect or surface condition. Parts being inspected should be dry and heated to at least 70° F, but not over 130° F. Very small indications require increased penetration periods.

c. Removal of Dye Penetrant. Surplus penetrant is usually removed by application of a special cleaner or remover, or by washing with plain water and allowing the part to dry. Water rinse may also be used in conjunction with the remover, subject to the manufacturer's recommendations.

d. Application of Developer. A light and even coat of developer is applied by spraying, brushing, or dipping. When dipping, avoid excess accumulation. Penetrant that has penetrated into cracks or other openings in the surface of the material will be drawn out by the developer resulting in a bright red indication. Some idea of the size of the defect may be obtained after experience by watching the size and rate of growth of the indication.

Issued in Fort Worth, Texas, on March 10, 1995.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 95–6684 Filed 3–17–95; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200 and 270

[Release No. 34–35483]

Organization and Program Management

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is amending its rules on organization and program management. This action is necessary to reflect changes that have occurred over the years. It is intended to update the rules.

EFFECTIVE DATE: March 20, 1995.

FOR FURTHER INFORMATION CONTACT: Diane A. Campbell, Office of the Executive Director, (202) 942–4300; Elizabeth T. Tsai, Office of Freedom of Information and Privacy Act Operations, (202) 942–4326.

SUPPLEMENTARY INFORMATION: The Commission has undertaken a comprehensive review of the rules governing its organization and program management. The present amendments and additions to its rules result from that review.

Specifically, the Commission is amending § 200.2 (b) and (d) to clarify the description of the Securities Exchange Act of 1934 [1] and the Trust Indenture Act of 1939.[2] It is amending paragraphs (c) and (e) of § 200.2 to describe adequately the Commission's current functions under the Public Utility Holding Company Act of 1935 [3] and the Investment Company Act of 1940.[4] The Commission is revising § 200.13 to designate the Executive Director as the Chief Operating Officer of the Commission, to clarify the description of the responsibilities of the Executive Director, and to update the list of statutes, regulations, and Executive Orders to be implemented by the Executive Director. It is revising § 200.14(a) to describe the work of the Office of Administrative Law Judges specifically and accurately. The revised section refers to the Administrative Procedure Act,[5] under which hearings are conducted, and lists the tasks of administrative law judges in administrative proceedings. The Commission makes only minor editorial changes in §§ 200.14(b) and 200.30–9.

The Commission is revising § 200.16a to reflect the establishment of the Office of the Inspector General (OIG) in March 1989 and the transfer of the Office of Internal Audit to it in accordance with the 1988 amendments to the Inspector General Act of 1978.[6] The Commission established the OIG as an independent and objective unit to conduct audits and investigations, to keep Congress and the Chairman informed about problems and deficiencies in the Commission's programs and operations, and to further the other purposes of the Inspector General Act. Under this Act, the Inspector General shall report to the Commission Chairman, who ''shall not prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.'' Under § 200.16a(e), any such subpoena shall be served by any method prescribed for service of subpoenas under § 201.232 of this chapter.

The Commission is revising § 200.17 to describe clearly the duties of the Chief Management Analyst. It is amending § 200.18(b) (3) and (5) to make technical clarifications.

The Commission is amending § 200.19a to reflect the current responsibilities of the Director of the Division of Market Regulation. As amended, the Director would have oversight of the entities and activities enumerated in the section, such as the national market system, government securities dealers, and the Securities Investor Protection Corporation. The Commission is also amending § 200.30–3, which delegates authority to the Director, to update citations to certain rules mentioned there.

The Commission is amending §§ 200.19b and 200.27 to reflect the reorganization of the Regional Offices under the general supervision of the Director of the Division of Enforcement. A further amendment to § 200.19b reflects the adoption of procedures for handling requests from regulatory and law enforcement agencies for access to nonpublic information in enforcement files.

The Commission is amending § 200.20b to clarify that the duties of the Director of the Division of Investment Management do not include enforcement activities under the jurisdiction of the Division of Enforcement and that the functions of the Director described in paragraphs (f) and (g) of the section relate to the Public Utility Holding Company Act. The Commission added paragraphs (f) and (g) in 1985 when it transferred the duties under this Act to the Division of Investment Management [7] from the Office of Public Utility Regulation, which then ceased to exist. At that time, however, introductory language to paragraphs (f) and (g) was inadvertently omitted.

The Commission is amending § 200.21a to clarify the responsibilities of the Ethics Counsel vis-a-vis those of the Inspector General. Specifically, the amendments reflect (1) Referral by the Ethics Counsel to the Inspector General of matters of alleged staff misconduct, and complaints appearing to involve violations of Federal criminal statutes, (2) the transfer of the Ethics Counsel's investigative responsibilities in those matters to the Inspector General, and (3) the transfer from the Ethics Counsel to the Inspector General of the responsibility to act as liaison with the Department of Justice with respect to such referred matters.

The Commission is revising § 200.24a to reflect reorganizations, which moved the management of the public reference facilities to the Office of Filings and Information Services and the administration of the Freedom of Information Act [8] and the Privacy Act of 1974 [9] to the Office of Freedom of Information and Privacy Act Operations. Both of these offices are now under the executive direction and administrative control of the Executive Director. The former Office of Consumer Affairs and Information Services has been renamed as the Office of Consumer Affairs and the Director of this office reports directly to the Chairman of the Commission.

The Commission is amending § 200.30–1 to reflect previous amendments and revisions in regulations overseen by the Division of Corporation Finance. These amendments are technical in nature, as the amendments primarily update and revise regulatory citations.

The Commission is amending paragraphs (a)(1), (a)(2), (e)(3), and (e)(4) of § 200.30–5 to simplify the review of applications in the Division of Investment Management. These provisions authorize the Director of the Division of Investment Management to approve applications under all sections of the Investment Company Act and the Investment Advisers Act of 1940,[10] except as specifically limited. The amendments give some discretion to the

[1] 15 U.S.C. 78a *et seq.*

[2] 15 U.S.C. 77aaa *et seq.*

[3] 15 U.S.C. 79a *et seq.*

[4] 15 U.S.C. 80a–1 *et seq.*

[5] 5 U.S.C. 551–559.

[6] 5 U.S.C. app.

[7] Investment Company Act Release No. 14341 (Jan. 30, 1985) [50 FR 5064] (Feb. 6, 1985)].

[8] 5 U.S.C. 552.

[9] 5 U.S.C. 552a.

[10] 15 U.S.C. 80b–1 *et seq.*

Director to present applications to the Commission. The Director generally may issue notices and orders if the matter does not appear to the Director to present significant issues that have not been previously settled by the Commission or to raise questions of fact or policy warranting consideration by the Commission. The Commission proposed these § 200.30–5 amendments in March 1993, along with amendments to Rule 0–5 under the Investment Company Act,[11] but has not received any public comments on the former. These § 200.30–5 amendments do not authorize the Director to deny exemptive relief or to order a hearing under the Investment Company Act or the Investment Advisers Act.[12]

The Commission is revising paragraph (b) of § 200.30–5 to clarify that the Director of the Division of Investment Management has the authority referred to in that paragraph with respect to all of the types of entities listed. This amendment does not change the Director's authority, but is intended to clarify that the Director of the Division of Investment Management, rather than the Director of the Division of Corporation Finance, has the authority listed with respect to certain entities, such as business development companies, that are not registered investment companies.

The Commission is changing the cross-reference to the Internal Revenue Code in § 200.30–5(d) to the Internal Revenue Code of 1986.[13] It also is deleting paragraphs (g) and (h) of § 200.30–5 because the duties specified in those paragraphs fall within the jurisdiction of the Division of Enforcement. In new § 200.30–5(g)(1), it updates the cross-reference to § 200.30–6, which it amended in 1992.[14]

The Commission is also amending § 200.30–5(f)(1) to authorize the Director of the Division of Investment Management to issue notices of applications and declarations under Sections 32 and 33 of the Public Utility Holding Company Act. The Energy Policy Act of 1992 [15] has added these two sections. Also, the Commission is removing paragraph (f)(5) of § 200.30–5 because holding companies and their subsidiaries no longer submit the type of applications it describes and are not likely to submit any such applications in the future.

The Commission is amending § 200.30–6(a) to clarify that the delegated authority for the Regional Directors concerning Forms SB–1 and SB–2 is limited to filings made in their region. The Commission is amending § 200.20c and revising § 200.30–11 to reflect recent reorganizations and to clarify certain delegated authority to the Associate Executive Director of the Office of Filings and Information Services. The Commission is adopting new § 200.23, which describes the functions of the Office of Economic Analysis. It created this Office in 1988 when it merged the Office of the Chief Economist and the Directorate of Economic and Policy Analysis.

The Commission is removing § 200.30–12, which delegated authority to waive or reduce fees under the Freedom of Information Act and the Privacy Act of 1974 to the director of an office that no longer exists. The initial authority to waive or reduce such fees now lies with the Freedom of Information Act/Privacy Act Officer, whose decision is appealable to the General Counsel under § 200.30–14(c) and (d).

The Commission is revising § 200.30–15 to update the delegation of authority to the Executive Director in two ways. First, it removes the delegation of authority to publish quarterly compilations of reimbursements for Commission attendees of non-Federal conferences relating to the work of the Commission, since these reimbursements are now required to be reported semi-annually to the Office of Government Ethics. Second, it delegates the authority to the Executive Director, as the Chief Operating Officer of the Commission, to perform certain functions described in President Clinton's memorandum, dated October 1, 1993, on ''Implementing Management Reform in the Executive Branch.''

Other changes reflect the current titles of certain offices and office heads.

The Commission finds, in accordance with the Administrative Procedure Act (''APA''),[16] that these rule amendments relate solely to agency organization, procedures, or practice. Hence, the public notice and comment requirements of that Act are inapplicable. Similarly, the provisions of the Regulatory Flexibility Act,[17] which apply only when notice and comment are required by the APA or other law, are not applicable. The Commission further finds that, since these rule amendments relate solely to agency organization, procedures, or practice, the provisions of the APA, which require publication for not less than 30 days before the effective date of a substantive rule, are inapplicable. Accordingly, the amendments adopted today are effective March 20, 1995.

Effects on Competition

Section 23(a)(2) of the Securities Exchange Act[18] requires the Commission, in adopting rules under the Act, to consider their anti-competitive effects, if any. It also requires the Commission to balance any adverse impact against the regulatory benefits that will flow by advancing the purposes of the Act. The Commission has considered the amendments and additions to its rules announced in this release in light of the standards set forth in section 23(a)(2). It believes that their adoption would not impose any burden on competition unnecessary or inappropriate in furtherance of the Act.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Government employees, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

17 CFR Part 270

Investment companies.

Text of Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended to read as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for Part 200, Subpart A, continues to read, in part, as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. In § 200.1(a), the word ''trade'' is revised to read ''traded''.

3. Section 200.2 is amended by revising paragraphs (b), (c), (d), (e), and (g) to read as follows:

[11] Investment Company Act Release No. 19362 (Mar. 26, 1993) (58 FR 16799 (Mar. 31, 1993)).

[12] In reviewing applications, the Division occasionally determines that it will not recommend that the Commission order the relief requested by an applicant, and notifies the applicant accordingly. The applicant then may request that the Division submit the application to the Commission with the Division's recommendation that the application be set down for a hearing.

[13] 26 U.S.C. 1 *et seq.*

[14] Securities Act Release No. 6949 (July 30, 1992) (57 FR 36442 (Aug. 13, 1992)).

[15] Pub. L. No. 102–486, 106 Stat. 2776.

[16] 5 U.S.C. 553(b)(3)(A).

[17] 5 U.S.C. 601 *et seq.*

[18] 15 U.S.C. 78w(a)(2).

§ 200.2 Statutory functions.

* * * * *

(b) *Securities Exchange Act of 1934.* This Act requires the filing of registration applications and annual and other reports with national securities exchanges and the Commission, by companies whose securities are listed on the exchanges. Annual and other reports must be filed also by certain companies whose securities are traded on the over-the-counter markets. These must contain financial and other data prescribed by the Commission for the information of investors. Material misstatements or omissions are grounds for suspension or withdrawal of the security from exchange trading. This Act makes unlawful any solicitation of proxies, authorizations, or consents in contravention of Commission rules. These rules require disclosure of information about the subject of the solicitation to security holders. The Act requires disclosure of the holdings and the transactions by an officer, director, or beneficial owner of over 10 percent of any class of equity security of certain companies. It also requires disclosure of the beneficial owners of more than five percent of any class of equity securities of a registered company. It provides substantive and procedural protection to security holders in third-party and issuer tender offers. The Act also provides for the registration with, and regulation by, the Commission of national securities exchanges, brokers or dealers engaged in an over-the-counter securities business, and national associations of such brokers or dealers. It gives the Commission rulemaking power with respect to short sales, stabilizing, floor trading activities of specialists and odd-lot dealers, and such matters as excessive trading by exchange members. The Act authorizes the Board of Governors of the Federal Reserve System to prescribe minimum margin requirements for listed securities.

(c) *Public Utility Holding Company Act of 1935.* This Act authorizes the Commission to regulate gas and electric public-utility holding companies under standards prescribed for the protection of the public interest and the interest of investors and consumers. The Act generally limits a public-utility holding company to a single integrated public-utility system, and requires simple corporate and capital structures. If not exempt, a public-utility holding company must register with the Commission. Generally, a registered holding company must obtain Commission approval before it can issue and sell securities, acquire utility securities or assets or any other interest in any business, or enter into transactions with its affiliates. It must also comply with extensive reporting and record-keeping requirements. Although largely free of these requirements, an exempt holding company remains subject to the geographic limitations of the Act. The Act permits the acquisition of interests in ''exempt wholesale generators'' and ''foreign utility companies'' unrelated to a system's utility operations.

(d) *Trust Indenture Act of 1939.* This Act safeguards the interests of purchasers of publicly-offered debt securities issued under trust indentures by requiring the inclusion of certain protective provisions in, and the exclusion of certain types of exculpatory clauses from, trust indentures. The Act also requires that an independent indenture trustee represent the debtors by proscribing certain relationships that could conflict with proper exercise of duties.

(e) *Investment Company Act of 1940.* This Act establishes a comprehensive regulatory framework for investment companies and subjects their activities to regulation under standards prescribed for the protection of investors. Among other things, the Act provides for the registration of investment companies with the Commission; requires them to disclose their financial condition and investment policies to their shareholders; prohibits them from substantially changing investment policies without shareholder approval; bars persons guilty of securities fraud from serving as officers or directors; prevents underwriters, investment bankers, or brokers from constituting more than a minority of the directors of an investment company; requires that management contracts be submitted to shareholders for their approval; prohibits transactions between investment companies and their directors, officers, or affiliated companies or persons, except when approved by the Commission; and prohibits investment companies from issuing senior securities except under specified terms and conditions. The Act also regulates advisory fees, sales and repurchases of securities, exchange offers, and other activities of investment companies. The Act authorizes the Commission to exempt any person or class of persons or securities from any provisions of, or rules under, the Act and to conduct any investigation it deems necessary to determine existing or potential violations of the Act. It also authorizes the Commission to prepare reports to security holders on the fairness of plans of reorganization, merger, or consolidation. The Commission may institute a court action to enjoin acts or practices of management involving, among other things, a breach of fiduciary duty and the consummation of plans of reorganization, merger, or consolidation that are grossly unfair to security holders.

(f) * * *

(g) *Chapter 11 of the Bankruptcy Code.* Chapter 11 of the Bankruptcy Code (11 U.S.C. 1101 *et seq.*) provides for Commission participation as a statutory party in reorganization cases. Under section 1109(a) of the Bankruptcy Code (11 U.S.C. 1109(a)), which also applies to Chapter 9 cases regarding municipalities, the Commission ''may raise and may appear and be heard on any issue in the case.''

4. In § 200.12, the word ''judges'' is revised to read ''judges and the Inspector General''.

5. Section 200.13 is revised to read as follows:

§ 200.13 Executive Director.

(a) The Executive Director is responsible for developing and executing the overall management policies of the Commission for all its operating divisions and staff offices. The Executive Director also provides executive direction to, and exercises administrative control over, the Office of Administrative and Personnel Management, the Office of the Comptroller, the Office of Filings and Information Services, the Office of Freedom of Information and Privacy Act Operations, and the Office of Information Technology. In addition, the Executive Director implements the following statutes, regulations, and Executive orders, as well as those that the Chairman may designate:

(1) Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

(2) Small and Disadvantaged Business Utilization Program (15 U.S.C. 631 *et seq.*).

(3) Government Printing and Binding Regulations, U.S. Congress Joint Committee on Printing (1977).

(4) Occupational Safety and Health Programs for Federal Employees under Executive Order 12196 of February 26, 1980 (29 CFR 1960.1–1960.90).

(5) Federal Managers' Financial Integrity Act of 1982 (31 U.S.C. 3512).

(6) National Security Information under Executive Order 12356 of April 6, 1982.

(7) Government Performance and Results Act of 1993 (31 U.S.C. 1101 *et seq.*).

(8) Recommendations of the Report of the National Performance Review (September 1993).

(b) The Executive Director appoints personnel, reviews and approves policies and procedures, and assures appropriate resources to implement the programs set forth in paragraph (a) of this section, and authorizes and transmits reports required by them.

(c) The Executive Director also designates certifying officers for agency payments, prescribes procurement regulations, enters into contracts, designates contracting officers, and makes procurement determinations.

(d) As the Chief Operating Officer of the Commission, the Executive Director shall be responsible for:

(1) Implementing the goals of the President and the Chairman and the mission of the Commission;

(2) Providing overall organizational management to improve agency performance;

(3) Assisting the Chairman in promoting ongoing quality improvement, developing strategic plans, and measuring results;

(4) Directing ongoing reengineering of the Commission's administrative processes;

(e) Overseeing Commission-specific application of performance measures, procurement reforms, personnel reductions, financial management improvements, telecommunications and information technology policies, and other government-wide systems reforms adopted as a result of the recommendations of the National Performance Review; and

(f) Reforming the Commission's management practices by incorporating the principles of the National Performance Review into day-to-day management.

6. In § 200.13b, the words ''Public Affairs'' are revised to read ''Public Affairs, Policy Evaluation, and Research'' in the section heading and in the text, and the words ''coordination and production of the Annual Report to Congress,'' are removed.

7. Section 200.14 is revised to read as follows:

§ 200.14 Office of Administrative Law Judges.

(a) Under the Administrative Procedure Act (5 U.S.C. 551–559) and the federal securities laws, the Office of Administrative Law Judges conducts hearings in proceedings instituted by the Commission. The Administrative Law Judges are responsible for the fair and orderly conduct of the proceedings and have the authority to:

(1) Administer oaths and affirmations;

(2) Issue subpoenas;

(3) Rule on offers of proof;

(4) Examine witnesses;

(5) Regulate the course of a hearing;

(6) Hold pre-hearing conferences;

(7) Rule upon motions; and

(8) Unless waived by the parties, prepare an initial decision containing the conclusions as to the factual and legal issues presented, and issue an appropriate order.

(b) The Chief Administrative Law Judge performs the duties of an Administrative Law Judge under the Administrative Procedure Act and the duties delegated to him or her by the Commission that are compatible with those duties. The Chief Administrative Law Judge is responsible for the orderly functioning of the Office of Administrative Law Judges apart from the conduct of administrative proceedings and acts as liaison between that Office and the Commission.

8. Section 200.16a is revised to read as follows:

§ 200.16a Inspector General.

(a) Under the Inspector General Act of 1978, as amended, (5 U.S.C. app.) the Inspector General performs independent and objective investigations and audits relating to the Commission's programs and operations. An investigation seeks to detect and prevent waste, fraud, and abuse in the Commission's programs and operations, such as violations of federal statutes or regulations by contractors and Commission employees or the Standards Of Ethical Conduct For Employees of the Executive Branch. An audit seeks to determine whether:

(1) Program goals and results identified in enabling legislation are achieved.

(2) Resources are efficiently and economically used and managed.

(3) Financial operations are properly conducted.

(4) Financial reports are fairly presented.

(5) Applicable laws and regulations are complied with.

(b) In cooperation with Commission management, the Inspector General generally promotes economy, efficiency, and the effectiveness of waste or fraud detection and prevention in the Commission's programs and operations. The Inspector General also keeps the Congress and the Chairman informed about problems and deficiencies in the Commission's programs and operations.

(c) The Inspector General reports to the Chairman, but is independent of all other Commission management. In addition, the Inspector General independently prepares semi-annual reports to the Congress.

(d) With respect to misconduct of Commission employees and contractors, the Inspector General, after consultation with the Ethics Counsel, where appropriate, serves as the Commission's liaison with other federal audit and investigative agencies, such as the Department of Justice and the Executive Council on Integrity and Efficiency.

(e) Subpoenas issued in the course of an audit or investigation conducted by the Office of the Inspector General shall be effected by any method prescribed by § 201.232(a) and (c) of this chapter.

9. Section 200.17 is revised to read as follows:

§ 200.17 Chief Management Analyst.

The Chief Management Analyst is responsible to the Executive Director for overseeing the performance of management analysis tasks which pertain, but are not limited, to:

(a) Agency work methods and procedures;

(b) Effective personnel and resource allocation and utilization;

(c) Organizational structures and delegations of authority;

(d) Management information systems and concepts; and

(e) The preparation of recurring special reports and analyses.

10. In § 200.18(b)(3), the words ''information material'' are revised to read ''information statements''.

11. In § 200.18(b)(5), the words ''Section 16(a) thereof (15 U.S.C. 78p(a))'' are revised to read ''Section 16 thereof (15 U.S.C. 78p)''.

12. The introductory text of § 200.19a is revised to read as follows:

§ 200.19a Director of the Division of Market Regulation.

The Director of the Division of Market Regulation is responsible to the Commission for the administration and execution of the Commission's programs under the Securities Exchange Act of 1934 relating to the structure and operation of the securities markets and the prevention of manipulation in the securities markets. These responsibilities include oversight of the national market system, the national clearance and settlement system, and self-regulatory organizations, such as the national securities exchanges, registered securities associations, clearing agencies, the Municipal Securities Rulemaking Board, and the Securities Investor Protection Corporation. Duties also include the registration and regulation of brokers, dealers, municipal securities dealers, government securities brokers and dealers, transfer agents, and securities information processors. The functions involved in the regulation of such entities include reviewing proposed rule changes of self-regulatory organizations,

recommending the adoption and amendment of Commission rules, responding to interpretive, exemptive, and no-action requests, and conducting inspections, examinations, and market surveillance. In addition, the Director shall have the duties specified below:

* * * * *

13. Section 200.19b is revised to read as follows:

§ 200.19b Director of the Division of Enforcement.

The Director of the Division of Enforcement is responsible to the Commission for supervising and conducting all enforcement activities under the acts administered by the Commission. The Director recommends the institution of administrative and injunctive actions arising out of such enforcement activities and determines the sufficiency of evidence to support the allegations in any proposed complaint. The Director supervises the Regional Directors and, in collaboration with the General Counsel, reviews cases to be recommended to the Department of Justice for criminal prosecution. The Director grants or denies access to nonpublic information in the Commission's enforcement files under § 240.24c–1 of this chapter; provided that access under that section shall be granted only with the concurrence of the head of the division or office responsible for the information or the files containing it.

14. Section 200.20b is amended by revising the last sentence of the introductory text, revising paragraph (f), and removing paragraph (g) to read as follows:

§ 200.20b Director of Division of Investment Management.

* * * These duties shall include inspections arising in connection with such administration but shall exclude enforcement and related activities under the jurisdiction of the Division of Enforcement.

* * * * *

(f) The administration and execution of the Public Utility Holding Company Act of 1935 in connection with:

(1) The administration and processing of proxy solicitation material subject to §§ 240.14a–1—240.14a–14 of this chapter.

(2) The examination and processing of ownership reports filed under section 17(a) of the Act (15 U.S.C. 79q(a)).

15. In § 200.20c, the words ''Applications and Reports'' are revised to read ''Filings and Information'' in the section heading and in the text, the last sentence is removed, and two new sentences are added in its place to read as follows:

§ 200.20c Office of Filings and Information Services.

* * * The Office provides filer-support services relating to the Commission's EDGAR system and the receipt of fees and filings for all types of filers, regardless of filing media. The Office also manages the Commission's public reference facilities to facilitate public access to electronic filings and ensure that all information contained in public filings with the Commission is timely made available to investors.

16. Paragraph (a) of § 200.21 is amended by:

(a) Adding in the second sentence after the words ''District Courts,'' the words ''except for law enforcement actions filed on behalf of the Commission,'';

(b) Revising in the fourth sentence the words ''officer'' to read ''office'' and ''professional persons'' to read ''lawyers'';

(c) Removing at the end of the fifth sentence the words ''and is responsible for investigating any claims of staff improprieties'';

(d) Revising the sixth sentence to read ''He or she is responsible (with the Associate Executive Director of the Office of Administrative and Personnel Management) for administering the Commission's Ethics Program, and (with the Ethics Counsel) for interpreting subpart M of this part and 5 CFR part 2635.''; and

(e) Revising in the seventh sentence the words ''Personnel Management'' to read ''Administrative and Personnel Management, the Office of the Inspector General''.

17. Paragraph (b)(2) of § 200.21 is amended by adding after the words ''administrative proceedings'' the words ''against lawyers''.

18. Section 200.21a is revised to read as follows:

§ 200.21a The Ethics Counsel.

(a) The Ethics Counsel within the Office of the General Counsel of the Commission shall oversee compliance with subpart M of this part and 5 CFR part 2635. When appropriate and subject to the authority of, and in consultation with, the Inspector General, the Ethics Counsel shall inquire into alleged violations of subparts C, F, and M of this part, and 5 CFR part 2635.

(b) Subject to the oversight of the General Counsel or his or her delegate, the Ethics Counsel shall:

(1) Receive and review allegations of misconduct by a Commission employee.

(2) Refer matters involving management questions to Division Directors, Office Heads, District Administrators, or Regional Directors, and matters involving alleged or apparent employee misconduct to the Office of the Inspector General, except for matters involving alleged professional misconduct ultimately referable to state professional boards or societies.

(3) Refer complaints that appear to involve a violation of Federal criminal statutes, and do not appear to be frivolous, to the Inspector General for referral to the Department of Justice under 28 U.S.C. 535.

(4) Act as liaison with the Office of the Inspector General on matters that the Ethics Counsel has referred to that Office, and with state or local authorities on matters that, on occasion, the Ethics Counsel may refer to them.

(5) Arrange for the review of proposed publications and prepared speeches under § 200.735–4(e).

(6) Provide advice, counseling, interpretations, and opinions with respect to subparts C, F, and M of this part, and 5 CFR part 2635.

(7) Oversee investigations and refer findings of professional misconduct to state professional boards or societies.

(8) Draft rules and regulations as necessary to implement the Commission's Ethics Program.

19. Section 200.22 is revised to read as follows:

§ 200.22 The Chief Accountant.

The Chief Accountant of the Commission is the principal adviser to the Commission on, and is responsible to the Commission for, all accounting and auditing matters arising in the administration of the federal securities laws. The Chief Accountant oversees the accounting profession's standard-setting and self-regulatory organizations, develops or supervises the development of accounting and auditing rules, regulations, opinions and policy, and interprets Commission accounting policy and positions. The Chief Accountant is responsible for recommending the institution of administrative and disciplinary proceedings relating to the disqualification of accountants to practice before the Commission. The Chief Accountant supervises the procedures to be followed in the Commission's enforcement activities involving accounting and auditing issues and helps resolve differences on accounting issues between registrants and the Commission staff.

20. Section 200.23a is revised to read as follows:

§ 200.23 Office of Economic Analysis.

The Office of Economic Analysis is responsible for providing an objective economic perspective to understand and evaluate the economic dimension of the Commission's regulatory oversight. It performs economic analyses of proposed rule changes, current or proposed policies, and capital market developments and offers advice on the basis of these analyses. The Office also assists the Commission's enforcement effort by applying economic analysis and statistical tools to issues raised in enforcement cases. It reviews certifications and initial and final regulatory flexibility analyses prepared by the operating divisions under the Regulatory Flexibility Act.

21. Section 200.23b is removed and reserved.

22. In the text only of § 200.24, the word ''Comptroller'' is revised to read ''Associate Executive Director of the Office of the Comptroller'' each time it appears, the word ''his'' is revised to read ''his or her'' and the word ''serves'' is revised to read ''serve''.

23. Section 200.24a is revised to read as follows:

§ 200.24a Director of the Office of Consumer Affairs.

The Director of the Office of Consumer Affairs is responsible to the Chairman for the Commission's investor education and consumer protection program. The program includes, but is not limited to:

(a) Presenting seminars and instructional programs to educate investors about the securities markets and their rights as investors; preparing and distributing to the public materials describing the operations of the securities markets, prudent investor behavior, and the rights of investors in disputes they may have with individuals and entities regulated by the Commission; and increasing public knowledge of the functions of the Commission.

(b) Implementing and administering a nationwide system for resolving investor complaints against individuals and entities regulated by the Commission by processing complaints received from individual investors and assuring that regulated individual and entities process and respond to such complaints.

(c) Providing information to investors who inquire about individuals and entities regulated by the Commission, the operation of the securities markets, or the functions of the Commission.

(d) Advising the Commission and its staff about problems frequently encountered by investors and possible solutions to them.

(e) Transmitting to other offices and divisions of the Commission information provided by investors which concerns the responsibilities of these offices and divisions.

(f) Providing for greater consumer input in Commission rulemaking proceedings.

24. Section 200.25 is revised to read as follows:

§ 200.25 Office of Administrative and Personnel Management.

(a) The Office of Administrative and Personnel Management (OAPM) is responsible for providing a wide variety of programs for human resources, office services, and other administrative and management services for the Commission. The Associate Executive Director of the Office of Administrative and Personnel Management is responsible to the Executive Director and the Chairman of the Commission for developing and executing these programs.

(b) OAPM develops, implements, and evaluates the Commission's programs for human resources and personnel management, such as position management and pay administration; recruitment, placement, and staffing; performance management and employee recognition; employee training and career development; employee and labor relations; personnel management evaluation; employee benefits and counseling; and the processing and maintenance of employee records. OAPM administers the Ethics Program, and helps the Office of the Executive Director manage the Senior Executive Service Program. It reviews requests, recommendations, and justifications for certain awards, recruitment and relocation bonuses, retention allowances, special salary rates, and other personnel compensation or benefit determinations for sufficiency and compliance with law, regulations, and Commission policy. OAPM develops and executes programs for office services, such as telecommunications; procurement and contracting; property management; contract and lease administration; space acquisition and management; management of official vehicles; safety programs; emergency preparedness plans; physical security; mail receipt and distribution; and publications, printing, and desktop publishing.

(c) With respect to human resources management, the Associate Executive Director of the Office of Administrative and Personnel Management is the Commission's liaison with the Office of Personnel Management, other agencies, professional organizations, educational institutions, and private industry. He or she is also the Printing Liaison with the Joint Committee on Printing, and the Contract Officer.

25. Section 200.26 is removed and reserved.

26. In § 200.26a, the words ''Systems Management'' are revised to read ''Technology'' in the section heading and in the text.

27. In § 200.27, the phrase ''subject to policy direction and review by the Division Directors'' is revised to read ''subject to review by the Director of the Division of Enforcement and policy direction and review by the other Division Directors''.

28. Section 200.30–1 is amended by revising paragraphs (e)(2), (e)(6), (f)(4), (f)(8), (f)(12), and (g)(2) to read as follows:

§ 200.30–1 Delegation of authority to Director of Division of Corporation Finance.

* * * * *

(e) * * *

(2) To authorize the issuance of orders exempting certain securities from the Act under sections 304(c) and (d) thereof (15 U.S.C. 77ddd(c) and 77ddd(d)) and § 260.4c–1 and § 260.4d–7 of this chapter.

* * * * *

(6) To authorize the issuance of an order permitting a foreign person to act as sole trustee under qualified indentures under section 310(a) of the Act (15 U.S.C. 77jjj(a)) and § 260.10a–1 through § 260.10a–5 of this chapter.

* * * * *

(f) * * *

(4) To authorize the use of forms of proxies, proxy statements, or other soliciting material within periods of time less than that prescribed in §§ 240.14a–6, 240.14a–8(d), and 240.14a–11 of this chapter; to authorize the filing of information statements within periods of time less than that prescribed in § 240.14c–5a of this chapter; and to authorize the filing of information under § 240.14f–1 of this chapter within periods of time less than that prescribed therein.

* * * * *

(8) At the request of the issuer to accelerate the termination of registration of any class of equity securities as provided in section 12(g)(4) of the Act (15 U.S.C. 78l(g)(4)) or as provided in § 240.12g–4(a) of this chapter.

* * * * *

(12) To grant an exemption from § 240.14b–2(b) or § 240.14b–2(c), or both, of this chapter.

* * * * *

(g) * * *

(2) The Director of the Division of Corporation Finance shall have the same authority as that delegated to each Regional Director in § 200.30–6(a) and (c).

29. Section 200.30–3 is amended by revising paragraphs (a)(21), (a)(22), and (a)(32), adding an introductory text to paragraph (a)(35), and revising paragraph (a)(35)(i), the introductory text to paragraph (a)(39), and paragraphs (a)(39)(ii) and (a)(42) to read as follows:

§ 200.30–3 Delegation of authority to Director of Division of Market Regulation.

(a) * * *

(21) Under section 17A(c)(4)(B) of the Act (15 U.S.C. 78q–1(c)(4)(B)), to set terms and conditions upon which transfer agents registered with the Commission may withdraw from registration as a transfer agent by filing a written notice of withdrawal.

(22) Under section 17A(c)(4)(B) of the Act (15 U.S.C. 78q–1(c)(4)(B)), to authorize the issuance of orders canceling registrations of transfer agents registered with the Commission or denying applications for registration as a transfer agent with the Commission, if such transfer agents are no longer in existence or are not engaged in business as transfer agents.

* * * * *

(32) Under § 240.10b–10(f) of this chapter, to grant exemptions from § 240.10b–10 of this chapter.

* * * * *

(35) Under § 240.13e–4(h)(8) of this chapter:

(i) To grant exemptions from § 240.13e–4 of this chapter; and

* * * * *

(39) Under § 240.9b–1 of this chapter:

(i) * * *

(ii) To require refiling of an amendment to an options disclosure document pursuant to the procedure set forth in § 240.9b–1(b)(2)(i) of this chapter.

* * * * *

(42) Under § 240.11Aa3–2(f) of this chapter, to grant or deny exemptions from § 240.11Aa3–2 of this chapter.

* * * * *

30. Section 200.30–4(a)(2) is revised to read as follows:

§ 200.30–4 Delegation of authority to Director of Division of Enforcement.

* * * * *

(a) * * *

(2) In nonpublic investigative proceedings, to grant requests of persons to procure copies of the transcript of their testimony under § 203.6 of this chapter.

* * * * *

31. Section 200.30–5 is amended by revising paragraphs (a)(1), (a)(2), (b), (d), (e)(3), and (e)(4), adding paragraphs (f)(1)(xxiv) and (f)(1)(xxv), removing paragraphs (g) and (h), redesignating present paragraphs (i), (j), (k), (l), (m), and (n) as paragraphs (g), (h), (i), (j), (k), and (l), respectively, and revising newly designated paragraph (g)(1) to read as follows:

§ 200.30–5 Delegation of Authority to Director of Division of Investment Management.

* * * * *

(a) * * *

(1) Except as otherwise provided in this section, to issue notices, under § 270.0–5 of this chapter, with respect to applications for orders under the Act and the rules and regulations thereunder and, with respect to section 8(f) of the Act (15 U.S.C. 80a–8(f)), in cases where no application has been filed, where, upon examination, the matter does not appear to the Director to present significant issues that have not been previously settled by the Commission or to raise questions of fact or policy indicating that the public interest or the interest of investors warrants that the Commission consider the matter.

(2) Except as otherwise provided in this section, to authorize the issuance of orders where a notice, under § 270.0–5 of this chapter, has been issued and no request for a hearing has been received from any interested person within the period specified in the notice and the Director believes that the matter presents no significant issues that have not been previously settled by the Commission and it does not appear to the Director to be necessary in the public interest or the interest of investors that the Commission consider the matter.

(b) With respect to matters pertaining to investment companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*), pooled investment funds or accounts, and the general assets or separate accounts of insurance companies, all arising under the Securities Act of 1933 (15 U.S.C. 77a, *et seq.*), the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*), and the Trust Indenture Act of 1939 (15 U.S.C. 77aaa, *et seq.*), the same functions as are delegated to the Director of the Division of Corporation Finance in regard to companies other than such investment companies in paragraphs (a), (e), and (f) of § 200.30–1.

* * * * *

(d) To issue certifications to investment companies that are principally engaged in the furnishing of capital to corporations that are principally engaged in the development or exploitation of inventions, technological improvements, new processes, or products not previously generally available, under Section 851(e) of the Internal Revenue Code of 1986 (26 U.S.C. 851(e)), where applications from the investment companies do not present issues that have not been previously settled by the Commission and do not require a hearing.

(e) * * *

(3) To issue notices, under § 275.0–5 of this chapter, with respect to applications for orders under the Act and the rules and regulations thereunder where, upon examination, the matter does not appear to the Director to present significant issues that have not been previously settled by the Commission or to raise questions of fact or policy indicating that the public interest or the interest of investors warrants that the Commission consider the matter.

(4) To authorize the issuance of orders where a notice, pursuant to § 275.0–5 of this chapter, has been issued, no request for a hearing has been received from any interested person within the period specified in the notice, and the Director believes that the matter presents no significant issues that have not been previously settled by the Commission and it does not appear to the Director to be necessary in the public interest or the interest of investors that the Commission consider the matter.

* * * * *

(f) * * *

(1) * * *

(xxiv) Section 32, 15 U.S.C. 79ff.

(xxv) Section 33, 15 U.S.C. 79gg.

(g) * * *

(1) The Director of the Division of Investment Management shall have the same authority with respect to the Securities Act of 1933 (15 U.S.C. 77a, *et seq.*), §§ 230.251–230.263, and §§ 230.651–230.703(T) of this chapter as that delegated to each Regional Director in § 200.30–6 (b) and (c).

32. Section 200.30–6 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 200.30–6 Delegation of authority to Regional Directors.

* * * * *

(a) With respect to the registration of securities on Forms SB–1 and SB–2 (§§ 239.9 and 239.10 of this chapter) filed in the regional office under the Securities Act of 1933 (15 U.S.C. 77a *et*

seq.) and §§ 230.400 *et seq.* of this chapter:

* * * * *

33. Section 200.30–7(a)(4) is revised to read as follows:

§ 200.30–7 Delegation of authority to Secretary of the Commission.

* * * * *

(a) * * *

(4) To grant or deny extensions of time within which to file papers with the Commission under § 201.13 of this chapter.

34. Section 200.30–9 is revised to read as follows:

§ 200.30–9 Delegation of authority to Administrative Law Judges.

Under Pub. L. 87–592, 76 Stat. 394 (15 U.S.C. 78d–1), the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, to each Administrative Law Judge (''Judge'') the authority to make the initial decision in any proceeding at which the Judge presides in which a hearing is required to be conducted in conformity with the Administrative Procedure Act (5 U.S.C. 557) unless an initial decision is waived by all parties that appear at the hearing and the Commission does not subsequently order that an initial decision nevertheless be made by the Judge, and in any other proceeding in which the Commission directs the Judge to make an initial decision.

35. Section 200.30–11 is amended by revising the section heading, the introductory text, and paragraphs (a), (b), and (d) to read as follows:

§ 200.30–11 Delegation of authority to Associate Executive Director of the Office of Filings and Information Services.

Under Pub. L. 87–592, 76 Stat. 394 (15 U.S.C. 78d–1, 78d–2), the Securities and Exchange Commission hereby delegates the following functions to the Associate Executive Director of the Office of Filings and Information Services to be performed by him or her or under his or her direction by such person or persons as the Chairman of the Commission may designate from time to time:

(a) With respect to the Securities Exchange Act of 1934 (15 U.S.C. 78a, *et seq.*):

(1) Under section 15(b) of the Act (15 U.S.C. 78o(b)):

(i) To authorize the issuance of orders granting registration of brokers or dealers within 45 days of the acceptance of an application for registration as a broker or dealer (or within such longer period as to which the applicant consents);

(ii) To grant registration of brokers or dealers sooner than 45 days after acceptance of an application for registration;

(iii) To authorize the issuance of orders canceling registrations of brokers or dealers, or pending applications for registration, if such brokers or dealers or applicants for registration are no longer in existence or are not engaged in business as brokers or dealers; and

(iv) To determine whether notices of withdrawal from registration on Form BDW shall become effective sooner than the normal 60-day waiting period.

(2) Under section 15B(a) of the Act (15 U.S.C. 78o–4(a)):

(i) To authorize the issuance of orders granting registration of municipal securities dealers within 45 days of the filing of acceptable applications for registration as a municipal securities dealer (or within such longer period as to which the applicant consents); and

(ii) To grant registration of municipal securities dealers sooner than 45 days after receipt by the Commission of acceptable applications for registration.

(3) Under section 15B(c) of the Act (15 U.S.C. 78o–4(c)):

(i) To authorize the issuance of orders canceling registrations of municipal securities dealers, or pending applications for registration, if such municipal securities dealers or applicants for registration are no longer in existence or are not engaged in business as municipal securities dealers; and

(ii) To determine whether notices of withdrawal from registration on Form MSDW shall become effective sooner than the normal 60-day waiting period.

(4) Under section 15C(a) of the Act (15 U.S.C. 78o–5(a)):

(i) To authorize the issuance of orders granting registration of government securities brokers or government securities dealers for which the Commission is the appropriate regulatory agency within 45 days of the acceptance of an application for registration as a government securities broker or government securities dealer (or within such longer period as to which the applicant consents); and

(ii) To grant registration of government securities brokers or government securities dealers for which the Commission is the appropriate regulatory agency sooner than 45 days after acceptance of an application for registration.

(5) Under section 15C(c) of the Act (15 U.S.C. 78o–5(c)):

(i) To authorize the issuance of orders canceling registrations of government securities brokers or government securities dealers registered with the Commission, or pending applications for registration, if such government securities brokers or government securities dealers or applicants for registration are no longer in existence or are not engaged in business as government securities brokers or government securities dealers; and

(ii) To determine whether notices of withdrawal from registration on Form BDW shall become effective sooner than the normal 60-day waiting period.

(6) Under section 17A(c) of the Act (15 U.S.C. 78q–1(c)):

(i) To authorize the issuance of orders granting registration of transfer agents within 45 days of the filing of acceptable applications for registration as a transfer agent (or within such longer period as to which the applicant consents);

(ii) To grant registration of transfer agents sooner than 45 days after receipt by the Commission of acceptable applications for registration;

(iii) To authorize the issuance of orders canceling registrations of transfer agents, or pending applications for registration, if such transfer agents or applicants for registration are no longer in existence or are not engaged in business as transfer agents; and

(iv) To determine whether notices of withdrawal from registration on Form TA–W shall become effective sooner than the normal 60-day waiting period.

(b) With respect to the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*):

(1) Under section 203(c) of the Act (15 U.S.C. 80b–3(c)):

(i) To authorize the issuance of orders granting registration of investment advisers within 45 days of the filing of acceptable applications for registration as an investment adviser (or within such longer period as to which the applicant consents); and

(ii) To grant registration of investment advisers sooner than 45 days after receipt by the Commission of acceptable applications for registration.

(2) Under section 203(h) of the Act (15 U.S.C. 80b–3(h)):

(i) To authorize the issuance of orders canceling registrations of investment advisers, or pending applications for registration, if such investment advisers or applicants for registration are no longer in existence or are not engaged in business as investment advisers; and

(ii) To determine whether notices of withdrawal from registration on Form ADV–W shall become effective sooner than the normal 60-day waiting period.

(c) * * *

(d) Notwithstanding anything in the foregoing, in any case in which the Associate Executive Director of the

Office of Filings and Information Services believes it appropriate, he or she may submit the matter to the Commission.

* * * * *

36. Section 200.30–12 is removed and reserved.

37. In § 200.30–13, the word ''Comptroller'' in the heading and the words ''Comptroller of the Commission'' in the text are revised to read ''Associate Executive Director of the Office of the Comptroller''.

38. In § 200.30–14, remove the semicolon at the end of paragraph (a) and ''; and'' at the end of paragraph (b) and add in both their places a period.

39. Section 200.30–15 is revised to read as follows:

§ 200.30–15 Delegation of authority to Executive Director.

Under Pub. L. 100–181, 101 Stat. 1254 (15 U.S.C. 78d–1, 78d–2), the Securities and Exchange Commission hereby delegates, until the Commission orders otherwise, the following functions to the Executive Director to be performed by him or her or under his or her direction by persons designated by the Chairman of the Commission: To identify and implement additional changes within the Commission that will promote the principles and standards of the National Performance Review and the strategic and quality management approaches described by the Federal Quality Institute's ''Presidential Award for Quality'' or its successor awards.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

40. The authority citation for part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–37, 80a–39, unless otherwise noted;

* * * * *

41. In the last sentence of § 270.8b–25(b), the words ''(j) and (k)'' are revised to read ''(h) and (i)''.

By the Commission.

Dated: March 14, 1995.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6696 Filed 3–17–95; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

[T.D. 95–22]

RIN 1515–AB65

Temporary Importation Bonds; Anticipatory Breach, Assessment Amounts, Petitions for Relief

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to permit anticipatory breach and provide for early payment of liquidated damages in Temporary Importation Bond (TIB) cases. It also amends the regulations to permit assessment of liquidated damages in excess of double the duties in those cases where the district director requires extra bonding in order to protect the revenue and to state that the term ''duties'' for TIB assessment shall also include any applicable merchandise processing fees that otherwise would be charged on an entry for consumption. Finally, the document amends the regulations to eliminate forwarding of petitions for relief in TIB cases to Customs Headquarters when the bond principal or surety is dissatisfied with the decision on the petition afforded by the district director.

EFFECTIVE DATE: April 19, 1995.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Penalties Branch, Office of Regulations and Rulings, 202–482–6950.

SUPPLEMENTARY INFORMATION:

Background

Under the provisions of Chapter 98, Subchapter XIII, Harmonized Tariff Schedule of the United States (HTSUS), merchandise may be entered under the terms of a Temporary Importation Bond (TIB) without the payment of duties if the merchandise is entered for a specific purpose enumerated in Subchapter XIII, HTSUS. Per U.S. Note 1 to Subchapter XIII, the merchandise is permitted to remain in the United States for a one-year period subsequent to the date of importation (with a maximum of two one-year extensions allowed). Prior to the expiration of the bond period or any properly approved extension thereof, the merchandise must be exported or destroyed under Customs supervision. Failure to export or destroy in a timely manner results in the imposition of liquidated damages against the importer.

Instances arise where, after initiation of a TIB entry, the importer decides that the merchandise will remain in the United States in violation of the terms of the bond. Rather than wait for the one-year period to end and for liquidated damages to be assessed, importers inquired as to the possibility of early payment of liquidated damages. The Customs Regulations currently do not provide for an anticipatory breach of a TIB.

In a Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** of September 29, 1992 (57 FR 44714), it was proposed to amend the regulations to permit anticipatory breach of a TIB and allow the importer to pay the full measure of liquidated damages and thereby close the bond. Through payment of the liquidated damages, the importer would waive his right to receipt of notice of a claim for liquidated damages pursuant to § 172.1(a), Customs Regulations (19 CFR 172.1(a)).

For TIB entries, the provisions of § 10.31(f) of the Customs Regulations (19 CFR 10.31(f)) require that a bond shall be given containing the conditions set forth in § 113.62 of the Customs Regulations (19 CFR 113.62) in an amount equal to double the duties which it is estimated would have accrued (or such larger amount as the district director shall state in writing to the entrant is necessary to protect the revenue) had all the articles covered by the entry been entered under an ordinary consumption entry. By contrast, under the provisions of § 10.39(d), if any article entered under Chapter 98, Subchapter XIII, HTSUS, has not been exported or destroyed in accordance with the regulations within the period of time during which the articles may remain in the Customs territory of the United States under bond (including any lawful extension), the district director shall make a demand in writing under the bond for the payment of liquidated damages equal to double the estimated duties applicable to such entry, unless a lower amount is prescribed by § 10.31(f).

On the one hand, § 10.31(f) empowers the district director to require a bond in excess of double the duties, but the provisions of § 10.39(d) only permit him to assess liquidated damages at double the estimated duties or such *lower* amount (emphasis added) as prescribed by § 10.31(f). These regulations can provide anomalous results and inefficient protection of the revenue. Accordingly, the NPRM proposed an amendment to the regulations to permit, in the case of breach of a TIB, assessment of liquidated damages in an

amount equal to double the estimated duties or any different amount prescribed by § 10.31(f) rather than only a lower amount.

When a TIB entry is filed, no merchandise processing fees are charged to the importer of record. However, section 111 of the Customs and Trade Act of 1990 (Pub. L. 101–382) amended 19 U.S.C. 58c(g) (the statute which requires payment of the merchandise processing fee) to provide that all administrative and enforcement provisions of the Customs laws and regulations, except those relating to drawback, shall apply with respect to any fee prescribed under 19 U.S.C. 58c(a) (which requires payment of the merchandise processing fee), and with respect to persons liable therefor, as if such fee is a Customs duty. Any penalty which is expressed in terms of a relationship to the amount of the duty (e.g., liquidated damages expressed in terms of an amount equal to double the estimated duties due on an entry) shall be assessed as a multiple of the unpaid fee. Accordingly, when calculating the measure of liquidated damages for breach of a TIB, the amount of estimated duties due for breach should include duties plus the merchandise processing fees that would have been applicable to the entry had an entry for consumption been filed. The NPRM proposed an amendment to the regulations to provide that, for purposes of assessment of liquidated damages for breach of a TIB, the term duties includes any merchandise processing fees that would have been due on a consumption entry that would have been filed with regard to such TIB merchandise.

Under the provisions of § 10.39(e) of the Customs Regulations (19 CFR 10.39(e)), if there has been a default with respect to all the articles covered by the bond and a written petition for relief is filed timely, the regulations state that the petition ''shall be transmitted to Headquarters, U.S. Customs Service, with a full report of the facts, unless it is allowed by the district director in whole or in part in accordance with this regulation, * * *.'' This language noting referral to Headquarters is unique to TIB cases in which all the articles covered by the bond are in default and the district director allows no mitigation. The NPRM posited that the jurisdictional amount found in § 172.21 of the Customs Regulations (19 CFR 172.21) should govern review of all petitions. Jurisdiction should not be predicated on a denial of relief in a limited fact situation. Accordingly, the NPRM proposed that § 10.39(e) be amended to remove the reference regarding referral of the petition to Customs Headquarters.

Analysis of Comments

Five comments were received with regard to the subject document. It should initially be noted that Customs, in error, indicated the harbor maintenance fees, as required by the provisions of the Harbor Maintenance Review Act of 1986 (Pub. L. 99–682), are not imposed on TIB entries. The NPRM then went on to state also in error that unpaid harbor maintenance fees, as well as merchandise processing fees, should be included in any calculation of double the duties or 110 percent of the duties for assessment of liquidated damages. Two commenters noted these errors. Customs concedes these mistakes, and the final rule avoids any mention of harbor maintenance fees in the calculation of duties, fees and charges in TIB liquidated damages assessment.

Two commenters suggested that the proposed regulatory amendment would only permit anticipatory breach as to the entire amount of merchandise entered under a TIB and would not permit anticipatory breach if a percentage of TIB merchandise covered by a single entry was intended to remain in the United States in violation of the bond provisions but the remaining percentage was to be exported or destroyed in compliance with bond conditions. The regulations require assessment of the full amount of liquidated damages applicable to the entry. The commenters suggest that there would be little incentive to comply with anticipatory breach provisions because the importer who wishes to file a partial anticipatory breach would be required to pay for the full amount of the entry.

Customs concedes that the comment has some validity but it should be emphasized that acceptance of payment in recognition of anticipatory breach of TIB conditions is being promulgated in response to requests made to Customs and as a courtesy to the importing community. It will permit importers to close out the records on a TIB rather than wait for the one-year bond period to expire. Partial anticipatory breaches would be difficult for Customs to administer, particularly if merchandise which the importer still intends to export or destroy in compliance with bond conditions has not yet been exported or destroyed so as to close the bond out in its entirety. Customs will not accept a partial anticipatory breach if the merchandise not covered by the breach has not been exported or destroyed in compliance with bond terms because of the difficulty of administration.

A comment received from a representative of surety companies did not oppose the concept of anticipatory breach, but did request that Customs notify a surety that anticipatory breach occurred, liquidated damages were paid and that the bond could be closed with regard to that particular TIB entry. Customs has no objection to this request and has added language which would require surety notification by the importer when an anticipatory breach occurs. Inasmuch as the importer seeks the benefit of anticipatory breach, Customs does not find it burdensome to require the importer to notify surety of its actions.

One commenter was of the view that the proposed amendment to § 10.31(f) gave Customs excessively broad discretion in deciding the bond amount. We disagree. The provisions of § 10.31(f) give the district director discretion to require a bond in sufficient size to protect the revenue. As a condition precedent to requiring a larger bond, the district director must notify the entrant, in writing or by equivalent electronic notification, of the increase. The language of the regulation does not permit an increase in the bond amount without cause.

Finally, one commenter indicates that under proposed amendments to § 10.39(e) of the regulations, Customs could be faced with an anomalous situation regarding review of petitions for relief. As proposed, the district director would review petitions for relief in all cases where the claim is for $100,000 or less and the entire amount of merchandise entered under a TIB is in default. Under the provisions of § 10.39(f), a petition for relief could be reviewed by the district director when a partial default occurs and the liability for liquidated damages on the articles in respect of which there has been a default does not exceed $50,000. Thus, jurisdictional amounts are not consistent, and Headquarters review would be required in certain TIB liquidated damages cases, depending upon what percentage of articles are in default. We agree with the comment and, therefore, are amending § 10.39(f) to be consistent with the change to § 10.39(e).

Accordingly, the regulations are amended as proposed except that references to the harbor maintenance fee have been removed, notice of anticipatory breach will now be required to be afforded to sureties by the breaching importer, and the jurisdictional amount in § 10.39(f) is amended to $100,000 to be consistent with § 10.39(e).

Regulatory Flexibility Act and Executive Order 12866

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis requirements of 5 U.S.C. 603 and 604. The document does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

List of Subjects in 19 CFR Part 10

Articles conditionally free, Customs duties and inspection, Exports, temporary importations under bond.

Amendments

Part 10, Customs Regulations (19 CFR part 10), is amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 17, Harmonized Tariff Schedule of the United States), 1481, 1484, 1498, 1508, 1623, 1624;

* * * * *

2. Section 10.31 is amended by revising the first two sentences of paragraph (f) to read as follows:

§ 10.31 Entry; bond.

* * * * *

(f) With the exceptions stated herein, a bond shall be given on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, in an amount equal to double the duties, including fees, which it is estimated would accrue (or such larger amount as the district director shall state in writing or by the electronic equivalent to the entrant is necessary to protect the revenue) had all the articles covered by the entry been entered under an ordinary consumption entry. In the case of samples solely for use in taking orders entered under subheading 9813.00.20, HTSUS, motion-picture advertising films entered under subheading 9813.00.25, HTSUS, and professional equipment, tools of trade and repair components for such equipment or tools entered under subheading 9813.00.50, HTSUS, the bond required to be given shall be in an amount equal to 110 percent of the estimated duties, including fees, determined at the time of entry. * * *

* * * * *

3. Section 10.39(d)(1) is amended by removing the word ''lower'' in the first sentence and by adding in its place the word ''different'', and by adding a sentence at the end of the paragraph to read as follows:

§ 10.39 Cancellation of bond charges.

* * * * *

(d) (1) * * * For purposes of this section, the term estimated duties shall include any merchandise processing fees applicable to such entry.

* * * * *

4. Section 10.39(e) is amended by revising its first sentence to read as follows:

§ 10.39 Cancellation of bond charges.

* * * * *

(e) If there has been a default with respect to all the articles covered by the bond and a written petition for relief has been timely filed as provided in part 172 of this chapter, it shall be reviewed by the district director if the full amount of the claim does not exceed $100,000 and by the Director, International Trade Compliance Division, Office of Regulations and Rulings, Customs Headquarters, if the full amount of the claim exceeds $100,000.

* * * * *

§ 10.39 [Amended]

* * * * *

5. Section 10.39(f) is amended by removing the figure ''$50,000'' in the first sentence and by adding in its place the figure ''$100,000''.

6. Section 10.39 is amended by redesignating paragraph (g) as paragraph (h) and by adding a new paragraph (g) to read as follows:

* * * * *

§ 10.39 Cancellation of bond charges.

* * * * *

(g) *Anticipatory breach.* If an importer anticipates that the merchandise entered under a Temporary Importation Bond will not be exported or destroyed in accordance with the terms of the bond, the importer may indicate to Customs in writing before the bond period has expired of the anticipatory breach. At the time of written notification of the breach, the importer shall pay to Customs the full amount of liquidated damages that would be assessed at the time of breach of the bond, and the entry will be closed. The importer shall notify the surety in writing of the breach and payment. By this payment, the importer waives his right to receive a notice of claim for liquidated damages as required by § 172.1(a) of this chapter.

* * * * *

Approved: February 23, 1995.

Peter J. Baish,

Acting Commissioner of Customs.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–6759 Filed 3–17–95; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 200 and 760

[Docket No. R–95–1750; FR–3468–F–02]

RIN 2501–AB83

Participant's Consent To Release of Information

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements the amendments made to Section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (the McKinney Act) by Section 903 of the Housing and Community Development Act of 1992, and Section 3003 of the Omnibus Budget Reconciliation Act of 1993. Section 904 of the McKinney Act authorizes HUD to require applicants or participants in any HUD program involving review of an applicant's or participant's income to sign a consent form authorizing HUD, the Housing Agency/Authority, or the owner to verify income information by requesting wage and claim data from employers and the State agency responsible for the administration of the State unemployment laws.

EFFECTIVE DATE: April 19, 1995.

FOR FURTHER INFORMATION CONTACT: Edward Whipple, Director, Occupancy Division, Office of Assisted Housing, Room 4206, concerning occupancy matters; Barbara D. Hunter, Acting Division Director, Planning and Procedures Division, Office of Multifamily Housing Management, Room 6180 concerning housing assistance programs administered by this office; and David L. Decker, Director, Computer Matching Activities, Room 5156, concerning computer matching/tenant income verification matters. They may be contacted at the Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708–0744, (202) 708–3944 and (202) 708–0099, respectively. Hearing or speech-impaired individuals may call

HUD's TDD number (202) 708–0850. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Background

A. October 12, 1994 Proposed Rule

On October 12, 1994 (59 FR 51519) HUD published a rule which proposed to implement the amendments made to Section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (42 U.S.C. 3544) (the McKinney Act) by Section 903 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) (the 1992 Act) and Section 3003 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, approved August 10, 1993).

Section 904 of the McKinney Act authorizes HUD to require applicants and participants and adult members of their families in any HUD program involving initial and periodic review of an applicant's or participant's income to sign a consent form authorizing: (1) HUD, the Housing Authority/Agency (HA),[1] or the owner to verify employee income information from current or previous employers; and (2) HUD or the HA to request wage and claim information from the State agency responsible for the administration of the State unemployment laws. In accordance with section 904(b) of the McKinney Act, HUD regulations make signing the consent form an explicit condition of initial or continuing eligibility for participation in the covered programs.

Among other revisions, the statutory amendments to Section 904 limited the scope of the consent form by requiring that it only cover information relevant and necessary to meet the requirements of Section 904. The amendments also authorized the Secretary of HUD to request that the Commissioner of Social Security and the Secretary of the Treasury release information pursuant to Section 6103 (1)(7)(D)(ix) of the Internal Revenue Code of 1986 (26 U.S.C. 6103).

The preamble to the proposed rule listed the specific changes made to Section 904 of the McKinney Act by section 903 of the 1992 Act, section 3003 of the Omnibus Budget Reconciliation Act of 1993, and the regulatory amendments proposed to be made as a result of the statutory changes (see 59 FR 51519–51521). HUD solicited public comments on the proposed amendments to parts 200 and 760. By the expiration of the public comment period on December 12, 1994, four comments had been received.

The following section of the preamble presents a summary of the comments raised by the commenters, and HUD's responses to these comments.

B. Comments on the October 12, 1994 Proposed Rule

Comment. One of the commenters expressed concern over proposed §§ 200.1203 and 200.1205, which permit HUD to require consent to the release of ''other information as provided in 24 CFR 813.109 and 24 CFR 913.109.'' The commenter interpreted the McKinney Act as limiting the consent form to the three categories of information listed in Section 904: (1) Salary and wage information from employers; (2) wage and benefit information from State unemployment insurance agencies; and (3) income information from the Social Security Administration and the Department of the Treasury. The commenter contended that Section 904's requirement that HUD independently verify information provided by applicants and participants is an insufficient basis for requiring consent to release ''other information.'' Furthermore, the commenter stated that it is indefensible for HUD to require consent to release ''other information'' before there is any adverse information to verify. Finally, the commenter believed that 24 CFR 813.109 and 24 CFR 913.109 conflict with 42 U.S.C 3544(b) and should be ''amended or repealed accordingly.''

HUD Response. HUD believes proposed §§ 200.1203 and 200.1205 are necessary to its compliance with statutory mandates. The Omnibus Budget Reconciliation Act of 1993 and the McKinney Act require that HUD verify information affecting eligibility for, and the level of, assisted housing benefits. Furthermore, the Privacy Act, as amended by Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, requires that agencies may not suspend, terminate, reduce or make a final denial of assistance or payment under a Federal benefit program until information is verified.

HUD notes that the language in proposed §§ 200.1203 and 200.1205 only permits consent to the release of ''other information'' necessary to determine eligibility or level of benefits. HUD believes that the consent form it has implemented, permitting HAs to obtain ''financial information'', is consistent with the ''other information'' language, since the information needed to determine eligibility or the level of benefits frequently is financial in nature.

Congress intended that the computer matching permitted by the consent form result in savings. If an HA or owner were prevented from obtaining an applicant's or participant's consent until after acquiring adverse information through computer matching, its ability to recoup funds or take other administrative or legal action would be seriously impaired. Many participants who receive excessive housing assistance will not sign the consent form after the HA or owner has obtained adverse information. By preventing the verification of the adverse information, these participants hinder the HA or owner from taking action against the participants and realizing program savings.

Finally, HUD disagrees with the commenter's statement that 24 CFR 813.109 and 24 CFR 913.109 need to be amended or repealed. Many recent and past laws require verification of information concerning applicants' and participants' eligibility for, and levels of, benefits.

Comment. One commenter questioned the basis for the proposed rule's placement of a 15-month limit on the effectiveness of the participant's consent for release of information. The commenter felt that the time limit would prove burdensome to local HAs, which would be required to have the consent form signed at each annual re-examination. The commenter suggested that HUD issue a blanket authorization which would permit the HA to verify information for the duration of the resident's tenancy.

HUD Response. HUD agrees that making the consent form effective for only 15 months increases the paperwork burden on HAs. However, Section 903(a) of the 1992 Act requires that the consent to release of information be limited with respect to time, and only cover information relevant and necessary to meet the requirements of Section 904 of the McKinney Act.

Given tenant concerns that the consent form might be used improperly to obtain private information, Congress required that HUD place a time limit on the consent form's effectiveness. A blanket authorization that would be valid for the duration of the resident's tenancy, like the one suggested by the

[1] The preamble to the October 12, 1994 proposed rule referred only to Public Housing Agencies (PHAs). Section 903 of the 1992 Act required that HUD develop a new consent form. This consent form, applicable to Indian Housing Authorities (IHAs) as well as PHAs, was released on June 13, 1994 (HUD Notice PIH–94–36 (HA)). IHAs were made aware of this new consent form and have utilized it since its issuance. Accordingly, the language in the preamble to this final rule and in the rule includes PHAs as well as IHAs (collectively referred to as HAs).

commenter, would be inconsistent with the explicit instructions given by Congress.

Congress suggested that the consent for release of information be effective for 12 months, the normal period for tenant re-certification for continued occupancy. However, the law allows HUD discretion in choosing the effective period for the consent form. In order to provide leeway for unexpected delays in re-certification, HUD has chosen to make the consent form effective for 15 months from the date of execution.

Comment. Two commenters recommended that HUD develop a new regulation to accompany the issuance of this final rule. Specifically, the commenters urged the issuance of a regulation that would ''clearly and unambiguously prohibit the release of [Housing Assistance Program] contracts or any other information which might lead to the identity of a recipient of Section 8 subsidy assistance, including the addresses of properties in which such recipients reside or the names of their landlords.'' Neither of the commenters expressed any objection to the proposed rule.

HUD Response. Although the rule recommended by the commenters and the proposed rule both have privacy implications, a clear nexus does not exist between them. Accordingly, HUD views the issuance of this final rule and the commenters' recommendation as independent issues.

C. Adoption of Proposed Rule

HUD adopts as its final rule the proposed rule published on October 12, 1994, without change.

II. Other Matters

A. Executive Order 12866

This rule was reviewed by the Office of Management and Budget under Executive Order 12866, *Regulatory Planning and Review*. Any changes made to the rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the Office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh St., SW., Washington, DC 20410.

B. Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures contained in this final rule relate to internal administrative procedures whose content does not constitute a development decision nor affect the physical condition of project areas or building sites and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

C. 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 final rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, the requirements of this final rule are directed toward applicants and participants in federally assisted housing programs. It effects no significant changes in the current relationships between the Federal government, the States and their political subdivisions in connection with these programs.

D. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family,* has determined that this final 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. Under this final rule, applicants and participants, and adult members of their families, are required to sign and submit consent forms authorizing the verification or collection of certain information necessary for determining eligibility for or level of assistance under the covered programs. Consent forms to permit verification of information provided by the family are already required. This rule change prohibits the collection of information which is not necessary to verify the income of an applicant or participant, and makes the consent form valid for 15 months. No significant change in existing HUD policies or programs will result from promulgation of this final rule, as those policies and programs relate to family concerns.

E. 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 final rule will not have a significant economic impact on a substantial number of small entities. This final rule relates to applicants and participants in federally assisted housing projects but should not have a meaningful economic impact on these entities.

F. Regulatory Agenda

This final rule was not listed in HUD's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 760

Grant programs—housing and community development, Income verification procedures, Indians, Intergovernmental relations, Loan programs—housing and community development, Penalties, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Wages.

Accordingly, 24 CFR parts 200 and 760 are amended as follows:

PART 200—INTRODUCTION

1. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1701–1715z-18, 1701s, and 1715z-11; 42 U.S.C. 3535(d), 3543, and 3544.

2. Section 200.1203 is amended by revising paragraph (a), to read as follows:

§ 200.1203 Applicability.

(a) *Information to be covered by consent forms.* The information covered by consent forms described in this part involves: wage and claim information from SWICAs; and wages, net earnings from self-employment, payments of retirement income and unearned income as referenced at sections 6103(l)(7)(A) and 6103(l)(7)(B) of the Internal Revenue Code (26 U.S.C. 6103). In addition, the consent forms may authorize the collection of other information from applicants or participants to determine eligibility or level of benefits as provided in 24 CFR 813.109 and 24 CFR 913.109.

* * * * *

3. Section 200.1205 is amended by revising the definition for ''Consent form'', to read as follows:

§ 200.1205 Definitions.

* * * * *

Consent form means a consent form or forms approved by HUD to be signed by applicants and participants for the purpose of obtaining employee income information from employers; wage and claim information from SWICAs; return information from the Social Security Administration (including wages, net earnings from self-employment, payments of retirement income as referenced at section 6103(l)(7)(A) of the Internal Revenue Code (26 U.S.C. 6103); and return information for unearned income (i.e., interest and dividends) from the Internal Revenue Service as referenced at section 6103(l)(7)(B) (26 U.S.C. 6103). Also, the consent forms may authorize the collection of other information from applicants or participants to determine eligibility or level of benefits as provided in 24 CFR 813.109 and 24 CFR 913.109. The consent form expires after a limited amount of time.

* * * * *

4. Section 200.1210 is amended by revising paragraph (c), to read as follows:

§ 200.1210 Consent by applicants and participants.

* * * * *

(c) *Consent form requirements.* The consent form required by this subpart V shall contain, at a minimum, the following:

(1) A provision authorizing HUD to obtain from SWICAs any information or materials necessary to complete or verify the application for participation and/or to maintain continued assistance under a program referred to in § 200.1203;

(2) A provision authorizing HUD or the owner (or mortgagee as applicable) responsible for determining eligibility for or level of assistance, to verify with previous or current employers employee income information pertinent to the applicant's or participant's eligibility for or level of assistance under a program referred to in § 200.1203;

(3) A provision authorizing HUD to request tax return information from the Internal Revenue Service and the Social Security Administration for the sole purpose of verifying income information pertinent to the applicant's or participant's eligibility or level of benefits; and

(4) A statement that the authorization to release the information requested by the consent form expires 15 months after the consent form was signed.

(5) These requirements may be contained in more than one consent form.

PART 760—PROCEDURES FOR OBTAINING WAGE AND CLAIM INFORMATION ABOUT APPLICANTS AND PARTICIPANTS IN HUD'S SECTION 8 AND PUBLIC HOUSING PROGRAMS FROM STATE WAGE INFORMATION COLLECTION AGENCIES (SWICAs)

5. The authority citation for part 760 is revised to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437a, 1437d, 1437ee, 1437f, 3535(d), and 3544.

6. Section 760.3 is amended by revising paragraph (a), to read as follows:

§ 760.3 Applicability.

(a) *information to be covered by consent forms.* The information covered by consent forms described in this part involves wage and claim information from SWICAs; and wages, net earnings from self-employment, payments of retirement income, and unearned income as referenced at sections 6103(l)(7)(A) and 6103(l)(7)(B) of the Internal Revenue Code (26 U.S.C. 6103). In addition, consent forms may authorize the collection of other information as identified in 24 CFR 813.109(b) and 24 CFR 913.109(b) for current verification procedures, including requirements regarding signing and submitting consent forms, for the covered programs.

* * * * *

7. Section 760.5 is amended by revising the definition for ''Consent form'', to read as follows:

§ 760.5 Definitions.

* * * * *

Consent form means a consent form or forms approved by HUD to be signed by applicants and participants for the purpose of obtaining employee income information from employers; wage and claim information from SWICAs; return information from the Social Security Administration (including wages, net earnings from self-employment, payments of retirement income as referenced at section 6103(l)(7)(A) of the Internal Revenue Code (26 U.S.C. 6103); and return information for unearned income (i.e., interest and dividends) from the Internal Revenue Service as referenced at section 6103(l)(7)(B) (26 U.S.C. 6103). Also, the consent forms may authorize the collection of other information from applicants or participants to determine eligibility or level of benefits as provided in 24 CFR 813.109 and 24 CFR 913.109. The consent form expires after a limited amount of time.

* * * * *

8. Section 760.10 is amended by revising paragraph (c), to read as follows:

§ 760.10 Consent by applicants and participants.

* * * * *

(c) *Consent form requirements.* The consent form required by this subpart B shall, at a minimum, contain the following:

(1) A provision authorizing HUD and HAs to obtain from SWICAs any information or materials necessary to complete or verify the application for participation or to maintain continued assistance under a program referred to in § 760.3;

(2) A provision authorizing HUD, HAs, or the owner responsible for determining eligibility for or level of assistance, to verify with previous or current employers income information pertinent to the applicant's or participant's eligibility for or level of assistance under a program referred to in §§ 200.1203, 813.109 and 913.109 of this title;

(3) A provision authorizing HUD to request income return information from the Internal Revenue Service and the Social Security Administration for the sole purpose of verifying income information pertinent to the applicant's or participant's eligibility or level of benefits; and

(4) A statement that the authorization to release the information requested by the consent form expires 15 months after the consent form was signed.

Dated: March 3, 1995.

Henry G. Cisneros,

Secretary.

[FR Doc. 95–6715 Filed 3–17–95; 8:45 am]

BILLING CODE 4210–32–P

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24 CFR Part 3500

[Docket No. R–95–1538; FR–2942–C–07]

RIN 2502–AG27

Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Real Estate Settlement Procedures Act, Section 6 Transfer of Servicing of Mortgage Loans (Regulation X): Corrections

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: The final rule published on December 19, 1994, is being further amended to correct technical errors and to conform the rule text and an Appendix. Previously, on January 10, 1995, the Department published a substitute page correcting Appendix MS–1 to Part 3500 and correcting a cross-reference. The corrections published today are necessary to clarify certain other provisions.

EFFECTIVE DATE: June 19, 1995. This is the same effective date as applies to the final rule and earlier corrections. However, the Department continues to encourage persons covered by the new rule to implement all of its provision earlier than the rule's effective date.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, RESPA Enforcement, Room 5239, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, telephone (202) 708–4560. The TDD number for hearing-impaired persons is (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Under the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) (RESPA), the Secretary is to publish regulations implementing the requirements in Section 6 (12 U.S.C. 2605) concerning the servicing of mortgage loans. On December 19, 1994 (59 FR 65442), the Department published a final rule implementing Section 6 of RESPA. On January 10, 1995 (60 FR 2642), the Department published a substitute page correcting Appendix MS–1 to Part 3500, the Servicing Disclosure Statement, to include the Acknowledgment of Mortgage Loan Applicant that was referenced in the rule text. In addition, the January 10, 1995, publication corrected a cross-reference in § 3500.21(e) of the rule.

Additional corrections are necessary:

(a) To clarify terminology relating to the period of time applicable to certain calculations;

(b) To clarify how long signed acknowledgements must be retained;

(c) To clarify the contents of the Notices of Transfer, including removing one unnecessary requirement and ensuring that borrowers are advised of their rights in connection with complaint resolution; and

(d) To clarify the protections applicable to borrowers during a transfer of loan servicing and to conform the text of the rule with Appendix MS–2, Notice of Assignment, Sale, or Transfer of Servicing Rights.

In addition, the Department is correcting a cross-reference in one of the definitions applicable to part 3500.

Accordingly, 24 CFR 3500.2 is amended and FR Doc. 94–30413, the final rule on Real Estate Settlement Procedures Act, Section 6 Transfer of Servicing of Mortgage Loans (Regulation X); and Real Estate Settlement Procedures Act (Regulation X); Escrow Accounting Procedures: Technical Correction, published December 19, 1994 (59 FR 65442), is corrected, as follows:

PART 3500—REAL ESTATE SETTLEMENT PROCEDURES ACT

1. The authority citation for 24 CFR part 3500 continues to read as follows:

Authority: 12 U.S.C. 2601 *et seq.*

2. In § 3500.2, the definition of ''Lender'' is amended by revising the fourth sentence to read as follows:

§ 3500.2 Definitions.

* * * * *

Lender * * * See also § 3500.5(b)(7), secondary market transactions.

* * * * *

§ 3500.21 [Corrected]

3. In the **Federal Register** of December 19, 1994, on page 65449, the second sentence in § 3500.21(b)(3)(iii) is amended at the first and fourth line of the third column by substituting the phrase ''12-month period'' for the phrase ''calendar year'' in the two places where it appears.

4. On page 65450, in the first column, in § 3500.21, a new paragraph (c)(3) is added, to read as follows:

§ 3500.21 Mortgage servicing transfers.

* * * * *

(c) * * *

(3) The signed Applicant Acknowledgment(s) shall be retained for a period of 5 years after the date of settlement as part of the loan file for every settled loan. There is no requirement for retention of Applicant Acknowledgment(s) if the loan is not settled.

* * * * *

5. On page 65450, beginning in the second column, in § 3500.21:

a. Paragraphs (d)(3) (ii) and (iii) are revised;

b. The word ''and'' is removed following the semicolon at the end of paragraph (d)(3)(v) in the third column;

c. The period at the end of paragraph (d)(3)(vi) in the third column is replaced with the word ''; and'';

d. A new paragraph (d)(3)(vii) is added; and

e. Paragraph (d)(5) is revised, to read as follows:

* * * * *

(d) * * *

(3) * * *

(ii) The name, consumer inquiry addresses (including, at the option of the servicer, a separate address where qualified written requests must be sent), and a toll-free or collect-call telephone number for an employee or department of the transferee servicer;

(iii) A toll-free or collect-call telephone number for an employee or department of the transferor servicer that can be contacted by the borrower for answers to servicing transfer inquiries;

* * * * *

(vii) A statement of the borrower's rights in connection with complaint resolution, including the information set forth in paragraph (e) of this section. Appendix MS–2 of this part illustrates a statement satisfactory to the Secretary.

* * * * *

(5) *Consumer protection during transfer of servicing.* During the 60-day period beginning on the effective date of transfer of the servicing of any mortgage servicing loan, if the transferor servicer (rather than the transferee servicer that should properly receive payment on the loan) receives payment on or before the applicable due date (including any grace period allowed under the loan documents), a late fee may not be imposed on the borrower with respect to that payment and the payment may not be treated as late for any other purposes.

* * * * *

Dated: March 14, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 95–6794 Filed 3–17–95; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8590]

RIN 1545–AR10

Dividends Received Deduction Holding Period Reduced for Periods Where Risk of Loss Diminished

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the reduction in the holding period of stock where a taxpayer has diminished its risk of loss by holding one or more other positions with respect to substantially similar or

related property. In addition, this document contains final regulations relating to tax straddles involving stock and substantially similar or related property. The regulations, in response to specific congressional direction, provide guidance to taxpayers with respect to the availability of the dividends received deduction and the application of the rules relating to tax straddles.

DATES: These regulations are effective March 20, 1995.

For dates of applicability of these regulations, see § 1.246–5(e) and § 1.1092(d)–2(b).

FOR FURTHER INFORMATION CONTACT: Nicholas G. Bogos or Thomas M. Preston of the Office of the Assistant Chief Counsel, Financial Institutions and Products, (202) 622–3920 or 622–3940, respectively (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On May 27, 1993, proposed regulations § 1.246–5 and § 1.1092(d)–2 under sections 246(c)(4)(C) and 1092(d)(3)(B) respectively were published in the **Federal Register** (58 FR 45080). A public hearing was held on September 28, 1993. After IRS and Treasury consideration of the public comments on the proposed regulations, the regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

The final regulations retain, with only minor modifications, the definitions of substantially similar or related property and diminished risk of loss that are contained in the proposed regulations. Property is substantially similar or related to stock if the property and the stock primarily reflect the performance of a single firm or enterprise, the same industry or industries, or the same economic factor or factors (such as interest rates, commodity prices, or foreign-currency exchange rates), and changes in the fair market value of the stock are reasonably expected to approximate, directly or inversely, changes in the fair market value of the property. A taxpayer has diminished its risk of loss if changes in the fair market values of the stock and a position with respect to substantially similar or related property are reasonably expected to vary inversely.

Several commentators argued that the definition of substantially similar or related property improperly focuses on the economic relationship between the stock and the other property held by the taxpayer. They argued that this approach fails to give independent substance to the two parts of the statutory test, namely, (a) risk reduction, and (b) holding positions in substantially similar or related property.

The IRS and Treasury believe that the rule, as finalized, gives appropriate weight both to risk reduction and to whether the taxpayer holds a position in substantially similar or related property. The only way to determine when properties are substantially similar or related for purposes of section 246(c)(4)(C) is by taking into account the economic characteristics of the properties. A definition that did not look to the economic relationships of properties would give undue deference to labels and would not serve the purposes of section 246(c)(4)(C).

Several commentators suggested that the regulations should provide a safe harbor under which taxpayers could establish that properties are not substantially similar or related by demonstrating a sufficiently low mathematical correlation between the changes in the price of stock and changes in the price of the other property. The final regulations do not include the suggested safe harbor because the IRS and Treasury have not identified a simple, workable safe harbor that would be appropriate in all cases and that the IRS could effectively administer. The IRS and Treasury continue to welcome suggestions for a safe harbor.

Although the final regulations retain the definition of substantially similar or related property, *Example 6* of the proposed regulations has been eliminated. This example, which was widely criticized by commentators, concludes that a nonparticipating, fixed-term, preferred stock is substantially similar to Treasury securities because both types of property primarily reflect the performance of the same economic factor—interest rates—and changes in the value of the stock will approximate changes in the value of the Treasury securities. The commentators argued that, although hedging preferred stock with Treasury securities may provide protection against the impact of substantial movements in overall interest rates, the value of preferred stock can also be significantly affected by other economic factors, such as the issuer's credit risk. Thus, they argued, the stock and the Treasury securities do not primarily reflect the performance of the same economic factor, and changes in their fair market values are not reasonably expected to approximate each other.

Whether offsetting positions constitute substantially similar or related property is determined based on the facts and circumstances of each case. Commentators demonstrated that, in many cases, changes in the price of Treasury securities would not approximate changes in the price of a preferred stock. Therefore, *Example 6* of the proposed regulations has been eliminated. Whether Treasury securities or other interest-sensitive property is substantially similar or related to a particular preferred stock must be decided on a case-by-case basis. The elimination of *Example 6* does not preclude a finding that such property or securities are substantially similar or related to preferred stock in appropriate cases.

Examples 3 and *8* of the proposed regulations were eliminated because, after further consideration, the IRS and Treasury decided the regulations were sufficiently clear without the examples.

The proposed regulations state that, notwithstanding the general rule, two portfolios of stocks are substantially similar or related if changes in their fair market values are reasonably expected to approximate each other. Commentators suggested that this rule did not give effect to the statement in the legislative history that the substantially similar or related standard is not satisfied merely because the taxpayer is an investor with diversified holdings and acquires a regulated futures contract or an option on a stock index to hedge general market risks. Commentators suggested that, even if changes in the values of two portfolios approximate each other, the substantially similar or related standard should be met only if the portfolios substantially overlap.

The final regulations adopt this suggestion subject to an anti-abuse rule. Under the final regulations, a position that reflects the value of a portfolio is not treated as substantially similar or related to the taxpayer's stock holdings unless the stock holdings and the portfolio substantially overlap. For this purpose, a taxpayer's stock holdings substantially overlap with a portfolio if the taxpayer holds 70 percent, by value, of the stocks in the portfolio (that is, the taxpayer holds 70 percent of the capitalization of the portfolio). A mechanical rule is provided for determining substantial overlap. The final regulations also define a portfolio as 20 or more stocks and provide that positions that reflect the value of more than one stock but less than 20 are treated as positions in each of the underlying stocks.

If the anti-abuse rule applies, a position that reflects the value of two or more stocks (including a portfolio) is treated as substantially similar or related property even if those stocks and

the taxpayer's stock holdings do not substantially overlap. The anti-abuse rule applies when the following two conditions are met. First, changes in the value of the position or the stocks reflected in a position are reasonably expected to virtually track (directly or inversely) changes in the value of the taxpayer's stock holdings or any portion of the taxpayer's stock holdings and other positions of the taxpayer; and, second, the position is acquired or held as part of a plan a principal purpose of which is to obtain tax savings (including by deferring tax) that are significantly in excess of the expected pre-tax economic profits from the plan. Of course, common law doctrines and statutory authorities, such as substance over form, the sham transaction doctrine, and the clear reflection of income requirement, continue to apply notwithstanding any provision of these regulations. See, e.g., *Sheldon* v. *Commissioner*, 94 T.C. 738 (1990).

The final regulations generally retain the other provisions of the proposed regulations with the following modifications. The final regulations define a position, for purposes of section 246(c)(4)(C), as an interest (including a futures or forward contract or an option) in property or any contractual right to a payment, whether or not severable from stock or other property. Thus, for purposes of section 246(c)(4)(C), stock coupled with an option to sell the stock will not be treated as a single instrument (regardless of whether the option trades separately from the stock). A position does not, however, include traditional equity rights to demand payment from the issuer, such as rights traditionally provided by mandatorily redeemable preferred stock. The definition of position does not apply for purposes of section 1092, which includes its own definition of position in section 1092(d)(2).

The final regulations make clear that certain convertible instruments are substantially similar or related property. Thus, the holding period of stock may be tolled if the taxpayer holds an instrument that is convertible into property that is substantially similar or related to the taxpayer's stock. The situations identified in the final regulations are taken directly from the legislative history underlying the statutory provision. See H.R. Conf. Rep. No. 861, 98th Cong., 2d Sess. 818 (1984).

For hedges of positions other than stock, the final regulations retain the rule in the proposed regulations that hedges of one position are not treated as hedges of another position (including stock). The final regulations clarify that relationships established in the taxpayer's books and records at the time the positions are entered into are given substantial deference. In addition, the final regulations provide that a taxpayer that diminishes its risk of loss in stock by holding a position in substantially similar or related property is treated as diminishing the risk of loss on the shares with the shortest holding period.

The final regulations retain the rule in the proposed regulations that a guarantee, surety agreement, or similar arrangement is treated as substantially similar or related property if it substantially offsets decreases in the fair market value of the stock. The IRS and Treasury caution that these arrangements or similar rights (even if they do not substantially offset decreases in the fair market value of the stock) may also be treated as options (whether settled in cash or property) to sell the stock for purposes of section 246(c)(4)(A). For example, if an instrument is debt for state law purposes but stock for federal income tax purposes, creditor's rights on the instrument are treated as options to sell. See Rev. Rul. 94–28, 1994–1 C.B. 86.

The final regulations clarify the treatment of notional principal contracts as substantially similar or related property. Under the final regulations, an analysis of whether a notional principal contract is a position in substantially similar or related property that diminishes risk must take into account the gross payments due under the contract even if payments under the contract are netted for other purposes. Thus, a taxpayer cannot look solely to the net payments that it expects to receive and argue that, because fluctuations in the value of the swap may not approximate changes in the value of the stock, the swap is not substantially similar or related to the stock, and does not diminish the taxpayer's risk of loss.

The final regulations defining substantially similar or related property under section 1092 of the Code are found in new § 1.1092(d)–2. The regulations provide that the definition of the term substantially similar or related property in § 1.246–5 is generally applicable for purposes of section 1092(d)(3)(B).

Effective Dates

The regulations contained in this Treasury decision generally are effective with respect to dividends received, and to positions established, on or after March 17, 1995 with respect to stock acquired after July 18, 1984. However, the regulations apply to dividends received by a taxpayer on stock acquired after July 18, 1984, and to positions established after March 1, 1984, with respect to certain specific transactions listed in the legislative history.

Special Analysis

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Nicholas G. Bogos and Thomas M. Preston, both of the Office of Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended to read as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *.

Section 1.246–5 also issued under 26 U.S.C. 246(c) and 7701(f). * * *

Section 1.1092(d)–2 also issued under 26 U.S.C. 1092(d)(3)(B). * * *

Par. 2. Section 1.246–5 is added to read as follows:

§ 1.246–5 Reduction of holding periods in certain situations.

(a) *In general.* Under section 246(c)(4)(C), the holding period of stock for purposes of the dividends received deduction is appropriately reduced for any period in which a taxpayer has diminished its risk of loss by holding one or more other positions with respect to substantially similar or related property. This section provides rules for applying section 246(c)(4)(C).

(b) *Definitions*—(1) *Substantially similar or related property.* The term substantially similar or related property is applied according to the facts and circumstances in each case. In general, property is substantially similar or related to stock when—

(i) The fair market values of the stock and the property primarily reflect the performance of—

(A) A single firm or enterprise;

(B) The same industry or industries; or

(C) The same economic factor or factors such as (but not limited to) interest rates, commodity prices, or foreign-currency exchange rates; and

(ii) Changes in the fair market value of the stock are reasonably expected to approximate, directly or inversely, changes in the fair market value of the property, a fraction of the fair market value of the property, or a multiple of the fair market value of the property.

(2) *Diminished risk of loss.* A taxpayer has diminished its risk of loss on its stock by holding positions with respect to substantially similar or related property if changes in the fair market values of the stock and the positions are reasonably expected to vary inversely.

(3) *Position.* For purposes of this section, a position with respect to property is an interest (including a futures or forward contract or an option) in property or any contractual right to a payment, whether or not severable from stock or other property. A position does not include traditional equity rights to demand payment from the issuer, such as the rights traditionally provided by mandatorily redeemable preferred stock.

(4) *Reasonable expectations.* For purposes of paragraphs (b)(1)(i), (b)(2), or (c)(1)(vi) of this section, reasonable expectations are the expectations of a reasonable person, based on all the facts and circumstances at the later of the time the stock is acquired or the positions are entered into. Reasonable expectations include all explicit or implicit representations made with respect to the marketing or sale of the position.

(c) *Special rules*—(1) *Positions in more than one stock*—(i) *In general.* This paragraph (c)(1) provides rules for the treatment of positions that reflect the value of more than one stock. In general, positions that reflect the value of a portfolio of stocks are treated under the rules of paragraphs (c)(1) (ii) through (iv) of this section, and positions that reflect the value of more than one stock but less than a portfolio are treated under the rules of paragraph (c)(1)(v) of this section. A portfolio for this purpose is any group of stocks of 20 or more unrelated issuers. Paragraph (c)(1)(vi) of this section provides an anti-abuse rule.

(ii) *Portfolios.* Notwithstanding paragraph (b)(1) of this section, a position reflecting the value of a portfolio of stocks is substantially similar or related to the stocks held by the taxpayer only if the position and the taxpayer's holdings substantially overlap as of the most recent testing date. A position may be substantially similar or related to a taxpayer's entire stock holdings or a portion of a taxpayer's stock holdings.

(iii) *Determining substantial overlap.* This paragraph (c)(1)(iii) provides rules for determining whether a position and a taxpayer's stock holdings or a portion of a taxpayer's stock holdings substantially overlap. Paragraphs (c)(1)(iii) (A) through (C) of this section determine whether there is substantial overlap as of any testing date.

(A) *Step One.* Construct a subportfolio (the Subportfolio) that consists of stock in an amount equal to the lesser of the fair market value of each stock represented in the position and the fair market value of the stock in the taxpayer's stock holdings. (The Subportfolio may contain fewer than 20 stocks.)

(B) *Step Two.* If the fair market value of the Subportfolio is equal to or greater than 70 percent of the fair market value of the stocks represented in the position, the position and the Subportfolio substantially overlap.

(C) *Step Three.* If the position does not substantially overlap with the Subportfolio, repeat Steps One and Two (paragraphs (c)(1)(iii)(A) and (B) of this section) reducing the size of the position. The largest percentage of the position that results in a substantial overlap is substantially similar or related to the Subportfolio determined with respect to that percentage of the position.

(iv) *Testing date.* A testing date is any day on which the taxpayer purchases or sells any stock if the fair market value of the stock or the fair market value of substantially similar or related property is reflected in the position, any day on which the taxpayer changes the position, or any day on which the composition of the position changes.

(v) *Nonportfolio positions.* A position that reflects the fair market value of more than one stock but not of a portfolio of stocks is treated as a separate position with respect to each of the stocks the value of which the position reflects.

(vi) *Anti-abuse rule.* Notwithstanding paragraphs (c)(1)(i) through (v) of this section, a position that reflects the value of more than one stock is a position in substantially similar or related property to the appropriate portion of the taxpayer's stock holdings if—

(A) Changes in the value of the position or the stocks reflected in the position are reasonably expected to virtually track (directly or inversely) changes in the value of the taxpayer's stock holdings, or any portion of the taxpayer's stock holdings and other positions of the taxpayer; and

(B) The position is acquired or held as part of a plan a principal purpose of which is to obtain tax savings (including by deferring tax) the value of which is significantly in excess of the expected pre-tax economic profits from the plan.

(2) *Options*—(i) *Options that are significantly out of the money.* For purposes of paragraph (b)(2) of this section, an option to sell that is significantly out of the money does not diminish the taxpayer's risk of loss on its stock unless the option is held as part of a strategy to substantially offset changes in the fair market value of the stock.

(ii) *Conversion rights.* Notwithstanding paragraphs (b)(1) and (2) of this section, a taxpayer is treated as diminishing its risk of loss by holding substantially similar or related property if it engages in the following transactions or their substantial equivalents—

(A) A short sale of common stock while holding convertible preferred stock of the same issuer and the price changes of the convertible preferred stock and the common stock are related;

(B) A short sale of a convertible debenture while holding convertible preferred stock into which the debenture is convertible or common stock; or

(C) A short sale of convertible preferred stock while holding common stock.

(3) *Stacking rule.* If a taxpayer diminishes its risk of loss by holding a position in substantially similar or related property with respect to only a portion of the shares that the taxpayer holds in a particular stock, the holding period of those shares having the shortest holding period is reduced.

(4) *Guarantees, surety agreements, or similar arrangements.* A taxpayer has diminished its risk of loss on stock by holding a position in substantially similar or related property if the taxpayer is the beneficiary of a guarantee, surety agreement, or similar arrangement and the guarantee, surety agreement, or similar arrangement provides for payments that will substantially offset decreases in the fair market value of the stock.

(5) *Hedges counted only once.* A position established as a hedge of one outstanding position, transaction, or obligation of the taxpayer (other than stock) is not treated as diminishing the risk of loss with respect to any other position held by the taxpayer. In determining whether a position is established to hedge an outstanding position, transaction, or obligation of the taxpayer, substantial deference will be given to the relationships that are established in its books and records at the time the position is entered into.

(6) *Use of related persons or pass-through entities.* Positions held by a party related to the taxpayer within the meaning of sections 267(b) or 707(b)(1) are treated as positions held by the taxpayer if the positions are held with a view to avoiding the application of this section or § 1.1092(d)–2. In addition, a taxpayer is treated as diminishing its risk of loss by holding substantially similar or related property if the taxpayer holds an interest in, or is the beneficiary of, a pass-through entity, intermediary, or other arrangement with a view to avoiding the application of this section or § 1.1092(d)–2.

(7) *Notional principal contracts.* For purposes of this section, rights and obligations under notional principal contracts are considered separately even though payments with regard to those rights and obligations are generally netted for other purposes. Therefore, if a taxpayer is treated under the preceding sentence as receiving payments under a notional principal contract when the fair market value of the taxpayer's stock declines, the taxpayer has diminished its risk of loss by holding a position in substantially similar or related property regardless of the netting of the payments under the contract for any other purposes.

(d) *Examples.* The following examples illustrate the provisions of this section:

Example 1. General application to common stock. Corporation A and Corporation B are both automobile manufacturers. The fair market values of Corporation A and Corporation B common stock primarily reflect the value of the same industry. Because Corporation A and Corporation B common stock are affected not only by the general level of growth in the industry but also by individual corporate management decisions and corporate capital structures, changes in the fair market value of Corporation A common stock are not reasonably expected to approximate changes in the fair market value of the Corporation B common stock. Under paragraph (b)(1) of this section, Corporation A common stock is not substantially similar or related to Corporation B common stock.

Example 2. Common stock value primarily reflects commodity price. Corporation C and Corporation D both hold gold as their primary asset, and historically changes in the fair market value of Corporation C common stock approximated changes in the fair market value of Corporation D common stock. Corporation M purchased Corporation C common stock and sold short Corporation D common stock. Corporation C common stock is substantially similar or related to Corporation D common stock because their fair market values primarily reflect the performance of the same economic factor, the price of gold, and changes in the fair market value of Corporation C common stock are reasonably expected to approximate changes in the fair market value of Corporation D common stock. It was reasonably expected that changes in the fair market values of the Corporation C common stock and the short position in Corporation D common stock would vary inversely. Thus, Corporation M has diminished its risk of loss on its Corporation C common stock for purposes of section 246(c)(4)(C) and this section by holding a position in substantially similar or related property.

Example 3. Portfolios of stocks—(i) Corporation Z holds a portfolio of stocks and acquires a short position on a publicly traded index through a regulated futures contract (RFC) that reflects the value of a portfolio of stocks as defined in paragraph (c)(1)(i) of this section. The index reflects the fair market value of stocks A through T. The values of stocks reflected in the index and the values of the same stocks in Corporation Z's holdings are as follows:

Stock	Z's holdings	RFC	Subportfolio
A	$300	$300	$300
B	300	300	300
C	—	300	—
D	400	500	400
E	300	500	300
F	300	500	300
G	500	600	500
H	300	300	300
I	—	300	—
J	400	450	400
K	200	500	200
L	200	400	200
M	200	500	200
N	100	200	100
O	—	200	—
P	200	200	200
Q	100	300	100
R	200	100	100
S	100	100	100
T	100	200	100
Totals	$4,200	$6,750	$4,100

(ii) The position is substantially similar or related to Z's stock holdings only if they substantially overlap. To determine whether they substantially overlap, Corporation Z must construct a Subportfolio of stocks with the lesser of the value of the stock as reflected in the RFC and its holdings. The Subportfolio is given in the rightmost column above. The value of the Subportfolio is 60.74 percent of the value of the stocks represented in the position ($4100÷$6750), so the position and the Subportfolio do not substantially overlap.

(iii) To determine whether any portion of the position substantially overlaps with any portion of the Z's stock holdings, the values of the stocks in the RFC are reduced for purposes of the above steps. Eighty percent of the position and the corresponding subportfolio (consisting of stocks with a value of the lesser of the stocks represented in Z's holdings and in 80 percent of the RFC) substantially overlap, computed as follows:

Stock	Z's holdings	80% of RFC	Subportfolio
A	$300	$240	$240
B	300	240	240
C	—	240	—
D	400	400	400
E	300	400	300
F	300	400	300
G	500	480	480
H	300	240	240
I	—	240	—
J	400	360	360
K	200	400	200
L	200	320	200
M	200	400	200
N	100	160	100
O	—	160	—
P	200	160	160
Q	100	240	100
R	200	80	80
S	100	80	80
T	100	160	100
Totals	$4,200	$5,400	$3,780

(iv) Because $3,780 is 70 percent of $5,400, the Subportfolio substantially overlaps with 80 percent of the position. Under paragraph (c)(3) of this section, Z's stocks having the shortest holding period are treated as included in the Subportfolio. A larger portion of Z's stocks may be treated as substantially similar or related property under the

anti-abuse rule of paragraph (c)(1)(vi) of this section.

Example 4. Hedges counted only once. January 1, 1996, Corporation X owns a $100 million portfolio of stocks all of which would substantially overlap with a $100 million regulated futures contract (RFC) on a commonly used index (the Index). On January 15, Corporation X enters into a $100 million short position in an RFC on the Index with a March delivery date and enters into a $75 million long position in an RFC on the Index for June delivery. Also on January 15, 1996, Corporation X indicates in its books and records that the long and short RFC positions are intended to offset one another. Under paragraph (c)(5) of this section, $75 million of the short position in the RFC is not treated as diminishing the risk of loss on the stock portfolio and instead is treated as a straddle or a hedging transaction, as appropriate, with respect to the $75 million long position in the RFC, under section 1092. The remaining $25 million short position is treated as diminishing the risk of loss on the portfolio by holding a position in substantially similar or related property. The rules of paragraph (c)(1) determine how much of the portfolio is subject to this rule and the rules of paragraph (c)(3) determine which shares have their holding periods tolled.

(e) *Effective date*—(1) *In general.* The provisions of this section apply to dividends received on or after March 17, 1995, on stock acquired after July 18, 1984.

(2) *Special rule for dividends received on certain stock.* Notwithstanding paragraph (e)(1) of this section, this section applies to any dividends received by a taxpayer on stock acquired after July 18, 1984, if the taxpayer has diminished its risk of loss by holding substantially similar or related property involving the following types of transactions—

(i) The short sale of common stock when holding convertible preferred stock of the same issuer and the price changes of the two stocks are related, or the short sale of a convertible debenture while holding convertible preferred stock into which the debenture is convertible (or common stock), or a short sale of convertible preferred stock while holding common stock; or

(ii) The acquisition of a short position in a regulated futures contract on a stock index, or the acquisition of an option to sell the regulated futures contract or the stock index itself, or the grant of a deep-in-the-money option to buy the regulated futures contract or the stock index while holding the stock of an investment company whose principal holdings mimic the performance of the stocks included in the stock index; or alternatively, while holding a portfolio composed of stocks that mimic the performance of the stocks included in the stock index.

Par. 3. Section 1.1092(d)–2 is added to read as follows:

§ 1.1092(d)–2 Personal property.

(a) *Special rules for stock.* Under section 1092(d)(3)(B), personal property includes any stock that is part of a straddle, at least one of the offsetting positions of which is a position with respect to substantially similar or related property (other than stock). For purposes of this rule, the term *substantially similar or related property* is defined in § 1.246–5 (other than § 1.246–5(b)(3)). The rule in § 1.246–5(c)(6) does not narrow the related party rule in section 1092(d)(4).

(b) *Effective date*—(1) *In general.* This section applies to positions established on or after March 17, 1995.

(2) *Special rule for certain straddles.* This section applies to positions established after March 1, 1984, if the taxpayer substantially diminished its risk of loss by holding substantially similar or related property involving the following types of transactions—

(i) Holding offsetting positions consisting of stock and a convertible debenture of the same corporation where the price movements of the two positions are related; or

(ii) Holding a short position in a stock index regulated futures contract (or alternatively an option on such a regulated futures contract or an option on the stock index) and stock in an investment company whose principal holdings mimic the performance of the stocks included in the stock index (or alternatively a portfolio of stocks whose performance mimics the performance of the stocks included in the stock index).

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Dated: March 3, 1995.

Approved: Leslie Samuels, Assistant Secretary of the Treasury (Tax Policy).

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5173–4]

The National Priorities List for Uncontrolled Hazardous Waste Sites; Deletion Policy for Resource Conservation and Recovery Act Facilities

AGENCY: Environmental Protection Agency.

ACTION: Notice of policy statement.

SUMMARY: The Environmental Protection Agency (''EPA'') is announcing a policy relating to the National Oil and Hazardous Substances Contingency Plan (''NCP''), 40 CFR part 300, which was promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'') (amended by the Superfund Amendments and Reauthorization Act of 1986 (''SARA'')) and Executive Order 12580 (52 FR 2023, January 29, 1987). CERCLA requires that the NCP include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants or contaminants throughout the United States, and that the list be revised at least annually. The National Priorities List (''NPL''), initially promulgated as Appendix B of the NCP on September 8, 1983 (48 FR 40658), constitutes this list.

This document describes a policy for deleting sites from the NPL and deferring them to the Resource Conservation and Recovery Act (''RCRA''), as amended by the Hazardous and Solid Waste Amendments of 1984 (''HSWA'') corrective action program, if they meet the eligibility criteria for deletion set out in the NCP. EPA requested public comment on this policy on December 21, 1988 (53 FR 51421). The policy applies to sites on the NPL that are RCRA-regulated facilities engaged in treatment, storage or disposal of hazardous waste (''TSDs'' under the RCRA program).

EFFECTIVE DATE: This policy is effective on April 19, 1995.

ADDRESSES: Comments received and the Agency's responses to them are contained in the Headquarters Superfund Docket. The Headquarters Superfund Docket is located at the U.S. Environmental Protection Agency, Crystal Gateway #1, 12th Floor, 1235 Jefferson Davis Highway, Arlington, VA. It is available for viewing by appointment only from 9:00 a.m. to 4:00

p.m., Monday through Friday, excluding Federal holidays, Telephone 703/603–8917.

FOR FURTHER INFORMATION CONTACT: The Superfund Hotline, phone 800/424–9346 (or 703/412–9810 in the Washington, DC metropolitan area).

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I. Introduction

A. Purpose of CERCLA

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601, *et seq.* (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled or abandoned hazardous waste sites. CERCLA was amended in 1986 by the Superfund Amendments and Reauthorization Act (''SARA''), Pub. L., No. 99–499, 100 Stat. 1613. To implement CERCLA, the Environmental Protection Agency (''EPA'' or ''the Agency'') promulgated the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP, further revised most recently by EPA on March 8, 1990 (55 FR 8664), sets forth guidelines and procedures for responding under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants.

The National Priorities List (''NPL''), initially promulgated as Appendix B of the NCP on September 8, 1983 (48 FR 40658), constitutes this list.

EPA requested public comment on this policy on December 21, 1988 (53 FR 51421).

B. Purpose of the NPL

Section 105(a)(8)(A) of CERCLA requires that the NCP include criteria for ''determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action.'' Section 105(a)(8)(B) of CERCLA requires that those criteria be used to prepare a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is Appendix B of the NCP, is the National Priorities List (''NPL''). A site may undergo Fund-financed remedial action only after it is placed on the NPL. *See* 40 CFR 300.425(b)(1).

The Hazard Ranking System (''HRS''), which EPA promulgated as Appendix A of the NCP (47 FR 31219, July 16, 1982), and amended (55 FR 51532, December 14, 1990), is the principal tool upon which the Agency relies to determine the priority sites for possible remedial actions under CERCLA. 40 CFR 300.425(c)(1). In addition to the HRS scoring method, a site also may be listed if designated as a state's highest priority, or if the Agency for Toxic Substances and Disease Registry (''ATSDR'') has issued a health advisory for the site, and EPA determines that the site poses a significant threat to public health and that it will be more cost effective to use the Agency's remedial authority than to use removal authority to respond to a release. *Id.* at 40 CFR 300.425(c) (2) and (3).

II. Policy for Deleting Sites from the NPL Based Upon RCRA Deferral

A. Purpose of Today's Notice

This notice announces the Agency's policy of deleting RCRA facilities from the NPL before a cleanup is complete, if the site is being, or will be, adequately addressed by the RCRA corrective action program under an existing permit or order. EPA must also be satisfied, based either on an evaluation of a petition from a person outside the Agency or via a unilateral Agency determination, that the site, as defined by the CERCLA program, falls within the criteria for deferral.

The terms ''deferral'' and ''deletion'' as used in the context of the NPL refer to the following: Deferral refers to the decision not to list a site on the NPL, or not retain a site on the NPL, to allow another authority (RCRA corrective action in this case) to handle the remediation of the site in lieu of CERCLA. Deletion is the act of taking a site off the NPL, which may occur because cleanup at a site is complete or because another authority (such as RCRA corrective action) can be used to bring about remediation at the site and further CERCLA action is not needed. Please see Appendix A for a summary of the development of deferral policies.

B. Rationale for Deleting Sites Based Upon RCRA Deferral Under NCP Deletion Criteria

EPA believes it is appropriate to delete sites from the NPL based upon deferral to RCRA under certain circumstances. Deletion of sites from the NPL to defer them to RCRA Subtitle C corrective action authorities would free CERCLA's oversight resources for use in situations where another authority is not available, as well as avoid possible duplication of effort and the need for an owner/operator to follow more than one set of regulatory procedures. Eliminating regulation under two separate authorities also will eliminate public and owner/operator confusion over which authority has primacy. Moreover, since the CERCLA and RCRA programs have comparable cleanup goals, RCRA Subtitle C facilities requiring remediation appropriately may be deferred to RCRA corrective action authorities unless deletion would interfere with the remediation of the site.

However, today's RCRA deletion policy does not pertain to Federal facility sites. Federal facility sites will not be deleted from the NPL based upon deferral to RCRA, even if such facilities are also subject to the corrective action authorities of Subtitle C of RCRA. One of the primary goals of deferral—maximizing the use of limited Fund monies—does not apply to Federal facility sites since Federal facilities typically are not eligible for Fund-financed remedial action. Furthermore, the goal of avoiding duplication of efforts can be resolved through the use of comprehensive Inter-Agency Agreements (54 FR 10522, March 13, 1989).

C. Proposed Criteria for Deleting Sites from the NPL Based on Deferral to RCRA

The following are the criteria proposed in the December 21, 1988 **Federal Register** notice for determining whether a site may be deleted from the NPL based upon deferral to another authority such as RCRA:

i. A site on the NPL is currently being addressed by another regulatory authority under an enforceable order or permit requiring corrective action or the PRPs have entered into a CERCLA consent order to perform the RD/RA;

ii. Response is progressing adequately;

iii. Deletion would not otherwise disrupt an ongoing CERCLA response action; and

iv. All criteria for deferral to that authority have been met (i.e., the requesting party must meet all conditions for deferral to that authority in addition to the three specific criteria set out above for deletion based upon deferral).

D. Final Criteria for Deleting Sites

EPA believes that it is appropriate to apply different and more stringent

criteria to actions to delete based on deferral to RCRA for sites that are on the NPL than to sites that are candidates for deferral prior to NPL listing. For NPL sites, EPA has completed its listing process, identified the site as a potential problem requiring further attention, and often has commenced CERCLA response actions. In addition, the listing itself has created public anticipation of a response under CERCLA. Thus, EPA and the public will generally have an interest in seeing that these sites are addressed by the Superfund program, particularly in cases where significant Superfund resources already have been expended at a site. Thus, it is in the best interest of the public to apply different and more stringent criteria.

In today's notice, EPA is finalizing the criteria enumerated below for use in identifying sites eligible for deletion based upon deferral to RCRA corrective action authorities. A site should satisfy all of these criteria to be eligible for deletion. Where there is uncertainty as to whether the criteria have been met, deletion generally will be inappropriate. The criteria are the following:

1. If evaluated under EPA's current RCRA/NPL deferral policy,[1] the site would be eligible for deferral from listing on the NPL.
2. The CERCLA site is currently being addressed by RCRA corrective action authorities under an existing enforceable order or permit containing corrective action provisions.
3. Response under RCRA is progressing adequately.
4. Deletion would not disrupt an ongoing CERCLA response action.

E. Discussion of Each Criterion

The first criterion states that sites generally will not be eligible for deletion from the NPL based upon deferral to RCRA corrective action if similarly situated sites would not be deferred from listing on the NPL.

Two types of sites may be eligible for deletion: 1) sites that would be eligible for deferral under current deferral criteria, but were not deferred because the deferral policy at the time of listing was different; and 2) sites that were not eligible for deferral when listed, but now may be eligible because of changed conditions at the site (e.g., they no longer are in bankruptcy, or they now are in compliance with a corrective action order). For RCRA facilities within the second category, the Agency will review the original listing rationale (e.g., unwillingness, bankruptcy) together with current information to ascertain whether conditions at the site have changed sufficiently to warrant deletion from the NPL. Where there is uncertainty about whether the criteria have been met, deletion generally will be inappropriate. Persons who submit petitions for deletion will have to bear the burden of demonstrating that they meet the current criteria for deletion based upon deferral, and that the conditions that justified the listing no longer exist and are not likely to recur.

The second criterion states that the site is being addressed by RCRA corrective action authorities under an existing order or permit. The criterion specifies that the requirement applies to sites as defined by CERCLA, and that the authority addressing the site is RCRA Subtitle C corrective action.

Under the second criterion, corrective action orders or permits issued by EPA or an authorized state program that address corrective action at the facility must generally be in place as a condition of deletion. This criterion serves as an objective indicator that contamination at a site is addressable under RCRA corrective action authorities. The term ''addressable'' in this context means that a CERCLA site is fully remediable by a permit or order with a schedule of compliance, whether or not actual cleanup has begun.

Corrective action permits or orders should require the cleanup of *all* releases at the CERCLA site (e.g., if contamination stemming from the CERCLA ''release'' extends beyond the boundaries of a particular RCRA facility, such releases must be addressed under RCRA sections 3004(v) and 3008(h) or other enforcement authority under RCRA);[2] otherwise, the CERCLA site would not be a candidate for deletion. There may be circumstances where modification of corrective action orders or permits may be necessary before a facility can be considered for deletion from the NPL. For example, a facility owner/operator who has been doing remedial work under CERCLA and intends to pursue deletion from the NPL, generally must obtain modification of RCRA permits or orders if existing permits and orders do not contain corrective action requirements for all operable units. Likewise, the implementing agency intending to unilaterally pursue deletion would need to modify orders or permits if necessary. This should enable the facility to meet the second criterion by ensuring that the entire CERCLA-defined facility is subject to RCRA corrective action.

Under the third criterion, EPA evaluates whether response under RCRA is progressing adequately. The RCRA/NPL deferral policy currently looks to compliance with corrective action orders or permits as the primary indicator of whether an owner/operator is willing to undertake corrective action. Under this criterion, noncompliance with corrective action orders and permits generally would be regarded as an indicator that response under RCRA is not progressing adequately. The Agency's evaluation may not end there, however. Even if an owner/operator is in compliance with a corrective action order or permit, EPA may determine that response is not progressing adequately based upon other factors. For example, the Agency may consider whether there has been a history of protracted negotiations due primarily to an uncooperative owner or operator.

Under the fourth criterion, EPA evaluates on a site-by-site basis whether deletion would disrupt an ongoing CERCLA response action. Consistent with the deletion criterion set forth in the NCP, the fourth criterion in today's notice is satisfied only where one of the following two circumstances exist: 1) no CERCLA response has been undertaken; or 2) CERCLA response has been discontinued (e.g., where CERCLA response action has reached a logical point of transfer to the RCRA program and has been discontinued). Response actions being undertaken under CERCLA generally will not be discontinued solely to allow for deletion.

In cases where EPA determines that a CERCLA response, or a CERCLA response combined with a RCRA response, is the most effective approach for addressing contamination at a site, the site will be retained on the NPL. In addition, a site generally will not be eligible for deletion based upon deferral to RCRA if such deletion would cause a significant delay in the response resulting in a threat to human health or the environment.

[1] The term ''current RCRA/NPL deferral policy'' refers to the policy in effect at the time the deletion decision is made. As past **Federal Register** notices demonstrate, the RCRA/NPL deferral policy has changed, and may continue to change based upon the Agency's continued evaluation of how best to implement the statutory authorities of RCRA and CERCLA.

[2] Under CERCLA, the term ''facility'' is meant to be synonymous with ''site'' or ''release'' and is not meant to suggest that the listing is geographically defined (56 FR 5600, February 11, 1991). The size or extent of a facility listed on the NPL may extend to those areas where the contamination has ''come to be located.'' (See CERCLA section 101(9)). On the other hand, a ''facility'' as defined under RCRA is ''all contiguous property under the control of the owner or operator seeking a Subtitle C permit'' (58 FR 8664, February 16, 1993). Thus, a RCRA site relates more to property boundaries, and a CERCLA site/facility/release includes contamination irrespective of RCRA facility boundaries.

F. Process for Deleting Sites From the NPL

In order for a site to be deleted from the NPL based upon deferral to RCRA, that site will be evaluated by EPA, as well as the relevant state authority. Deferral will be accomplished only after a coordinated review has occurred and concurrence has been achieved. As with any deletion, a decision to delete a site based upon deferral to RCRA would be made only after EPA publishes a Notice of Intent to Delete in the **Federal Register** and comment is taken. In addition, EPA's regulations allow a site to be deleted only if ''the state in which the release was located has concurred on the proposed deletion'' (40 CFR 300.425(e)(2)).

The process of deletion may begin either by a petition by a party outside the Agency, such as a facility owner/operator, or via a unilateral action from EPA. Petitions and inquiries about them should be directed to the appropriate Regional Administrator. The petitioner must demonstrate that the site has met the four criteria to the satisfaction of EPA, as well as the state in which the release has occurred. If necessary, the Agency may request additional information from the petitioner before making a decision.

Finally, if, after deletion, EPA later determines that a site is not being addressed adequately under RCRA, and that CERCLA remedial action is necessary at the site, the site would remain eligible for CERCLA Fund-financed remedial action. (40 CFR 300.425(e)(3)). Under such circumstances, and in accordance with the NCP, the site also may be eligible for relisting on the NPL.

III. Appendix A: Summary of NPL Deletion/Deferral Policies

1. NCP Criteria for Deleting Sites From the NPL

Section 300.425(e)(1) (i)–(iii) of the NCP addresses deletion of sites from the NPL. Pursuant to that section, releases may be deleted from the NPL where EPA determines that no further response is appropriate. In making that determination, EPA must consider, in consultation with the state, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and therefore, taking remedial measures is not appropriate.

2. Current Deferral Policies

When the initial NPL was promulgated (48 FR 40658, September 8, 1983), the Agency announced certain listing policies relating to sites that might qualify for the NPL, but instead could be ''deferred'' to another authority for cleanup. These deferral policies included sites that can be addressed by the corrective action authorities of RCRA Subtitle C, or that are subject to regulation by the Nuclear Regulatory Commission.[3] (*Id.* at 40661–62).

3. RCRA Deferral Policy

In the preamble to the final rule promulgating the initial NPL (48 FR 40662, September 8, 1983), EPA announced the RCRA/NPL deferral policy, which provided that ''where a site consists of regulated units of a RCRA facility operating pursuant to a permit or interim status, it will not be included on the NPL but will instead be addressed under the authorities of RCRA.'' Since that time, EPA has amended the RCRA/NPL deferral policy on a number of occasions. (For a more detailed discussion of the components of the RCRA/NPL deferral policy, see the **Federal Register** notice referenced below.[4])

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA) only releases to ground water from regulated units, i.e. surface impoundments, waste piles, land treatment areas, and landfills were subject to corrective action requirements under RCRA. The enactment of HSWA greatly expanded RCRA Subtitle C corrective action authorities. For example, under RCRA section 3004(u), hazardous waste treatment, storage, and disposal facilities seeking RCRA permits must address all releases of hazardous constituents to any medium from solid waste management units, whether active or inactive. HSWA also provided new authority in RCRA section 3004(v) to address releases that have migrated beyond the facility boundary. In addition, section 3008(h) authorizes EPA to compel corrective action or any response necessary to protect human health or the environment when there is or has been a release of hazardous waste at a RCRA interim status facility.

In light of the new authorities, the Agency proposed in the preamble to the April 10, 1985 proposed rule (50 FR 14118), a revised policy for listing of RCRA-related sites on the NPL. Under the proposed policy, listing on the NPL of RCRA-related sites would be deferred until the Agency determined that RCRA corrective action measures were not likely to succeed due to factors outlined in the following paragraph.

On June 10, 1986 (51 FR 21057), EPA announced several new components of the RCRA/NPL deferral policy for placing RCRA-regulated facilities on the NPL. Certain RCRA facilities at which Subtitle C corrective action authorities are available would generally be listed if they had an HRS score of 28.50 or greater and fell within at least one of the following categories: (1) Facilities owned by persons who have demonstrated an inability to finance a cleanup as evidenced by their invocation of the bankruptcy laws; (2) facilities that have lost authorization to operate, or for which there are additional indications that the owner or operator will be unwilling to undertake corrective action; or (3) facilities, analyzed on a case-by-case basis, whose owners or operators have a clear history of unwillingness to undertake corrective action.

The Agency also recognized that facilities clearly not subject to RCRA Subtitle C corrective action authorities would be eligible for listing on the NPL, including those that ceased treating, storing or disposing of hazardous wastes prior to November 19, 1980 (the effective date of the RCRA hazardous waste regulations), and sites at which only material exempted from the statutory or regulatory definition of solid waste or hazardous waste are managed. *Id.* In addition, RCRA hazardous waste handlers to which Subtitle C corrective action authorities do not apply, such as hazardous waste generators or transporters not required to have interim status or a final RCRA permit, also are eligible for listing. *Id.*

On June 24, 1988 (53 FR 23980) and October 4, 1989 (54 FR 41004), EPA revised the NPL/RCRA deferral policy by identifying four new categories of RCRA sites eligible for listing on the NPL: (1) Non- or late filers; (2) pre-HSWA permittees; (3) protective filers;

[3] In 1988, the Agency proposed to defer to a number of other authorities, namely Subtitles D and I of RCRA, the Surface Mine Control and Reclamation Act (''SMCRA''), the Federal Insecticide, Fungicide, and Rodenticide Act (''FIFRA''), and States, and to allow responsible parties voluntarily to clean up sites under CERCLA without listing (53 FR 51415, December 21, 1988). Final decisions have not been made on those proposals, and they are not addressed in this notice.

[4] On March 13, 1989 (54 FR 10520), EPA announced the policy of including on the NPL Federal facility sites that may be eligible for listing (e.g., they have an HRS score of 28.5 or higher) even if such facilities are also subject to the corrective action authorities of Subtitle C of RCRA. The elements of the RCRA/NPL deferral policy are not revised in today's notice.

and (4) converters.[5] In the June 24, 1988, revision, EPA also recognized that sites where RCRA corrective action may not apply to all contamination are eligible for listing (53 FR 23982).

On August 9, 1988 (53 FR 30002), EPA proposed additional revisions to the policy concerning criteria to determine if an owner or operator is unable to pay for corrective action. No final Agency action has been taken on those proposed revisions.

On August 9, 1988 (53 FR 30005), in a separate **Federal Register** notice, EPA also further revised a portion of the NPL/RCRA deferral policy relating to the determination of unwillingness. The Agency specified that circumstances under which RCRA sites may be listed on the NPL if an owner/operator's unwillingness to undertake corrective action is established through noncompliance with one or more of the following: (1) A Federal or substantially equivalent state unilateral administrative order requiring corrective action, after the facility owner/operator has exhausted administrative due process rights; (2) a Federal or substantially equivalent State unilateral administrative order requiring corrective action, if the facility owner/operator did not pursue administrative due process rights within the specified time; (3) an initial Federal or State preliminary injunction or other judicial order requiring corrective action; (4) a Federal or State RCRA permit condition requiring corrective action after the facility owner/operator has exhausted administrative due process rights; or (5) a final Federal or State consent decree or administrative order on consent requiring corrective action after the exhaustion of dispute resolution procedures.

EPA also may depart from the above criteria on a case-by-case basis where CERCLA authorities are determined to be more appropriate than RCRA authorities for cleaning up a site. (*See, e.g.,* 56 FR 5602, February 11, 1991).

[5] Non- or late filers are facilities that were treating, storing or disposing of hazardous waste after November 19, 1980, but did not file a Part A permit by that date and have little or no history of compliance with RCRA. Pre-HSWA permittees are facilities that have permits in place that pre-date the 1984 corrective action requirements of HSWA. The protective filer category includes facilities which have filed Part A permit applications for treatment, storage and disposal of hazardous wastes as a precautionary measure only, and were never actually engaged in hazardous waste management activities subject to RCRA Subtitle C corrective action. Converters are facilities that at one time were treating or storing RCRA Subtitle C hazardous waste but have since converted to generator-only status, or are engaged in no other hazardous waste activity for which interim status is required (53 FR 22992, June 24, 1988).

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Authority: 42 U.S.C. 9605; 42 U.S.C. 9620; 33 U.S.C. 1321(C)(2); E.O. 11735, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12580, 3 CFR, 1987 Comp., p. 193.

Dated: March 8, 1995.

Elliott P. Laws,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 95–6673 Filed 3–17–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 300

[FRL–5174–2]

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

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of a site from the national priorities list.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Kent City Mobile Home Park Site in Kent City, Michigan from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP) which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), as amended.

EFFECTIVE DATE: March 20, 1995.

FOR FURTHER INFORMATION CONTACT: Betty G. Lavis, Remedial Project Manager (HSE–5J); Waste Management Division; Emergency Response Branch; U.S. Environmental Protection Agency, Region 5; 77 West Jackson Boulevard; Chicago, IL 60604–3590. Phone (312) 886–7183.

SUPPLEMENTARY INFORMATION: The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action.

Section 300. 66(c)(8) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL.

The site EPA deletes from the NPL is the Kent City Mobile Home Park Site in Kent City, Michigan.

An explanation of the criteria for deleting sites from the NPL was presented in section II of the November 8, 1994, Notice of Intent to Delete FR Doc. No. 94–27647. A description of the site and how it meets the criteria for deletion was presented in Section IV of that notice.

The closing date for comments on the Notice of Intent to Delete was December 7, 1994.

EPA received one comment on the deletion of the Kent City Mobile Home Park Site from the NPL.

Comment: Commenter states they are ''concerned by the proposal to abandon a carbon tetrachloride contaminated well'' at the site because ''groundwater is a valuable resource for present and future generations and that groundwater contamination should therefore be remediated whenever possible.''

Response: EPA appreciates the concern and strongly agrees that groundwater is a valuable resource; it is EPA's policy to promote protection of our groundwater resource and to restore usable goundwater to beneficial use whenever possible. However, at the Kent City site, the level of contamination is so low and the area of contamination so localized, that remediation is not practical.

List of Subjects in 40 CFR Part 300

Environmental protection, Hazardous waste.

PART 300—[AMENDED]

40 CFR part 300 is amended as follows:

1. The authority citation for part 300 continues to read as follows.

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(d); E.O. 11735, 38 FR 21243; E.O. 12580, 52 FR 2923; E.O. 12777, 56 FR 54757.

Appendix B—[AMENDED]

2. Table 1 of Appendix B to part 300 is amended by removing the entry for Kent City Mobile Home Park Site, Kent City, Michigan.

Dated: March 8, 1995.

David A. Ullrich,

Acting Regional Administrator, U.S. EPA, Region V.

[FR Doc. 95–6770 Filed 3–17–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. PS–101; Amdt. 192–73 and 195–54]

RIN 2137—AB 47

Excavation Damage Prevention Programs for Gas and Hazardous Liquid and Carbon Dioxide Pipelines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule extends the existing excavation damage prevention requirements for gas pipelines in urban areas to gas pipelines in rural areas; establishes excavation damage prevention program requirements for hazardous liquid and carbon dioxide pipelines; requires, with limited exceptions, line markers for gas transmission lines in urban areas; and permits smaller lettering on line markers for hazardous liquid and carbon dioxide pipelines in heavily developed urban areas.

This final rule is accompanied by a notice of proposed rulemaking (NPRM)(Docket No. PS–101A), which proposes mandatory participation in qualified one-call systems by pipeline operators. This final rule and the NPRM are intended to reduce excavation damage, the largest single cause of reportable pipeline accidents.

EFFECTIVE DATE: This final rule takes effect April 19, 1995.

FOR FURTHER INFORMATION CONTACT: Albert C. Garnett, (202) 366–2036, or Christina M. Sames, (202) 366–4561, regarding the content of this final rule; or the Dockets Unit, (202) 366–5046, for copies of this document or other material in the docket.

SUPPLEMENTARY INFORMATION

Related Document

The Secretary of Transportation, pursuant to 49 U.S.C. 60114, is required to establish minimum standards for one-call systems. RSPA implemented those requirements in 49 CFR part 198 and has prepared a NPRM titled ''Mandatory Participation in Qualified One-Call Systems by Pipeline Operators'' (Docket No. PS–101A).

The NPRM proposes to amend this final rule by requiring that operators of interstate and intrastate pipelines participate in qualified one-call systems. However, the NPRM proposes less stringent standards for the participation of small entities (including operators of master meter systems) whose primary activity does not include the transportation of gas.

Although RSPA anticipates these regulations will be amended by a final rule addressing mandatory participation in qualified one-call systems, RSPA sees no reason to delay the regulations developed in this final rule. In the meantime, RSPA urges pipeline operators to voluntarily participate in qualified one-call systems that cover the areas where their pipeline facilities are located.

Excavation Damage

Excavation damage is the largest single cause of reportable gas and hazardous liquid pipeline accidents. During the period of January 1, 1988 through December 31, 1993, 33 percent or 481 of a total of 1,456 reported gas pipeline incidents were caused by excavation damage by persons other than the operator or its contractor. These incidents resulted in 35 deaths, 151 personal injuries, and about $42,570,000 in property damage. Of these 481 reported excavation damage incidents, 178 incidents or 37 percent occurred in Class 1 and 2 locations (class locations are described in 49 CFR 192.5) where damage prevention programs have not been required. These Class 1 and 2 incidents resulted in 7 deaths, 40 personal injuries, and about $10,912,000 in property damage.

Similarly, during the 1988–1993 period, 20 percent or 245 of a total of 1,221 reported hazardous liquid pipeline accidents were caused by excavation damage by persons other than the pipeline operator or its contractor. These accidents resulted in 3 deaths, 46 personal injuries, and about $48,821,000 in property damage. In addition, about 264,500 barrels of hazardous liquids were reported to have been spilled as a result of these accidents.

The above statistics do not account for all of the gas pipeline incidents and hazardous liquid pipeline accidents that have occurred from 1988 to 1993. Sections 191.3 and 195.50 exempt certain gas pipeline incidents and hazardous liquid pipeline accidents from the reporting requirements. Thus, the actual number of personal injuries and the amount of property damage resulting from excavation damage by persons other than the operator or its contractor can be assumed to be higher.

Existing Gas Damage Prevention Program

The most widely accepted approach to reducing excavation damage to underground pipelines and other underground facilities is a formalized damage prevention program that employs a one-call system. RSPA permits this approach for gas pipelines under the current § 192.614, ''Damage Prevention Program.'' Section 192.614(a) allows a pipeline operator to perform any of the duties required by § 192.614(b) through participation in a one-call system. Such participation does not relieve the operator of responsibility for compliance with any requirements of § 192.614 that are not satisfied by the one-call system.

The current rule requires each gas pipeline operator, with limited exceptions, to establish and implement a written damage prevention program for buried gas pipelines in highly populated or urban areas, specifically Class 3 and 4 locations. Damage prevention programs have not been required for gas pipelines in Class 1 and 2 locations or for hazardous liquid and carbon dioxide pipelines subject to part 195. Also excluded from this current requirement for a damage prevention program are permanently marked pipelines in certain Class 3 locations (described in § 192.5(d)(2)), pipelines to which access is physically controlled by the operator, petroleum gas pipelines subject to § 192.11, and master meter systems as defined in § 191.3.

Gas pipeline operators in Class 3 and 4 locations, with certain exclusions previously discussed, are currently required by § 192.614 to: (1) Identify excavators normally operating in the area where the pipeline is located; (2) provide notification to the public and actual notification to excavators of the program's existence and purpose, as well as how to learn the location of underground pipelines before excavation activities begin; (3) provide a means for receiving and recording notification of planned excavations; (4) if an operator has buried pipelines in the area of planned excavation, provide actual notification to a person who has given notice of intent to excavate of the type of temporary markings to be provided and how to identify them; (5) provide temporary marking of buried pipelines in the area of the excavation in a timely manner; and (6) inspect, as frequently as necessary, pipelines that the operator has reason to believe could be damaged by the excavation activities and, in case of blasting, include leakage surveys. An operator may perform any of these six duties through participation in a one-call system, but participation does not relieve the operator of responsibility for compliance with § 192.614.

One-Call Systems

A one-call system is a communication system established individually or jointly by utilities, government agencies, or other operators of underground facilities to provide a single telephone number (other methods of communication are also used) for excavators and the general public to call to notify participating members of their intent to engage in excavation activities. Notices of intent to excavate are received by the operational center and transmitted to the operators of underground pipeline facilities and other underground facilities that participate in the system. Upon receipt of notices of intended excavation activities, participating operators that have underground facilities in that area arrange for the timely identification and temporary marking of their underground facilities. Underground operators may inspect the site during the excavation activities to insure the safety of their underground facilities.

National One-Call Campaign

Presently, there are 74 one-call systems in the United States operating in 48 states and the District of Columbia. These one-call systems may not meet all of the qualifications of a ''one-call notification system,'' as defined in § 198.39. Two states and Puerto Rico are currently without a one-call system.

Approximately 45 states and the District of Columbia have damage prevention laws that, to a varying extent, govern the activities performed by excavators and persons locating and temporarily marking underground facilities. However, most of the existing state damage prevention programs do not meet all of the requirements of § 198.37, ''State one-call damage prevention program.''

To address the problem of incomplete national one-call coverage and the deficiencies in some of the existing one-call systems, RSPA has launched a national campaign to encourage states to adopt improved one-call notification systems. The national campaign will target states for concentrated outreach to assist these states in their efforts to upgrade their current one-call systems. The national campaign will also work with selected states where there is a need to strengthen the one-call legislation or where a state is currently without one-call legislation.

Notice of Proposed Rulemaking

To reduce the incidence of excavation damage, RSPA issued a Notice of Proposed Rulemaking (NPRM) titled ''Natural Gas and Hazardous Liquid Pipeline Damage Prevention Program'' (53 FR 24747, June 30, 1988). The NPRM proposed to (1) Delete the damage prevention program exemption for buried onshore gas pipelines in Class 1 and 2 locations, and for gas pipelines in Class 3 locations that are marked in accordance with § 192.707; (2) require that hazardous liquid pipeline operators carry out similar damage prevention programs for their buried onshore pipelines; and (3) require that gas pipeline operators permanently mark their mains and transmission lines in Class 3 and 4 locations, except where placement of a marker is impractical.

Presentation to Advisory Committees

RSPA presented the three proposals listed above to its two pipeline advisory committees, the Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC).

On September 13, 1988, the TPSSC discussed and unanimously supported extending § 192.614 to cover onshore gas pipelines in Class 1 and 2 locations. However, the TPSSC generally opposed the proposal requiring line markers over mains and transmission lines in Class 3 and 4 locations. Some members argued the proposed marking would be too burdensome and that markers in these class locations might cause an excavator to rely on the markers for location information instead of using the one-call system. However, two members stated their large gas companies occasionally install markers in Class 3 and 4 locations, as this final rule will now generally require for transmission lines.

On September 14, 1988, the THLPSSC voted 6 to 4 against the proposed rule to require hazardous liquid pipeline operators to establish and carry out damage prevention programs over the entire length of their pipelines. Opposition stemmed from the need to identify ''on a current basis'' the persons who normally engage in excavation activities in rural areas and the problem of identifying excavators who might come from some distant location or who recently entered the excavation business. A committee member also expressed concern over the exact meaning of ''as often as needed,'' language in the proposed rule which refers to the frequency of notifying the public of the damage prevention program, and ''leakage surveys applicable to the liquid transported,'' language which refers to the type of inspection done on pipelines that might have been damaged by blasting.

Additional Recommendations

The Transportation Research Board (TRB) proposed extending the excavation damage prevention program requirements to liquid pipelines. TRB is a unit of the National Research Council and provides public comment on scientific and technical questions of national importance. Their proposal was published in a report titled ''Special Report 219–Pipelines and Public Safety.'' The report states that although most gas and liquid transmission pipelines were constructed in undeveloped areas and buried with 2½ to 3 feet of cover to prevent disturbance, development is intruding on these high pressure pipelines and is increasing the risk of failures from excavation damage. In the section of the Executive Summary titled ''Damage Prevention and Public Awareness Programs,'' the report identifies significant gaps in existing damage prevention measures. TRB's first recommendation for closing these gaps was to extend the gas pipeline damage prevention program to liquid pipelines. That recommendation is one of the principal thrusts of this final rule.

Comments on the NPRM

RSPA received 81 comments on the three proposed rule changes. The commenters included gas and liquid pipeline operators, governmental agencies, and industry trade associations.

Comments—Damage Prevention Program, part 192

Of the 41 comments received addressing the proposal to extend the existing requirement for a damage prevention program in § 192.614 to Class 1 and 2 locations and to marked pipelines in Class 3 locations, 93 percent, including a gas industry trade association, expressed full or partial support, and 7 percent were opposed. Among those in support, a large gas transmission company commented that the proposal would have no significant impact on its operations because it participates in one-call systems regardless of class location, or it conducts similar programs in Class 1 and 2 locations where one-call systems are not yet operative. A large gas distribution company supported the proposal because the company voluntarily includes Class 1 and 2 locations in its current damage prevention program and believes customers and the general public expect the expenditure.

Among those opposed, a large gas distribution company argued that because conditions in urban (Class 3

and 4 locations) and rural (Class 1 and 2) locations are completely different, different types of damage prevention programs are logical and reasonable and have evolved to meet these special conditions. The company commented that requiring the same damage prevention program in both areas defies logic and cannot be cost-effective. In particular, the company stated that the temporary marking of pipelines would be more expensive and less cost-effective in rural areas because of the greater distances to be traveled.

As indicated above, 37 percent of the gas pipeline excavation damage reported over the 1988 to 1993 period occurred in Class 1 and 2 locations and resulted in 7 deaths, 40 personal injuries, and millions of dollars in property damage. Therefore, RSPA rejects the argument that applying the same damage prevention program to both urban and rural areas defies logic and cannot be cost-effective. Furthermore, the overwhelming support expressed for extension of the gas damage prevention program rule supports RSPA's determination that this action is warranted to reduce the incidence of excavation damage.

Comments—Line Markers, Part 192

Of the 67 comments received regarding the proposal to require permanent line markers for gas mains and transmission lines in Class 3 and 4 locations except where placement is impractical, 22 percent indicated full or partial support and 78 percent were opposed. Those favoring the proposal included the National Transportation Safety Board (NTSB). NTSB is the Federal agency responsible for investigating and determining the cause of pipeline accidents involving a death, substantial property damage, or significant safety issues. NTSB stated that while it may not be practicable to mark pipelines in some Class 3 and 4 locations, line markers should generally be required for gas transmission lines. Similarly, a gas distribution company commented that additional line markers may make sense when elevated pressures are involved, as is often the case with transmission lines, or when pipelines are installed in unconventional places. A state regulatory agency commented that prior to adoption of the existing Class 3 and 4 location line marking exception, many operators were required to mark mains and transmission lines in Class 3 and 4 locations. The state agency pointed out that many operators have continued this practice even though it is no longer required. The agency said that marking pipelines in these areas is not impractical and provides, in conjunction with the damage prevention program, an extra line of defense against excavation damage.

Several of those opposed to requiring line markers argued the proposed exception for locations ''where placement of a marker is impractical'' is imprecise and would result in continual differences of opinion between operators and government inspectors. Many commenters felt that pipeline markers are useful for indicating the presence of a buried pipeline within a rural right-of-way but are of little benefit in urban areas where excavators are generally aware of the presence of buried utilities and of the need to call before they dig. Many commenters also felt that excavators in urban areas might get a false impression of the exact location of buried pipelines from the placement of line markers and assume they can dig without contacting a one-call system or the pipeline operator for temporary marking. Several commenters pointed out that property owners and planning commissions would resist installation of pipeline markers in Class 3 and 4 locations for aesthetic reasons. Also, a large gas distribution operator commented that while marker posts at every road crossing in a rural setting are reasonable, marker posts at every street intersection in cities and suburbs are unreasonable because of the very large number of pipeline street crossings.

This final rule has not adopted the proposal to require gas mains be marked in Class 3 and 4 locations. Because mains generally operate at lower pressures than transmission lines, they usually pose less of a threat to public safety in the event of excavation damage. Thus, RSPA believes there is lesser need for mains to be marked as a backup to damage prevention programs. Also, RSPA agrees with TPSSC's and the commenters' view that, because of the vast number of mains to be marked in Class 3 and 4 locations, compliance would be unduly burdensome and line markers would likely be more expensive to install and maintain.

This final rule has adopted the line marker requirement for gas transmission lines in Class 3 and 4 locations, except where placement of a marker is impractical. RSPA believes this is a reasonable means of advancing safety without imposing an undue burden on the operators. There are relatively few gas transmission lines in Class 3 and 4 locations and some of these gas transmission operators already voluntarily mark their pipelines. RSPA agrees with these commenters who indicated that these line markers provide an extra line of defense against excavation damage.

Further support for requiring gas transmission lines in Class 3 and 4 locations to be marked is found in § 195.410. Section 195.410 requires line markers for hazardous liquid pipelines in urban areas with specific exceptions for heavily developed urban areas, such as downtown business centers. Many of the objections to placing line markers in urban areas have been resolved by permitting adjustment of the marker's location. RSPA believes that some line markers installed to mark gas transmission lines in Class 3 and 4 locations could be suitably flush mounted on streets, sidewalks, and other appropriate surfaces to minimize the situations where placement of standing markers would be objectionable. When considering the design of flush mounted gas pipeline markers, it may be helpful to note § 192.707(d)(1) currently permits operators to use less than standard letter size on line markers in heavily developed urban areas. This final rule amends § 195.410(a)(2)(i) to provide the same flexibility for the lettering size on line markers in similar areas for hazardous liquid and carbon dioxide pipelines.

A few commenters objected to the phrase in § 192.707(b) of ''where placement of a marker is impractical.'' Commenters stated the phrase is too indefinite and should be clarified. RSPA believes the phrase is appropriate as it has been applied successfully to allow operators limited discretion in determining where to install markers for buried gas main and transmission lines in Class 3 and 4 locations. The phrase will continue to allow operators limited discretion when a marker would be extremely difficult or expensive to install or maintain, would create a dangerous condition, or would be ineffective because it would be obscured or otherwise would not serve to reduce the likelihood of excavation type damage to the pipeline.

RSPA is not persuaded by the commenters' and TPSSC's view that the presence of markers in Class 3 and 4 areas might cause excavators to rely on the location of the marker and to dig without notifying the one-call system. No evidence was offered to support this view and it has not been true for markers in Class 1 and 2 locations. Pipeline markers are installed to warn excavators of the presence of buried pipelines, to provide a telephone number to obtain more accurate location information, and to allow persons in the area to report indications of other

problems relating to the safety of the pipeline.

Comments—Damage Prevention Program, part 195

Of the 16 commenters who responded to the proposal to require hazardous liquid pipelines carry out damage prevention programs, 15 commenters indicated full or partial support and only one commenter was opposed. Of those expressing support, a large products transmission company commented it has always advocated practical, cost effective, damage prevention programs and has made the locations of its facilities known to landowners, developers, and excavators. Additionally, its company policy has been to provide inspectors during and after excavation activities. An industry trade association replied that it concurs with RSPA that federal regulations for the development of damage prevention programs should be applied to hazardous liquid pipeline operators. The one commenter opposed, a hazardous liquid pipeline company, said it would be impossible to know of every backhoe operation in the area of its pipelines. This company further stated that any obligation to prepare an excavator list should be limited to checking county licenses every 4 to 6 months.

RSPA is not swayed by the THLPSSC's and the commenter's concern about the difficulty of identifying excavators in rural areas. Although some excavators may be difficult to identify, operators are only required to identify excavators by reasonably available means. Regarding one commenter's suggestion that excavator lists be assembled only from county licenses, RSPA believes that this procedure could be a supplementary approach to identifying and notifying excavators of the damage prevention program, since not all counties or other political subdivisions require licenses for all excavators in their jurisdiction. It would generally be more helpful for operators to contact the one-call centers operating in the area of their pipeline for excavator information or to look for excavator advertisements in publications such as the local yellow-pages and newspapers.

One THLPSSC member questioned the meaning of the phrase ''as often as needed,'' currently in § 192.614(b)(2) and proposed in § 195.442(b)(2), to describe the frequency of notification to the public and excavators to make them aware of the damage prevention program. This phrase, which is retained, is intended to require that operators provide additional notice when damage appears to be caused by persons unaware of the damage prevention program. More frequent advertisement would be expected to have a positive effect on program results.

In proposed § 195.442(b)(6)(ii), the phrase ''leakage surveys applicable to the liquid transported'' was intended to indicate the required leakage surveys must be appropriate for the commodity being transported. However, in view of the concern expressed by a THLPSSC member over its meaning, RSPA has deleted the term from § 195.442(b)(6)(ii) and has replaced it with the comparable performance-based standard of the gas pipeline damage prevention program rule.

Amendments

Extending the Damage Prevention Program, Part 192

RSPA is amending § 192.614 to require that operators of gas pipelines in Class 1 and 2 locations, with limited exception, carry out damage prevention programs. The existing exception for Class 1 and 2 locations under § 192.614(c)(1) is removed and replaced with an exception for pipelines located offshore.

The operators affected by this action will be given 6 months to implement their damage prevention program.

The existing exception under § 192.614(c)(2) for pipelines in Class 3 locations and marked in accordance with § 192.707 is also removed. The operators affected by this action will be given 12 months to mark the location of their pipelines. Pipelines to which access is physically controlled by the operator and pipelines that are part of a petroleum gas system subject to § 192.11 or part of a distribution system operated by a person in connection with that person's leasing of real property or by a condominium or cooperative association would still be exempt. RSPA is taking this action after considering the high incidence of excavation-related accidents in Class 1 and 2 locations, the generally recognized efficacy of damage prevention programs, and the favorable comments received in response to the NPRM.

Extending Line Markers, Part 192

Because of the continuing incidence of excavation damage in Class 3 and 4 locations and the extra risk posed by damage to transmission lines in these areas, RSPA is amending § 192.707 to require that gas operators place and maintain line markers, as close as practical, over buried transmission lines in Class 3 and 4 locations except where placement is impractical. Accordingly, the exception under § 192.707(b)(2) for line markers over buried pipelines in Class 3 and 4 locations where a § 192.614 damage prevention program is in effect is revised to limit the exception to mains and to transmission lines where placement of a marker is impractical.

Providing Flexibility in Lettering Requirements and Placement of Line Markers, Part 195

RSPA has provided flexibility in the lettering requirements listed under § 195.410(a)(2) by excepting the lettering on line markers for hazardous liquid and carbon dioxide pipelines in heavily developed urban areas from the minimum height and stroke requirements. RSPA has also provided flexibility in the placement of markers by changing the word ''impracticable'' to ''impractical'' under § 195.410(b)(2)(i). These exceptions were not proposed in the NPRM but will provide hazardous liquid and carbon dioxide operators the same flexibility as is currently afforded natural gas pipeline operators in § 192.707(b)(2)(i) and (d)(1). These revisions to the current regulations will provide uniform lettering requirements and uniform marker placement for operators of natural gas, hazardous liquid, and carbon dioxide pipelines.

Establishing Damage Prevention Programs, Part 195

RSPA is amending part 195 by adding § 195.442 to require that operators of buried hazardous liquid and carbon dioxide pipelines carry out a written damage prevention program similar to the current § 192.614 requirements for natural gas pipelines. The operators affected by this action will be given 6 months to implement their damage prevention program. This action is warranted due to the excavation damage accident rate for hazardous liquid pipelines and the demonstrated effectiveness of damage prevention programs. Commenters overwhelmingly supported this proposal. TRB's ''Special Report 219–Pipelines and Public Safety,'' (referenced above), also supported amending the regulations to require damage prevention programs for liquid pipelines.

Rulemaking Analyses

E.O. 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to review by the Office of Management and

Budget. The final rule is also not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979).

RSPA has prepared a regulatory evaluation to assess the costs and associated benefits that are expected to result from this final rule. The regulatory evaluation shows net benefits resulting from this final rule of between $1,375,000 and $1,991,000 per year. A copy of the regulatory evaluation is available in this docket.

Federalism Assessment

This rulemaking action will not have substantial direct effects on states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 12612 (52 FR 41685; October 30, 1987), RSPA has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

Based on the facts available about the anticipated impact of this rulemaking action, I certify pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that this action will not have a significant economic impact on a substantial number of small entities; i.e. gas pipeline operators, small hazardous liquid pipeline operators, or small carbon dioxide pipeline operators. This determination is based on the following: (1) RSPA is not aware of any small gas, hazardous liquid, or carbon dioxide transmission companies; (2) small operators of pipelines that are part of a petroleum gas system subject to § 192.11 or are a part of a distribution system operated in connection with the leasing of real property, including master meter operators, are not affected by this regulatory action, (3) while there are many small gas distribution operators, they are currently required to have excavation damage prevention programs in the urban areas where the majority of their customers are located.

Paperwork Reduction Act

This final rule contains information collection requirements for written damage prevention programs for gas pipelines in rural areas under the revised § 192.614 and for hazardous liquid and carbon dioxide pipelines in urban and rural areas under the new § 195.442. None of these information collection requirements would be prepared for the purpose of submittal to RSPA.

The information collection requirements associated with this final rule are being submitted to OMB for approval in accordance with 44 U.S.C. Chapter 35 under the following:

OMB No: 2137–0049 for the added burden to gas pipelines and under New for hazardous liquid and carbon dioxide pipelines;

Administration: DOT, RSPA;

Title: Excavation Damage Prevention Programs for Gas and Hazardous Liquid and Carbon Dioxide Pipelines;

Need for Information: To reduce excavation damage, the largest single cause of pipeline accidents;

Proposed Use of Information: For preparation of written damage prevention programs for gas pipelines in rural areas under the revised § 192.614 and for hazardous liquid and carbon dioxide pipelines under the new § 195.442;

Frequency: On occasion;

Burden Estimate: For 2137–0049 (gas pipeline operators): 30,428 hrs annually will be added to the current burden to industry; under NEW (hazardous liquid pipeline operators): 19,580 hrs annually;

Respondents: Operators subject to 49 CFR parts 192 and 195;

Form(s): None;

Average Burden Hours per Respondent: 13 hrs (gas pipeline operators); 77 hrs (hazardous liquid pipeline operators).

For further information contact: The Information Management Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street SW, Washington, DC 20590, Tel. (202) 366–4735. Comments on the information collection requirements should be submitted to: OMB, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk officer for DOT, RSPA. It is requested that comments sent to OMB also be sent to the RSPA rulemaking docket for this final rule.

List of Subjects

49 CFR Part 192

Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 195

Anhydrous ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 192 and 195 are amended as follows:

PART 192—[AMENDED]

1. The authority citation for part 192 is revised to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, 60118; 49 CFR 1.53.

2. In § 192.614, paragraph (c)(1) and (c)(2) are revised to read as follows:

§ 192.614 Damage prevention program.

* * * * *

(c) * * *

(1) Pipelines located offshore.

(2) Pipelines, other than those located offshore, in Class 1 or 2 locations until September 20, 1995.

* * * * *

3. Section 192.707 is amended by revising paragraph (b) to read as follows:

§ 192.707 Line markers for mains and transmission lines.

* * * * *

(b) *Exceptions for buried pipelines.* Line markers are not required for the following pipelines:

(1) Mains and transmission lines located offshore, or at crossings of or under waterways and other bodies of water.

(2) Mains in Class 3 or Class 4 locations where a damage prevention program is in effect under § 192.614.

(3) Transmission lines in Class 3 or 4 locations until March 20, 1996.

(4) Transmission lines in Class 3 or 4 locations where placement of a line marker is impractical.

* * * * *

PART 195—[AMENDED]

4. The authority citation for part 195 is revised to read as follows:

Authority: 49 U.S.C. 60102, 60104, 60108, 60109; 49 CFR 1.53.

5. Section 195.410 is amended by removing the term ''impracticable'' from paragraph (b)(2)(i) and adding ''impractical'' in its place, and by revising paragraph (a)(2) to read as follows:

§ 195.410 Line markers.

(a) * * *

(2) The marker must state at least the following on a background of sharply contrasting color:

(i) The word ''Warning,'' ''Caution,'' or ''Danger'' followed by the words ''Petroleum (or the name of the hazardous liquid transported) Pipeline'', or ''Carbon Dioxide Pipeline,'' all of which, except for markers in heavily developed urban areas, must be in letters at least one inch high with an approximate stroke of one-quarter inch.

(ii) The name of the operator and a telephone number (including area code)

where the operator can be reached at all times.

* * * * *

6. Section 195.442 is added to subpart F to read as follows:

§ 195.442 Damage prevention program.

(a) After September 20, 1995, and except for pipelines listed in paragraph (c) of this section, each operator of a buried pipeline shall carry out in accordance with this section a written program to prevent damage to that pipeline by excavation activities. For the purpose of this section, ''excavation activities'' include excavation, blasting, boring, tunneling, backfilling, the removal of above ground structures by either explosive or mechanical means, and other earth moving operations. An operator may comply with any of the requirements of paragraph (b) of this section through participation in a public service program, such as a one-call system, but such participation does not relieve the operator of responsibility for compliance with this section.

(b) The damage prevention program required by paragraph (a) of this section must, at a minimum:

(1) Include the identity, on a current basis, of persons who normally engage in excavation activities in the area in which the pipeline is located.

(2) Provide for notification of the public in the vicinity of the pipeline and actual notification of the persons identified in paragraph (b)(1) of this section of the following, as often as needed to make them aware of the damage prevention program:

(i) The program's existence and purpose; and

(ii) How to learn the location of underground pipelines before excavation activities are begun.

(3) Provide a means of receiving and recording notification of planned excavation activities.

(4) If the operator has buried pipelines in the area of excavation activity, provide for actual notification of persons who give notice of their intent to excavate of the type of temporary marking to be provided and how to identify the markings.

(5) Provide for temporary marking of buried pipelines in the area of excavation activity before, as far as practical, the activity begins.

(6) Provide as follows for inspection of pipelines that an operator has reason to believe could be damaged by excavation activities:

(i) The inspection must be done as frequently as necessary during and after the activities to verify the integrity of the pipeline; and

(ii) In the case of blasting, any inspection must include leakage surveys.

(c) A damage prevention program under this section is not required for the following pipelines:

(1) Pipelines located offshore.

(2) Pipelines to which access is physically controlled by the operator.

Issued in Washington, DC on February 17, 1995.

Ana Sol Gutiérrez,

Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 95–6723 Filed 3–17–95; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 950106003–5070–02; I.D. 121994A]

RIN 0648–AH01

Pacific Halibut Fisheries; Catch Sharing Plan

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

ACTION: Final rule and approval of catch sharing plan.

SUMMARY: NMFS, on behalf of the International Pacific Halibut Commission (IPHC), publishes regulations governing the Pacific halibut fishery implemented by the IPHC and approved by the Secretary of State. NMFS also approves catch limits for Areas 2A and 2C, approves regulations implementing a catch sharing plan for Area 2A, and repeals three regulations for Area 4. This final rule is intended to enhance the conservation of the Pacific halibut stock and to rebuild and sustain it in the northern Pacific Ocean and Bering Sea.

EFFECTIVE DATE: March 15, 1995.

ADDRESSES: NMFS Alaska Regional Office, 709 W 9th Street, P.O. Box 21668, Juneau, AK 99802–1668, telephone: 907–586–7228; NMFS Northwest Regional Office, Bldg. 1, 7600 Sand Point Way NE., Seattle, WA 98115–0070, telephone: 206–586–6140.

FOR FURTHER INFORMATION CONTACT: Aven Andersen, 907–586–7228, or Joe Scordino, 206–526–6140.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has implemented new regulations governing the Pacific halibut fishery in 1995. The Secretary of State of the United States has accepted the IPHC regulations under section 4 of the Northern Pacific Halibut Act (Halibut Act, 16 U.S.C. 773–773k). However, the IPHC did not adopt 1995 catch limits for any portion of Area 2. Therefore, the United States is adopting catch limits for Areas 2A and 2C, which are implemented under domestic rule as described herein.

On behalf of the IPHC, the approved IPHC regulations are published in the **Federal Register** to provide notice of their effectiveness, and to inform persons subject to the regulations of the restrictions and requirements. The IPHC held its annual meeting on January 23–26, 1995, in Victoria, British Columbia, and adopted regulations for 1995. The substantive changes to the previous IPHC regulations (59 FR 22522, May 2, 1994) include: (1) New catch limits for all areas except Areas 2A and 2C; (2) a commercial fishing season opening on March 15 and closing November 15 for all areas except 2A, which has specific 1-day openings; (3) repeal of a prohibition on automated hook strippers; (4) elimination of Area 4D–N; (5) a requirement that halibut be dressed before offloading; and (6) revisions to the Area 4 clearance requirements. In addition, because the non Indian directed commercial fishery in Area 2A is likely to exceed the subquota for this fishery during the first 10-hour opening, the IPHC announced that it would impose vessel trip limits. However, because it was unknown at the time of the meeting how many vessels might participate in the Area 2A fishery, the IPHC staff will determine and announce the vessel trip limits necessary to avoid exceeding the subquota prior to the July 5 opening, when better information will be available on the number of vessels that may participate in the fishery.

The U.S. and Canadian Commissioners were unable to agree upon new catch limits for Area 2, which includes all waters off Canada (Area 2B), waters off southeast Alaska (Area 2C), and waters off Washington, Oregon, and California (Area 2A). However, the U.S. and Canadian Commissioners expressed a joint commitment to adopt domestic catch limits for their respective portions of Area 2 to ensure conservation of the halibut stock. Without domestic action, the Area 2

catch limits for the 1994 halibut fisheries would remain in effect for 1995. The 1994 catch limits for Areas 2C and 2A of 11,000,000 lb (4,990 mt) and 550,000 lb (249.5 mt), respectively, are higher than the catch limits recommended by the U.S. Commissioners for 1995. The lower catch limits were recommended by the U.S. Commissioners based on recent stock assessments, because of a continuing decline in the abundance of halibut, and the need to reduce catch limits to conserve the stock. Based on this recommendation and the findings in the February 1995 Environmental Assessment (EA) prepared on these catch limits, the NOAA Assistant Administrator for Fisheries (AA) approves the catch limits of 520,000 lb (235.9 mt) in Area 2A and 9,000,000 lb (4,082 mt) in Area 2C recommended by the U.S. Commissioners at the IPHC meeting. Canada is expected to adopt a 9,520,000 lb (4,318 mt) total allowable catch (TAC) level for Area 2B as recommended by the Canadian Commissioners. Copies of the EA are available from NMFS (see **ADDRESSES**).

Section 5 of the Halibut Act (16 U.S.C. 773c) provides that the Secretary of Commerce (Secretary) shall have general responsibility to carry out the Convention, and that the Secretary shall adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. The Secretary's authority has been delegated to the AA. Section 5 of the Halibut Act (16 U.S.C. 773c(c)) also authorizes the regional fishery management councils having authority for the geographic area concerned to develop regulations governing the Pacific halibut catch in U.S. Convention waters that are in addition to, but not in conflict with, regulations of the IPHC. Regulations developed by the councils may be implemented only with the Secretary's approval. Under this authority, NOAA requested the Pacific and North Pacific Fishery Management Councils to allocate halibut catches should allocation be necessary.

Repeal of Unnecessary Regulations

NMFS repeals three regulations that were necessary during the past open access fishery in waters off Alaska, but that have been made unnecessary by provisions of the individual fishing quota (IFQ) program (50 CFR part 676) that will govern the fishery for the first time this year. The North Pacific Fishery Management Council (NPFMC) recommended the repeal of these regulations at its December 1994 meeting. NMFS issues this final rule repealing them before the start of the 1995 Alaska commercial halibut fishery. Regulations implementing the IFQ program were published on November 9, 1993 (58 FR 59375). They since have been amended at 59 FR 28281, June 1, 1994; 59 FR 43502, August 24, 1994 (corrected at 59 FR 51874, October 13, 1994); and 59 FR 51135, October 7, 1994.

First, NMFS repeals § 301.7(f), a regulation that (1) closes Area 4B to commercial halibut fishing when the commercial harvest amounts to 315,000 lb (143 mt), and (2) withholds the remainder of that area's harvest limit until the fishery reopens on August 15. NMFS, at the recommendation of the NPFMC, implemented these provisions to provide summer fishing opportunities for operators of small vessels that catch and land all their halibut in Area 4B, which, in an open-access fishery, are at a competitive disadvantage with the operators of larger vessels that catch and land halibut in other areas as well as in Area 4B (59 FR 27241, May 26, 1994).

Second, NMFS removes § 301.10(g), which (1) divides Area 4E into a southeast part and a northwest part, (2) provides for a test fishery in the southeast part, (3) closes the southeast part when 30 percent of the total Area 4E quota has been harvested from the southeast part, and (4) transfers 50 percent of the amount of the quota remaining in the northwest part, as of August 1, to the quota of the southeast part. NMFS, on the recommendation of the NPFMC, implemented this provision in 1991 to ensure that, in the open access fishery, the small-boat fisheries of Nelson Island and Nunivak Island would have an opportunity for an equitable share of the harvest in Area 4E (56 FR 19617, April 29, 1991).

Third, NMFS removes three paragraphs of § 301.11 regarding trip harvest limits. Section 301.11(g) limits all vessels fishing in Area 4B to a maximum catch of 10,000 lb (4.5 mt) per fishing period from June 6 through August 14; § 301.11(h) limits all vessels fishing in Area 4C to a maximum catch of 10,000 lb (4.5 mt) of halibut per fishing period; and § 301.11(j) limits all vessels fishing in Area 4E to a maximum catch of 6,000 lb (2.7 mt) of halibut per fishing period. NMFS, on the recommendation of the NPFMC, implemented these provisions to (1) enhance fishing opportunities for operators of vessels that land their total annual catch within Area 4B (59 FR 22522, May 2, 1994); (2) enhance the economic development of the Pribilof Islands (55 FR 23085, June 6, 1990), and (3) increase the competitive advantage of the small vessels that catch and land their halibut exclusively in Area 4B (59 FR 27241, May 26, 1994).

The IFQ program provides each permitted fisher with an individual share of the harvest limit for a fishing area, which the fisher may harvest anytime during the fishing season that he or she deems to be the safest and most economical. Thus, the IFQ program eliminates the need for regulations, such as harvest limits per fishing period, intended to equalize the competitive abilities of fishers. In addition, community development quota (CDQ) allocations under the IFQ program will provide special economic benefits to resident fishers in Area 4. Hence, these regulations would impose an economic hardship on some fishers under the IFQ program. For example, a fisher with an IFQ or CDQ allocation amounting to 17,637 lb (8 mt) for Area 4B would be unable to harvest his or her entire allocation if the existing regulations are not removed. Thus, the regulation is unnecessary, because it has been superseded by provisions of the IFQ program, and it would be burdensome on fishers if it were not removed. The same reasoning applies to the other paragraphs removed by this final rule.

NMFS has prepared a regulatory impact review (RIR) for this action. It concludes that the action would have no significant economic or social impacts, is not a significant regulatory action as defined by E.O. 12866, requires no new reporting requirements, would not increase administrative or enforcement costs, and would not substantially alter the current management process. A copy of the RIR may be obtained from the NMFS Alaska Regional Office (see **ADDRESSES**).

Catch Sharing Plan

The PFMC has prepared catch sharing plans since 1988 to allocate the TAC of Pacific halibut among treaty Indian, non-Indian commercial, and non-Indian sport fisheries in Area 2A off Washington, Oregon, and California. For 1995 and beyond, the PFMC recommended revisions only to the allocations within the non-Indian fisheries, leaving the treaty Indian share of 35 percent of the Area 2A TAC the same as for 1994. The PFMC's recommended Catch Sharing Plan for 1995 and Beyond (Plan) divides the non-Indian harvest into three shares with the sport fishery north of the Columbia River receiving 36.6 percent, the sport fishery south of the Columbia River receiving 31.7 percent, and the commercial fishery receiving 31.7 percent. The recommended Plan also contains a number of management

measures including restricting the non-Indian commercial fishery to the area south of Subarea 2A–1 (south of the treaty Indian tribes' usual and accustomed fishing area). A complete description of the proposed Plan, background information on development and rationale for the Plan, and the proposed regulations necessary to implement the Plan were published in the **Federal Register** on January 12, 1995 (60 FR 2925) with a request for public comments. This action responds to public comments on the proposed Plan and proposed implementing regulations and announces approval of the final Plan, and final implementing regulations. Comments and Responses on the Proposed Plan and the Proposed Rule.

NMFS received six letters from the public with comments on the proposed Plan and one letter with comments on the proposed sport regulations. One letter from the Oregon Department of Fish and Wildlife (ODFW) expressed support for the Plan and five letters from commercial fishery interests were opposed. The one letter with comments on the proposed sport regulations was from Washington Department of Fish and Wildlife (WDFW) and was based on input the State received from sport fishing representatives at a public workshop on the Pacific halibut sport fishery on February 3, 1995. The comments are summarized below with responses.

Comment 1: ODFW supports approval of the Plan, because it provides a better balance between resource harvest and resource distribution. Available scientific information indicates that most (as high as 70 percent) of the halibut in Area 2A are found south of subarea 2A–1; however, for many years, the harvests south of subarea 2A–1 have averaged 30 to 35 percent of the TAC but those harvest do not reflect the abundance and distribution of halibut available to Oregon and California fishers.

Response: The Plan increases the allocation to sport fisheries off Oregon and California by about 8 percent over 1994 (from about 12.7 percent of the Area 2A TAC in 1994 to 20.6 percent in 1995). The Plan also closes the non-Indian directed commercial fishery north of subarea 2A–1. The PFMC recommended this shift in harvests to the south to provide a broader distribution of harvests in Area 2A that is more consistent with the distribution of halibut biomass in Area 2A.

Comment 2: The reallocation from commercial to sport fishery would unreasonably and unfairly terminate a 106-year-old commercial longline fishery north of Willapa Bay.

Response: The Plan does reduce the allocation to the commercial fishery from 50 percent of the non-Indian allocation to 31.7 percent and does shift the location of the directed (traditional) commercial halibut fishery south of Willapa Bay. Participation in the Area 2A halibut fishery by non-Indian commercial and sport users has increased and the potential harvests by both groups have had to be severely restricted in recent years to prevent quota overages. The continued need to reduce fishing effort and fishing opportunity prompted the PFMC to review the overall allocations to determine what changes could be made to preserve the viability of some of the Area 2A halibut fisheries over the long term. Because halibut quotas are expected to be low and not sufficient to fulfill the needs of all user groups for the near future, the PFMC has placed a high priority on maintaining viable sport fisheries and the coastal community businesses supported by sport fisheries in developing its allocation recommendations.

Comment 3: The basis for the PFMC's recommendation was an economic analysis that was fundamentally flawed with respect to treatment of economic contributions of the commercial and sport sectors of the fishery. That analysis, an EA/RIR, includes data on the numbers of commercial vessels in the fishery, but does not include comparable information on charterboats.

Response: Concerns about the economic analysis were raised by the Fishing Vessel Owners' Association at the PFMC's Halibut Advisory Subpanel meeting in July 1994 and at the PFMC's public meeting in October 1994, and the author of the analysis did address the concerns at these meetings. The EA/RIR contained the best available information on all sectors of the halibut fishery in Area 2A including catches by charterboats. Although the PFMC did review and consider economic aspects of the revised allocations, such information was not the primary basis for its recommendation. The PFMC placed a high priority on maintaining viable sport fisheries and the coastal community businesses supported by sport fisheries in developing the allocation recommendations.

Comment 4: Small longline commercial vessels will not be able to safely and reasonably transit from Neah Bay or Westport to the area open to commercial fishing south of Willapa Bay. Larger boats would have to absorb the additional time and expense of fishing in southern waters.

Response: NMFS acknowledges that this action may reduce the number of commercial vessels operating in this fishery; however, with the need to reduce fishing effort and shift harvests into areas of halibut biomass, it is not possible to accommodate the entire fleet that would like to fish off the northern Washington coast.

Comment 5: The PFMC failed to analyze other reasonable alternatives such as a system of individual fishing quotas based on historical landings.

Response: Various alternatives and options for allocation between and within commercial and sport sectors were considered, analyzed and discussed by the PFMC over the course of five public meetings from September 1993, when the PFMC decided to consider all aspects of the halibut allocation issue and to develop a multi-year plan for 1995 and beyond, through adoption of a final Plan at the PFMC's October 1994 public meeting. At its November 1993 public meeting, the PFMC did discuss transferable Individual Quotas (IQs) for the non-Indian commercial halibut fishery including transfer of IQs to sport users in 2A. As described in the EA/RIR, the PFMC, in developing the IQ program for fixed gear sablefish, initially included Pacific halibut. However, as the PFMC proceeded with the development of the fixed-gear IQ program, it decided that its limited resources would best be spent in development of the IQ program for the much larger sablefish fishery. The halibut fishery was sufficiently different not to be included with the sablefish fishery. An IQ program was identified for halibut allocations in 1995 and beyond, and the PFMC advised the commercial fishing industry to take the lead in establishing a committee to develop a proposal for PFMC consideration.

Comment 6: The Halibut Act requires that any limited entry scheme be consistent with section 303(b)(6) of the Magnuson Act.

Response: This action is not a limited-entry scheme. It does not place direct limits on who can participate, rather it reallocates among groups and shifts the area of participation.

Comment 7: The Halibut Act requires that any allocation be reasonably calculated to promote conservation.

Response: The potential Pacific halibut harvest in Area 2A by either the non-Indian commercial fishery or the sport fishery can easily exceed the non-Indian allocation, thereby exceeding the overall Area 2A quota, which could result in conservation problems for the halibut resource in Area 2A. All of the

quotas are calculated to promote conservation.

Comment 8: The PFMC recommended prohibiting double-dipping by commercial vessels that also may fish in the sport fishery, but did not address multiple access by the charterboat fishery.

Response: The Plan prohibits commercial fishing for halibut from any vessel that participates in the sport fishery for halibut in Area 2A and vice versa. This includes charter boats. The PFMC is concerned that increased numbers of charterboat vessels operating in the sport fishery will also participate in the commercial fishery in Area 2A. The PFMC considers this double-dipping into both commercial and sport allocations as inconsistent with its intent to provide separate quotas and opportunity for each harvesting sector to utilize its allocation. Because the potential fishing effort and harvests far exceed what the resource can accommodate, the PFMC is trying to allocate fairly among various groups.

Comment 9: There is no net economic benefit, from either a national or local perspective, demonstrated by the reallocation.

Response: The analysis in the EA/RIR indicates varying losses/gains on the alternatives considered by the PFMC in terms of net economic value, local personal income, or state level income with the principal result of the allocations being distributional shifts. As noted above, although the PFMC did consider economic aspects of the revised allocations, such information was not the primary basis for its recommendation. The PFMC concluded that the best use for the limited halibut resource in Area 2A was to stabilize the recreational fishery while allowing some commercial harvest.

Comment 10: The PFMC did not follow a procedure that allowed for public input.

Response: As described above, the PFMC considered and discussed allocation options over the course of five public meetings, during which descriptions and analyses of the options were provided to the public and public input was received both orally and in writing.

Comment 11: The change in fishing boundary will disrupt the collection of data on the catch per unit-of-effort needed to manage the halibut stock.

Response: Although catch and effort data cannot be derived from non-Indian commercial harvests in the closed area in the future, the same data will continue to be collected from the commercial fisheries in the open area as well as from tribal commercial fisheries in the closed area.

Comment 12: The proposed geographic redistribution of harvest is not based on a conservation concern.

Response: NMFS agrees that the harvest shift was not necessitated by a conservation concern. See response to Comment 1.

Comment 13: The PFMC did not consider the findings of the Halibut Advisory Subpanel (HAS), which had nearly agreed on an option to allocate 40 percent of the TAC to commercial users and 60 percent to sport users.

Response: The PFMC did not adopt the recommendations of the HAS, but it considered them before it made its decision. The decision is fully supported by the record.

Comment 14: Why did salmon trollers receive 15 percent of the non-Indian commercial allocation?

Response: In the mid-1980's, quota reductions and increased fishing effort caused constraints on the commercial fishery, reducing it from multi-day seasons (35 days in 1985) that overlapped the May chinook salmon troll season to the current 1-day, 10-hour openings that occur only in the summer months. From about 1960 to the mid-1980's, salmon trollers caught about 15 percent of the commercial halibut fishery quota incidental to their salmon troll fishery. With the reduced seasons in recent years that occurred outside the timeframe of the chinook salmon fishery, the trollers lost their fishing opportunity. The PFMC decided that an allocation within the commercial fishery was necessary to provide trollers the opportunity to retain halibut caught incidentally during chinook salmon troll seasons.

Comment 15: WDFW recommends that the sport fishing season in Puget Sound open on May 25 and close on July 29. This recommendation is based on recent performance of the fishery that indicates an average of 440 lb (0.2 mt) of halibut were caught on weekdays and 1000 lb (0.5 mt) on weekend days. With the area allocation of 34,653 lb (15.7 mt) and closures on Tuesday and Wednesday, these average catches would allow 29 weekdays of fishing and 19 weekend days. The average catches used in these calculations were developed in consultation with IPHC.

Response: NMFS agrees with this recommendation, and the sport fishing season at § 301.21(d)(2)(i)(A) has been modified accordingly.

Comment 16: WDFW recommends that the sport fishing season in the north Washington coast area open on May 2 and continue until the subarea quota is taken. WDFW has estimated that the subarea quota is insufficient to allow for the May season and the second priority season from July 1 through at least July 4 in accordance with the Plan. Therefore, WDFW recommends that the May season be allowed to continue, possibly into early June, for 5 days per week until the subarea quota is estimated to have been taken.

Response: NMFS agrees with this recommendation and the sport fishing regulations for the north coast area at § 301.21(d)(2)(ii) have been modified accordingly.

Comment 17: WDFW recommends that the closed area in the north Washington coast area be enlarged by 1 mile on each side of the proposed closure area. In accordance with the Plan, the State is recommending this enlarged closure area to extend the length of the fishing season by reducing the numbers of larger fish caught. Data from the 1994 fishery indicate that larger fish were caught just outside the closure area and an enlarged closure would prevent this, thus allowing a longer fishing season since the quotas are based on pounds of halibut caught.

Response: NMFS agrees with this recommendation and the sport fishing closed area for the north coast area at § 301.21(d)(2)(ii) has been modified to be an area within a rectangle defined by these four corners: 48°18′00″ N. lat., 125°11′00″ W. long.; 48°18′00″ N. lat., 124°59′00″ W. long.; 48°04′00″ N. lat., 125°11′00″W. long.; and, 48°04′00″ N. lat., 124°59′00″ W. long.

The proposed Plan for 1995 and beyond was approved by NMFS on January 20, 1995, and the approval was announced at the IPHC annual meeting on January 23, 1995, so the IPHC could implement applicable portions of the Plan in its regulations. The only modifications to the proposed Plan, as recommended by the PFMC, are the opening and closing dates of the treaty Indian commercial fishery. The dates in the Plan adopted by PFMC were March 1 to October 31. These dates have been modified to allow the opening to be set between March 1 and April 1 and to set the closing for November 15 to be consistent with the IPHC action to have a March 15 to November 15 commercial season for all areas. The final approved Plan appears in the regulations at § 301.23.

Changes From the Proposed Plan and the Proposed Rule

The final regulations implementing the Plan are hereby approved, with the following changes from the proposed regulations. The subquotas in the proposed regulations implementing the Plan were based on an assumed

500,000-lb (226.8-mt) TAC for Area 2A and have been modified in accordance with the allocations set forth in the Plan based on the final TAC of 520,000 lb (235.9 mt) in Area 2A. The only other substantive modifications to the proposed sport fishing regulations at § 301.21(d)(2) were described in the responses to the comments above (i.e., the seasons and the closure area for the sport fishery subareas off Washington have been modified based on the final TAC, in accordance with the objectives in the Plan). The proposed sport fishing possession limits on land at § 301.21 (n) and (o) have been redesignated (i) and (j), respectively, to follow IPHC regulations on possession limits on the water. The proposed restriction on use of commercial vessels in the sport fishery and vice versa at § 301.21 (p) and (q) have been removed, because they are redundant with the restrictions in § 301.22. References to new §§ 301.22 and 301.23 have been added to § 301.5. The closure of the non-Indian commercial fishery north of Point Chehalis, WA (46°53′18″ N. lat.) set forth in the Plan at § 301.23(e)(2) and described in the preamble of the proposed rule (January 12, 1995, 60 FR 2925) has been added to the final rule at § 301.9(b) and noted in the IPHC regulations at §§ 301.3(c), 301.7(b), 301.10(b), and 301.11(g). Portions of the proposed rule have been implemented in IPHC regulations and separate U.S. rules are not necessary. Those portions of the proposed rule implemented by the IPHC are: (1) Area 2A license requirements in § 301.3, (2) fishing periods for the non-Indian directed commercial fishery in § 301.7, (3) fishing period limits for the non-Indian directed commercial fishery in § 301.11, and (4) treaty Indian commercial and ceremonial and subsistence fishing seasons in § 301.20. The proposed rules at §§ 301.7(j) and 301.10(j) were modified and renumbered §§ 301.7(c) and 301.10(b), respectively, to conform with IPHC regulations.

For the convenience and information of the public, all of the regulations in part 301 (including the 1995 IPHC regulations, U.S. regulations for Area 2A, the catch limits for Area 2, and U.S. regulations at § 301.21(d) (3), (4), and (5) originally published at 58 FR 17791 (April 6, 1993)) are set out in their entirety herein as revised.

Classification

IPHC Regulations

Because approval of the IPHC regulations by the Secretary of State is a foreign affairs function, *Jensen* v. *National Marine Fisheries Service*, 512 F.2d 1189 (9th Cir. 1975), 5 U.S.C. 553 does not apply to this notice of the effectiveness and content of the IPHC regulations. Because a notice of proposed rulemaking is not required, the preparation of a regulatory flexibility analysis is not required.

Area 2A and 2C Catch Limits

The AA has determined that this rule is necessary to respond to an emergency situation and is consistent with the Halibut Act of 1982 and other applicable law. Without emergency adoption of the catch limits for Area 2A and 2C for 1995, the Pacific halibut stock would be harvested at an unacceptably high rate that could have long-term adverse effects on the halibut stock and U.S. halibut fisheries. Accordingly, the AA finds there is good cause to implement these regulations expediently and that it is impracticable and contrary to the public interest to require prior notice and public comment, or to delay the effective date of the regulations, under the provisions of section 553 (b) and (d) of the APA. This rule is exempt from the procedures of the Regulatory Flexibility Act, because the rule is not required to be issued with prior notice and opportunity for public comment. This action has been determined to be not significant for purposes of E.O. 12866.

Repeal of Unnecessary Regulations for Area 4

The AA has determined, under 5 U.S.C. 553(b)(B), that good cause exists for waiving prior notice of this action and opportunity for public comment, because providing prior notice and opportunity for public comment would have been impracticable and contrary to the public interest. It was impracticable to do so, because the NPFMC determined only in December 1994, after hearing reports from its technical committees and entertaining public comment, that these regulations were an unnecessary burden on the IFQ fishery. Thus, there was inadequate time to prepare a proposed rule, collect comments, and prepare a final rule before the start of the Alaska commercial halibut fishery on March 15, 1995. A delay in repealing these unnecessary regulations would have been contrary to the public interest because, to realize the full benefit of the IFQ program and prevent economic inefficiencies and bycatch waste, the regulations must be removed by March 15, 1995. Moreover, this action is necessary to provide consistent management and conservation of other fixed gear fisheries also scheduled to begin on March 15.

Because this action relieves a restriction under 5 U.S.C. 553(d)(1), it is being made immediately effective. This action has been determined to be not significant for purposes of E.O. 12866.

Catch Sharing Plan and Implementing Regulations

The EA/RIR prepared for this Plan and implementing domestic regulations indicates that, although the actions taken under this Plan would reduce the allocation and area available to commercial fisheries, the commercial harvest of halibut in Area 2A is a small part of their average annual harvests. As such, the Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when the Plan and regulations were proposed that, if they were adopted as proposed, they would not have a significant economic impact on a substantial number of small entities. Accordingly, preparation of a regulatory flexibility analysis under the Regulatory Flexibility Act was not required.

The AA finds, under 5 U.S.C. 553(d)(3), that having the regulations for the Plan in place when the treaty Indian fishery opens on March 15 justifies waiving the 30-day delayed-effectiveness period. A copy of the EA/RIR may be obtained from the NMFS Northwest Region (see **ADDRESSES**).

This action has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 301

Fisheries, Treaties.

Dated: March 13, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 301 is revised to read as follows:

PART 301—PACIFIC HALIBUT FISHERIES

Sec.
301.1 Short title.
301.2 Interpretation.
301.3 Licensing vessels.
301.4 Inseason actions.
301.5 Application.
301.6 Regulatory areas.
301.7 Fishing periods.
301.8 Closed periods.
301.9 Closed area.
301.10 Catch limits.
301.11 Fishing period limits.
301.12 Size limits.
301.13 Careful release of halibut.
301.14 Vessel clearance in Area 4.
301.15 Logs.

301.16 Receipt and possession of halibut.
301.17 Fishing gear.
301.18 Retention of tagged halibut.
301.19 Supervision of unloading and weighing.
301.20 Fishing by U.S. treaty Indian tribes.
301.21 Sport fishing for halibut.
301.22 Fishery election in Area 2A.
301.23 Catch Sharing Plan for Area 2A.
301.24 Previous regulations superseded.
Figure 1 to part 301—Map of Regulatory Areas
Figure 2 to part 301—Halibut Size Limits

Authority: 5 UST 5; TIAS 2900; 16 U.S.C. 773–773k.

§ 301.1 Short title.

This part may be cited as the Pacific Halibut Fishery Regulations.

§ 301.2 Interpretation.

(a) In this part:

Authorized officer means any state, Federal, or provincial officer authorized to enforce this part including, but not limited to, the National Marine Fisheries Service (NMFS), Canada's Department of Fisheries and Oceans (DFO), Alaska Division of Fish and Wildlife Protection (ADFWP), and the U.S. Coast Guard (USCG).

Charter vessel means a vessel used for hire in sport fishing for halibut, but does not include a vessel without a hired operator.

Commercial fishing means fishing, the resulting catch of which either is, or is intended to be, sold or bartered.

Commission means the International Pacific Halibut Commission.

Daily bag limit means the maximum number of halibut a person may take in any calendar day from Convention waters.

Fishing means the taking, harvesting, or catching of fish, or any activity that can reasonably be expected to result in the taking, harvesting, or catching of fish, including specifically the deployment of any amount or component part of setline gear anywhere in the maritime area.

Fishing period limit means the maximum amount of halibut that may be retained and landed by a vessel during one fishing period.

Land, with respect to halibut, means the offloading of halibut from the catching vessel.

License means a halibut fishing license issued by the Commission pursuant to § 301.3.

Maritime area, with respect to the fisheries jurisdiction of a Contracting Party, includes, without distinction, areas within and seaward of the territorial sea or internal waters of that Party.

Operator, with respect to any vessel, means the owner and/or the master or other individual aboard and in charge of that vessel.

Overall length of a vessel means the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern (excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments).

Person includes an individual, corporation, firm, or association.

Regulatory area means an area referred to in § 301.6.

Setline gear means one or more stationary, buoyed, and anchored lines with hooks attached.

Sport fishing means all fishing other than commercial fishing and treaty Indian ceremonial and subsistence fishing.

Tender means any vessel that buys or obtains fish directly from a catching vessel and transports it to a port of landing or fish processor.

(b) In this part, all bearings are true and all positions are determined by the most recent charts issued by the National Ocean Service or the Canadian Hydrographic Service.

(c) In this part, all weights shall be computed on the basis that the heads of the fish are off and their entrails removed.

§ 301.3 Licensing vessels.

(a) No person shall fish for halibut from a U.S. vessel, nor possess halibut on board a U.S. vessel, used either for commercial fishing or as a charter vessel in Area 2A unless the Commission has issued a license valid for fishing in Area 2A in respect of that vessel.

(b) A license issued for a vessel operating in Area 2A shall be valid only for operating either as a charter vessel or a commercial vessel, but not both.

(c) A license issued for a vessel operating in the commercial fishery in Area 2A shall be valid only for either the directed commercial fishery south of 46°53′18″ N. lat. during the fishing periods specified in § 301.7(b) or the incidental catch fishery during the salmon troll fishery specified in § 301.7(c), but not both.

(d) No person shall fish for halibut from a Canadian vessel used as a charter vessel, nor possess halibut on board such vessel, unless the Commission has issued a license valid for fishing in Area 2B in respect of that vessel.

(e) No person shall fish for halibut from a U.S. vessel, nor possess halibut on board a U.S. vessel, used either for commercial fishing or as a charter vessel in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E, unless the Commission has issued a license valid for fishing in those areas in respect of that vessel.

(f) A license issued in respect of a vessel referred to in paragraphs (a), (d), and (e) of this section must be carried on board that vessel at all times and the vessel operator shall permit its inspection by any authorized officer.

(g) The Commission shall issue a license in respect of a vessel, without fee from its office in Seattle, WA, upon receipt of a completed, written, and signed ''Application for Vessel License for the Halibut Fishery'' form.

(h) A vessel operating in the commercial fishery in Area 2A must have its ''Application for Vessel License for the Halibut Fishery'' form postmarked no later than midnight April 30.

(i) Application forms may be obtained from any authorized officer, or from the Commission.

(j) Information on ''Application for Vessel License for the Halibut Fishery'' form must be accurate.

(k) The ''Application for Vessel License for the Halibut Fishery'' form shall be completed and signed by the vessel owner.

(l) Licenses issued under this section shall be valid only during the year in which they are issued.

(m) A new license is required for a vessel that is sold, transferred, renamed, or redocumented.

(n) The license required under this section is in addition to any license, however designated, that is required under the laws of Canada or any of its Provinces or the United States or any of its States.

(o) The United States may suspend, revoke, or modify any license issued under this section under policies and procedures in 15 CFR part 904.

§ 301.4 Inseason actions.

(a) The Commission is authorized to establish or modify the IPHC regulations in this part during the season after determining that such action:

(1) Will not result in exceeding the catch limit established preseason for each regulatory area;

(2) Is consistent with the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, and applicable domestic law of either Canada or the United States; and

(3) Is consistent, to the maximum extent practicable, with any domestic catch sharing plans developed by the U.S. or Canadian Governments.

(b) Inseason actions may include, but are not limited to, establishment or modification of the following:

(1) Closed areas;

(2) Fishing periods;

(3) Fishing period limits;
(4) Gear restrictions;
(5) Recreational bag limits;
(6) Size limits; or
(7) Vessel clearances.

(c) Inseason changes will be effective at the time and date specified by the Commission.

(d) The Commission will announce inseason actions under this section by providing notice to major halibut processors; Federal, state, U.S. treaty Indian, and provincial fishery officials; and the media.

§ 301.5 Application.

(a) This part applies to persons and vessels fishing for halibut in, or possessing halibut taken from, waters off the west coast of Canada and the United States, including the southern as well as the western coasts of Alaska, within the respective maritime areas in which each of those countries exercises exclusive fisheries jurisdiction as of March 29, 1979.

(b) Section 301.6 through 301.19 apply to commercial fishing for halibut.

(c) Section 301.20 applies to the U.S. treaty Indian tribal fishery in Area 2A–1.

(d) Section 301.21 applies to sport fishing for halibut.

(e) Section 301.22 applies to non-Indian commercial and sport fishing for halibut in Area 2A.

(f) Section 301.23 applies to all fishing for halibut in Area 2A.

(g) This part does not apply to fishing operations authorized or conducted by the Commission for research purposes.

§ 301.6 Regulatory areas.

The following areas (shown in Figure 1 of this part) shall be regulatory areas for the purposes of the Convention:

(a) Area 2A includes all waters off the States of California, Oregon, and Washington;

(b) Area 2B includes all waters off British Columbia;

(c) Area 2C includes all waters off Alaska that are east of a line running 340° true from Cape Spencer Light (58°11′57″ N. lat., 136°38′18″ W. long.), and south and east of a line running 205° true from said light;

(d) Area 3A includes all waters between Area 2C and a line extending from the most northerly point on Cape Aklek (57°41′15″ N. lat., 155°35′00″ W. long.) to Cape Ikolik (57°17′17″ N. lat., 154°47′18″ W. long.), then along the Kodiak Island coastline to Cape Trinity (56°44′50″ N. lat., 154°08′44″ W. long.), then 140° true;

(e) Area 3B includes all waters between Area 3A and a line extending 150° true from Cape Lutke (54°29′00″ N. lat., 164°20′00″ W. long.) and south of 54°49′00″ N. lat. in Isanotski Strait;

(f) Area 4A includes all waters in the Gulf of Alaska west of Area 3B and in the Bering Sea west of the closed area defined in § 301.9 that are east of 172°00′00″ W. long. and south of 56°20′00″ N. lat.;

(g) Area 4B includes all waters in the Bering Sea and the Gulf of Alaska west of Area 4A and south of 56°20′00″ N. lat.;

(h) Area 4C includes all waters in the Bering Sea north of Area 4A and north of the closed area defined in § 301.9 that are east of 171°00′00″ W. long., south of 58°00′00″ N. lat., and west of 168°00′00″ W. long.;

(i) Area 4D includes all waters in the Bering Sea north of Areas 4A and 4B, north and west of Area 4C, and west of 168°00′00″ W. long.;

(j) Area 4E includes all waters in the Bering Sea north and east of the closed area defined in § 301.9, east of 168°00′00″ W. long., and south of 65°34′00″ N. lat.

§ 301.7 Fishing periods.

(a) The fishing periods for each regulatory area apply where the catch limits specified in § 301.10 have not been taken.

(b) Each fishing period in the Area 2A directed fishery south of 46°53′18″ N. lat. shall begin at 0800 hours and terminate at 1800 hours local time on July 5, July 18, August 1, and August 15, unless the Commission specifies otherwise.

(c) Notwithstanding paragraph (b) of this section and § 301.10(g), an incidental catch fishery is authorized during salmon troll seasons in Area 2A. Vessels participating in the salmon troll fishery in Area 2A may retain halibut caught incidentally during authorized periods, in conformance with the annual salmon management measures announced in the **Federal Register**. The notice also will specify the ratio of halibut to salmon that may be retained during this fishery.

(d) The fishing period in Areas 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall begin at 1200 hours local time on March 15 and terminate at 1200 hours local time on November 15, unless the Commission specifies otherwise.

(e) All commercial fishing for halibut in Areas 2A, 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall cease at 1200 hours local time on November 15.

§ 301.8 Closed periods.

(a) No person shall engage in fishing for halibut in any regulatory area other than during the fishing periods set out in § 301.7 in respect of that area.

(b) No person shall land or otherwise retain halibut caught outside a fishing period applicable to the regulatory area where the halibut was taken.

(c) Subject to § 301.17(g) and (h), fishing is not prohibited for any species of fish other than halibut during the closed periods.

(d) Notwithstanding paragraph (c) of this section, no person shall have halibut in his/her possession while fishing for any other species of fish during the closed periods.

(e) No vessel shall retrieve any halibut fishing gear during a closed period if the vessel has any halibut on board.

(f) A vessel that has no halibut on board may retrieve any halibut fishing gear during the closed period after the operator notifies an authorized officer or representative of the Commission prior to that retrieval.

(g) After retrieval of halibut gear in accordance with paragraph (f) of this section, the vessel shall submit to a hold inspection at the discretion of the authorized officer or representative of the Commission.

(h) No person shall retain any halibut caught on gear retrieved under paragraph (f) of this section.

(i) No person shall possess halibut on board a vessel in a regulatory area during a closed period, unless that vessel is in continuous transit to or within a port in which that halibut may be lawfully sold.

§ 301.9 Closed area.

(a) All waters in the Bering Sea that are north of 54°49′00″ N. lat. in Isanotski Strait that are enclosed by a line from Cape Sarichef Light (54°36′00″ N. lat., 164°55′42″ W. long.) to a point at 56°20′00″ N. lat., 168°30′00″ W. long.; thence to a point at 58°21′25″ N. lat., 163°00′00″ W. long.; thence to Strogonof Point (56°53′18″ N. lat., 158°50′37″ W. long.); and then along the northern coasts of the Alaska Peninsula and Unimak Island to the point of origin at Cape Sarichef Light are closed to halibut fishing and no person shall fish for halibut therein or have halibut in his/her possession while in those waters except in the course of a continuous transit across those waters.

(b) In Area 2A, all waters north of Point Chehalis, WA (46°53′18″ N. lat.) are closed to the directed commercial halibut fishery.

§ 301.10 Catch limits.

(a) The total allowable catch of halibut to be taken during the halibut fishing periods specified in § 301.7 shall be limited to the weight expressed in pounds or metric tons shown in the following table.

Regulatory area	Catch limits	
	Pounds	Metric tons
2A	107,120	49
2C	9,000,000	4,082
3A	20,000,000	9,072
3B	3,700,000	1,678
4A	1,950,000	885
4B	2,310,000	1,048
4C	770,000	349
4D	770,000	349
4E	120,000	54

(b) Notwithstanding paragraph (a) of this section, the catch limit in Area 2A shall be divided between a directed halibut fishery to operate south of 46°53′18″ N. lat. during the fishing periods set out in § 301.7(b) and an incidental halibut catch fishery during the salmon troll fishery in Area 2A described in § 301.7(c). Inseason actions to transfer catch between these fisheries may occur in conformance with § 301.23.

(1) The catch limit in the directed halibut fishery is 91,052 lb (41.3 mt).

(2) The catch limit in the incidental catch fishery during the salmon troll fishery is 16,068 lb (7.3 mt).

(c) The Commission shall determine and announce to the public the date on which the catch limit for Area 2A will be taken and the specific dates during which the directed fishery will be allowed in Area 2A.

(d) Notwithstanding paragraph (a) of this section, Area 2B will close only when all Individual Vessel Quotas assigned by Canada's Department of Fisheries and Oceans are taken, or November 15, whichever is earlier.

(e) Notwithstanding paragraph (a) of this section, Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E will close only when all Individual Fishing Quotas and all Community Development Quotas issued by NMFS have been taken, or November 15, whichever is earlier.

(f) If the Commission determines that the catch limit specified for Area 2A in paragraph (a) of this section would be exceeded in an unrestricted 10-hour fishing period as specified in § 301.7(b), the catch limit for that area shall be considered to have been taken unless fishing period limits are implemented.

(g) When under paragraph (c) or (f) of this section the Commission has announced a date on which the catch limit for Area 2A will be taken, no person shall fish for halibut in that area after that date for the rest of the year, unless the Commission has announced the reopening of that area for halibut fishing.

§ 301.11 Fishing period limits.

(a) It shall be unlawful for any vessel to retain more halibut than authorized by that vessel's license in any fishing period for which the Commission has announced a fishing period limit.

(b) The operator of any vessel that fishes for halibut during a fishing period when fishing period limits are in effect must, upon commencing an offload of halibut to a commercial fish processor, completely offload all halibut on board said vessel to that processor and ensure that all halibut are weighed and reported on state fish tickets.

(c) The operator of any vessel that fishes for halibut during a fishing period when fishing period limits are in effect, must, upon commencing an offload of halibut other than to a commercial fish processor, completely offload all halibut on board said vessel and ensure that all halibut are weighed and reported on state fish tickets.

(d) The provisions of paragraph (c) of this section are not intended to prevent retail over-the-side sales to individual purchasers, so long as all the halibut on board are ultimately offloaded and reported.

(e) When fishing period limits are in effect, a vessel's maximum retainable catch will be determined by the Commission based on:

(1) The vessel's overall length in feet and associated length class;

(2) The average performance of all vessels within that class; and

(3) The remaining catch limit.

(f) Length classes are shown in the following table.

Overall length	Vessel class
1– 25	A
26–30	B
31–35	C
36–40	D
41–45	E
46–50	F
51–55	G
56– +	H

(g) Fishing period limits in Area 2A apply only to the directed halibut fishery south of 46°53′18″ N. lat. referred to in § 301.7(b).

§ 301.12 Size limits.

(a) No person shall take or possess any halibut that:

(1) With the head on, is less than 32 in (81.3 cm) as measured in a straight line, passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail, as illustrated in Figure 2 of this part; or

(2) With the head removed, is less than 24 in (61.0 cm) as measured from the base of the pectoral fin at its most anterior point to the extreme end of the middle of the tail, as illustrated in Figure 2 of this part.

(b) No person shall fillet, mutilate, or otherwise disfigure a halibut in any manner that prevents the determination of the minimum size of the halibut for the purpose of paragraph (a) of this section.

(c) No person aboard a vessel fishing for, or tendering, halibut caught in Area 2A shall possess any halibut that has had its head removed.

§ 301.13 Careful release of halibut.

All halibut that are caught and are not retained shall be immediately released and returned to the sea with a minimum of injury by:

(a) Hook straightening outboard of the roller;

(b) Cutting the gangion near the hook; or

(c) Carefully removing the hook by twisting it from the halibut with a gaff.

§ 301.14 Vessel clearance in Area 4.

(a) The operator of any vessel that fishes for halibut in Areas 4A, 4B, 4C, or 4D must obtain a vessel clearance before fishing in any of these areas and fishing periods that apply, and before the unloading of any halibut caught in any of these areas and fishing periods, unless specifically exempted in paragraph (k), (l), or (m) of this section.

(b) The vessel clearance required under paragraph (a) of this section prior to fishing in Areas 4A, 4C, or 4D may be obtained only at Dutch Harbor or Akutan, AK, from an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(c) The vessel clearance required under paragraph (a) of this section prior to fishing in Area 4B may only be obtained at Nazan Bay on Atka Island, AK, from an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(d) The vessel operator shall specify the specific regulatory area in which fishing will take place.

(e) Before unloading any halibut caught in Area 4A, a vessel operator may obtain the clearance required under paragraph (a) of this section only in Dutch Harbor or Akutan, AK, by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(f) Before unloading any halibut caught in Area 4B, a vessel operator may obtain the clearance required under paragraph (a) of this section only in

Nazan Bay on Atka Island, either in person or by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor by VHF radio and allowing the person contacted to confirm visually the identity of the vessel.

(g) Before unloading any halibut caught in Area 4C or 4D, a vessel operator may obtain the clearance required under paragraph (a) of this section only in St. Paul or St. George, AK, either in person or by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor by VHF radio and allowing the person contacted to confirm visually the identity of the vessel.

(h) Vessel clearances required under paragraph (a) of this section prior to fishing in Area 4 shall be obtained between 0600 and 1800 hours, local time.

(i) No halibut shall be on board the vessel at the time of the clearance required by paragraph (h) of this section.

(j) Vessel clearances required under paragraph (a) of this section after fishing in Area 4 shall be obtained between 0600 and 1800 hours, local time.

(k) Any vessel that is used to fish for halibut only in Area 4B and that lands its total annual halibut catch at a port within Area 4B is exempt from the clearance requirements of paragraph (a) of this section.

(l) Any vessel that is used to fish for halibut only in Area 4C and that lands its total annual halibut catch at a port within Area 4C is exempt from the clearance requirements of paragraph (a) of this section.

(m) Any vessel that is used to fish for halibut only in Areas 4D and 4E and that lands its total annual halibut catch at a port within Areas 4D, 4E, or the closed area defined in § 301.9, is exempt from the clearance requirements of paragraph (a) of this section.

§ 301.15 Logs.

(a) The operator of any vessel that has an overall length of 26 ft (7.9 m) or greater shall keep an accurate log of all halibut fishing operations including the date, locality, amount of gear used, and total weight of halibut taken daily in each locality.

(b) The log referred to in paragraph (a) of this section shall be:

(1) Separate from other records maintained on board the vessel;

(2) Updated not later than 24 hours after midnight local time for each day fished and prior to the offloading or sale of halibut taken during that fishing period;

(3) Retained for a period of 2 years by the owner or operator of the vessel;

(4) Open to inspection by an authorized officer or any authorized representative of the Commission upon demand; and

(5) Kept on board the vessel during halibut fishing, during transits to port of landing, and for 5 days following offloading halibut.

(c) The poundage of any halibut that is not sold, but is utilized by the vessel operator, his/her crew members, or any other person for personal use, shall be recorded in the vessel's log within 24 hours of offloading.

(d) No person shall make a false entry in a log referred to in this section.

§ 301.16 Receipt and possession of halibut.

(a) No person shall receive halibut from a U.S. vessel that does not have on board the license required by § 301.3.

(b) No person shall offload halibut from a vessel unless the gills and entrails have been removed prior to offloading.

(c) A commercial fish processor who purchases or receives halibut directly from the owner or operator of a vessel that was engaged in halibut fishing must accept and weigh all halibut on board said vessel at the time offloading commences and record on state fish tickets or Federal catch reports the date, locality, name of vessel, Halibut Commission license number (United States), the name(s) of the person(s) from whom the halibut was purchased; and the scale weight obtained at the time of offloading of all halibut on board the vessel, including: Pounds purchased; pounds in excess of IFQs, IVQs, or fishing period limits; pounds retained for personal use; and pounds discarded as unfit for human consumption.

(d) No person shall make a false entry on a state fish ticket or a Federal catch or landing report referred to in paragraph (c) of this section.

(e) A copy of the fish tickets or catch reports referred to in paragraph (c) of this section shall be:

(1) Retained by the person making them for a period of 3 years from the date they are made; and

(2) Open to inspection by an authorized officer or any authorized representative of the Commission.

(f) No person shall possess any halibut that he/she knows to have been taken in contravention of this part.

(g) When halibut are delivered to other than a commercial fish processor the records required by paragraph (c) shall be maintained by the operator of the vessel from which that halibut was caught, in compliance with paragraph (e).

(h) It shall be unlawful to enter a Halibut Commission license number on a state fish ticket for any vessel other than the vessel actually used in catching the halibut reported thereon.

§ 301.17 Fishing gear.

(a) No person shall fish for halibut using any gear other than hook-and-line gear.

(b) No person shall possess halibut taken with any gear other than hook-and-line gear.

(c) No person shall possess halibut while on board a vessel carrying any trawl nets or fishing pots capable of catching halibut.

(d) All setline or skate marker buoys carried on board or used by any U.S. vessel used for halibut fishing shall be marked with one of the following:

(1) The vessel's name;

(2) The vessel's state license number; or

(3) The vessel's registration number.

(e) The markings specified in paragraph (d) of this section shall be in characters at least 4 in (10.2 cm) in height and 0.5 in (1.3 cm) in width in a contrasting color visible above the water, and shall be maintained in legible condition.

(f) All setline or skate marker buoys carried on board or used by a Canadian vessel used for halibut fishing shall be:

(1) Floating and visible on the surface of the water; and

(2) Legibly marked with the identification plate number of the vessel engaged in commercial fishing from which that setline is being operated.

(g) No person aboard a vessel from which setline gear was used to fish for any species of fish anywhere in Area 2A during the 72-hour period immediately before the opening of a halibut fishing period shall catch or possess halibut anywhere in those waters during that halibut fishing period.

(h) No vessel from which setline gear was used to fish for any species of fish anywhere in Area 2A during the 72-hour period immediately before the opening of a halibut fishing period may be used to catch or possess halibut anywhere in those waters during that halibut fishing period.

(i) No person aboard a vessel from which setline gear was used to fish for any species of fish anywhere in Areas 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E during the 72-hour period immediately before the opening of the halibut fishing season shall catch or possess halibut anywhere in those areas until the vessel

has removed all of its setline gear from the water and has either:

(1) Made a landing and completely offloaded its entire catch of other fish; or

(2) Submitted to a hold inspection by an authorized officer.

(j) No vessel from which setline gear was used to fish for any species of fish anywhere in Areas 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E during the 72-hour period immediately before the opening of the halibut fishing season shall catch or possess halibut anywhere in those areas until the vessel has removed all of its setline gear from the water and has either:

(1) Made a landing and completely offloaded its entire catch of other fish; or

(2) Submitted to a hold inspection by an authorized officer.

§ 301.18 Retention of tagged halibut.

(a) Nothing contained in this part prohibits any vessel at any time from retaining and landing a halibut that bears a Commission tag at the time of capture, if the halibut with the tag still attached is reported at the time of landing and made available for examination by a representative of the Commission or by an authorized officer.

(b) After examination and removal of the tag by a representative of the Commission or an authorized officer, the halibut:

(1) May be retained for personal use; or

(2) May be sold if it complies with the provisions of § 301.12.

§ 301.19 Supervision of unloading and weighing.

The unloading and weighing of halibut may be subject to the supervision of authorized officers to assure the fulfillment of the provisions of this part.

§ 301.20 Fishing by U.S. treaty Indian tribes.

(a) Halibut fishing in subarea 2A–1 by members of U.S. treaty Indian tribes located in the State of Washington is governed by this section.

(b) For purposes of this part, ''treaty Indian tribes'' means the Hoh, Jamestown S'Klallam, Lower Elwha S'Klallam, Lummi, Makah, Port Gamble S'Klallam, Quileute, Quinault, Skokomish, Suquamish, Swinomish, and Tulalip tribes.

(c) Subarea 2A–1 includes all U.S. waters off the coast of Washington that are north of 46°53'18'' N. lat. and east of 125°44'00'' W. long., and all inland marine waters of Washington.

(d) Commercial fishing for halibut by treaty Indians is permitted only in subarea 2A–1 with hook-and-line gear from March 15 through November 15, or until 171,000 lb (77.6 mt) are taken by treaty Indians, whichever occurs first.

(e) Commercial fishing periods and management measures to implement paragraph (d) of this section will be established by treaty Indian tribal regulations.

(f) Commercial fishing for halibut by treaty Indians shall comply with the provisions of §§ 301.12, 301.13, 301.15, and 301.17, except that the 72-hour fishing restriction preceding the opening of a halibut fishing period shall not apply to treaty Indian fishing.

(g) Ceremonial and subsistence fishing for halibut by treaty Indians in subarea 2A–1 is permitted with hook-and-line gear from January 1 to December 31, and is estimated to take 11,000 lb (5 mt).

(h) No size or bag limits shall apply to the ceremonial and subsistence fishery, except that when commercial halibut fishing is prohibited pursuant to paragraph (d) of this section, treaty Indians may take and retain not more than two halibut per person per day.

(i) Halibut taken for ceremonial and subsistence purposes shall not be offered for sale or sold.

(j) Any member of a U.S. treaty Indian tribe, as defined in paragraph (b) of this section, who is engaged in commercial or ceremonial and subsistence fishing under this section must have on his or her person a valid treaty Indian identification card issued pursuant to 25 CFR part 249, subpart A, and must comply with the treaty Indian vessel and gear identification requirements of Final Decision No. 1 and subsequent orders in *United States* v. *Washington* 384 F. Supp. 312 (W.D. Wash. 1974).

(k) The following table sets forth the fishing areas of each of the 12 treaty Indian tribes fishing pursuant to this section. Within subarea 2A–1, boundaries of a tribe's fishing area may be revised as ordered by a Federal Court.

Tribe	Boundaries
Hoh	Between 47°54'18'' N. lat. (Quillayute River) and 47°21'00'' N. lat. (Quinault River), and east of 125°44'00'' W. long.
Jamestown S'Klallam	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington,* 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 626 F. Supp. 1486, to be places at which the Jamestown S'Klallam Tribe may fish under rights secured by treaties with the United States.
Lower Elwha S'Klallam	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington,* 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 459 F. Supp. 1049 and 1066 and 626 F. Supp. 1443, to be places at which the Lower Elwha S'Klallam Tribe may fish under rights secured by treaties with the United States.
Lummi	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington,* 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 384 F. Supp. 360, as modified in Subproceeding No. 89–08 (W.D. Wash. February 13, 1990) (decision and order re: cross-motions for summary judgement), to be places at which the Lummi Tribe may fish under rights secured by treaties with the United States.
Makah	North of 48°02'15'' N. lat. (Norwegian Memorial), west of 123°42'30'' W. long., and east of 125°44'00'' W. long.
Port Gamble S'Klallam	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington,* 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 626 F. Supp. 1442, to be places at which the Port Gamble S'Klallam Tribe may fish under rights secured by treaties with the United States.
Quileute	Between 48°07'36'' N. lat. (Sand Point) and 47°31'42'' N. lat. (Queets River), and east of 125°44'00'' W. long.
Quinault	Between 47°40'06'' N. lat. (Destruction Island) and 46°53'18'' N. lat. (Point Chehalis), and east of 125°44'00'' W. long.

Tribe	Boundaries
Skokomish	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington,* 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 384 F. Supp. 377, to be places at which the Skokomish Tribe may fish under rights secured by treaties with the United States.
Suquamish	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington,* 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 459 F. Supp. 1049, to be places at which the Suquamish Tribe may fish under rights secured by treaties with the United States.
Swinomish	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington,* 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 459 F. Supp. 1049, to be places at which the Swinomish Tribe may fish under rights secured by treaties with the United States.
Tulalip	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington,* 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 626 F. Supp. 1531–1532, to be places at which the Tulalip Tribe may fish under rights secured by treaties with the United States.

§ 301.21 Sport fishing for halibut.

(a) No person shall engage in sport fishing for halibut using gear other than a single line with no more than two hooks attached; or a spear.

(b) In all waters off Alaska:

(1) The sport fishing season is from February 1 to December 31; and

(2) The daily bag limit is two halibut of any size per day per person.

(c) In all waters off British Columbia:

(1) The sport fishing season is from February 1 to December 31; and

(2) The daily bag limit is two halibut of any size per day per person.

(d) In all waters off California, Oregon, and Washington:

(1) The total allowable catch of halibut shall be limited to:

(i) 123,760 lb (56.1 mt) in waters off Washington; and

(ii) 107,120 lb (48.6 mt) in waters off Oregon and California.

(2) The sport fishing subareas, subquotas, fishing dates, and daily bag limits are as follows, except as modified under the inseason actions in paragraph (d)(3) of this section. All sport fishing in Area 2A (except for fish caught in the North Washington coast area and landed into Neah Bay) is managed on a ''port of landing'' basis, whereby any halibut landed into a port counts toward the quota for the area in which that port is located, and the regulations governing the area of landing apply, regardless of the specific area of catch.

(i) In Puget Sound and the U.S. waters in the Strait of Juan de Fuca, east of a line from the lighthouse on Bonilla Point on Vancouver Island, British Columbia (48°35′44″ N. lat., 124°43′00″ W. long.) to the buoy adjacent to Duntze Rock (48°24′55″ N. lat., 124°44′50″ W. long.) to Tatoosh Island lighthouse (48°23′30″ N. lat., 124°4′′00″ W. long.) to Cape Flattery (48°22′55″ N. lat., 124°43′42″ W. long.), there is no subquota. This area is managed by setting a season that is projected to result in a catch of 34,653 lb (15.7 mt).

(A) The fishing season is May 25 through July 29, 5 days a week (closed Tuesdays and Wednesdays).

(B) The daily bag limit is one halibut of any size per day per person.

(ii) In the area off the north Washington coast, west of the line described in paragraph (d)(2)(i) of this section and north of the Queets River (47°31′42″ N. lat.), the subquota for landings into ports in this area is 71,410 lb (32.4 mt). Landings into Neah Bay of halibut caught in this area will count against this subquota and are governed by the regulations in this paragraph (d)(2)(ii).

(A) The fishing season commences on May 2, and continues 5 days a week (Tuesday through Saturday) until 71,410 lb (32.4 mt) are estimated to have been taken and the season is closed by the Commission.

(B) The daily bag limit is one halibut of any size per day per person.

(C) A portion of this area about 19 nm (35 km) southwest of Cape Flattery is closed to sport fishing for halibut. The closed area is within a rectangle defined by these four corners: 48°18′00″ N. lat., 125°11′00″ W. long.; 48°18′00″ N. lat., 124°59′00″ W. long.; 48°04′00″ N. lat., 125°11′00″ W. long.; and, 48°04′00″ N. lat., 124°59′00″ W. long.

(iii) In the area between the Queets River, WA and Leadbetter Point, WA (46°38′10″ N. lat.), the subquota for landings into ports in this area is 15,222 lb (6.9 mt).

(A) The fishing season commences on May 1, and continues every day through September 30, or until 15,222 lb (6.9 mt) are estimated to have been taken and the area is closed by the Commission, whichever occurs first.

(B) The daily bag limit is one halibut of any size per day per person.

(C) The northern offshore portion of this area is closed to sport fishing for halibut. The closed area is west of 124°40′00″ W. long. and north of 47°10′00″ N. lat. If, on September 1, sufficient quota remains for at least 1 day of fishing, NMFS will, by inseason action as specified at § 301.21(d)(4), remove the geographical restriction on each Tuesday until the fishery is closed.

(iv) In the area between Leadbetter Point, WA and Cape Falcon, OR (45°46′00″ N. lat.), the subquota for landings into ports in this area is 4,617 lb (2.1 mt).

(A) The fishing season commences on May 1, and continues every day through September 30, or until 4,617 lb (2.1 mt) are estimated to have been taken and the area is closed by the Commission, whichever occurs first.

(B) The daily bag limit is one halibut with a minimum overall size limit of 32 in (81.3 cm).

(v) In the area off Oregon between Cape Falcon and the Siuslaw River (44°01′08″ N. lat.), the subquota for landings into ports in this area is 94,694 lb (43 mt).

(A) The fishing seasons are:

(*1*) Commencing May 4, and continuing 3 days a week (Thursday through Saturday) until 67,706 lb (30.7 mt) are estimated to have been taken and the season is closed by the Commission;

(*2*) Commencing the day following the closure of the season in paragraph (d)(2)(v)(A)(*1*) of this section, and continuing every day through August 2, in the area inside the 30-fathom (55 m) curve nearest to the coastline as plotted on National Ocean Service charts numbered 18520, 18580, and 18600, or until 3,314 lb (1.5 mt) or the area subquota is estimated to have been taken (except that any poundage remaining unharvested after the earlier season will be added to this season) and the season is closed by the Commission, whichever is earlier; and

(*3*) Commencing August 3, and continuing 3 days a week (Thursday through Saturday) through September 30, or until the combined subquotas for the areas described in paragraphs (d)(2)(v) and (vi) of this section totaling 102,193 lb (46.4 mt) are estimated to have been taken and the area is closed by the Commission, whichever is earlier.

(B) The daily bag limit is two halibut, one with a minimum overall size limit of 32 in (81.3 cm) and the second with a minimum overall size limit of 50 in (127.0 cm).

(vi) In the area off Oregon between the Siuslaw River and the California border (42°00′00″ N. lat.), the subquota for landings into ports in this area is 7,499 lb (3.4 mt).

(A) The fishing seasons are:

(*1*) Commencing May 4 and continuing 3 days a week (Thursday through Saturday) until 5,999 lb (2.7 mt) are estimated to have been taken and the season is closed by the Commission;

(*2*) Commencing the day following the closure of the season in paragraph (d)(2)(vi)(A)(*1*) of this section, and continuing every day through August 2, in the area inside the 30-fathom (55 m) curve nearest to the coastline as plotted on National Ocean Service charts numbered 18520, 18580, and 18600, or until a total of 1,500 lb (0.7 mt) or the area subquota is estimated to have been taken (except that any poundage remaining unharvested after the earlier season will be added to this season) and the season is closed by the Commission, whichever is earlier; and

(*3*) Commencing August 3 and continuing 3 days a week (Thursday through Saturday) through September 30, or until the combined subquotas for the areas described in paragraphs (d)(2)(v) and (vi) of this section totaling 102,193 lb (46.4 mt) are estimated to have been taken and the area is closed by the Commission, whichever is earlier.

(B) The daily bag limit is two halibut, one with a minimum overall size limit of 32 in (81.3 cm) and the second with a minimum overall size limit of 50 in (127.0 cm).

(vii) In the area off the California coast, there is no subquota. This area is managed on a season that is projected to result in a catch of less than 2,785 lb (1.3 mt).

(A) The fishing season will commence on May 1, and continue every day through September 30.

(B) The daily bag limit is one halibut with a minimum overall size limit of 32 in (81.3 cm).

(3) *Flexible inseason management provisions in Area 2A.*

(i) The Regional Director, NMFS Northwest Region, after consultation with the Chairman of the Pacific Fishery Management Council, the Commission Executive Director, and the Fisheries Director(s) of the affected state(s), is authorized to modify regulations during the season after determining that such action:

(A) Is necessary to allow allocation objectives to be met; and

(B) Will not result in exceeding the catch limit established preseason for each area.

(ii) Flexible inseason management provisions include, but are not limited to, the following:

(A) Modification of sport fishing periods;

(B) Modification of sport fishing bag limits;

(C) Modification of sport fishing size limits; and

(D) Modification of sport fishing days per calendar week.

(iii) *Notice procedures.* (A) Actions taken under paragraph (d)(3) of this section will be published in the **Federal Register**.

(B) Actual notice of inseason management actions will be provided by a telephone hotline administered by the Northwest Region, NMFS, at 800–662–9825 (May through September) and by U.S. Coast Guard broadcasts. These broadcasts are announced on Channel 16 VHF–FM and 2182 kHz at frequent intervals. The announcements designate the channel or frequency over which the notice to mariners will be immediately broadcast. Since provisions of these regulations may be altered by inseason actions, sport fishermen should monitor either the telephone hotline or U.S. Coast Guard broadcasts for current information for the area in which they are fishing.

(iv) *Effective dates.* (A) Any action issued under paragraph (d)(3)(iii) of this section is effective on the date specified in the publication or at the time that the action is filed for public inspection with the Office of the Federal Register, whichever is later.

(B) If time allows, NMFS will invite public comment prior to the effective date of any inseason action filed with the Federal Register. If the Regional Director determines, for good cause, that an inseason action must be filed without affording a prior opportunity for public comment, public comments will be received for a period of 15 days after of the action in the **Federal Register**.

(C) Any inseason action issued under paragraph (d)(3) of this section will remain in effect until the stated expiration date or until rescinded, modified, or superseded. However, no inseason action has any effect beyond the end of the calendar year in which it is issued.

(v) *Availability of data.* The Regional Director will compile, in aggregate form, all data and other information relevant to the action being taken and will make them available for public review during normal office hours at the Northwest Regional Office, NMFS, Fisheries Management Division, 7600 Sand Point Way NE, Seattle, WA.

(4) The Commission shall determine and announce closing dates to the public for any area in which the subquotas under paragraph (d)(2) of this section are estimated to have been taken.

(5) When the Commission has determined that a subquota under paragraph (d)(2) of this section is estimated to have been taken, and has announced a date on which the season will close, no person shall sport fish for halibut in that area after that date for the rest of the year, unless a reopening of that area for sport halibut fishing is scheduled under paragraph (d)(2) or (d)(3) of this section, or announced by the Commission.

(e) Any minimum overall size limit in this section shall be measured in a straight line passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail.

(f) No person shall fillet, mutilate, or otherwise disfigure a halibut in any manner that prevents the determination of minimum size or the number of fish caught, possessed, or landed.

(g) The possession limit for halibut in the waters off the coast of Alaska is two daily bag limits.

(h) The possession limit for halibut in the waters off British Columbia, Washington, Oregon, and California is the same as the daily bag limit.

(i) The possession limit for halibut on land in Area 2A north of Cape Falcon, OR is two daily bag limits.

(j) The possession limit for halibut on land in Area 2A south of Cape Falcon, OR is one daily bag limit.

(k) Any halibut brought on board a vessel and not immediately returned to the sea with a minimum of injury will be included in the daily bag limit of the person catching the halibut.

(l) No person shall be in possession of halibut on a vessel while fishing in a closed area.

(m) No halibut caught by sport fishing shall be offered for sale, sold, traded, or bartered.

(n) No halibut caught in sport fishing shall be possessed on board a vessel when other fish or shellfish on board

the said vessel are destined for commercial use, sale, trade, or barter.

(o) The operator of a charter vessel shall be liable for any violations of this part committed by a passenger aboard said vessel.

§ 301.22 Fishery election in Area 2A.

(a) A vessel that fishes in Area 2A may participate in only one of the following three fisheries in Area 2A:

(1) The recreational fishery under § 301.21;

(2) The commercial directed fishery for halibut during the fishing period(s) established in § 301.7(b); or

(3) The incidental catch fishery during the salmon troll fishery as authorized in § 301.7(c).

(b) No person shall fish for halibut in the recreational fishery in Area 2A under § 301.21 from a vessel that has been used during the same calendar year for commercial halibut fishing in Area 2A or that has been issued a permit for the same calendar year for the commercial halibut fishery in Area 2A.

(c) No person shall fish for halibut in the directed halibut fishery in Area 2A during the fishing periods established in § 301.7(b) from a vessel that has been used during the same calendar year for the incidental catch fishery during the salmon troll fishery as authorized in § 301.7(c).

(d) No person shall fish for halibut in the directed commercial halibut fishery in Area 2A from a vessel that, during the same calendar year, has been used in the recreational halibut fishery in Area 2A or that is licensed for the recreational halibut fishery in Area 2A.

(e) No person shall retain halibut in the salmon troll fishery in Area 2A as authorized under § 301.7(c) taken on a vessel that, during the same calendar year, has been used in the recreational halibut fishery in Area 2A, or that is licensed for the recreational halibut fishery in Area 2A.

(f) No person shall retain halibut in the salmon troll fishery in Area 2A as authorized under § 301.7(c) taken on a vessel that, during the same calendar year, has been used in the directed commercial fishery during the fishing periods established in § 301.7(b) for Area 2A or that is licensed to participate in the directed commercial fishery during the fishing periods established in § 301.7(b) in Area 2A.

§ 301.23 Catch sharing plan for Area 2A.

(a) This Plan constitutes a framework that shall be applied to the annual Area 2A total allowable catch (TAC) approved by the Commission each January. The framework shall be implemented in both Commission regulations and domestic regulations (implemented by NMFS) as published in the **Federal Register** as rulemaking in §§ 301.1 through 301.22.

(b) This Plan allocates 35 percent of the Area 2A TAC to U.S. treaty Indian tribes in the State of Washington in subarea 2A–1, and 65 percent to non-Indian fisheries in Area 2A. The allocation to non-Indian fisheries is divided into three shares, with the Washington sport fishery (north of the Columbia River) receiving 36.6 percent, the Oregon/California sport fishery receiving 31.7 percent, and the commercial fishery receiving 31.7 percent. The sport fishery in the Columbia River area (Leadbetter Point to Cape Falcon) will receive 2 percent of the Washington sport allocation plus 2 percent of the Oregon/California sport allocation. The California sport fishery is allocated 2.6 percent of the Oregon/California sport allocation. These allocations may be changed if new information becomes available that indicates a change is necessary and/or the Pacific Fishery Management Council takes action to reconsider its allocation recommendations. Such changes will be made after appropriate rulemaking is completed and published in the **Federal Register**.

(c) The allocations in this Plan are distributed as subquotas to ensure that any overage or underage by any one group will not affect achievement of an allocation set aside for another group. The specific allocative measures in the treaty Indian, non-Indian commercial, and non-Indian sport fisheries in Area 2A are described in paragraphs (d) through (f) of this section.

(d) Thirty-five percent of the Area 2A TAC is allocated to 12 treaty Indian tribes in subarea 2A–1, which includes that portion of Area 2A north of Point Chehalis, WA (46°53′18″ N. lat.) and east of 125°44′00″ W. long. The treaty Indian allocation is to provide for a tribal commercial fishery and a ceremonial and subsistence fishery. These two fisheries are managed separately; any overages in the commercial fishery do not affect the ceremonial and subsistence fishery. The commercial fishery is managed to achieve an established subquota, while the ceremonial and subsistence fishery is managed for a year-round season. The tribes will estimate the ceremonial and subsistence harvest expectations in January of each year, and the remainder of the allocation will be for the tribal commercial fishery.

(1) The tribal ceremonial and subsistence fishery begins on January 1 and continues through December 31. No size or bag limits will apply to the ceremonial and subsistence fishery, except that when the tribal commercial fishery is closed, treaty Indians may take and retain not more than two halibut per day per person. Halibut taken for ceremonial and subsistence purposes may not be offered for sale or sold.

(2) The tribal commercial fishery begins between March 1 and April 1 and continues through November 15 or until the tribal commercial subquota is taken, whichever is earlier. Any halibut sold by treaty Indians during the commercial fishing season must comply with Commission regulations on size limits for the non Indian fishery.

(e) The non-Indian commercial fishery is allocated 20.6 percent of the Area 2A TAC. The commercial fishery is divided into two components: A directed fishery targeting on halibut, and an incidental catch fishery during the salmon troll fisheries off Washington, Oregon, and California.

(1) *Incidental halibut catch in the salmon troll fishery*. Fifteen percent of the non-Indian commercial fishery allocation is allocated to the salmon troll fishery in Area 2A as an incidental catch during the May through June salmon fisheries. The subquota for this incidental catch fishery is 3.1 percent of the Area 2A TAC. One halibut (in compliance with the Commission minimum size limit of 32 in (81.3 cm)) may be landed for each 25 chinook landed by a salmon troller. A salmon troller must have 25 chinook on board before retaining a halibut. NMFS may adjust this ratio preseason, after the halibut and chinook quotas are established. NMFS will publish adjustments to the ratio annually in the **Federal Register**, along with the salmon management measures. A salmon troller may participate in this fishery or in the directed commercial fishery targeting halibut, but not in both. Any poundage remaining in the subquota for this fishery after the May through June salmon troll season will be made available inseason to the directed halibut fishery. If the Commission determines that poundage remaining in the subquota for the directed fishery is insufficient to allow an additional day of directed halibut fishing, the remaining directed harvest subquota will be made available inseason for the fall salmon troll fisheries.

(2) *Directed fishery targeting halibut*. Eighty-five percent of the non-Indian commercial fishery allocation is allocated to the directed fishery targeting halibut (e.g., longline fishery) in southern Washington, Oregon, and California. The subquota for this directed catch fishery is 17.5 percent of

the Area 2A TAC. This fishery is confined to the area south of Subarea 2A–1 (south of Point Chehalis, WA; 46°53′18″ N. lat.). The commercial fishery opening date(s), duration, and vessel trip limits for this fishery, as necessary to ensure that the subquota for this fishery is not exceeded, will be determined by the Commission and implemented in Commission regulations. If the Commission determines that poundage remaining in the subquota for this fishery is insufficient to allow an additional day of directed halibut fishing, the remaining subquota will be made available for incidental catch of halibut in the fall salmon troll fisheries.

(3) *Commercial license restrictions/declarations.* Commercial fishers must obtain a license to fish for halibut in Area 2A by May 1 of each year. Commercial fishers must choose either to operate in the directed commercial fishery in Area 2A, or to retain halibut caught incidentally during the salmon troll fishery. Fishing vessels that are issued Commission licenses to fish commercially in Area 2A are prohibited from obtaining a Commission charterboat license for Area 2A. Sport fishing for halibut in Area 2A is prohibited from a vessel licensed to fish commercially for halibut in Area 2A.

(f) *Sport fisheries.* The non-Indian sport fisheries are allocated 68.3 percent of the non-Indian share, which is 44.4 percent of the Area 2A TAC. The Washington sport fishery (north of the Columbia River) is allocated 53.6 percent of the non-Indian sport allocation and Oregon/California is allocated 46.4 percent. The allocations are further subdivided as subquotas among seven geographic subareas as described in paragraph (f)(1) of this section.

(1) *Subarea management.* The sport fishery is divided into seven sport fishery subareas, each having separate allocations and management measures as follows.

(i) *Washington inside waters subarea.* This sport fishery subarea is allocated 28.0 percent of the Washington sport allocation, which equals 6.66 percent of the Area 2A TAC. This subarea is defined as all U.S. waters east of the Bonilla-Tatoosh line, defined as follows: From Bonilla Point (48°35′44″ N. lat., 124°43′00″ W. long.) to the buoy adjacent to Duntze Rock (48°24′55″ N. lat., 124°44′50″ W. long.) to Tatoosh Island lighthouse (48°23′30″ N. lat., 124°44′00″ W. long.) to Cape Flattery (48°22′55″ N. lat., 124°43′42″ W. long.), including Puget Sound. The structuring objective for this subarea is to provide a stable sport fishing opportunity and maximize the season length. Due to inability to monitor the catch in this area inseason, a fixed season will be established preseason based on projected catch per day and number of days to achievement of the subquota. No inseason adjustments will be made, and estimates of actual catch will be made postseason. The fishery opens on either May 18 or May 25 and continues at least through July 4, until a date established preseason when the subquota is predicted to be taken, or until September 30, whichever is earlier. If May 18 or May 25 fall on a Tuesday or Wednesday, the fishery will open on the following Thursday. The season opens for 5 days per week (closed on Tuesdays and Wednesdays). The daily bag limit is one fish per person, with no size limit.

(ii) *Washington north coast subarea.* This sport fishery subarea is allocated 57.7 percent of the Washington sport allocation, which equals 13.73 percent of the Area 2A TAC. This subarea is defined as all U.S. waters west of the Bonilla-Tatoosh line, as defined in paragraph (f)(1)(i) of this section, and north of the Queets River (47°31′42″ N. lat.). The structuring objective for this subarea is to maximize the season length for viable fishing opportunity and, if possible, stagger the seasons to spread out this opportunity to anglers who utilize these remote grounds. The fishery opens on May 1, and continues 5 days per week (closed on Sundays and Mondays). If May 1 falls on a Sunday or Monday, the fishery will open on the following Tuesday. The highest priority is for the season to last through the month of May. If sufficient quota remains, the second priority is to establish a fishery that will be open July 1, through at least July 4. If the preseason prediction indicates that these two goals can be met without utilizing the quota for this subarea, the next priority is to open the May fishery 7 days per week and extend it into June as long as possible. No sport fishing for halibut is allowed after September 30. The daily bag limit in all fisheries is one halibut per person with no size limit. A closure to sport fishing for halibut will be established in an area that is approximately 19.5 nm (36.1 km) southwest of Cape Flattery. The size of this closed area may be modified preseason by NMFS to maximize the season length. The closed area is defined as the area within a rectangle defined by these four corners: 48°17′00″ N. lat., 125°10′00″ W. long.; 48°17′00″ N. lat., 125°00′00″ W. long.; 48°05′00″ N. lat., 125°10′00″ W. long.; and, 48°05′00″ N. lat., 125°00′00″ W. long.

(iii) *Washington south coast subarea.* This sport fishery subarea is allocated 12.3 percent of the Washington sport allocation, which equals 2.93 percent of the Area 2A TAC. This subarea is defined as waters south of the Queets River (47°31′42″ N. lat.) and north of Leadbetter Point (46°38′10″ N. lat.). The structuring objective for this subarea is to maximize the season length, while providing for a limited halibut fishery. The fishery opens on May 1, for 7 days per week until the subquota is estimated to have been taken, or September 30, whichever is earlier. The daily bag limit is one halibut per person, with no size limit. Sport fishing for halibut is prohibited in the area south of the Queets River (47°31′42″ N. lat.), west of 124°40′00″ W. long. and north of 47°10′00″ N. lat. This closure may be removed through inseason action by NMFS under § 301.21(d)(3) after September 1, for 1 day each week on Tuesday only, if NMFS determines that sufficient subarea quota remains to allow for 1 day of fishing without geographic restriction.

(iv) *Columbia River subarea.* This sport fishery subarea is allocated 2.0 percent of the Washington sport allocation plus 2.0 percent of the Oregon/California sport allocation, which combined equals 0.89 percent of the Area 2A TAC. This subarea is defined as waters south of Leadbetter Point, WA (46°38′10″ N. lat.) and north of Cape Falcon, OR (45°46′00″ N. lat.). The structuring objective for this subarea is to provide for a non-directed halibut sport fishery of not more than 5 months duration out of the Columbia River ports. The fishery will open on May 1, and continue 7 days per week until the subquota is estimated to have been taken, or September 30, whichever is earlier. The daily bag limit is one halibut per person, with a 32-in (81.3 cm) minimum size.

(v) *Oregon central coast subarea (applicable through December 31, 1995).* If the Area 2A TAC is 388,350 lb (176.2 mt) and above, this subarea extends from Cape Falcon to the Siuslaw River at the Florence north jetty (44°01′08″ N. lat.) and is allocated 88.4 percent of the Oregon/California sport allocation, which is 18.21 percent of the Area 2A TAC. If the Area 2A TAC is below 388,350 lb (176.2 mt), this sport fishery subarea extends from Cape Falcon to the California border and is allocated 95.4 percent of the Oregon/California sport allocation. The structuring objectives for this subarea are to provide one or two periods of fishing opportunity in productive deeper water areas along the coast, principally for charter and larger private boat anglers, and provide a period of fishing opportunity in nearshore waters in June and July,

especially for small boat anglers. Any poundage remaining in this subarea quota from earlier seasons will be added to the last season in this subarea. This subarea has three seasons as set out in paragraphs (f)(2)(v) (A) through (C) of this section. The daily bag limit for all seasons is two halibut per person, one with a minimum 32-in (81.3 cm) size limit and the second with a minimum 50-in (127.0 cm) size limit.

(A) The first season is an all-depth fishery that begins on May 4, and continues 3 days per week (Thursday through Saturday) until 71.5 percent of the subarea quota is taken.

(B) The second season opens the day following closure of the first season, only in waters inside the 30-fathom (55 m) curve, and continues every day until 3.5 percent of the subarea quota is taken, or August 2, whichever is earlier.

(C) The last season begins on August 3, with no depth restrictions, and continues 3 days per week (Thursday through Saturday), until the combined Oregon subarea quotas south of Falcon are estimated to have been taken, or September 30, whichever is earlier.

(vi) *Oregon south coast subarea (applicable through December 31, 1995).* If the Area 2A TAC is 388,350 lb (176.2 mt) and above, this subarea extends from the Siuslaw River at the Florence north jetty (44°01′08″ N. lat.) to the California border (42°00′00″ N. lat.) and is allocated 7.0 percent of the Oregon/California sport allocation, which is 1.44 percent of the Area 2A TAC. If the Area 2A TAC is below 388,350 lb (176.2 mt), this subarea will be included in the Oregon Central sport fishery subarea. The structuring objective for this subarea is to create a south coast management zone designed to accommodate the needs of both charterboat and private boat anglers in this area where weather and bar crossing conditions very often do not allow scheduled fishing trips. This subarea has three seasons as set out in paragraphs (f)(2)(vi) (A) through (C) of this section. The daily bag limit for all seasons is two halibut per person, one with a minimum 32-in (81.3 cm) size limit and the second with a minimum 50-in (127.0 cm) size limit.

(A) The first season is an all-depth fishery that begins on May 4, and continues 3 days per week (Thursday through Saturday) until 80 percent of the subarea quota is taken.

(B) The second season opens the day following closure of the first season, only in waters inside the 30-fathom (55 m) curve, and continues every day until the subarea quota is estimated to have been taken, or August 2, whichever is earlier.

(C) The last season begins on August 3, with no depth restrictions, and continues 3 days per week (Thursday through Saturday), until the combined Oregon subarea quotas south of Falcon are estimated to have been taken, or September 30, whichever is earlier.

(vii) *California subarea.* This sport fishery subarea is allocated 2.6 percent of the Oregon/California subquota, which is 0.54 percent of the Area 2A TAC. This area is defined as the area south of the California border (42°00′00″ N. lat.). The structuring objective for this subarea is to provide anglers in California the opportunity to fish in a continuous, fixed season that is open from May 1 through September 30. The daily bag limit is one halibut per person, with a minimum 32-in (81.3 cm) size limit. Due to inability to monitor the catch in this area inseason, a fixed season will be established preseason by NMFS based on projected catch per day and number of days to achievement of the subquota; no inseason adjustments will be made, and estimates of actual catch will be made post season.

(2) *Port of landing management.* All sport fishing in Area 2A (except for fish caught in the Washington north coast subarea and landed in Neah Bay) will be managed on a ''port of landing'' basis, whereby any halibut landed into a port will count toward the quota for the subarea in which that port is located, and the regulations governing the subarea of landing apply, regardless of the specific area of catch. The one exception is for halibut caught west of the Bonilla-Tatoosh line and landed in Neah Bay, which are counted against the Washington north coast subarea quota, and are governed by the regulations governing the Washington north coast subarea.

(3) *Possession limits.* The sport possession limit on land north of Cape Falcon, OR is two daily bag limits, regardless of condition, but only one daily bag limit may be possessed on the vessel. The possession limit on land south of Cape Falcon is the same as the bag limit.

(4) *Ban on sport vessels in the commercial fishery.* Vessels operating in the sport fishery for halibut in Area 2A are prohibited from operating in the commercial halibut fishery in Area 2A. Charterboat operators must choose, prior to May 1 of each year, whether they will obtain a charterboat license from the Commission or a commercial license, but cannot obtain both. Sport fishing for halibut in Area 2A is prohibited from a vessel licensed to fish commercially for halibut in Area 2A.

(g) *Procedures for implementation.* Each year, NMFS will publish a proposed rule with any regulatory modifications necessary to implement the Plan for the following year, with a request for public comments. The comment period will extend until after the Commission's annual meeting, so that the public will have the opportunity to consider the final Area 2A TAC before submitting comments. After the Area 2A TAC is known, and after NMFS reviews public comments, NMFS will implement final rules governing the sport fisheries. The final ratio of halibut to chinook to be allowed as incidental catch in the salmon troll fishery will be published with the annual salmon management measures. Inseason actions in the sport fisheries as stipulated in this Plan will be accomplished by NMFS in accordance with § 301.21(d)(3).

§ 301.24 Previous regulations superseded.

This part shall supersede all previous regulations of the Commission, and this part shall be effective each succeeding year until superseded by regulations, which will be published in the **Federal Register**.

BILLING CODE 3510–22–W

Figure 1 to Part 301—Map of Regulatory Areas

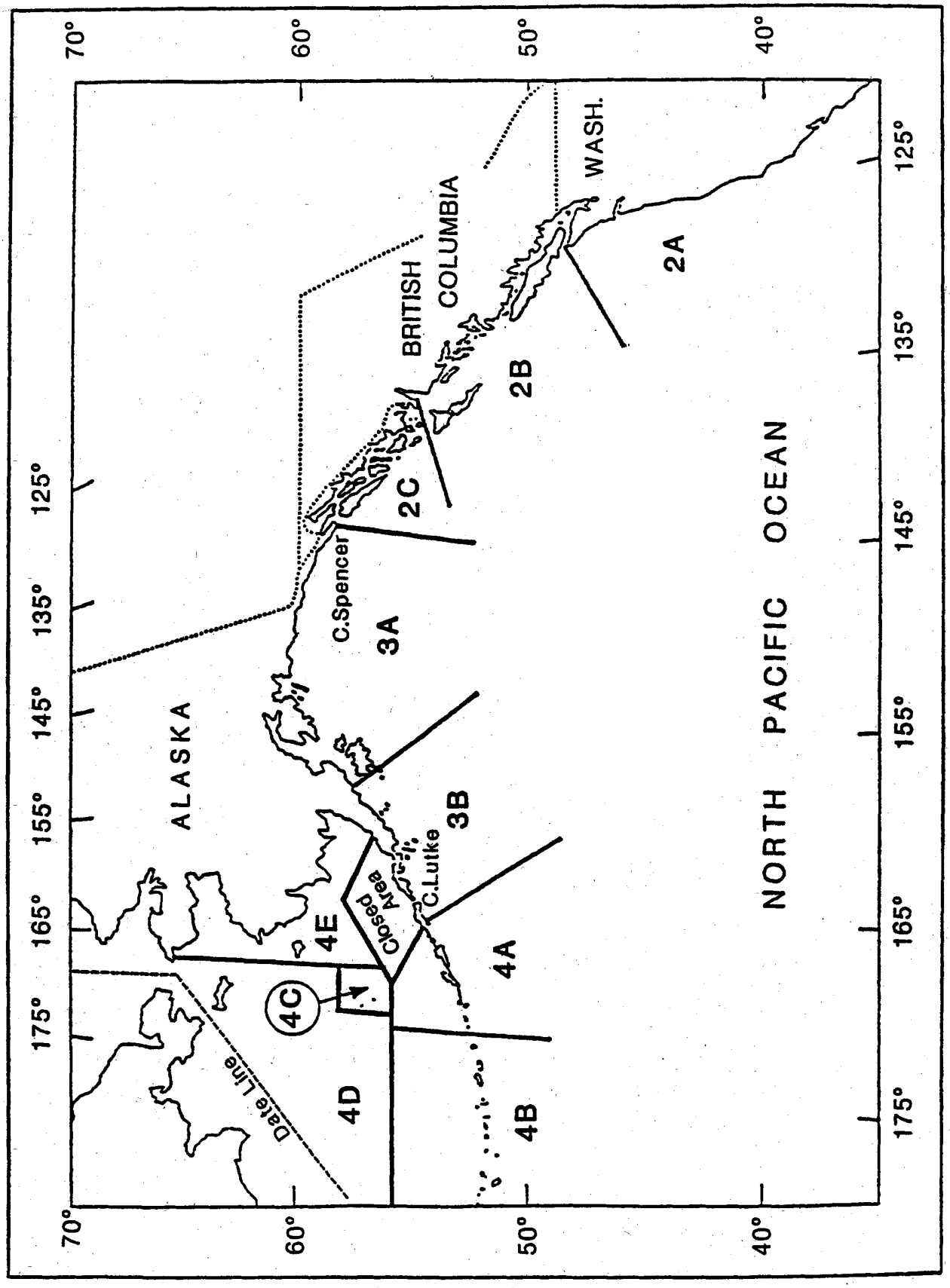
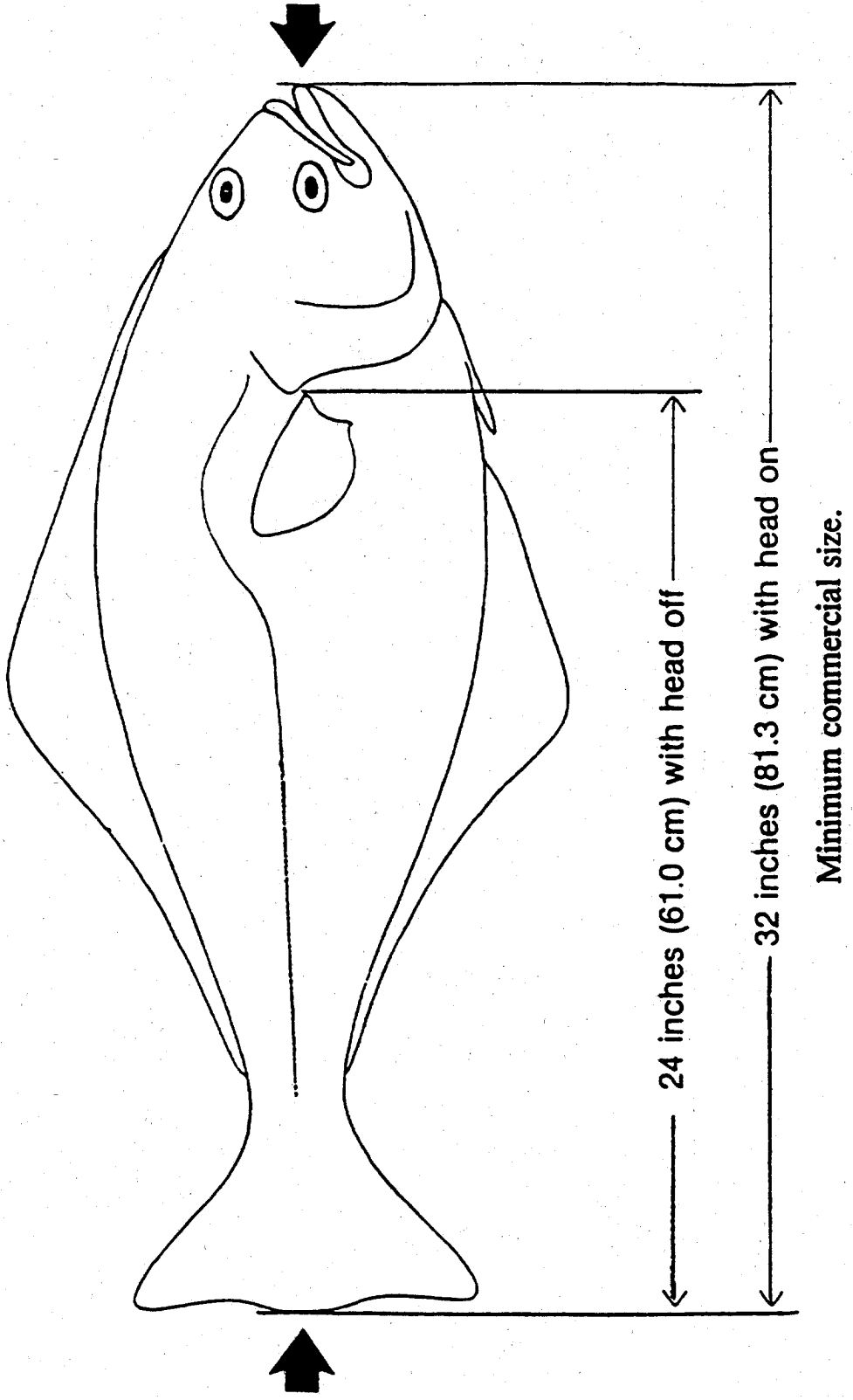


Figure 2 to Part 301—Halibut Size Limits



[FR Doc. 95–6667 Filed 3–14–95; 4:35 pm]
BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 60, No. 53
Monday, March 20, 1995

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

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 94–022E]

RIN 0583–AB86

Use of the Term ''Fresh'' on the Labeling of Raw Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule; extension of comment period; solicitation of comments.

SUMMARY: On January 17, 1995, the Food Safety and Inspection Service (FSIS) proposed to amend the Federal poultry products inspection regulations to prohibit the use of the term ''fresh'' on the labeling of raw poultry products whose internal temperature has ever been below 26° F. FSIS is extending the comment period on the proposal for 60 days in order to: Allow time for public review and comment on the findings of the Agriculture Research Service's (ARS) evaluation of the sensory, chemical, and physical properties of raw poultry products that have been exposed to and held at temperatures from 0° F to 40° F; allow the National Advisory Committee on Microbiological Criteria for Foods the opportunity to comment on the proposed rule; and solicit public comments on options for reconciling the FSIS proposal to require a ''previously frozen'' disclosure on product whose internal temperature has ever been below 26° F with existing FSIS regulations that require poultry labeled as ''frozen'' to have been chilled to an internal temperature of 0° F or below.

DATES: Comments must be received on or before May 19, 1995.

ADDRESSES: Submit written comments in triplicate to Diane Moore, Docket Clerk, Room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments should be directed to Mr. Charles R. Edwards, (202) 254–2565.

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, Area Code (202) 254–2565.

SUPPLEMENTARY INFORMATION: On January 17, 1995, FSIS published a proposed rule (60 FR 3454) to amend the Federal poultry products inspection regulations to prohibit the use of the term ''fresh'' on the labeling of raw poultry products whose internal temperature has ever been below 26° F. The proposal would require such poultry products to be labeled with a descriptive term reflecting the fact that the product had been ''previously frozen.'' The proposed action would help ensure that poultry products distributed to consumers are not labeled in a false or misleading manner and are not misbranded. Such action would also meet consumer expectations that the term ''fresh'' should not be applied to raw poultry products that have been subjected to processes that would cause such products to become chilled to temperatures below 26° F.

Interested persons were given until March 20, 1995, to submit comments on the proposed regulatory amendments. FSIS has received requests from two trade associations to extend the comment period for the proposed rule. The trade associations have requested that FSIS extend the comment period to allow the public time to obtain and review the findings of the Agricultural Research Service's (ARS) evaluation of the sensory, chemical, and physical properties of raw poultry products that have been exposed to and held at temperatures from 0° F to 40° F, with respect to their written comments on the proposed rule. The ARS report was not available for public review in the FSIS Docket Clerk's office at the time the ''fresh'' labeling proposal was published and, thus, its availability was not stated in the rulemaking docket. The report is now available for public review in the FSIS Docket Clerk's office, and FSIS concludes it is reasonable to allow additional time for interested parties to obtain, review, and comment on it.

Further, FSIS has previously stated its intention to seek comments from the National Advisory Committee on Microbiological Criteria for Foods on the Agency's conclusion stated in the preamble to the proposed rule that ''there should be no increased microbiological safety risks associated with the growth of pathogenic microorganisms,'' by changing the labeling definition for ''fresh'' poultry. The next meeting of the Committee will be held in mid-April and, thus, an extension of the comment period is necessary to allow the Committee's views to be received within the comment period.

Finally, in this notice, FSIS is soliciting comments on options for reconciling the element of its ''fresh'' labeling proposal that would require product whose internal temperature has ever been below 26° F to bear a ''previously frozen'' disclosure with existing FSIS regulations (9 CFR 381.129(b)(3) and 381.66(f)(2)) that require poultry labeled as ''frozen'' to have been chilled to an internal temperature of 0° F or below. Under the proposal, product chilled to an internal temperature of 0° F or below could be labeled as ''frozen'' or ''previously frozen,'' as the case may be.

FSIS has received a comment noting the conflict between the proposal and the existing regulatory definition of ''frozen.'' FSIS is aware that the products directly affected by its ''fresh'' labeling proposal, which are frequently frozen to temperatures in the range of 20° F to 25° F and sold in a thawed state have different attributes than product frozen to an internal temperature of 0° F or below. The product chilled to temperatures in the range of 20° F to 25° F is hard-to-the-touch and thus ''frozen'' in common consumer parlance, even though only about 80 percent of the water in that product is frozen. Further, although the product exhibits a longer shelf life than product held at higher temperatures, e.g., 28° F to 32° F, the product will spoil in several weeks. In the product frozen to 0° F or below, over 99 percent of the water in the product is in a frozen state, microbial growth is stopped, and the product can last a year or more, depending on packaging and storage temperature, without discernable quality changes. The purpose of the existing definition of ''frozen'' is to ensure that poultry products labeled simply as ''frozen'' would be suitable for long-term storage and subsequent use. The terms

''frozen,'' as currently defined in FSIS regulations, and ''previously frozen,'' as proposed by FSIS for use on poultry products held below 26° F and subsequently sold in a thawed state, both would provide truthful and useful information to consumers. FSIS is concerned that the existence of two definitions which make use of the word ''frozen'' could be confusing to industry and consumers. FSIS believes that the existing definition and the Agency's proposed use of the term ''previously frozen'' need to be reconciled. The Agency invites comments on how this can be accomplished. FSIS has identified three possible options as follows:

a. Use a term or phrase other than ''previously frozen'' to identify products in the temperature range from above 0° F to below 26° F. In its proposed rule, FSIS requested comments on other descriptive terms to describe the nature of the product. However, as of this time, no satisfactory substitute terms have been suggested. FSIS has identified other possible terms that do not use the unqualified word ''frozen.'' Such terms include: ''previously semi-frozen,'' ''held semi-frozen,'' ''previously partially frozen,'' ''previously chilled to semi-solid state,'' ''shipped/stored/handled semi-frozen (insert optional statement, e.g., to preserve quality),'' or ''previously frosted.'' FSIS continues to be interested in receiving comments on alternate terms including those that do not contain the unqualified word ''frozen.''

b. Eliminate the current requirement that poultry products labeled as ''frozen'' must be brought to an internal temperature of 0° F or below and require use of the term ''frozen'' to identify all poultry products whose internal temperature has ever been below 26° F. This option would eliminate any confusion that might be caused by having more than one temperature associated with products whose labels make use of the word ''frozen,'' and satisfy the need to label appropriately all products that have been chilled to the point where they are hard-to-the-touch. Such action would in no way prevent manufacturers from continuing current practices regarding freezing to 0° F for long-term storage or from making supportable claims about the storage life or appropriate ''use by'' date for their products. However, such action might require adjustment in government and industry purchasing standards, codes of practice, or product specifications that evolved from the current freezing regulations. FSIS does not believe that elimination of the 0° F requirement for labeling a product ''frozen'' would pose a safety concern. However, purchasers who expect that a product was frozen for long-term preservation based on use of the term ''frozen'' on the labeling might be misled in the absence of explanatory labeling, if the shelf life and quality differs from products frozen to 0° F or below because the product was not actually brought to such low temperatures.

c. Use the proposed term ''previously frozen'' on labeling of products with internal temperatures above 0° F and below 26° F but require use of a term other than ''frozen'' or ''previously frozen'' on the labeling of products that are frozen to 0° F or below. The latter products could be labeled with a phrase such as ''frozen for long-term preservation'' in order to distinguish them clearly from chill pack products whose temperatures were at one time in the lower 20-degree Fahrenheit range. This labeling option differentiates the two types of frozen products so that the product labeled ''previously frozen'' would not be confused with the deep-frozen product. The descriptive term for the 0° F product reflects the purpose of the processing procedure and can be linked to the special qualities associated with these products.

FSIS is interested in receiving comments on these options and any others that would appropriately reconcile the existing definition of ''frozen'' and the proposed use of the term ''previously frozen.''

For all these reasons, FSIS is extending the comment period on its ''fresh'' labeling proposal for 60 days. The comment period will close May 19, 1995.

Done at Washington, DC, on: March 15, 1995.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 95–6817 Filed 3–17–95; 8:45 am]

BILLING CODE 3410–DM–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AE97

Shutdown Operation of Nuclear Power Plants; Notice of Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: Members of the staff of the Office of Nuclear Reactor Regulation will meet with commenters (or their representatives) who responded to **Federal Register**, 59 FR 52707; October 19, 1994, regarding the proposed rule ''Shutdown and Low-Power Operations for Nuclear Power Reactors.'' The staff will discuss comments and receive feedback on the impact of potential staff responses regarding the proposed rule. The meeting will be open for interested members of the public, petitioners, intervenors, or other parties to attend as observers pursuant to ''Open Meeting Statement of NCR Staff Policy,'' 43 FR 28058, June 28, 1978.

DATES: The meeting will be Friday, April 7, 1995 from 9 a.m.–3 p.m.

ADDRESSES: The meeting will be held at the United States Nuclear Regulatory Commission Auditorium, Two White Flint North, 11545 Rockville Pike, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Warren C. Lyon, Senior Reactor Systems Engineer, Reactor Systems Branch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–3892.

SUPPLEMENTARY INFORMATION: The preliminary agenda for the proposed meeting is:

9:00—Introduction (Purpose of shutdown rule, Applicability/limitations)

9:15—Summary of Comments to Proposed Rule 59 FR 52707; October 19, 1994

9:30—Staff Decisions (Shutdown rule, Maintenance Rule, Codification of industry initiatives, Fire, Technical specifications, Outage plans and controls, Fuel storage pool, Safety related vs. non-safety related, Single failure, Regulatory analysis, Regulatory guide, Re notice in **Federal Register**)

10:15—Items Covered By Rule (General content of rule and philosophy; Structures, systems, and components; Reliability and redundancy; Planning; Procedures; Training; Controls; Reactivity; Reactor coolant system; Subcooled decay heat removal; Containment; Adequate core cooling; Contingency plan; Implementation)

13:15—Discussion—Issues (Maintenance rule—guidance for shutdown operation; The meaning of redundancy [Credit for passive heat removal, gravity feed, & operator response; Electrical power systems]; Containment; Analysis and test needs; Others)

Dated at Rockville, Maryland this 15 day of March 1995.

For the Nuclear Regulatory Commission.

Warren C. Lyon,

Senior Reactor Systems Engineer, Reactor Systems Branch, Office of Nuclear Reactor Regulation.

[FR Doc. 95–6735 Filed 3–17–95; 8:45 am]

BILLING CODE 7590–01–M

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10 CFR Parts 170 and 171

RIN 3150–AF07

Revision of Fee Schedules; 100% Fee Recovery, FY 1995

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend the licensing, inspection, and annual fees charged to its applicants and licensees. The proposed amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990, which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year (FY) 1995 less amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 1995 is approximately $503.6 million.

DATES: The comment period expires April 19, 1995. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered. Because Public Law 101–508 requires that NRC collect the FY 1995 fees by September 30, 1995, requests for extensions of the comment period will not be granted.

ADDRESSES: Submit written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone 301–415–1678).

The agency workpapers that support these proposed changes to 10 CFR Parts 170 and 171 may be examined at the NRC Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: C. James Holloway, Jr., Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301–415–6213.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Proposed Action.
III. Section-by-Section Analysis.
IV. Environmental Impact: Categorical Exclusion.
V. Paperwork Reduction Act Statement.
VI. Regulatory Analysis.
VII. Regulatory Flexibility Analysis.
VIII. Backfit Analysis.

I. Background

Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), enacted November 5, 1990, requires that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the Department of Energy (DOE) administered NWF, for FYs 1991 through 1995 by assessing fees. OBRA–90 was amended in 1993 to extend the NRC's 100 percent fee recovery requirement through 1998.

The NRC assesses two types of fees to recover its budget authority. First, license and inspection fees, established in 10 CFR part 170 under the authority of the Independent Offices Appropriation Act (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing individually identifiable services to specific applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for the issuance of new licenses or approvals, and amendments to or renewal of licenses or approvals. Second, annual fees, established in 10 CFR part 171 under the authority of OBRA–90, recover generic and other regulatory costs not recovered through 10 CFR part 170 fees.

Subsequent to enactment of OBRA–90, the NRC published seven final fee rules after evaluation of public comments. On July 10, 1991 (56 FR 31472), the NRC published a final rule in the **Federal Register** that established the Part 170 professional hourly rate and the materials licensing and inspection fees, as well as the Part 171 annual fees, to be assessed to recover approximately 100 percent of the FY 1991 budget. In addition to establishing the FY 1991 fees, the final rule established the underlying basis and methodology for determining both the 10 CFR part 170 hourly rate and fees and the 10 CFR part 171 annual fees. The FY 1991 rule was challenged in Federal court by several parties. The U.S. Court of Appeals for the District of Columbia Circuit rendered its decision on those challenges on March 16, 1993, in *Allied-Signal v. NRC,* remanding two issues to the NRC for further consideration (988 F.2d 146 (D.C. Cir. 1993)). The court decision was also extended to cover the FY 1992 fee rule by court order dated April 30, 1993.

On April 17, 1992 (57 FR 13625), the NRC published in the **Federal Register** two limited changes to 10 CFR parts 170 and 171. The limited changes became effective May 18, 1992. The limited change to 10 CFR part 170 allowed the NRC to bill quarterly for those license fees that were previously billed every six months. The limited change to 10 CFR part 171 lowered in some cases the maximum annual fee of $1,800 assessed a materials licensee who qualifies as a small entity under the NRC's size standards. A lower tier small entity fee of $400 per licensed category was established for small business and non-profit organizations with gross annual receipts of less than $250,000 and small governmental jurisdictions with a population of less than 20,000.

On July 23, 1992 (57 FR 32691), July 20, 1993 (58 FR 38666), and July 20, 1994 (59 FR 36895), the NRC published final rules in the **Federal Register** that established the licensing, inspection, and annual fees necessary for the NRC to recover approximately 100 percent of its budget authority for FY 1992, FY 1993, and FY 1994 respectively. The basic methodology used in the FY 1992 and FY 1993 final rules was unchanged from that used to calculate the 10 CFR part 170 professional hourly rate, the specific materials licensing and inspection fees in 10 CFR Part 170, and the 10 CFR Part 171 annual fees in the final rule published July 10, 1991 (56 FR 31472). In FY 1994, the NRC directly assigned additional effort to the reactor and materials programs for the Office of Investigations, the Office of Enforcement, the Advisory Committee on Reactor Safeguards, and the Advisory Committee on Nuclear Waste. Resources for these activities had previously been included in overhead, but were assigned directly to the class of licensees that they support. Because this direct assignment resulted in a reduction of overhead costs allocated to each FTE, the cost per full time equivalent (FTE) was about 3 percent less than it would have been without the additional direct assignment.

The methodology for assessing low-level waste (LLW) costs was changed in FY 1993 in response to the *AlliedSignal* v. *NRC* judicial decision mentioned earlier. This change was explained in detail in the FY 1993 final rule published July 20, 1993 (58 FR 38669–72). In brief, the NRC created two groups—large waste generators and small waste generators. Licensees within each group are charged a uniform fee. On May 19, 1994 (59 FR 26097), the NRC amended its fee regulations in 10 CFR Part 171 to establish revised FY 1991 and FY 1992

surcharges for NRC licensees based on this revised method.

On March 17, 1994 (59 FR 12539), the NRC reinstated the annual fee exemption for nonprofit educational institutions after notice and comment. This exemption was also included in the FY 1994 final rule. In response to the March 16, 1993, judicial decision, the exemption had been eliminated in the final rule published by NRC on July 20, 1993 (58 FR 38666).

The American College of Nuclear Physicians and the Society of Nuclear Medicine filed a Petition for Rulemaking which included a request that the Commission exempt medical licensees from fees for services provided in nonprofit institutions. The Commission denied that request on March 17, 1994 (59 FR 12555).

II. Proposed Action

The NRC is proposing to amend its licensing, inspection, and annual fees to recover approximately 100 percent of its FY 1995 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF. For FY 1995, the NRC's budget authority is $525.6 million of which approximately $22.0 million has been appropriated from the NWF. Therefore, OBRA–90 requires that the NRC collect approximately $503.6 million in FY 1995 through 10 CFR Part 170 licensing and inspection fees and 10 CFR part 171 annual fees. This amount to be recovered for FY 1995 is about $9.4 million less than the total amount to be recovered for FY 1994 and $15.3 million less when compared to the amount to be recovered for FY 1993. The NRC estimates that approximately $137.7 million will be recovered in FY 1995 from the fees assessed under 10 CFR Part 170. The remaining $365.9 million will be recovered through the 10 CFR Part 171 annual fees established for FY 1995.

Recognizing that OBRA–90 may have resulted in certain fees that were unfair or inequitable, Congress in Section 2903(c), of the Energy Policy Act of 1992 (EPA–92), directed the NRC to review its annual fee policy, solicit public comment on the need for changes to this policy, and recommend to the Congress any changes to existing law needed to prevent placing unfair burdens on NRC licensees. The NRC reviewed more than 500 public comments submitted in response to the request for comment published in the **Federal Register** on April 19, 1993 (58 FR 21116), and sent its report to Congress on February 23, 1994. A copy of this report has been placed in the Public Document Room. This report concluded that modifications to existing statutes governing NRC fees are necessary to alleviate licensees' major concerns about fairness and equity and to reduce the NRC administrative burden resulting from assessing fees. The report recommended enactment of legislation that would reduce the amount to be recovered from fees from 100 percent of the NRC budget to approximately 90 percent of the budget and eliminate the requirement that NRC assess 10 CFR part 170 fees.

In view of the fact that legislation has not been enacted to address licensees' fairness and equity concerns and the concern about the additional workload generated by 100 percent fee recovery, the Commission has reexamined its existing fee policies to determine whether they can be made more equitable. This reexamination was undertaken with the goal of addressing, within the limitations of the existing laws governing NRC fees, the concerns identified in the report to Congress and improving other features of the NRC fee program. Based on this reexamination, the NRC is proposing certain changes in 10 CFR part 170 and 171 to partially alleviate the identified concerns and improve the process of collecting NRC fees.

These proposed changes are summarized as follows and detailed in the following sections.

1. Change the method for allocating the budgeted costs that cause fairness and equity concerns. Approximately $56 million of NRC costs either do not directly benefit NRC licensees or provide benefits to non-NRC licensees. Currently, using three different methodologies, these costs have been allocated to classes of licensees. Approximately 50 percent of these costs were paid by power reactors. Under the proposed rule, these costs will instead be treated similar to overhead and distributed to each class of licensees based on the percent of the budget for that class. As a result, power reactors will pay a greater percentage of these costs.

2. Eliminate the materials selected inspection fees (i.e., flat fees and others with reasonable averages), hereinafter referred to as ''flat'' inspection fees in 10 CFR 170.31 and include the inspection costs with the annual materials fees in 10 CFR 171.16(d). These proposed actions would streamline the license fee process and provide more predictable fees.

3. Change the methodology for calculating the professional hourly rate to better align the budgeted costs with the major classes of licensees. Two professional staff-hour rates are proposed instead of a single rate.

4. Change the methodology for calculating annual fees for reactors, fuel facilities and uranium recovery licensees to make annual fees more closely reflect the cost of providing regulatory services to the classes and subclasses of licensees and to improve efficiency.

5. Modify NRC small entity and lower-tier size standards for annual fee purposes.

As a result of the reduced budget amount to be recovered for FY 1995 and these proposed changes, the annual fees for a large majority of the licensees would be reduced. The following provides illustrative examples of the changes in the annual fees.

	FY 1994 annual fee	Proposed FY 1995 annual fee
Class of Licensees:		
Power Reactors	$3,078,000	$2,967,000
Nonpower Reactors	62,200	56,500
High Enriched Fuel Facility	3,231,770	2,569,000
Low Enriched Fuel Facility	1,484,770	1,261,000
UF_6 Conversion	1,179,770	639,200
Uranium Mills	74,670	60,900
Typical Material Licenses:		
Radiographers	19,170	14,000
Well Loggers	12,870	8,100
Gauge Users	2,470	1,700
Broad Scope Medical	32,570	23,400

The NRC also notes that it plans to increase the use of reimbursable agreements to avoid including certain costs that do not benefit NRC licensees within the NRC budget. By doing this, the budget will be reduced and the fees lowered. The NRC plans to exclude funds for training, travel, and technical support to the Agreement States and for review of Department of Energy (DOE)/ Department of Defense (DOD) defense related projects from the NRC budget, beginning in FY 1997. This support would be provided to the Agreement States and DOE/DOD through reimbursable agreements, which would eliminate the need to recover the cost through fees assessed to NRC licensees. For FY 1995, these costs will continue to be recovered through fees. Because this change affects the budget and does not alter fee policies or methods, it falls outside the scope of this proposed rulemaking and the Commission is not soliciting comments on this policy change.

Although not a specific change in this rule, to help stabilize fees, beginning in FY 1996, the NRC proposes that the annual fees be adjusted only by the percent change in NRC's total budget. A base annual fee would be established in FY 1995 using current methodology modified by the changes in the final FY 1995 rule, and the percentage change (plus or minus) in the NRC total FY 1995 budget would be applied to all annual fees for the next four years (FY 1996–FY 1998 and FY 1999 if OBRA–90 is extended) unless there is a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licensees, in which case the annual fee base would be reestablished. The decision on whether to establish a new baseline would be made each year during budget formulation. For example, if the total NRC budget is reduced by 3 percent and the number of licenses and the amount estimated to be recovered under 10 CFR part 170 remains constant in a given fiscal year, then all annual fees would be reduced by approximately 3 percent. The NRC seeks comments on this approach in this rulemaking.

The Commission notes that, if, based on public comments, the Commission decides not to pursue some or all of these new proposed policies, then the respective current fee policies would be continued for FY 1995. Comments are also requested on whether the NRC should continue any or all of its current fee policies in lieu of the policies it proposes to change in this rule.

The NRC contemplates that any fees to be collected as a result of this proposed rule will be assessed on an expedited basis to ensure collection of the required fees by September 30, 1995, as stipulated in OBRA–90. Therefore, as in FYs 1991–1994 the fees, if adopted, will become effective 30 days after publication of the final rule in the **Federal Register**. The NRC will send a bill for the amount of the annual fee to the licensee or certificate, registration, or approval holder upon publication of the final rule. Payment will be due on the effective date of the FY 1995 rule.

The NRC will continue the proration of annual fees, established in FY 1994, in accordance with the provisions of Section 171.17. The annual fees for both reactor and material licensees are prorated based on (1) the date applications are filed during the FY to terminate a license or obtain a possession-only license (POL) and (2) the date new licenses are issued during the FY.

A. Amendments to 10 CFR Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services

The NRC proposes four amendments to Part 170. These amendments do not change the underlying basis for the regulation—that fees be assessed to applicants, persons, and licensees for specific identifiable services rendered. The proposed amendments also comply with the guidance in the Conference Committee Report on OBRA–90 that fees assessed under the Independent Offices Appropriation Act (IOAA) recover the full cost to the NRC of identifiable regulatory services each applicant or licensee receives.

First, the NRC is proposing to amend § 170.11 of the Commission's fee regulations to conform them to section 161 w. of the Atomic Energy Act of 1954, as amended (AEA). That section of the AEA currently allows the Commission to charge part 170 fees to power reactors operated by the Tennessee Valley Authority or other Federal government entities and to uranium enrichment facilities operated by the United States Enrichment Corporation, as these reactors and facilities are licensed or certified by the NRC. In all other cases, the NRC is prevented from charging Part 170 fees to Federal agencies for services rendered, due to a prohibition on such charges contained in the Independent Offices Appropriation Act, 31 U.S.C. 9701.

Second, the NRC is proposing to revise the current method of calculating the 10 CFR Part 170 professional hourly rate. Currently, there is one professional hourly rate established in § 170.20, which is used to determine the fees assessed by the NRC. This professional hourly rate was $133 per hour for FY 1994. The NRC proposes to establish two professional hourly rates for FY 1995, which will be used to determine the Part 170 fees. The NRC proposes to establish a rate of $123 per hour ($214,765 per direct FTE) for the reactor program. This rate is applicable to those licenses covered by 10 CFR part 170.21 of the fee regulations. A second rate of $116 per hour ($203,096 per direct FTE) is proposed for the nuclear materials and nuclear waste program. This rate is applicable to those licenses covered by 10 CFR Part 170.31 of the fee regulations. These rates are based on the FY 1995 direct FTEs and that portion of the FY 1995 budget that does not constitute direct program support (contractual services costs) and is not recovered through the appropriation from the NWF.

The two rates would be based on cost center concepts that are now being used for NRC budgeting purposes. In implementing cost center concepts, all budgeted resources for each cost center are assigned to that center for analysis and license fee purposes to the extent they can be separately distinguished. These costs include all salaries and benefits, contract support, and travel that are required for each cost center activity. Additionally, all resources for the Advisory Committee on Reactor Safeguards (ACRS), the Advisory Committee on Nuclear Waste (ACNW), the Office of Investigation (OI), the Office of Enforcement (OE), and all program direct resources for the Office of the General Counsel (OGC) will be assigned to cost centers. The NRC took a first step in this direction in FY 1994 when it directly assigned additional effort to the reactor and materials programs for OI, OE, ACRS and ACNW. Commenters supported this change in FY 1994 indicating that such assignment better defines the beneficiaries of certain regulatory activities and more equitably allocates the fees for services provided (59 FR 36897; July 20, 1994). The cost center concepts will be discussed more fully in Section III—Section-by-Section Analysis.

Third, the NRC proposes that the current Part 170 licensing and inspection fees in §§ 170.21 and 170.31 for applicants and licensees be revised to reflect both the revised hourly rates and the results of the review required by the Chief Financial Officers (CFO) Act. To comply with the requirements of the CFO Act, the NRC has evaluated historical professional staff hours used to process a licensing action (new license, renewal, and amendment) for those materials licensees whose fees are

based on the average cost method (flat fees).

Evaluation of the historical data shows that the average number of professional staff hours needed to complete materials licensing actions should be increased in some categories and decreased in others to reflect the costs incurred in completing the licensing actions. Thus, the revised average professional staff hours reflect the changes in the NRC licensing review program that have occurred since FY 1993. The proposed licensing fees are based on the new average professional staff hours needed to process the licensing actions multiplied by the proposed nuclear materials professional hourly rate for FY 1995 of $116 per hour. The data for the average number of professional staff hours needed to complete licensing actions were last updated in FY 1993 (58 FR 38666; July 20, 1993). For new licenses and amendments, the proposed licensing fees for FY 1995 are reduced in approximately 50 percent of the cases, while the proposed fees for renewals would increase in over 70 percent of the cases.

Fourth, the NRC is proposing to streamline the fee program and improve the predictability of fees by eliminating the materials ''flat'' inspection fees in 170.31 and including the cost of the inspections in 10 CFR Part 171. Eliminating the 10 CFR Part 170 materials ''flat'' fees would recognize that the ''regulatory service'' to licensees, referred to in OBRA–90, comprises the total regulatory activities that NRC determines are needed to regulate a class of licensees. These regulatory services include not only inspections, but also research, rulemaking, orders, enforcement actions, responses to allegations, incident investigations, and other activities necessary to regulate classes of licensees. This proposed action would not result in any net fee increases for affected licensees and would provide those licensees with greater fee predictability, a frequent request made in licensees' comments on past fee rules. The proposed materials annual fees, which include the 10 CFR Part 170 inspection fees, would become effective for FY 1995, and those materials licensees who paid a ''flat'' 10 CFR Part 170 inspection fee for inspections conducted in FY 1995 would receive a credit for those payments towards the FY 1995 annual fee assessed under 10 CFR Part 171. Because there is no annual fee for licensees operating under reciprocity in non-Agreement States, the reciprocity inspection fee has been combined with the application fee.

In summary, the NRC is proposing to (1) establish two 10 CFR Part 170 hourly rates; (2) revise the licensing fees assessed under 10 CFR Part 170 in order to comply with the CFO Act's requirement that fees be revised to reflect the cost of the agency of providing the service; and (3) eliminate the materials ''flat'' inspection fees in § 170.31 and include the costs of inspections with the materials annual fees in § 171.16(d), or with the reciprocity application fee in fee category § 170.31, Category 16.

Assessing Fees for Final Design Approval (FDA) and Design Certification (DC) Reviews

During FY 1994, the question was raised by several standard design vendors concerning the NRC's policy on assessment of 10 CFR part 170 licensing fees beyond issuance of the FDA. The Commission has examined this issue and has decided to continue assessing fees to vendors for its review costs incurred following the issuance of the FDA. This would include fees to recover NRC costs for preparation of the Design Control Document, review of comments on a proposed certification rule, and preparation of a final certification rule. 10 CFR Part 170 fees will not be assessed to the vendor for costs incurred for any contested hearing before the Atomic Safety Licensing Board Panel (ASLBP) during the design certification review and rulemaking.

While the NRC understands the impact of fees on its applicants and licensees, it has concluded that 10 CFR part 170 review fees should continue to be assessed beyond the FDA issuance, because the vendor, who applies for a certification, is the principal beneficiary of the certification. The fundamental policy underlying 10 CFR part 170 fees, which are based on the requirements of the Independent Offices Appropriation Act of 1952, as amended, is that the principal beneficiary of a regulatory service should bear the cost of providing that service. Applicants for design certifications will not be charged 10 CFR part 170 fees for any hearings held before an ASLBP under 10 CFR 52.51(b), which offers an opportunity for a hearing on a proposed certification. It has long been the policy of the NRC not to charge part 170 fees for hearings which are not mandated by law, and the NRC has maintained this policy despite its recent obligation to recover 100 percent of the budget through fees. Thus, for example, the NRC does not charge part 170 fees for power reactor operating license, amendment, or enforcement hearings. The costs of such hearings are recovered through the annual fees assessed to NRC licensees under 10 CFR part 171.

The NRC bills all design certification (DC) applicants for staff hours and contractual expenses incurred by the Office of Nuclear Reactor Regulation (NRR) in support of design certification and approval review activities as stipulated in 10 CFR part 170. The Office of Nuclear Regulatory Research (RES) staff and contractual expenses related to advanced reactor designs have been billed under 10 CFR part 171 to holders of operating reactor licenses. Although NRR is responsible for these advanced reactor reviews and licensing determinations, certain activities performed by RES can be essential elements of these reviews. If, for example, the review can be conducted more efficiently by RES due to experience of its staff, NRR would request that RES perform the review and provide the safety evaluation report input. In conducting recent DC reviews, NRR and RES have coordinated their activities to enhance the effectiveness and efficiency of the reviews. In specific technical areas (e.g., evaluation of DC applicant test programs), RES staff expertise and contractual resources provide direct support to NRR's licensing review. As such, some RES activities involve direct review of advanced reactor designs and provide input to the safety and licensing conclusions for design certification. The NRC believes that some adjustments to the fee policy are necessary to properly assess the applicant fees for design certification review activities performed by RES. Beginning with the effective date of the FY 1995 fee rule, the NRC plans to bill the applicants for RES's direct review and evaluation of the standard design in support of NRC's FDA and design certification. Direct review includes evaluation of the applicant's test programs, vendor codes and topical reports, standard safety analysis reports, and other supporting design and analysis information. Under this approach, fee assessment for RES costs would be treated identically to NRR charges for staff full-time equivalent (FTE) employees or contractors associated with the FDA/DC review. Billing vendors for RES activities that are in direct review of the applicant's design is consistent with the major principle of 10 CFR part 170 of assessing fees to the principal beneficiary of the NRC regulatory activity (i.e., vendor receipt of an FDA/DC). The applicant would not be assessed fees for confirmatory research related to the designs. The budget for confirmatory research would continue

to be recovered from annual fees assessed to operating power reactor licensees under 10 CFR part 171.

B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Operating Licenses, and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by NRC

The NRC proposes nine amendments to 10 CFR part 171. First, the NRC is proposing to modify its method for recovering certain budgeted costs. The report to Congress in response to EPA–92 identified fairness and equity concerns regarding the fees charged to recover the cost of certain NRC activities. Many licensees believed it was unfair to charge them fees for activities and policies undertaken by the NRC that did not benefit them and were not requested by them. The NRC is proposing to modify its current policies for allocating the budgeted costs for these and other activities that cause fairness and equity concerns, including international activities, the nonprofit educational exemption, the 10 CFR part 170 statutory exemption for Federal agencies, the small entity annual fee reduction resulting from implementing the Regulatory Flexibility Act, certain Site Decommissioning Management Program (SDMP), generic decommissioning and reclamation activities, and regulatory activities that support both NRC and Agreement State licensees. It is proposed that the budgeted costs of approximately $56 million for these activities be borne by all NRC licensees because the activities are necessary for the NRC to carry out its responsibilities but, in most instances, go beyond the regulation of those licensees or applicants that pay fees. Thus, the NRC proposes to allocate the approximately $56 million in fees for activities that raise fairness and equity concerns to all licensees, based on the budgeted dollars for each class of licensees. By allocating the costs in this way, the entire population of NRC licensees would pay the costs. The allocation would be based on the amount of the budget directly attributable to a class of licensees. This would result in operating power reactors paying approximately 89 percent of the costs of the activities in question with the other classes of licensees paying their respective share of these costs as follows: 3 percent to fuel facilities, 5 percent to materials, and 1 percent to each of the spent fuel, uranium recovery and transportation classes of licensees.

Second, 10 CFR 171.13 would be amended to provide that the NRC will publish the proposed rule in the **Federal Register** as early as is practicable but no later than the third quarter of the fiscal year. Currently, the regulations provide for issuance of the proposed rule during the first quarter of the fiscal year.

Third, NRC proposes to amend §§ 171.15 and 171.16 to revise the annual fees for FY 1995 to recover approximately 100 percent of the FY 1995 budget authority, less fees collected under 10 CFR Part 170 and funds appropriated from the NWF.

Fourth, the annual fees for operating power reactors in § 171.15(d) would be revised to reflect a single uniform annual fee. The NRC is proposing to streamline the fee program by assessing one uniform annual fee for all operating power reactors. During the past four years, the NRC has followed a somewhat lengthy and time-consuming process in determining power reactor annual fees. The annual fees have been determined in three ways. First, within the operating power reactor class, a distinction was made between the four vendor groups, that is, Babcock & Wilcox, Combustion Engineering, General Electric, and Westinghouse. Second, within each vendor group, a distinction was made using the type of containment, for example, General Electric Mark I, II or III. Third, a distinction was made based on the location of the reactor, that is, whether or not it is located east or west of the Rocky Mountains. The NRC indicated in the FY 1991 rule (56 FR 31479; July 10, 1991), and again in its request for public comment on NRC fee policy (58 FR 21119; April 19, 1993) that it would reexamine this approach with a view toward simplifying the method for determining annual fees and streamlining the fee process without causing an unfair burden. The Office of the Inspector General (OIG) in its report on license fees dated October 26, 1993, indicated that the fee process is very detailed and labor intensive and that substantial effort is expended in attempting to make the process equitable and the costs reasonable. The OIG report stated that the determination of Part 171 fees could be simplified by eliminating/streamlining much of the detailed analyses performed as part of the process. The NRC, for FY 1995, calculated the reactor annual fees using both the current method and the proposed uniform method. For FY 1995, the lowest annual fee using the current method is about $20,000 less than the proposed uniform fee of about $3 million for an operating reactor. The NRC believes that this difference is small enough, relative to the size of the annual fee, to justify moving to a uniform annual fee particularly in light of administrative savings that will follow. Therefore, in an effort to streamline the fee program consistent with the OIG report on fees and for ease of administration, whereby a single annual fee can be used for fee billing purposes, the NRC is proposing to establish a uniform annual fee for each operating power reactor.

Fifth, as discussed earlier, the annual fees for materials licenses in § 171.16(d) would include the budgeted costs for certain materials inspections which were previously recovered under 10 CFR Part 170.31.

Sixth, the NRC is proposing to refine the method for calculating the annual fees for fuel facilities and uranium recovery facilities. The NRC indicated in its final FY 1994 fee rule that given the questions raised by B&W Fuel Company, General Atomics and other fuel facilities, it would reexamine the fuel facility subclass categorizations, and include any restructuring resulting from this reexamination in the FY 1995 proposed rule for notice and comment (59 FR 36901; July 20, 1994). Having conducted its own reexamination, the NRC is therefore proposing revised methodologies for determining annual fees for both fuel facility and uranium recovery licensees. These revised methodologies have been used to determine the proposed FY 1995 annual fees. The use of the revised methodologies results in the annual fee more accurately reflecting the cost of providing regulatory services to each fuel facility and uranium recovery licensee. The proposed methodologies are explained in more detail in Section III—Section-by-Section Analysis.

Seventh, the NRC is proposing to modify the lower-tier size standard for those licensees that qualify as a small entity under the NRC's proposed size standards, published on November 30, 1994 (59 FR 61293). On April 7, 1994 (59 FR 16513), the Small Business Administration (SBA) issued a final rule changing its size standards. The SBA adjusted its receipts-based size standard levels to mitigate the effects of inflation from 1984 to 1994. On November 30, 1994 (59 FR 61293), the NRC published a proposed rule to amend the NRC's size standards. The NRC proposed to adjust its receipts-based size standards from $3.5 million to $5 million to accommodate inflation and to conform to the SBA final rule. The NRC also proposed to eliminate the separate $1 million size standard for private practice physicians and to apply the receipts-based size standard of $5

million to this class of licensees. This mirrors the revised SBA standard of $5 million for medical practitioners. The NRC also proposed to establish a size standard of 500 or fewer employees for business concerns that are manufacturing entities. This standard is the most commonly used SBA employee standard and would apply to the types of manufacturing industries that hold an NRC license. After evaluating the two comments received, a final rule that would revise the NRC's size standards as proposed has been developed and sent to the SBA for review and approval. The NRC expects to publish the final rule before the final fee rule becomes effective.

The NRC intends to use the revised standards in the final FY 1995 fee rule. The small entity fee categories in § 171.16(c) of this proposed fee rule have been modified to reflect the proposed changes in the NRC's size standards. The existing maximum small entity annual fee of $1800 will be continued for all small entities except those defined as lower-tier small entities in this rule. The existing lower-tier small entity fee of $400 will be assessed for those manufacturing industries and educational institutions not State or publicly supported with less than 35 employees, small governmental jurisdictions with a population of less than 20,000, and non-manufacturing entities with gross receipts of less than $350,000, a higher threshold than the current lower-tier level of $250,000 in gross receipts.

Eighth, the NRC is proposing to modify Footnote 1 of 10 CFR 171.16(d) to provide for a waiver of the FY 1995 annual fees for those materials licensees, and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 1994, and permanently ceased licensed activities entirely by September 30, 1994. All other licensees and approval holders who held a license or approval on October 1, 1994, are subject to FY 1995 annual fees. This change is in recognition of the fact that since the final FY 1994 rule was published in July 1994, licensees have continued to file requests for termination of their licenses or certificates with the NRC. Other licensees have either called or written to the NRC since the FY 1994 final rule became effective requesting further clarification and information concerning the annual fees assessed. The NRC is responding to these requests as quickly as possible. However, the NRC was unable to respond and take action on all of the requests before the end of the fiscal year on September 30, 1994. Similar situations existed after the FY 1991, FY 1992, and FY 1993 rules were published, and in those cases, NRC provided an exemption from the requirement that the annual fee is waived only when a license is terminated before October 1 of each fiscal year.

Ninth, the NRC is proposing to amend § 171.19 to credit the quarterly partial annual fee payments and ''flat'' inspection fee payments for FY 1995 inspections already made by certain licensees in FY 1995 either toward their total annual fee to be assessed or to make refunds, if necessary.

The amounts to be collected through annual fees in the amendments to 10 CFR Part 171 are based on the two proposed revised professional hourly rates discussed previously in the summary of the proposed changes to 10 CFR Part 170. The amendments to 10 CFR Part 171 do not change the underlying basis for 10 CFR Part 171; that is, charging a class of licensees for NRC costs attributable to that class of licensees. The changes are consistent with the Congressional guidance in the Conference Committee Report on OBRA–90, which states that the ''conferees contemplate that the NRC will continue to allocate generic costs that are attributable to a given class of licensees to such class'' and the ''conferees intend that the NRC assess the annual charge under the principle that licensees who require the greatest expenditures of the agency's resources should pay the greatest annual fee'' (136 Cong. Rec. at H12692–93). For those NRC costs not attributable to a class of licensees, the proposed amendments to 10 CFR Part 171 follow the conferees' guidance which states that ''the Commission should assess the charges for these costs as broadly as practicable in order to minimize the burden for these costs on any licensee or class of licensees . . .'' (136 Cong. Rec. at H12692–3).

C. FY 1995 Budgeted Costs

The FY 1995 budgeted costs, by major activity, that will be recovered through 10 CFR Parts 170 and 171 fees are shown in Table I.

TABLE I.—RECOVERY OF NRC'S FY 1995 BUDGET AUTHORITY

[Dollars in millions]

Recovery method	Estimated amount
Nuclear Waste Fund	$22.0
Part 170 (license and inspection fees)	137.7
Other receipts	.1
Part 171 (annual fees):	
Power Reactors	265.3
Nonpower Reactors	.3
Fuel Facilities	10.1
Spent Fuel Storage	1.7
Uranium Recovery	1.8
Transportation	4.2
Material Users [1]	24.91
Rare Earth Facilities	.1
Subtotal Part 171	308.4
Costs remaining to be recovered not identified above	57.4
Total	525.6

[1] Includes $5.8 million that will not be recovered from small materials licensees because of the reduced small entity fees.

In addition to the $57.4 million remaining to be recovered in Table I, approximately $5.8 million must be collected as a result of continuing the $1,800 maximum fee for small entities and the lower-tier small entity fee of $400 for certain licensees. The composition of the $63.2 million is as follows:

TABLE II.—ACTIVITIES TO BE RECOVERED THROUGH ASSESSMENT OF A SURCHARGE

Activities	Dollars in millions
Federal Agency Exemption	$1.6
Nonprofit Educational Exemption	6.1
International Activities	10.5
Small Entity Subsidy	5.8
Agreement State Oversight	6.2
Regulatory Support to Agreement States	14.2
Site Decommissioning Management Plan	6.2
Generic Decommissioning and Reclamation	5.6
Generic Low Level Waste (LLW)	7.0
	63.2

The NRC is proposing to continue the existing policy for recovering the $7 million for generic LLW activities from licensees that generate significant LLW. The revised method of allocation, described in detail in the FY 1993 final rule (58 FR 38669; July 20, 1994) allocates the LLW costs between two groups: large generators (power reactors and large fuel facilities) and small generators (all other LLW-producing

licensees). The remaining $56.2 million would be distributed to virtually all classes of licensees based on the percentage of the total budget directly allocated to each class. The resulting allocations of the $63.2 million are as follows:

$55.2 million to operating power reactors;
$2.2 million to fuel facilities;
$.6 million to spent fuel storage licensees;
$.6 million to transportation licensees;
$.6 million to uranium recovery facilities; and
$4.0 million to other materials licensees.

III. Section-by-Section Analysis

The following analysis of those sections that are affected under this proposed rule provides additional explanatory information. All references are to Title 10, Chapter I, U.S. Code of Federal Regulations.

Part 170

Section 170.11 Exemptions

This section would be amended to conform the fee regulations to section 161 w. of the Atomic Energy Act of 1954, as amended (AEA). That section of the AEA currently allows the Commission to charge Part 170 fees to power reactors operated by the Tennessee Valley Authority or other Federal government entities and to uranium enrichment facilities operated by the United States Enrichment Corporation, as these reactors and facilities are licensed or certified by the NRC. In all other cases, the NRC is prevented from charging Part 170 fees to Federal agencies for services rendered, due to a prohibition on such charges contained in the Independent Offices Appropriation Act, 31 U.S.C. 9701.

Section 170.20 Average Cost Per Professional Staff Hour

This section would be amended to establish two professional staff-hour rates based on FY 1995 budgeted costs—one for the reactor program and one for the nuclear material and nuclear waste program. Accordingly, the NRC reactor professional staff-hour rate for FY 1995 for all fee categories that are based on full cost under § 170.21 is $123 per hour, or $214,765 per direct FTE. The NRC nuclear material and nuclear waste professional staff-hour rate for all materials fee categories that are based on full cost under § 170.31 is $116 per hour, or $203,096 per direct FTE. The rates are based on the FY 1995 direct FTEs and NRC budgeted costs that are not recovered through the appropriation from the NWF. As noted earlier in this proposed rule, the NRC has used cost center concepts in reallocating certain costs to the reactor and materials programs in order to more closely align the budgeted costs with specific classes of licensees. The method used to determine the two professional hourly rates is as follows:

1. The direct program FTE levels are identified for both the reactor program and the nuclear material and waste program.

2. Direct contract support, which is the use of contract or other services in support of the line organization's direct program, is excluded from the calculation of the hourly rate because these support costs are charged directly through the various categories of fees.

3. All other direct program costs (i.e., Salaries and Benefits, Travel) represent ''in-house'' costs and are to be collected by dividing them uniformly by the total number of direct FTEs for the program. In addition, Salary and Benefits plus contracts for General and Administrative Support are allocated to each program based on that program's salary and benefits. This method results in the following costs, to be included in the hourly rates.

TABLE III.—FY 1995 BUDGET AUTHORITY TO BE INCLUDED IN HOURLY RATES

[Dollars in millions]

Salary and benefits	Reactor program	Materials program
Program	$148.5	$43.5
Allocated Agency Management & Support	$39.9	$11.7
Subtotal	$188.4	$55.2
General and Administrative Support (G&A):		
Program Travel and Other Support	$13.3	$2.7
Allocated Agency Management and Support	$73.6	$21.6
Subtotal	$86.9	$24.3
Less offsetting receipts	.1	
Total Budget Included in Hourly Rate	$275.2	$79.5
Program Direct FTEs	1,281.6	391.6
Rate per Direct FTE	$214,765	$203,096
Professional Hourly Rate	$123	$116

Dividing the $275.2 million budget for the reactor program by the number of reactor program direct FTEs (1281.6) results in a rate for the reactor program of $214,765 per FTE for FY 1995. Dividing the $79.5 million budget for the nuclear materials and nuclear waste program by the number of program direct FTEs (391.6) results in a rate of $203,096 per FTE for FY 1995. The Direct FTE Hourly Rate for the reactor program is $123 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTEs ($214,765) by the number of productive hours in one year (1744 hours) as indicated in OMB Circular A–76, ''Performance of Commercial Activities.'' The Direct FTE Hourly Rate for the materials program is $116 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTEs ($203,096) by the number of productive hours in one year (1744 hours).

Section 170.21 Schedule of Fees for Production and Utilization Facilities, Review of Standard Reference Design Approvals, Special Projects, Inspections and Import and Export Licenses

The NRC is proposing to revise the licensing and inspection fees in this section, which are based on full-cost recovery, to reflect the FY 1995 budgeted costs and to recover costs incurred by the NRC in providing licensing and inspection services to identifiable recipients. The fees assessed

for services provided under the schedule are based on the professional hourly rate, as shown in § 170.20, for the reactor program and any direct program support (contractual services) costs expended by the NRC. Any professional hours expended on or after the effective date of this rule will be assessed at the FY 1995 hourly rate for the reactor program as shown in § 170.20. Although the average amounts of time to review import and export licensing applications have not changed, the fees in § 170.21, facility Category K, have decreased from FY 1994 as a result of the decrease in the hourly rate.

For those applications currently on file and pending completion, footnote 2 of § 170.21 is revised to provide that the professional hours expended up to the effective date of the final rule will be assessed at the professional rates in effect at the time the service was rendered. For topical report applications currently on file which are still pending completion of the review and for which review costs have reached the applicable fee ceiling established by the July 2, 1990 rule, the costs incurred after any applicable ceiling was reached through August 8, 1991, will not be billed to the applicant. Any professional hours expended for the review of topical report applications, amendments, revisions, or supplements to a topical report on or after August 9, 1991, are assessed at the applicable rate established by § 170.20.

Section 170.31 Schedule of Fees for Materials Licenses and Other Regulatory Services, Including Inspections and Import and Export Licenses

The licensing and inspection fees in this section, which are based on full-cost recovery, would be modified to recover the FY 1995 costs incurred by the NRC in providing licensing and inspection services to identifiable recipients. The fees assessed for services provided under the schedule would be based on both the professional hourly rate as shown in § 170.20 for the materials program and any direct program support (contractual services) costs expended by the NRC. Those licensing fees, which are based on the average time to review an application (''flat'' fees), would be adjusted to reflect both the revised average professional staff hours needed to process a licensing action (new license, renewal, and amendment) and the decrease in the professional hourly rate from $133 per hour in FY 1994 to $116 per hour in FY 1995. The ''flat'' materials inspection fees in § 170.31 would be eliminated and combined with the materials annual fees in § 171.16(d). Because there is no annual fee for licensees operating under reciprocity in non-Agreement States, the application fee would include the costs of inspections.

As previously indicated, the CFO Act requires that the NRC conduct a review, on a biennial basis, of fees and other charges imposed by the agency for its services and revise those charges to reflect the costs incurred in providing the services. Consistent with the CFO Act requirement, the NRC has completed its most recent review of license and inspection fees assessed by the agency. The review focused on the flat fees that are charged to nuclear materials users for licensing actions (new licenses, renewals, and amendments) and for inspections. The full cost license and inspection fees (e.g., for fuel facilities) and annual fees were not included in this biennial review because the hourly rate for full cost fees and the annual fees are reviewed and updated annually in order to recover 100 percent of the NRC budget authority.

To determine the licensing and inspection flat fees for materials licensees and applicants, the NRC uses historical data to determine the average number of professional hours required to perform a licensing action or inspection for each license category. These average hours are multiplied by the proposed materials program professional hourly rate of $116 per hour for FY 1995. Because the professional hourly rate is updated annually and the NRC is proposing to eliminate materials ''flat'' inspection fees, the biennial review examined only the average number of hours per licensing action with regard to the 10 CFR part 170 fees. The review indicated that the NRC needed to modify the average number of hours on which the current licensing flat fees are based in order to recover the cost of providing licensing services. The average number of hours required for licensing actions was last reviewed and modified in 1993 (58 FR 38666; July 20, 1993). Thus the revised hours used to determine the proposed fees for FY 1995 reflect the changes in the licensing program that have occurred since that time; for example, new initiatives underway for certain types of licenses and management guidance that reviewers conduct more detailed reviews of certain renewal applications based on historical enforcement actions in order to insure public health and safety have been incorporated into the revised fees. For new licenses and amendments, the proposed licensing fees for FY 1995 are reduced in approximately 50 percent of the cases, while the proposed fees for renewals have increased in over 70 percent of the cases.

The amounts of the licensing flat fees were rounded by applying standard rules of arithmetic so that the amounts rounded would be de minimus and convenient to the user. Fees that are greater than $1,000 are rounded to the nearest $100. Fees under $1,000 are rounded to the nearest $10.

The proposed licensing flat fees are applicable to fee categories 1.C and 1.D; 2.B and 2.C; 3.A through 3.P; 4.B through 9.D, 10.B, 15A through 15E and 16. The fees would be assessed for applications filed on or after the effective date of the final rule. Although the average amounts of time to review import and export licensing applications have not changed, the fees in Category 15 have decreased from FY 1994 as a result of the decrease in the hourly rate.

For those licensing, inspection, and review fees assessed that are based on full-cost recovery (cost for professional staff hours plus any contractual services), the proposed materials program hourly rate of $116, as shown in § 170.20, would apply to those professional staff hours expended on or after the effective date of the final rule.

Part 171

Section 171.13 Notice

The language in this section is revised to reflect when the NRC could more realistically expect to publish the proposed fee rule. The NRC's experience indicates that the agency has been unable to publish the proposed rule during the first quarter of the fiscal year as indicated in the current FY 1994 rule. Therefore, this section will be revised to indicate that the NRC will publish the proposed rule (notice) in the **Federal Register** as early as is practicable but no later than the third quarter of the fiscal year.

Section 171.15 Annual Fee: Reactor Operating Licenses

The annual fees in this section would be revised to reflect FY 1995 budgeted costs. Paragraphs (a), (b)(3), (c)(1), (c)(2), (d), and (e) would be revised to comply with the requirement of OBRA–90 to recover approximately 100 percent of the NRC budget for FY 1995. Table IV shows the budgeted costs that have been allocated directly to operating power reactors as part of the base annual fee. They have been expressed in terms of the NRC's FY 1995 programs and cost centers. The resulting total base annual fee amount for power reactors is shown, as well as the one proposed uniform

annual fee to be assessed to all operating reactors.

The NRC is proposing to streamline the fee program by assessing one uniform annual fee for all operating power reactors. During the past four years, the NRC has followed a somewhat lengthy and time consuming process in calculating the amount of the power reactor annual fees. The annual fees were determined in three ways. First, within the operating power reactor class, a distinction was made between the four vendor groups, that is, Babcock & Wilcox, Combustion Engineering, General Electric and Westinghouse. Second, within each vendor group, a distinction was made using the type of containment, for example, General Electric Mark I, II or III. Third, a distinction was made based on the location of the reactor: whether or not it is located east or west of the Rocky Mountains. The NRC indicated in the FY 1991 rule (56 FR 31479; July 10, 1991) and again in its request for public comment on NRC fee policy (58 FR 21119; April 19, 1993) that it would be reexamining this approach with a view toward simplifying the method for determining annual fees without causing an unfair burden. The NRC Office of the Inspector General (OIG) in its report dated October 26, 1993, on license fees, described the fee process as very detailed and labor intensive and stated that substantial effort is expended in attempting to make the process equitable and the costs reasonable. The OIG stated that the determination of the Part 171 fees could be simplified by eliminating and streamlining much of the detailed analyses performed as part of the process. This detailed breakdown of the reactor annual fees was implemented when there were significant differences in the NRC research funding for the various types of reactors. This is no longer the case. The NRC for FY 1995, calculated the reactor annual fees using both the current method (different fees for different types of reactors) and the uniform method. The difference between the lowest fee under the current method and the uniform fee is about $20,000, which is less than 1 percent of the $3 million proposed annual fee for an operating power reactor. Because of this extremely small difference, the NRC believes that a single uniform annual fee should be established for each operating power reactor. Not only will this not cause an unfair burden, but it will allow the NRC to streamline the fee program and simplify the fee process.

TABLE IV.—ALLOCATION OF NRC FY 1995 BUDGET TO POWER REACTORS' BASE FEES[1]

Program total	Allocated to power reactors			
	Program support ($,K)	Direct FTE	Program support ($,K)	Direct FTE
Reactor Program				
Cost Center: Reactor Regulation:				
Inspections	$4,350	471.4	$4,350	471.4
Reactor Oversight	11,615	357.0	11,615	357.0
Reactor and Site Licensing	1,660	26.3	1,660	26.3
Reactor Aging and Renewal	19,973	54.7	19,973	54.7
Safety Assessment and Regulatory Development	33,687	69.5	33,687	69.5
Independent Analysis of Operational Experience	7,939	47.0	7,939	47.0
Technical Training and Qualification	4,728	19.0	4,728	19.0
Investigations, Enforcement and Legal Advice	11	59.0	11	59.0
Independent Review	536	42.0	536	42.0
Cost Center Total	.....	.....	$84,499	1,145.9
Cost Center: Standard Reactor Designs:				
Design Certification	6,873	91.6	6,873	91.6
Safety Assessment	14,885	19.7	14,885	19.7
Legal Advice	.....	3.0	.....	3.0
Independent Review	86	10.0	86	10.0
Cost Center Total	.....	.....	$21,844	124.3
Nuclear Materials and Nuclear Waste Program				
Cost Center: Fuel Facilities:				
Licensing and Inspection	1,304	28.5	.....	.1
Cost Center: LLW and Decommissioning:				
Licensing and Inspection	50	2.6	.....	.9
Reactor Decommissioning	100	6.7	100	6.7
Radiological Surveys	1,653	.....	331	.....
Cost Center Total	.....	.....	$431	7.6
Management and Support Programs				
Cost Center: Special Technical Programs:				
Educational Grants	1,050	.....	1,050	.....
Small Business Innovation Research	1,844	.....	1,844	.....
Nuclear Materials Mgt. and Safeguards System	1,165	1.0	850	.7
Cost Center Total	.....	.....	$3,744	.7
Reactor Program Total	.....	.....	$110,518	1,278.6

TABLE IV.—ALLOCATION OF NRC FY 1995 BUDGET TO POWER REACTORS' BASE FEES[1]—Continued

Program total	Allocated to power reactors			
	Program support ($,K)	Direct FTE	Program support ($,K)	Direct FTE
Total Base Fee Amount Allocated to Power Reactors				[2] $385.0 million
Less Estimated Part 170 Power Reactor Fees				$119.8 million
Part 171 Amount for Operating Power Reactors				$265.2 million
Part 171 Base Fee For Each Operating Reactor				265.2 million
				108 reactors = $2,456,000 per reactor

[1] Base annual fees include all costs attributable to the operating power reactor class of licensees. The base fees do not include costs allocated to power reactors for policy reasons.
[2] Amount is obtained by multiplying the direct FTE times the rate per FTE ($214,765) and adding the program support funds.

Paragraph (b)(3) would be revised to change the fiscal year references from FY 1994 to FY 1995.

Paragraphs (c)(1) and (c)(2) would be amended to show the amount of the budget allocated for policy reasons (surcharge) to operating reactors for FY 1995. This surcharge is added to the base annual fee for each operating power reactor. The purpose of this surcharge is to recover those NRC budgeted costs that are not directly or solely attributable to operating power reactors but nevertheless must be recovered to comply with the requirements of OBRA–90.

The FY 1995 budgeted costs that are to be recovered in the surcharge from all licensees are as follows:

TABLE V

Category of costs	FY 1995 budgeted costs ($ in millions)
1. Activities not attributable to an existing NRC licensee or class of licensee:	
a. International cooperative safety program and international safeguards activities;	$10.5
b. Agreement State oversight	6.2
c. Low-level waste disposal generic activities; and	7.0
d. Site decommissioning management plan activities not recoverable under 10 CFR Part 170	5 6
2. Activities not assessed Part 170 licensing and inspection fees or Part 171 annual fees based existing law or Commission policy:	
a. Fee Exemption of nonprofit educational institutions;	6.1
b. Licensing and inspection activities associated with other Federal agencies;	1.6
c. Costs not recovered from Part 171 for small entities	5.8
3. Activities supporting NRC operating licensees and Others:	
a. Regulatory support to Agreement States	$14.2
b. Decommissioning/Reclamation	6.2
Total Budgeted Costs	$63.2

Excluding low-level waste costs totalling $7 million, the current policy allocates the remaining $56.2 million based on three different methods. First, 100 percent of costs for certain activities (e.g., international activities and the nonprofit educational institution exemption) are allocated to operating power reactors, based on the guidance in the Conference Committee report accompanying OBRA–90 which stated that these types of costs may be recovered from such licensees as the Commission determines can fairly, equitably and practicably contribute to their payment. The second method prorates the costs of some activities (e.g., small entity subsidy and Agreement State oversight) to all licensees under the implicit assumption that no one class of licensees should have to bear the full cost. Under the third method, 100 percent of the costs of some activities (e.g., SDMP and regulatory support to Agreement States) are allocated to the class of licensees to which the activities relate, independent of whether the activities are needed for current licensees/applicants or support non-NRC licensees. In addition to being based on three different principles, the current policy creates significant annual fee problems for classes of licensees with a small or declining number of licensees. For example, as more states become Agreement States, the relatively fixed costs for generic regulatory activities (e.g., rulemaking, research, evaluation of operational data and policy development) that support both NRC and Agreement State licensees would be allocated to a smaller number of materials licensees, causing the NRC materials licensees' annual fees to increase substantially. For example, if the four States who have expressed interest in becoming Agreement States do so within the next few years, then the remaining NRC materials licensees' annual fees would increase by about 30 percent from current levels.

For the above reasons, the NRC is proposing to change the current policy for allocating the costs for activities

which have raised fairness and equity concerns among many NRC licensees. The proposed changes are based on the premise that these costs should be borne by all NRC licensees, because while the activities are necessary for the NRC to carry out its responsibilities, in most instances, they go beyond the regulation of those licensees or applicants that pay fees. Thus, the NRC proposes to allocate the costs in question to the entire population of NRC licensees that pay annual fees. The allocation would be based on the amount of the budget directly attributable to a class of licensees and would result in, for instance, operating power reactors paying 89 percent of the cost of these activities, compared to approximately 50 percent of these costs in the FY 1994 rule.

This proposed change is consistent with the guidance in the Conference Committee Report that accompanied OBRA–90. First, by allocating these costs to all licensees, this proposed change is consistent with the Conference Report guidance that: ''The Commission should assess the charge for these activities as broadly as practicable in order to minimize the burden for these costs on any licensee or class of licensees so as to establish as fair and equitable a system as is feasible.'' Second, allocating a higher percentage of these costs to operating power reactors as opposed to other classes of licensees is also consistent with the Conference Report guidance that: ''These expenses may be recovered from such licensees as the Commission, in its discretion, determines can fairly, equitable and practicably contribute to their payment.'' Allocating these costs to the universe of NRC licenses would minimize the impact of the declining numbers of licenses in any specific class, because the costs would be allocated over the maximum number of licensees. It would also put in place both a policy that would help mitigate future fee concerns associated with declining number of licenses, and a single methodology for allocating these types of costs, something that has been requested in comments submitted on previous proposed fee rules.

The annual additional charge for each operating power reactor is determined as follows:

$$\text{Generic LLW Cost Allocated} = .74 \times \$6{,}972\text{K} = \$5{,}159\text{K}$$

$$\text{Other Activities Allocated} = .89 \times \$56{,}229\text{K} = \$50{,}044\text{K}$$

$$\frac{\text{Total budgeted costs allocated}}{\text{Total number of operating reactors}} = \frac{\$55{,}203\text{K}}{108} = \$511{,}000 \text{ per operating power reactor}$$

Based on the information in Tables IV and V, each operating power reactor, except Big Rock Point, would pay a base annual fee of $2,456,000 and an additional charge of $511,000 for a total FY 1995 annual fee of $2,967,000.

With respect to Big Rock Point, a smaller older reactor, the NRC proposes to grant a similar partial exemption from the FY 1995 annual fees similar to FY 1994 based on a request filed with the NRC in accordance with § 171.11.

Paragraph (d) would be revised to show, in summary form, the amount of the total FY 1995 annual fee, including the surcharge, to be assessed to each operating power reactor.

Paragraph (e) would be revised to show the amount of the FY 1995 annual fee for nonpower (test and research) reactors. In FY 1995, $339,000 in costs are attributable to those commercial and non-exempt Federal government organizations that are licensed to operate test and research reactors. Applying these costs uniformly to those nonpower reactors subject to fees results in an annual fee of $56,500 per operating license. The Energy Policy Act established an exemption for certain Federally-owned research reactors that are used primarily for educational training and academic research purposes, where the design of the reactor satisfies certain technical specifications set forth in the legislation. Consistent with this legislative requirement, the NRC granted an exemption from annual fees for FY 1992 and FY 1993 to the Veterans Administration Medical Center in Omaha, Nebraska, the U.S. Geological Survey for its reactor in Denver, Colorado, and the Armed Forces Radiobiological Institute in Bethesda, Maryland, for its research reactor. This exemption was initially codified in the July 20, 1993 (58 FR 38695) final fee rule at § 171.11(a) and more recently in the March 17, 1994 (59 FR 12543) final rule at § 171.11(a)(2). The NRC amended § 171.11(a)(2) on July 20, 1994 (59 FR 36895) to exempt from annual fees the research reactor owned by the Rhode Island Atomic Energy Commission. The NRC intends to continue to grant exemptions from the annual fee to those Federally-owned and State owned research and test reactors who meet the exemption criteria specified in § 171.11.

Section 171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC

Section 171.16(c) covers the fees assessed for those licensees that can qualify as small entities under NRC size standards. On April 7, 1994 (59 FR 16513), the Small Business Administration (SBA) issued a final rule changing its size standards. The SBA adjusted its receipts-based size standard levels to mitigate the effects of inflation from 1984 to 1994. On November 30, 1994 (59 FR 61293), the NRC published a proposed rule to amend its size standards. The comment period expired December 30, 1994. The proposed size standards are as follows:

(a) A small business is a for-profit concern and is a—

(1) Concern that provides a service or a concern not engaged in manufacturing with average gross receipts of $5 million or less over its last three completed fiscal years; or

(2) Manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months.

(b) A small organization is a not-for-profit organization which is independently owned and operated and has annual gross receipts of $5 million or less.

(c) A small governmental jurisdiction is a government of a city, county, town, township, village, school district, or special district with a population of less than 50,000.

(d) A small educational institution is one that is—

(1) Supported by a qualifying small governmental jurisdiction; or

(2) Not state or publicly supported and has 500 or fewer employees.

(e) For purposes of this section, the NRC shall use the Small Business Administration definition of receipts to include ''all revenue in whatever form received or accrued from whatever source * * *'' (13 CFR 402(b)(2)). A licensee who is a subsidiary of a large entity does not qualify as a small entity for purposes of this section.

The NRC has evaluated the comments received on the proposed rule, prepared a draft final rule that will adopt these size standards and submitted the final rule for the approval of the Administrator, Small Business Administration, as required by statute.

Pending SBA approval, the NRC intends to use these size standards in the final FY 1995 fee rule. Therefore, the small entity categories in § 171.16(c) of this proposed fee rule have been modified to reflect the proposed changes in the NRC's size standards. Consistent with the establishment of an employee size standard for manufacturers, the NRC is also proposing that a new maximum small entity fee for manufacturing industries with 35 to 500 employees be established at $1,800 and a lower-tier small entity fee of $400 be instituted for those manufacturing industries and educational institutions not State or publicly supported with less than 35 employees. The lower-tier receipts-based threshold of $250,000 has been raised to $350,000 to reflect approximately the same percentage adjustment as that made by the SBA when they adjusted the receipts-based standard from $3.5 million to $5 million.

Section 171.16(d) would be revised to reflect the FY 1995 budgeted costs for materials licensees, including Government agencies, licensed by the NRC. These fees are necessary to recover the FY 1995 generic and other regulatory costs totalling $42.8 million that apply to fuel facilities, uranium recovery facilities, rare earth facilities, spent fuel facilities, holders of transportation certificates and QA program approvals, and other materials licensees, including holders of sealed source and device registrations.

Tables VI and VII show the NRC programs, cost centers, and resources that are attributable to fuel facilities and materials users, respectively. The costs attributable to the uranium recovery class of licensees are those associated with uranium recovery licensing, inspection, and generic activities. For transportation, the costs are those budgeted for transportation licensing, inspection, and generic activities. Similarly, the budgeted costs for spent fuel storage are those for spent fuel storage licensing, inspection and generic activities.

TABLE VI.—ALLOCATION OF NRC FY 1995 BUDGET TO FUEL FACILITY BASE FEES [1]

	Total program element		Allocated to fuel facility	
	Program support $,K	FTE	Program support $,K	FTE
Cost Center: Fuel Facilities:				
Fuel Fabricators Oversight and Inspections	$1,698	59.0	$1,486	56.1
Cost Center: LLW and Decommissioning:				
Decommissioning	4,447	50.0	325	1.7
Cost Center: Other Nuclear Materials and Waste:				
Independent Analysis of Operating Experience	346	8.0	69	1.6
Technical Training and Qualification	692	2.0	138	.4
Adjudicatory Reviews	.....	1.0	.....	.5
Investigations, Enforcement, Legal Advice	11	39.0	1	1.6
Cost Center: Special Technical Program:				
Nuclear Materials Mgt. and Safeguards System	1,165	1.0	47	.....
Total	.....	.....	$2,066	61.9
Total Base Fee Amount Allocated to Fuel Facilities	.....	.....	.....	[2] $14.6 million
Less Part 170 Fuel Facility Fees	.....	.....	.....	4.5 million
Part 171 Base Fees For Fuel Facilities	.....	.....	.....	$10.1 million

[1] Base annual fee includes all costs attributable to the fuel facility class of licensees. The base fee does not include costs allocated to fuel facilities for policy reasons.

[2] Amount is obtained by multiplying the direct FTE times the rate per FTE ($203,096) and adding the program support funds.

TABLE VII.—ALLOCATION OF FY 1995 BUDGET TO MATERIAL USERS' BASE FEES[1]

Total program element	Allocated to materials users			
	Program support $,K	FTE	Program support $,K	FTE
Nuclear Materials & Nuclear Waste Program				
Cost Center: Materials Users:				
Licensing/Inspection of Materials Users	2,436	113.0	721	82.3
Materials Licensee Performance	700	1.8	189	.5
Materials Regulatory Standards	1,494	12.8	403	3.5
Radiation Protection/Health Effects	1,621	5.3	438	1.4
Cost Center Total	.....	.....	$1,751	87.7
Cost Center: LLW and Decommissioning:				
Licensing & Inspections	50	2.6	.....	.2
Decommissioning	214	32.8	69	3.5

TABLE VII.—ALLOCATION OF FY 1995 BUDGET TO MATERIAL USERS' BASE FEES[1]—Continued

Total program element	Allocated to materials users			
	Program support $,K	FTE	Program support $,K	FTE
Radiological Surveys	1,653	.....	372	.....
Cost Center Total	.....	.....	441	3.7
Cost Center: Other Nuclear Materials:				
Analysis of Operational Experience	$346	8.0	184	1.7
Technical Training	692	2.0	498	1.4
Adjudicatory Reviews	.....	1.0	.....	.5
Investigations/Enforcement	11	39.0	9	24.4
Event Evaluation	.....	16.0	.....	4.4
Cost Center Total	.....	.....	$691	32.4
Total Program	.....	.....	$2,883	123.8
Management and Support Program				
Cost Center: Special Technical Programs:				
Nuclear Material Management and Safeguard Systems	1,165	1.0	74	.1
Total All Programs	.....	.....	$2,957	123.9
Base Amount Allocated to Materials Users	.....	.....	.....	[2] $28.1 million
Less Part 170 Material Users Fees	.....	.....	.....	3.2 million
Part 171 Base Fees for Material Users	.....	.....	.....	$24.9 million

[1] Base annual fee includes all costs attributable to the materials class of licensees. The base fee does not include costs allocated to materials licensees for policy reasons.
[2] Amount is obtained by multiplying the direct FTE times the rate per FTE ($203,096) and adding the program support funds.

The allocation of the NRC's $10.1 million in budgeted costs to the individual fuel facilities is based on the revised methodologies indicated earlier. The NRC indicated in its final FY 1994 fee rule that given the questions raised by B&W Fuel Company, General Atomics and other fuel facilities it would reexamine the fuel facility subclass categorizations and that any restructuring resulting from this reexamination would be included in the FY 1995 proposed rule for notice and comment (59 FR 36901; July 20, 1994). The NRC is therefore proposing a revised methodology for determining annual fees for fuel facilities. The revised methodology has been used to determine the proposed FY 1995 annual fees. The objective of revising the methodology is to reflect more precisely agency generic costs attributable to fuel facility licensees. This new methodology results in the creation of five fuel facility license fee categories. Licenses are grouped into these categories according to their license (nuclear type, enrichment, form, quantity, and use/associated activity) and according to the level scope, depth of coverage and rigor of generic regulatory programmatic effort applicable to each category. This methodology can be applied to determine fees for new licenses, current licenses and for licensees in unique license situations. In each case, the existing license was used to determine values for licensed nuclear material and its use without regard for current or planned licensee activities, which are at the discretion of the licensee.

The methodology is amenable to changes in the number of licenses, licensed material/activities, and total programmatic resources to be recovered through annual fees. When a license is modified, given that NRC recovers approximately 100 percent of its generic regulatory program costs through fee recovery, this revised fuel facility fee methodology may result in a change in fee category and may have an effect on the fees assessed to other licensees. For example, if a fuel facility licensee amended its license so as to avoid Part 171 fees for fuel facilities, the budget for the safety component would be spread only among those remaining licensees, resulting in a higher annual fee for those licensees.

Therefore, the methodology is applied as follows. First, a fee category is assigned based on certain criteria and the licensed nuclear material and use/associated activity. Although a licensee may choose not to fully utilize a license, the license is still used as the source for determining authorized nuclear material and use/associated activity. Next, the category/license information is used to determine where the license will fit into the matrix. The matrix depicts the categorization of licenses by authorized material and use/activity and the relative programmatic effort associated with each category. The programmatic effort (expressed as a value in the matrix) reflects the safety or safeguards significance associated with the authorized nuclear material and use/activity, and the commensurate generic regulatory program (i.e., scope, depth and rigor). The relative weighted factors per facility for the various subclasses are as follows:

	Number of facilities	Relative weight per facility	
		Safety	Safeguards
High Enriched Fuel	2	1.00	1.00
Low Enriched Fuel	4	.52	.34
Limited Operations Facility	1	.20	.11
UF_6 Conversion	1	.30	.....
Others	3	.12	.09

The above weighted factors for the safety and safeguards portion are applied to the $10.1 million base fee. To this base fee, the LLW and other surcharges are added. The resulting annual fee for each fuel facility, including the additional charge (surcharge) is shown below.

Type of facility	Proposed annual fee
High Enriched Fuel:	
Babcock & Wilcox	$2,569,000
Nuclear Fuel Services	2,569,000
Low Enriched Fuel:	
Combustion Engineering (Hematite)	1,261,000
General Electric	1,261,000
Siemens Nuclear Power	1,261,000
Westinghouse	1,261,000
Limited Operation Facilities:	
B&W Fuel Company	$501,700
UF_6 Conversion:	
AlliedSignal Corp.	$639,200
Other Fuel Facilities:	
Babcock & Wilcox	$340,700
General Atomics	$340,700
General Electric	$340,700

Of the $2.3 million ($1.8 million in base budget plus $0.5 million in surcharge) attributable to the uranium recovery class of licensees, approximately $1.9 million will be assessed to the Department of Energy (DOE) to recover the costs associated with DOE facilities under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). In September 1993, DOE became a general licensee of the NRC because post-reclamation closure of the Spook, Wyoming site had been achieved. There are two additional UMTRCA sites now under the general license: Burrell, Pennsylvania and Loman, Idaho.

As indicated earlier, the NRC has refined its methodology for establishing Part 171 annual fees for uranium recovery licenses. The methodology identifies three categories of licenses: (1) Conventional uranium mills; (2) solution mining uranium mills; and (3) mill tailings disposal facilities, each of which benefits from the generic uranium recovery program. In order to determine the benefits to each uranium recovery category, a matrix was established to relate the category and the level of benefit, by program element and subelement. The two major program elements of the generic uranium recovery program are activities related to facility operations and those related to facility closure. Each of these elements was further divided into three subelements. The three major subelements of generic activities related to uranium facility operations are activities related to: (1) The operation of the mill; (2) the handling and disposal of waste; and (3) prevention of groundwater contamination. The three major subelements of generic activities related to uranium facility closure are activities related to: (1) Decommissioning of facilities and cleanup of land; (2) reclamation and closure of the tailings impoundment; and (3) cleanup of contaminated groundwater. Weighted factors were assigned to each program element and subelement.

The two existing categories of mills, those that perform conventional milling and those that perform solution mining and milling, are continued. The existing category for licenses whose purpose is to dispose of Section 11e.(2) byproduct material is also continued. The matrix also contains a category for conventional mills with Possession Only Licenses that are also authorized to dispose of more than 5,000 cubic yards of byproduct material, as defined in section 11e.(2) of the Atomic Energy Act of 1954, as amended, from other facilities. Currently, there are three mills authorized for such waste disposal. The applicability of the generic program in each subelement to each uranium recovery category was qualitatively estimated as either significant, some, minor, or none.

The resulting relative weighted factor per facility for the various subclasses is as follows:

	No. of facilities	Relative weight per facility
Class I facilities	3	1.00
Class II facilities	6	.57
11e.(2) disposal	1	.73
11e.(2) disposal incidental to existing tailings sites	3	.13

Using this refined approach, the remaining $0.4 million not recovered from DOE results in annual fees for each class of licensees as follows:

2.A.(2) — Class I facilities: $60,900
2.A.(2) — Class II facilities: $34,400
2.A.(2) — Other facilities: $22,000
2.A.(3) — 11e(2) disposal: $44,700
2.A.(4) — 11e(2) disposal incidental to existing tailings site: $7,900

Because rare earth facilities are now budgeted for separately, a separate class has been established for these licensees in this proposed rule. For rare earth facilities, the generic and other regulatory costs of $66,000 have been spread uniformly among licensees who have a specific license for receipt and processing of source material. This results in an annual fee of $22,000 for each facility.

For spent fuel storage licenses, the costs of $2.3 million ($1.7 million in base budget plus $0.6 million in surcharge) have been spread uniformly among those licensees who hold specific or general licenses for receipt and storage of spent fuel at an ISFSI. This results in an annual fee of $291,500 for each facility. This represents a fee decrease compared to FY 1994 because there are now more licensees in this class.

To equitably and fairly allocate the $24.9 million directly attributable to the approximately 6,200 diverse material users and registrants plus the materials share ($2.8 million) of the surcharge, the NRC has continued to base the annual fee on the Part 170 application fees and an estimated cost for inspections. Because the application fees and inspection costs are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the generic and other regulatory costs to the diverse categories of licensees based on how much it costs NRC to regulate each category. The fee calculation also continues to consider the inspection frequency, which is indicative of the safety risk and resulting regulatory costs associated with the categories of licensees. In summary, the annual fee for these categories of licenses is developed as follows:

Annual Fee = (Application Fee + Average Inspection Cost/Inspection Priority) x Constant + (Unique Category Costs).

The constant is the multiple necessary to recover $27.7 million and is 2.2 for FY 1995. The unique costs are any special costs that the NRC has budgeted for a specific category of licensees. For FY 1995, unique costs of approximately $1.0 million were identified for the medical improvement program which is attributable to medical licensees.

For the first time, the NRC is proposing to combine the ''flat'' material inspection fees in 10 CFR part 170 with the annual fees in 10 CFR Part 171. This is being done to recognize that the ''regulatory service'' to licensees referred to in OBRA–90, comprises the total regulatory activities that NRC determines are needed to regulate a class of licensees. These regulatory services include not only ''flat'' fee inspections but also research, rulemaking, orders, enforcement actions, responses to allegations, incident investigations and other activities necessary to regulate classes of licensees. In addition to being consistent with the regulatory service concept in OBRA–90, the NRC believes that materials licensees' ''flat'' inspection fees could be combined with their annual fees without creating any significant questions of fairness. This is because the concept of the annual fee, including the inspection fee, has, in effect, already been implemented for most materials licensees. First, materials

licensees pay a ''flat fee'' per inspection based on the average cost of an inspection for their fee category, and second, the routine inspection frequency is identical for most licensees in the same fee category. Furthermore, past experience suggests that less than 10 percent of the materials inspections for these licensees are nonroutine. Thus, licensees in the same materials license fee category pay essentially the same average annual cost for inspections. Therefore, combining inspection and annual fees results in essentially the same average cost per license over time. Additionally, this approach will provide materials licensees with simpler and more predictable NRC fee charges as there will be no additional fees paid for periodic inspections. The proposed materials annual fees would become effective for FY 1995, and those materials licensees who paid a ''flat'' 10 CFR part 170 inspection fee for inspections conducted in FY 1995, would receive a credit for those payments towards their FY 1995 annual fee assessed under 10 CFR part 171. Those Agreement States licensees that paid an inspection fee would not receive a credit because they pay no annual fee.

Materials annual fees for FY 1995 have decreased compared to the FY 1994 annual fees. There are two basic reasons for this. First, the FY 1995 budgeted amount attributable to materials licensees is about 35 percent lower than the comparable FY 1994 amount, based on the reallocation of certain materials budgeted costs to all NRC licensees rather than to materials licensees as discussed earlier. The professional hourly rate for the materials program has decreased from $133 per hour to $116 per hour, due to the use of cost center concepts in allocating NRC budgeted costs. These decreases are partially offset by a decrease in the number of licensees to be assessed annual fees in FY 1995 (from about 6,500 to about 6,200) and the inclusion of the average annual inspection costs with the annual fee. For example, if an inspection is performed every three years, one- third of the flat inspection fee would be included in the annual fee.

A materials licensee may pay a reduced annual fee if the licensee qualifies as a small entity under the NRC's size standards and certifies that it is a small entity using NRC Form 526.

To recover the $4.7 million attributable to the transportation class of licensees, $1.2 will be assessed to the Department of Energy (DOE) to cover all of its transportation costs under Category 18. The remaining transportation costs for generic activities ($3.5 million) are allocated to holders of approved QA plans. The annual fee for approved QA plans is $77,800 for users and fabricators and $1,000 for users only.

The amount or range of the proposed FY 1995 annual fees for all materials licensees is summarized as follows:

MATERIALS LICENSES—ANNUAL FEE RANGES

Category of license	Annual fees
Part 70—High enriched fuel.	$2,569,000
Part 70—Low enriched fuel	1,261,000
Part 40—UF_6 conversion ..	639,200
Part 40—Uranium recovery	22,000 to 60,900
Part 30—Byproduct Material.	490 to 23,400 [1]
Part 71—Transportation of Radioactive Material.	1,000 to 77,800
Part 72—Independent Storage of Spent Nuclear Fuel.	291,500

[1] Excludes the annual fee for a few military ''master'' materials licenses of broad-scope issued to Government agencies, which is $417,700.

Section 171.16(e) would be amended to establish the additional charge which is included in the annual fees shown in Section 171.16(d) of this final rule. The Commission is continuing the approach used in FY 1993 to assess the budgeted low-level waste (LLW) costs to two broad categories of licensees (large LLW generators and small LLW generators) based on historical disposal data. This surcharge is included in the annual fees for the applicable categories in Section 171.16(d). Although these NRC LLW disposal regulatory activities are not directly attributable to regulation of NRC materials licensees, the costs nevertheless must be recovered in order to comply with the requirements of OBRA–90. For FY 1995, the additional charge recovers approximately 18 percent of the NRC budgeted costs of $7.0 million relating to LLW disposal generic activities from small generators, which are comprised of materials licensees that dispose of LLW. The percentage distribution reflects the deletion of costs for LLW disposed of by Agreement State licensees. The FY 1995 budgeted costs related to the additional charge for LLW and the amount of the charge are calculated as follows:

Category of costs	FY 1995 budgeted costs ($ in millions)
1. Activities not attributable to an existing NRC licensee or class of licensee, i.e., LLW disposal generic activities	$7.0

Of the $7.0 million in budgeted costs shown above for LLW activities, 82 percent of the amount ($5.7 million) are allocated to the 119 large waste generators (reactors and fuel facilities) included in 10 CFR Part 171. This results in an additional charge of $48,000 per facility. Thus, the LLW charge will be $48,000 per HEU, LEU, UF_6 facility, and each of the other three fuel facilities. The remaining $1.3 million is allocated to the materials licensees in categories that generate low-level waste (895 licensees) as follows: $1,400 per materials license except for those in Category 17. Those licensees that generate a significant amount of low-level waste for purposes of the calculation of the $1,400 surcharge are in fee Categories 1.B, 1.D, 2.C, 3.A, 3.B, 3.C, 3.L, 3.M, 3.N, 4.A, 4.B, 4.C, 4.D, 5.B, 6.A, and 7.B. The surcharge for licenses in fee Category 17, which also generate and/or dispose of low-level waste, is $21,000.

On the basis of this calculation, a fuel facility (a high-enriched fuel fabrication licensee, for example) pays an annual fee of $2,546,000 and an additional charge of $48,000 for LLW activities and small entity costs. A medical center with a broad-scope program pays a base annual fee of $22,000 and an additional charge of $1,400, for a total FY 1995 annual fee of $23,400.

Footnote 1 of 10 CFR 171.16(d) would be amended to provide for a waiver of the annual fees for those materials licensees, and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals, or filed for possession only/storage only licenses before October 1, 1994, and permanently ceased licensed activities entirely by September 30, 1994. All other licensees and approval holders who held a license or approval on October 1, 1994 are subject to the FY 1995 annual fees.

Section 171.19 Payment

This section would be revised to give credit for partial payments made by certain licensees in FY 1995 toward their FY 1995 annual fees. The NRC anticipates that the first, second, and third quarterly payments for FY 1995 will have been made by operating power reactor licensees and some materials

licensees before the final rule is effective. Therefore, the NRC would credit payments received for those quarterly annual fee assessments toward the total annual fee to be assessed. The NRC also expects that certain materials licensees would have paid inspection fees for inspections that were performed in FY 1995, whereas the rule proposes to include such costs in the annual fee. The FY 1995 annual fee bills will reflect a credit for these inspection fee payments. The NRC would adjust the fourth quarterly bill in order to recover the full amount of the revised annual fee, or to make refunds, as necessary. As in FY 1994, payment of the annual fee is due on the effective date of the rule and interest accrues from the effective date of the rule. However, interest will be waived if payment is received within 30 days from the effective date of the rule.

During the past four years many licensees have indicated that although they held a valid NRC license authorizing the possession and use of special nuclear, source, or byproduct material, they were in fact either not using the material to conduct operations or had disposed of the material and no longer needed the license. In responding to licensees about this matter, the NRC has stated that annual fees are assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. Whether or not a licensee is actually conducting operations using the material is a matter of licensee discretion. The NRC cannot control whether a licensee elects to possess and use radioactive material once it receives a license from the NRC. Therefore, the NRC reemphasizes that the annual fee will be assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. To remove any uncertainty, the NRC issued minor clarifying amendments to 10 CFR 171.16, footnotes 1 and 7 on July 20, 1993 (58 FR 38700).

IV. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental impact assessment has been prepared for the proposed regulation.

V. Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

VI. Regulatory Analysis

With respect to 10 CFR Part 170, this proposed rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in its decision of *National Cable Television Association, Inc.* v. *United States*, 415 U.S. 36 (1974) and *Federal Power Commission* v. *New England Power Company*, 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the ''value to the recipient'' of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia, *National Cable Television Association* v. *Federal Communications Commission*, 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters* v. *Federal Communications Commission*, 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association* v. *Federal Communications Commission*, 554 F.2d 1109 (D.C. Cir. 1976) and *Capital Cities Communication, Inc.* v. *Federal Communications Commission*, 554 F.2d 1135 (D.C. Cir. 1976). These decisions of the Courts enabled the Commission to develop fee guidelines that are still used for cost recovery and fee development purposes.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980). The Court held that—

(1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by NEPA;

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR Part 171, on November 5, 1990, the Congress passed Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90) which required that for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA–90 was amended in 1993 to extend the 100 percent fee recovery requirement for NRC through 1998. To accomplish this statutory requirement, the NRC, in accordance with § 171.13, is publishing the proposed amount of the FY 1995 annual fees for operating reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA–90 and the Conference Committee Report specifically state that—

(1) The annual fees be based on the Commission's FY 1995 budget of $525.6 million less the amounts collected from Part 170 fees and the funds directly appropriated from the NWF to cover the NRC's high level waste program;

(2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and

(3) The annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

When developing the annual fees for operating power reactors, the NRC is proposing a uniform annual fee rather than an annual fee that considers the various vendors, the types of containment, and the location of the operating power reactors. The NRC believes the difference in fees of about $20,000 is small enough relative to the size of the $3 million annual fees, to justify moving to a uniform annual fee particularly in light of the administrative savings that will follow. The annual fees for fuel cycle licensees, materials licensees, and holders of certificates, registrations and approvals and for licenses issued to Government agencies take into account the type of facility or approval and the classes of the licensees.

10 CFR Part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in *Florida*

Power and Light Company v. *United States*, 846 F.2d 765 (D.C. Cir. 1988), *cert. denied*, 490 U.S. 1045 (1989).

10 CFR Parts 170 and 171, which established fees based on the FY 1989 budget, were also legally challenged. As a result of the Supreme Court decision in *Skinner* v. *Mid-American Pipeline Co.*, 109 S. Ct. 1726 (1989), and the denial of certiorari in *Florida Power and Light*, all of the lawsuits were withdrawn.

The NRC's FY 1991 annual fee rule was largely upheld by the D.C. Circuit Court of Appeals in *Allied Signal* v. *NRC*, 988 F.2d 146 (D.C. Cir. 1993).

VII. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990 to recover approximately 100 percent of its budget authority through the assessment of user fees. OBRA–90 further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This proposed rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 1995. The proposed rule results in an decrease in the annual fees charged to most licensees, and holders of certificates, registrations, and approvals, including those licensees who are classified as small entities under the Regulatory Flexibility Act. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this proposed rule.

VIII. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and that a backfit analysis is not required for this proposed rule. The backfit analysis is not required because these proposed amendments do not require the modification of or additions to systems, structures, components, or design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct or operate a facility.

List of Subjects

10 CFR Part 170

Exports, Imports, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Penalties.

10 CFR Part 171

Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Penalties

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 170 and 171.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. The authority citation for Part 170 continues to read as follows:

Authority: 31 U.S.C. 9701, 96 Stat. 1051; sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–4381, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205, Pub. L. 101–576, 104 Stat. 2842, (31 U.S.C. 901).

2. In § 170.11, paragraph (a)(5) is revised to read as follows:

§ 170.11 Exemptions.

(a) * * *

(5) A construction permit, license, certificate of compliance, or other approval applied for by, or issued to, a Government agency, except where the Commission is authorized by statute to charge such fees.

* * * * *

3. Section 170.20 is revised to read as follows:

§ 170.20 Average Cost Per Professional Staff-Hour.

Fees for permits, licenses, amendments, renewals, special projects, Part 55 requalification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 that are based upon the full costs for the review or inspection will be calculated using the following applicable professional staff-hour rates:

Reactor Program	$123 per hour.
Nuclear Materials and Nuclear Waste Program.	$116 per hour.

4. In Section 170.21, the introductory text, Category J, Category K, and footnotes 1 and 2 to the table are revised to read as follows:

§ 170.21 Schedule of Fees for Production and Utilization Facilities, Review of Standard Referenced Design Approvals, Special Projects, Inspections and Import and Export Licenses.

Applicants for construction permits, manufacturing licenses, operating licenses, import and export licenses, approvals of facility standard reference designs, requalification and replacement examinations for reactor operators, and special projects and holders of construction permits, licenses, and other approvals shall pay fees for the following categories of services.

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees	Fees[1 2]
* * * * * * *	
J. Special Projects:[4]	
Approvals and preapplication/licensing activities	Full Cost.
Inspections[3]	Full Cost.
K. Import and export licenses:	
Licenses for the import and export only of production and utilization facilities or the import and export only of components for production and utilization facilities issued pursuant to 10 CFR part 110:	
1. Application for import or export of reactors and other facilities and components which must be reviewed by the Commission and the Executive Branch, for example, actions under 10 CFR 110.40(b):	
Application-new license	$7,500
Amendment	$7,500
2. Application for import or export of reactor components and initial exports of other equipment requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)–(8):	
Application-new license	$4,600
Amendment	$4,600

SCHEDULE OF FACILITY FEES—Continued

[See footnotes at end of table]

Facility categories and type of fees	Fees[1 2]
3. Application for export of components requiring foreign government assurances only:	
Application-new license	$2,900
Amendment	$2,900
4. Application for export or import of other facility components and equipment not requiring Commission review, Executive Branch review, or foreign government assurances:	
Application-new license	$1,200
Amendment	$1,200
5. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require analysis or review:	
Amendment	$120

[1] Fees will not be charged for orders issued by the Commission pursuant to § 2.202 of this chapter or for amendments resulting specifically from the requirements of these types of Commission orders. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g. §§ 50.12, 73.5) and any other sections now or hereafter in effect regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100 percent of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20. In no event will the total review costs be less than twice the hourly rate shown in § 170.20.

[3] Inspections covered by this schedule are both routine and non-routine safety and safeguards inspections performed by NRC for the purpose of review or followup of a licensed program. Inspections are performed throughout the full term of the license to ensure that the authorized activities are being conducted in accordance with the Atomic Energy Act of 1954, as amended, other legislation, Commission regulations or orders, and the term and conditions of the license. Non-routine inspections that result from third-party allegations will not be subject to fees.

[4] Fees will not be assessed for requests/reports submitted to the NRC:

1. In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;
2. In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or
3. As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

5. Section 170.31 is revised to read as follows:

Section 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

Applicants for materials licenses, import and export licenses, and other regulatory services and holders of materials licenses, or import and export licenses shall pay fees for the following categories of services. This schedule includes fees for health and safety and safeguards inspections where applicable.

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee[2 3]
1. Special nuclear material:	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U–235 in unsealed form or 200 grams or more of U–233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI):	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers:[4]	
Application—New license	$530.
Renewal	$720.
Amendment	$290.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee[2 3]
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A:[4]	
Application—New license	$580
Renewal	$650.
Amendment	$280.
E. Licenses for construction and operation of a uranium enrichment facility:	
Application	$125,000.
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
2. Source material:	
A.(1) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
(2) Licenses that authorize the receipt, from other persons, of byproduct material as defined in section 11e(2) of the Atomic Energy Act for possession and disposal except those licenses subject to fees in Category 2.A.(1).	
License, renewal, amendment	Full Cost.
Inspections	Full Cost.
(3) Licenses that authorize the receipt, from other persons, of byproduct material as defined in section 11e(2) of the Atomic Energy Act for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(1).	
License, renewal, amendment	Full Cost.
B. Licenses which authorize the possession, use and/or installation of source material for shielding:	
Application—New license	$150.
Renewal	$170.
Amendment	$230.
C. All other source material licenses:	
Application—New license	$2,700.
Renewal	$1,500.
Amendment	$400.
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	$2,900.
Renewal	$1,900.
Amendment	$530.
B. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	$1,200.
Renewal	$2,400.
Amendment	$560.
C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material:	
Application—New license	$3,900.
Renewal	$3,100.
Amendment	$500.
D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material:	
Application—New license	$1,500.
Renewal	$480.
Amendment	$420.
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):	
Application—New license	$1,200.
Renewal	$820.
Amendment	$350.
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application—New license	$1,500.
Renewal	$1,100.
Amendment	$360.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee[2 3]
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application—New license	$5,800.
Renewal	$5,200.
Amendment	$750.
H. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application—New license	$2,300.
Renewal	$2,700.
Amendment	$990.
I. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application—New license	$4,300.
Renewal	$2,600.
Amendment	$840.
J. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application—New license	$1,500.
Renewal	$1,500.
Amendment	$280.
K. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application—New license	$1,300.
Renewal	$1,300.
Amendment	$300.
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	$4,100.
Renewal	$3,300.
Amendment	$640.
M. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	$1,500.
Renewal	$1,700.
Amendment	$590.
N. Licenses that authorize services for other licensees, except: (1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P and (2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, 4C, and 4D:	
Application—New license	$1,800.
Renewal	$1,900.
Amendment	$570.
O. Licenses for possession and use of byproduct material issued pursuant to part 34 of this chapter for industrial radiography operations:	
Application—New license	$3,700.
Renewal	$3,000.
Amendment	$700.
P. All other specific byproduct material licenses, except those in Categories 4A through 9D:	
Application—New license	$530.
Renewal	$720.
Amendment	$290.
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material:	
License, renewal, amendment	Full Cost.
Inspections	Full Cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	$3,200.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee[2 3]
Renewal	$2,300.
Amendment	$390.
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	$1,700.
Renewal	$1,200.
Amendment	$280.
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:	
Application—New license	$3,100.
Renewal	$4,000.
Amendment	$610.
B. Licenses for possession and use of byproduct material for field flooding tracer studies:	
License, renewal, amendment	Full Cost
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:	
Application—New license	$4,900.
Renewal	$1,900.
Amendment	$770.
7. Human use of byproduct, source, or special nuclear material:	
A. Licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$2,700.
Renewal	$1,400.
Amendment	$450.
B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$2,900.
Renewal	$5,700.
Amendment	$560.
C. Other licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	$1,300.
Renewal	$1,400.
Amendment	$430.
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:	
Application—New license	$730.
Renewal	$630.
Amendment	$340.
9. Device, product, or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:	
Application—each device	$3,200.
Amendment—each device	$1,200.
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices:	
Application—each device	$1,600.
Amendment—each device	$580.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:	
Application—each source	$700.
Amendment—each source	$230.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel:	
Application—each source	$350.
Amendment—each source	$120.
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers:	
Approval, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
B. Evaluation of 10 CFR Part 71 quality assurance programs:	
Application—Approval	$320.
Renewal	$340.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee[2 3]
Amendment	$240.
Inspections	Full Cost.
11. Review of standardized spent fuel facilities:	
Approval, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
12. Special projects:[5]	
Approvals and preapplication/licensing activities	Full Cost.
Inspections	Full Cost.
13. A. Spent fuel storage cask Certificate of Compliance:	
Approvals	Full Cost.
Amendments, revisions, and supplements	Full Cost.
Reapproval	Full Cost.
B. Inspections related to spent fuel storage cask Certificate of Compliance	Full Cost.
C. Inspections related to storage of spent fuel under § 72.210 of this chapter	Full Cost.
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities pursuant to 10 CFR parts 30, 40, 70, and 72 of this chapter:	
Approval, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
15. Import and Export licenses:	
Licenses issued pursuant to 10 CFR Part 110 of this chapter for the import and export only of special nuclear material, source material, byproduct material, heavy water, tritium, or nuclear grade graphite.	
A. Application for import or export of HEU and other materials which must be reviewed by the Commission and the Executive Branch, for example, those actions under 10 CFR 110.40(b).	
Application—new license	$7,500.
Amendment	$7,500.
B. Application for import or export of special nuclear material, heavy water, nuclear grade graphite, tritium, and source material, and initial exports of materials requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(2)-(8).	
Application—new license	$4,600.
Amendment	$4,600.
C. Application for export of routine reloads of LEU reactor fuel and exports of source material requiring foreign government assurances only.	
Application—new license	$2,900.
Amendment	$2,900.
D. Application for export or import of other materials not requiring Commission review, Executive Branch review or foreign government assurances.	
Application—new license	$1,200.
Amendment	$1,200.
E. Minor amendment of any export or import license to extend the expiration date, change domestic information or make other revisions which do not require analysis or review.	
Amendment	$120.
16. Reciprocity:	
Agreement State licensees who conduct activities in a non-Agreement State under the reciprocity provisions of 10 CFR 150.20.	
Application (initial filing of Form 241)	$1,100.
Renewal	N/A.
Revisions	$200.

[1] *Types of fees*—Separate charges, as shown in the schedule, will be assessed for preapplication consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, amendments and renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, and certain inspections. The following guidelines apply to these charges:

(a) *Application fees*—Applications for new materials licenses and approvals; applications to reinstate expired, terminated or inactive licenses and approvals except those subject to fees assessed at full cost; and applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20, must be accompanied by the prescribed application fee for each category, except that:

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category and

(2) Applications for licenses under Category 1E must be accompanied by an application fee of $125,000.

(b) *License/approval/review fees*—Fees for applications for new licenses and approvals and for preapplication consultations and reviews subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 4D, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(b), (e), and (f).

(c) *Renewal/reapproval fees*—Applications for renewal of licenses and approvals must be accompanied by the prescribed renewal fee for each category, except that fees for applications for renewal of licenses and approvals subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 4D, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(d).

(d) *Amendment/Revision Fees*—

(1) Applications for amendments to licenses and approvals and revisions to reciprocity initial applications, except those subject to fees assessed at full costs, must be accompanied by the prescribed amendment/revision fee for each license/revision affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories in which case the amendment fee for the highest fee category would apply. For those licenses and approvals subject to full costs (fee Categories 1A, 1B, 1E, 2A, 4A, 4D, 5B, 10A, 11, 12, 13A, and 14), amendment fees are due upon notification by the Commission in accordance with § 170.12(c).

(2) An application for amendment to a materials license or approval that would place the license or approval in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for the new category.

(3) An application for amendment to a license or approval that would reduce the scope of a licensee's program to a lower fee category must be accompanied by the prescribed amendment fee for the lower fee category.

(4) Applications to terminate licenses authorizing small materials programs, when no dismantling or decontamination procedure is required, are not subject to fees.

(e) *Inspection fees*—Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. The fees assessed at full cost will be determined based on the professional staff time required to conduct the inspection multiplied by the rate established under § 170.20 plus any applicable contractual support services costs incurred. Inspection fees are due upon notification by the Commission in accordance with § 170.12(g).

[2] Fees will not be charged for orders issued by the Commission pursuant to 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections now or hereafter in effect) regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For those applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20. The minimum total review cost is twice the hourly rate shown in § 170.20.

[4] Licensees paying fees under Categories 1A, 1B, and 1E are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except in those instances in which an application deals only with the sealed sources authorized by the license. Applicants for new licenses or renewal of existing licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application or renewal fee for fee Category 1C only.

[5] Fees will not be assessed for requests/reports submitted to the NRC:

(a) In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter or does not involve an unreviewed safety issue;

(b) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

(c) As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

PART 171—ANNUAL FEES FOR REACTOR OPERATING LICENSES AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

6. The authority citation for Part 171 continues to read as follows:

Authority: Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330, as amended by sec. 3201, Pub. L. 101–239, 103 Stat. 2106 as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388, (42 U.S.C. 2213); sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201(w)); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 2903, Pub. L. 102–486, 106 Stat. 3125, (42 U.S.C. 2214 note).

7. Section 171.13 is revised to read as follows:

§ 171.13 Notice.

The annual fees applicable to an operating reactor and to a materials licensee, including a Government agency licensed by the NRC, subject to this part and calculated in accordance with §§ 171.15 and 171.16, will be published as a notice in the Federal Register as soon as is practicable but no later than the third quarter of FY 1996 through 1998. The annual fees will become due and payable to the NRC in accordance with § 171.19 except as provided in § 171.17. Quarterly payments of the annual fees of $100,000 or more will continue during the fiscal year and be based on the applicable annual fees as shown in §§ 171.15 and 171.16 of the regulations until a notice concerning the revised amount of the fees for the fiscal year is published by Commission.

8. In § 171.15, paragraphs (a), (b)(3), (c)(1), (c)(2), (d), and (e) are revised to read as follows:

§ 171.15 Annual fees: Reactor operating licenses.

(a) Each person licensed to operate a power, test, or research reactor shall pay the annual fee for each unit for which the person holds an operating license at any time during the Federal FY in which the fee is due, except for those test and research reactors exempted in § 171.11(a)(1) and (a)(2).

(b) * * *

(3) Generic activities required largely for NRC to regulate power reactors, e.g., updating Part 50 of this chapter, or operating the Incident Response Center. The base FY 1995 annual fee for each operating power reactor subject to fees under this section and which must be collected before September 30, 1995, is $2,456,000. The total annual fee to be assessed to each operating power reactor which would include the surcharge for each reactor is shown in paragraph (d) of this section.

(c)(1) An additional charge will be established and added to the base annual fee for each operating power reactor. The amount of the surcharge is the sum of the budgeted costs for each FY for the following:

(i) Activities not attributable to an existing NRC licensee or classes of licensees; e.g., international cooperative safety program and international safeguards activities; support for the Agreement State program; site decommissioning management plan (SDMP) activities and approximately 82 percent of the low-level waste disposal generic activities, and

(ii) Activities not currently assessed under 10 CFR Part 170 licensing and inspection fees based on existing law or Commission policy, e.g., reviews and inspections conducted of nonprofit educational institutions and Federal agencies; activities related to decommissioning and reclamation and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act.

(2) The FY 1995 surcharge to be added to each operating power reactor is $511,000. This amount is calculated by dividing the total cost for these activities ($55.2 million) by the number of operating power reactors (108).

(d) The FY 1995 Part 171 annual fee for each operating power reactor, which includes the surcharge in paragraph (c)(2) of this section, is $2,967,000. Thereafter, annual fees will be assessed in accordance with § 171.13.

(e) The annual fees for licensees authorized to operate a nonpower (test and research) reactor licensed under part 50 of this chapter, except for those reactors exempted from fees under § 171.11(a), are as follows:

Research reactor	$56,500
Test reactor	$56,500

* * * * *

9. In § 171.16, the introductory text of paragraph (c) and paragraphs (c)(4), (d), and (e) are revised to read as follows:

§ 171.16 Annual fees: Materials licensees, holders of certificates of compliance, holders of sealed source and device registrations, holders of quality assurance program approvals and Government agencies licensed by the NRC.

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification, the licensee may pay reduced annual fees for FY 1995 as follows:

	Maximum annual fee per licensed category
Small businesses not engaged in manufacturing and small not-for-profit organizations (gross annual receipts):	
$350,000 to $5 million	$1,800
Less than $350,000	400
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	1,800
Less than 35 employees	400
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	1,800
Less than 20,000	400
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less:	
35 to 500 employees	1,800
Less than 35 employees	400

* * * * *

(4) For FY 1995, the maximum annual fee (base annual fee plus surcharge) a small entity is required to pay is $1,800 for each category applicable to the license(s).

(d) The FY 1995 annual fees, including the surcharges shown in paragraph (e) of this section, for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are as follows:

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

Category of materials licenses		Annual Fees[1 2 3]
1. Special nuclear material:		
A.(1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities.		
(a) Strategic Special Nuclear Material.		
Babcock & Wilcox	SNM–42	$2,569,000
Nuclear Fuel Services	SNM–124	2,569,000
(b) Low Enriched Uranium in Dispersable Form Used for Fabrication of Power Reactor Fuel		
Combustion Engineering (Hematite)	SNM–33	1,261,000
General Electric Company	SNM–1097	1,261,000
Siemens Nuclear Power	SNM–1227	1,261,000
Westinghouse Electric Company	SNM–1107	1,261,000
(2) All other special nuclear materials licenses not included in category 1.A.(1) which are licensed for fuel cycle activities.		
(a) Facilities with limited operations:		
B&W Fuel Company	SNM–1168	501,700
(b) All Others:		
Babcock & Wilcox	SNM–414	340,700
General Atomics	SNM–696	340,700
General Electric	SNM–960	340,700
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI)		291,500
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers		1,300
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2)		3,000
E. Licenses for the operation of a uranium enrichment facility		[11] N/A
2. Source Material		
A.(1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride		639,200
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode		
Class I facilities[4]		60,900
Class II facilities[4]		34,400
Other facilities		22,000
(3) Licenses that authorize the receipt, from other persons, of byproduct material as defined in Section 11e.(2) of the Atomic Energy Act for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4)		44,700
(4) Licenses that authorize the receipt, from other persons, of byproduct material as defined in Section 11e(2) of the Atomic Energy Act for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2)		7,900

B. Licenses which authorize only the possession, use and/or installation of source material for shielding	490
C. All other source material licenses	8,700
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	16,500
B. Other licenses for possession and use of byproduct material issued pursuant to Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	5,500
C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to Part 40 of this chapter when included on the same license	11,200
D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when included on the same license	4,400
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)	3,200
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	3,800
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	19,600
H. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	5,000
I. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	8,800
J. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	3,800
K. Licenses issued pursuant to subpart B of part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	3,200
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution	12,200
M. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for research and development that do not authorize commercial distribution	5,400
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, 4C, and 4D	6,000
O. Licenses for possession and use of byproduct material issued pursuant to Part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized pursuant to Part 40 of this chapter when authorized on the same license	14,000
P. All other specific byproduct material licenses, except those in Categories 4A through 9D	1,700
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material	[5] 101,600
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	14,400
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	7,600
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies	8,100
B. Licenses for possession and use of byproduct material for field flooding tracer studies	13,100
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material	14,600
7. Human use of byproduct, source, or special nuclear material.	
A. Licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license	10,200

B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license	[9] 23,300
C. Other licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license	[9] 4,700
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities	1,800
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	7,200
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices.	3,700
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution.	1,600
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel.	780
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers.	
Spent Fuel, High-Level Waste, and plutonium air packages	[6] N/A
Other Casks	[6] N/A
B. Approvals issued of 10 CFR part 71 quality assurance programs.	
Users and Fabricators	77,800
Users	1,000
11. Standardized spent fuel facilities	[6] N/A
12. Special Projects	[6] N/A
13. A. Spent fuel storage cask Certificate of Compliance	[6] N/A
B. General licenses for storage of spent fuel under 10 CFR 72.210	291,500
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities pursuant to 10 CFR parts 30, 40, 70, and 72	[7] N/A
15. Import and Export licenses	[8] N/A
16. Reciprocity	[8] N/A
17. Master materials licenses of broad scope issued to Government agencies	417,700
18. Department of Energy:	
A. Certificates of Compliance	[10] 1,200,000
B. Uranium Mill Tailing Radiation Control Act (UMTRCA) activities	1,937,000

[1] Annual fees will be assessed based on whether a licensee held, during the fiscal year, a valid license with the NRC authorizing possession and use of radioactive material. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 1994 and permanently ceased licensed activities entirely by September 30, 1994. Annual fees for licensees who filed for termination of a license or for a POL during the fiscal year and for new licenses issued during the fiscal year will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1.A.(1). are not subject to the annual fees of category 1.C and 1.D for sealed sources authorized in the license and licensees paying annual fees under Category 2.A(2) are not subject to the annual fees for Category 4.D.

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of Parts 30, 40, 70, 71, or 72 of this chapter.

[3] For FYs 1996 through 1998, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the Federal Register for notice and comment.

[4] A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses. An ''other'' license includes licenses for extraction of metals, heavy metals, and rare earths.

[5] Two licenses have been issued by NRC for land disposal of special nuclear material. Once NRC issues a LLW disposal license for byproduct and source material, the Commission will consider establishing an annual fee for this type of license.

[6] Standardized spent fuel facilities, part 71 and 72 Certificates of Compliance, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to the users of the designs certificates, and topical reports.

[7] Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

[8] No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

[9] Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses under Categories 7B or 7C.

[10] This includes Certificates of Compliance issued to DOE that are not under the Nuclear Waste Fund.

[11] No annual fee has been established because there are currently no licensees in this particular fee category.

(e) A surcharge is added for each category for which a base annual fee is required. The surcharge consists of the following:

(1) To recover costs relating to LLW disposal generic activities, an additional charge of $48,000 has been added to fee Categories 1.A.(1), 1.A.(2) and 2.A.(1); an additional charge of $1,400 has been added to fee Categories 1.B., 1.D., 2.C., 3.A., 3.B., 3.C., 3.L., 3.M., 3.N., 4.A., 4.B., 4.C., 4.D., 5.B., 6.A., and 7.B.; and an additional charge of $21,000 has been added to fee Category 17.

(2) To recover these budgeted costs that are not directly or solely attributable to materials licensees and holders of certificates, registrations or approvals a surcharge has been added for the following:

(i) Activities not attributable to an existing NRC licensee or classes of licensees; e.g., international cooperative safety program and international safeguards activities; support for the Agreement State program; site decommissioning management plan (SDMP) activities and

(ii) Activities not currently assessed under 10 CFR part 170 licensing and inspection fees based on existing law or Commission policy, e.g., reviews and inspections conducted of nonprofit educational institutions and Federal agencies; activities related to decommissioning and reclamation and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act.

10. In Section 171.19, paragraphs (b) and (c) are revised to read as follows:

§ 171.19 Payment.

* * * * *

(b) For FY 1995 through FY 1998, the Commission will adjust the fourth quarterly bill for operating power reactors and certain materials licensees to recover the full amount of the revised annual fee. If the amounts collected in the first three quarters exceed the amount of the revised annual fee, the overpayment will be refunded. The NRC will also adjust the FY 1995 annual fee bills to reflect a credit for any payments received for those FY 1995 inspection costs that are included in the FY 1995 annual fee. All other licensees, or holders of a certificate, registration, or approval of a QA program will be sent a bill for the full amount of the annual fee upon publication of the final rule. Payment is due on the effective date of the final rule and interest accrues from the effective date of the final rule. However, interest will be waived if payment is received within 30 days from the effective date of the final rule.

(c) For FYs 1995 through 1998, annual fees in the amount of $100,000 or more and described in the **Federal Register** notice pursuant to § 171.13 must be paid in quarterly installments of 25 percent as billed by the NRC. The quarters begin on October 1, January 1, April 1, and July 1 of each fiscal year. Annual fees of less than $100,000 must be paid once a year as billed by the NRC.

Dated at Rockville, Maryland, this 10th day of March, 1995.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Appendix A to This Proposed Rule Regulatory Flexibility Analysis for the Amendments to 10 CFR Part 170 (License Fees) and 10 CFR Part 171 (Annual Fees)

I. Background

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) establishes as a principle of regulatory practice that agencies endeavor to fit regulatory and informational requirements, consistent with applicable statutes, to a scale commensurate with the businesses, organizations, and government jurisdictions to which they apply. To achieve this principle, the Act requires that agencies consider the impact of their actions on small entities. If the agency cannot certify that a rule will not significantly impact a substantial number of small entities, then a regulatory flexibility analysis is required to examine the impacts on small entities and the alternatives to minimize these impacts.

To assist in considering these impacts under the Regulatory Flexibility Act, the NRC adopted size standards for determining which NRC licensees qualify as small entities (50 FR 50241; December 9, 1985). These size standards were clarified November 6, 1991 (56 FR 56672). On April 7, 1994 (59 FR 16513), the Small Business Administration (SBA) issued a final rule changing its size standards. The SBA adjusted its receipts-based size standards levels to mitigate the effects of inflation from 1984 to 1994. On November 30, 1994 (59 FR 61293), the NRC published a proposed rule to amend its size standards. The NRC proposed to adjust its receipts-based size standards from $3.5 million to $5 million to accommodate inflation and to conform to the SBA rule. The NRC also proposed to eliminate the separate $1 million size standard for private practice physicians and to apply a receipts-based size standard of $5 million to this class of licensees. This mirrors the revised SBA standard of $5 million for medical practitioners. The NRC also proposed to establish a size standard of 500 or fewer employees for business concerns that are manufacturing entities. This standard is the most commonly used SBA employee standard and would be the standard applicable to the types of manufacturing industries that hold an NRC license. The final rule that would revise the NRC's size standards has been sent to the SBA for review and approval. The NRC intends to adopt the revised standards in the final FY 1995 fee rule. The small entity fee categories in § 171.16(c) of this proposed rule have been modified to reflect the proposed changes in the size standards. It is proposed that a new maximum small entity fee for manufacturing industries with 35 to 500 employees be established at $1,800 and a lower-tier small entity fee of $400 be established for those manufacturing industries with less than 35 employees. The receipts-based lower-tier of $250,000 has been raised to $350,000 to maintain the lower-tier at the same relative amount of the new small entity size standard of $5 million. The NRC proposed size standards are as follows:

(a) A small business is a for-profit concern and is a—

(1) Concern that provides a service or a concern not engaged in manufacturing with average gross receipts of $5 million or less over its last three completed fiscal years; or

(2) Manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months.

(b) A small organization is a not-for-profit organization which is independently owned and operated and has annual gross receipts of $5 million or less.

(c) A small governmental jurisdiction is a government of a city, county, town, township, village, school district, or special district with a population of less than 50,000.

(d) A small educational institution is one that is—

(1) Supported by a qualifying small governmental jurisdiction; or

(2) Not state or publicly supported and has 500 or fewer employees.

(e) For purposes of this section, the NRC shall use the Small Business Administration definition of receipts to include ''all revenues in whatever form received or accrued from whatever source * * *'' (13 CFR 402(b)(2)). A licensee who is a subsidiary of a large entity does not qualify as a small entity for purposes of this section.

Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), requires that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, for Fiscal Years (FY) 1991 through 1995 by assessing license and annual fees. OBRA–90 was amended in 1993 to extend the 100 percent recovery requirement for NRC through 1998. For FY 1991, the amount collected was approximately $445 million; for FY 1992, approximately $492.5 million; for FY 1993 about $518.9 million; for FY 1994 about $499.6 million and the amount to be collected in FY 1995 is approximately $503.6 million.

To comply with OBRA–90, the Commission amended its fee regulations in 10 CFR parts 170 and 171 in FY 1991 (56 FR 31472; July 10, 1991); in FY 1992 (57 FR 32691; July 23, 1992); in FY 1993 (58 FR 38666; July 20, 1993); and in FY 1994 (59 FR 36895; July 20, 1994) based on a careful evaluation of over 1,000 comments. These final rules established the methodology used by NRC in identifying and determining the fees assessed and collected in FY 1991, FY 1992, FY 1993 and FY 1994. The NRC has used the same methodology established in the FY 1991, FY 1992, FY 1993 and FY 1994 rulemakings to establish the proposed fees to be assessed for FY 1995 with the following exceptions: (1) the Commission has reinstated the annual fee exemption for nonprofit educational institutions; (2) in the FY 1994 final rule, the NRC directly assigned additional effort to the reactor and materials programs for the Office of Investigations, the Office of Enforcement, the Advisory Committee on Reactor Safeguards, and the Advisory Committee on Nuclear Waste; and (3) for FY 1995, the NRC is proposing the use of cost center concepts, now being used for budgeting purposes, to develop the fees. The NRC is also proposing: (1) To change the method for allocating the budgeted costs (about $56 million) that cause fairness and equity concerns; (2) eliminate the materials ''flat'' inspection fees in 10 CFR 170.31 and include the inspections with the annual fees in 10 CFR 171.16(d); and (3) establish two professional hourly rates to better align the budgeted costs with the major classes of licensees. For FY 1995, the methodology for assessing low-level waste (LLW) costs was changed in FY 1993 based on the U.S. Court of Appeals decision dated March 16, 1993 (988 F.2d 146 (D.C. Cir. 1993)). The FY 1993

LLW allocation method has been continued in the FY 1995 final rule.

II. Impact on Small Entities

The comments received on the proposed FY 1991, FY 1992, FY 1993, and FY 1994 fee rule revisions and the small entity certifications received in response to the final FY 1991, FY 1992, FY 1993, and FY 1994 fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily those licensed under the NRC's materials program. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees.

The Commission's fee regulations result in substantial fees being charged to those individuals, organizations, and companies that are licensed under the NRC materials program. Of these materials licensees, about 18 percent (approximately 1,300 licensees) have requested small entity certification in the past. In FY 1993, the NRC conducted a survey of its materials licensees. The results of this survey indicated that about 25 percent of these licensees could qualify as small entities under the current NRC size standards.

The commenters on the FY 1991, FY 1992, FY 1993, and FY 1994 proposed fee rules indicated the following results if the proposed annual fees were not modified:

Large firms would gain an unfair competitive advantage over small entities. One commenter noted that a small well-logging company (a ''Mom and Pop'' type of operation) would find it difficult to absorb the annual fee, while a large corporation would find it easier. Another commenter noted that the fee increase could be more easily absorbed by a high-volume nuclear medicine clinic. A gauge licensee noted that, in the very competitive soils testing market, the annual fees would put it at an extreme disadvantage with its much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.

—Some firms would be forced to cancel their licenses. One commenter, with receipts of less than $500,000 per year, stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Another commenter noted that the rule would force the company and many other small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in about 10 percent of the well-logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

—Some companies would go out of business. One commenter noted that the proposal would put it, and several other small companies, out of business or, at the very least, make it hard to survive.

—Some companies would have budget problems. Many medical licensees commented that, in these times of slashed reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Another noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Over the past four years, approximately 2,900 license, approval, and registration terminations have been requested. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

The NRC continues to receive written and oral comments from small materials licensees. These comments indicate that the $3.5 million threshold for small entities is not representative of small businesses with gross receipts in the thousands of dollars. These commenters believe that the $1,800 maximum annual fee represents a relatively high percentage of gross annual receipts for these ''Mom and Pop'' type businesses. Therefore, even the reduced annual fee could have a significant impact on the ability of these types of businesses to continue to operate.

To alleviate the continuing significant impact of the annual fees on a substantial number of small entities, the NRC considered alternatives, in accordance with the RFA. These alternatives were evaluated in the FY 1991 rule (56 FR 31472; July 10, 1991) in the FY 1992 rule (57 FR 32691; July 23, 1992), in the FY 1993 rule (58 FR 38666; July 20, 1993) and in the FY 1994 rule (59 FR 36895; July 20, 1994). The alternatives considered by the NRC can be summarized as follows.

—Base fees on some measure of the amount of radioactivity possessed by the licensee (e.g., number of sources).

—Base fees on the frequency of use of the licensed radioactive material (e.g., volume of patients).

—Base fees on the NRC size standards for small entities.

The NRC has reexamined the FY 1991, FY 1992, FY 1993, and FY 1994 evaluation of the these alternatives. Based on that reexamination, the NRC continues to support the previous conclusion. That is, the NRC continues to believe that establishment of a maximum fee for small entities is the most appropriate option to reduce the impact on small entities.

The NRC established, and is continuing for FY 1995, a maximum annual fee for small entities. The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity. Therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. For FY 1995, the NRC will rely on the analysis previously completed that established a maximum annual fee for a small entity and the amount of cost that must be received from other NRC licensees as a result of establishing the maximum annual fees. The NRC continues to believe that license and inspection fees, or any adjustments to these fees during the past year, do not have a significant impact on small entities. In issuing this proposed rule for FY 1995, the NRC concludes that the materials license fees do not have a significant impact on a substantial number of small entities and that the maximum annual small entity fee of $1,800 be continued.

By maintaining the maximum annual fee for small entities at $1,800, the annual fee for many small entities will be reduced while at the same time materials licensees, including small entities, pay for most of the FY 1995 costs ($27.1 million of the total $32.9 million) attributable to them. The costs not recovered from small entities are allocated to other materials licensees and to operating power reactors. However, the amount that must be recovered from other licensees as a result of maintaining the maximum annual fee is not expected to increase. Therefore, the NRC is continuing, for FY 1995, the maximum annual fee (base annual fee plus surcharge) for certain small entities at $1,800 for each fee category covered by each license issued to a small entity.

While reducing the impact on many small entities, the Commission agrees that the proposed maximum annual fee of $1,800 for small entities, when added to the part 170 license fees, may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars. Therefore, as in FY 1992, FY 1993, and FY 1994, the NRC proposes to continue the lower-tier small entity annual fee of $400 for small entities with relatively low gross annual receipts. The lower-tier small entity fee of $400 will also apply to manufacturing concerns and educational institutions not State or publicly supported with less than 35 employees. This lower-tier small entity fee was first established in the final rule published in the **Federal Register** on April 17, 1992 (57 FR 13625) and would now include manufacturing companies with a relatively small number of licensees.

In establishing the annual fee for lower-tier small entities, the NRC continues to retain a balance between the objectives of the RFA and OBRA–90. This balance can be measured by: (1) The amount of costs attributable to small entities that is transferred to larger entities (the small entity subsidy); (2) the total annual fee small entities pay, relative to this subsidy; and (3) how much the annual fee is for a lower-tier small entity. Based on this proposed rule, the amount of the small entity subsidy is lower than last year. Thus, no change is proposed.

III. Summary

The NRC has determined the annual fee significantly impacts a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to collect 100 percent of the NRC budget and the requirement to consider means of reducing the impact of the proposed fee on small entities. On the basis of its regulatory flexibility analyses, the NRC concludes that a proposed maximum annual fee of $1,800 for small entities and a proposed lower-tier small entity annual fee of $400 for small businesses and not-for-profit organizations with gross annual receipts of less than $350,000, small governmental jurisdictions with a population of less than 20,000, small manufacturing entities that

have less than 35 employees and educational institutions that are not State or publicly supported and have less than 35 employees will reduce the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA–90. Thus, the revised fees for small entities maintain a balance between the objectives of OBRA–90 and the RFA. The NRC has used the methodology and procedures developed for the FY 1991, FY 1992, FY 1993, and FY 1994 fee rules in this proposed rule except those noted in Section II, in establishing the FY 1995 fees. Therefore, the analysis and conclusions established in the FY 1991, FY 1992, FY 1993, and FY 1994 rules remain valid for this proposed rule for FY 1995.

[FR Doc. 95–6485 Filed 3–17–95; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 123CE, Notice No. SC–23–ACE–80]

Special Conditions; SIAI Marchetti Model S211A Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the SIAI Marchetti Aircraft Company Model S211A airplanes. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These design features include performance characteristics for which the applicable regulations do not contain adequate or appropriate airworthiness standards. This notice contains the additional airworthiness standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the current airworthiness standards.

DATES: Comments must be received on or before May 19, 1995.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. 123CE, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 123CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mike Downs, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking further rulemaking action on this proposal. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 123CE.'' The postcard will be date stamped and returned to the commenter. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Background

On July 9, 1993, the SIAI Marchetti Aircraft Co., VIA Indipendenza, 2, 21018 Sesto Calende (VA) [ITALY] made application for acrobatic category type certification of the model S211A airplane. The S211A is a two-place (tendem), all metal, mid-wing cantilevered, retractable gear, pressurized, single turbofan engine airplane with a maximum weight of 6,394 pounds intended for specialized military operations as a 14 CFR Part 23 airplane in the Acrobatic Category.

Type Certification Basis

Type certification basis of the SIAI Marchetti Model S211A airplane is as follows: Federal Aviation Regulations (14 CFR Part 23), effective February 1, 1965, through amendment 23–44, effective August 18, 1993; Special Conditions in lieu of Part 23, amendment 23–44, as stated in this document; Equivalent Level of Safety for §§ 23.562, 23.677(a), 23.777(f)(1), 23.807(b)(5), 23.841 (a) and (b)(6), 23.971 (a) and (b), 23.1182, 23.1557(d); 14 CFR Part 34, effective September 10, 1990; 14 CFR Part 36, effective December 1, 1969, through amendment effective on the date of type certification; exemptions if any; and any special conditions that may result from this notice.

Discussion

SIAI Marchetti plans to incorporate certain novel and unusual design features into the airplane for which the airworthiness regulations do not contain adequate or appropriate safety standards. These features include certain performance characteristics necessary for this type of airplane that were not envisaged by the existing regulations.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with 14 CFR Part 21, § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with 14 CFR Part 11, § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become a part of the type certification basis, as provided by 14 CFR Part 21, § 21.17(a)(2).

Flight

Current standards in 14 CFR Part 23 did not envisage this type of airplane and the associated performance capabilities. Based upon the knowledge and experience gained during certification and operation of previous 14 CFR Part 23 acrobatic jet airplanes and other acrobatic airplanes, special conditions that include selected Joint Airworthiness Regulations (JAR) 23, Issue 1, dated March 11, 1994, are proposed instead of selected performance requirements of subpart B of part 23.

Operating Limitations and Information

Current standards in part 23 did not envisage this type of airplane and the associated performance.

To maintain a level of safety consistent with other acrobatic category and jet powered airplanes, special conditions that include selected JAR 23, Issue 1, dated March 11, 1994, are proposed instead of the flight manual requirements of subpart G of Part 23.

Conclusion

In view of the design features and operational envelope discussed for the

Model S211A airplane, the following special conditions are proposed. This action is not a rule of general applicability and affects only the model of airplane identified in these proposed special conditions.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423), 49 U.S.C. 106(g); 14 CFR 21.16 ad 21.17; and 14 CFR 11.28 and 11.29(b).

The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes the following special conditions as part of the type certification basis for the SIAI Marchetti Model S211A airplane.

1. Flight

Instead of compliance with the sections listed below contained in subpart b of part 23, the following sections apply:

SC23.45 Performance—General.

(a) The performance requirements of this subpart must be met for: Still air; and Ambient atmospheric conditions.

(b) Unless otherwise prescribed, performance data must be provided over not less than the following ranges of conditions:

(1) Airport altitude from sea level to 10,000 feet; and

(2) Temperature from standard to 30°C above standard, or the maximum ambient atmospheric temperature at which compliance with the cooling provisions 14 CFR Part 23, §§ 23.1041 to 23.1045 is shown, if lower.

(c) Performance data must be determined with the means for controlling the engine cooling air supply in the position used in the cooling tests required by §§ 23.1041 to 23.1045.

(d) The available propulsive thrust must correspond to engine thrust not exceeding the approved thrust, less:

(1) Installation losses; and

(2) The equivalent thrust absorbed by the accessories and services appropriate to the particular flight condition.

(e) The performance as affected by engine thrust must be based on a relative humidity of—

(1) 80 percent at and below standard temperature; and

(2) 34 percent at and above standard temperature plus 50°F. Between the two temperatures the relative humidity must vary linearly.

(f) Unless otherwise prescribed in determining the takeoff and landing distances, changes in the airplane's configuration, speed and thrust must be made in accordance with procedures established by the applicant for operation in service. The procedures must be able to be executed consistently by pilots of average skill in atmospheric conditions reasonably expected to be encountered in service.

(g) The takeoff and landing distances must be determined on a smooth dry hard-surfaced runway. The effect on these distances of operation on other types of surface (for example, grass, gravel) when dry, may be derived and these surfaces listed under SC23.1583(o).

SC23.51 Takeoff speeds.

(a) The rotation speed V_R, is the speed at which the pilot makes a control input with the intention of lifting the airplane out of contact with the runway. V_R must not be less than V_{SI}.

(b) The speed at 50 feet must not be less than the highest of—

(1) A speed that is shown to be safe under all reasonably expected conditions, including turbulence and complete engine failure; or

(2) 1.20 V_{SI}

SC23.53 Takeoff distance.

(a) The takeoff distance must be determined in accordance with subparagraph (b), using speeds determined in accordance with SC23.51 (a) and (b).

(b) The distance required to takeoff and climb to a height of 50 feet above the takeoff surface must be determined for each weight, altitude an temperature within the operational limits established for takeoff with—

(1) Takeoff thrust;

(2) Wing flaps in the takeoff position(s); and

(3) Landing gear extended.

SC23.63 Climb: General.

(a) Compliance with the requirements of SC23.65, SC23.69, and SC23.77 must be shown:

(1) Out of ground effect; and

(2) At speeds that are not less than those at which compliance with the powerplant cooling requirements of §§ 23.1041 to 23.1045 have been demonstrated.

(b) Compliance must be shown, at weights, as a function of airport altitude and ambient temperature, within the operational limits established for takeoff and landing respectively, with—

(1) SC23.65 for takeoff; and

(2) SC23.77 for landing.

SC23.65 Climb: All engines operating.

The airplane must have a steady gradient of climb after takeoff of at least 4 percent with—

(a) Takeoff thrust;

(b) Landing gear extended except that, if the landing gear can be retracted in not more than 7 seconds, it may be assumed to be retracted;

(c) Wing flaps in the takeoff position(s); and

(d) A climb speed not less than 1.2 V_{S1}.

SC23.69 Enroute climb/descent.

(a) All engines operating.

The steady gradient and rate of climb must be determined at each weight, altitude and ambient temperature within the operational limits established by the applicant with—

(1) Not more than maximum continuous thrust;

(2) Landing gear retracted;

(3) Wing flaps retracted; and

(4) Climb speed not less than 1.3 V_{S1}.

SC23.71 Glide (Single Engine Airplanes).

The maximum horizontal distance traveled in still air, in nautical miles per 1,000 feet of altitude lost in a glide, and the speed necessary to achieve this, must be determined with the engine inoperative and with the landing gear and wing flaps in the most favorable position available.

SC23.73 Reference landing approach speed.

The reference landing approach speed, V_{REF}, must not be less than 1.3 V_{SO}.

SC23.75 Landing distance.

The horizontal distance necessary to land and come to a complete stop from a point 50 feet above the landing surface must be determined, for standard temperatures at each weight and altitude within the operational limits established for landing, as follows:

(a) A steady approach at not less than V_{REF} must be maintained down to the 50-foot height and

(1) The steady approach must be at a gradient or descent not greater than 5.2 percent (3 degrees) down to the 50-foot height; and

(2) In addition, an applicant may demonstrate by tests that a maximum steady approach gradient, steeper than 5.2 percent, down to the 50-foot height is safe. The gradient must be established as an operating limitation and the information necessary to display the gradient must be available to the pilot by an appropriate instrument.

(b) A constant configuration must be maintained throughout the maneuver.

(c) The landing must be made without excessive vertical acceleration or tendency to bounce, nose-over, ground loop, or porpoise.

(d) It must be shown that a safe transition to the balked landing conditions of SC23.77 can be made from the conditions that exist at the 50-foot height, at maximum landing weight or the maximum landing weight for latitude and temperature of SC23.63(b)(2), as appropriate.

(e) The brakes must not be used so as to cause excessive wear of brakes or tires.

(f) Retardation means other than wheel brakes may be used if that means—

(1) Is safe and reliable;

(2) Is used so that consistent results can be expected in service

SC23.77 Balked landing.

The steady gradient of climb must not be less than 2.5 percent with—

(a) Not more than the thrust that is available 8 seconds after initiation of movement of the thrust controls from the minimum flight idle position;

(b) The landing gear extended;

(c) The wing flaps in the landing position; and

(d) A climb speed equal to V_{REF}, as defined in SC23.73.

2. Operating Limitations and Information

Instead of compliance with the sections listed below contained in subpart G of part 23, the following sections apply:

Airplane Flight Manual

SC23.1581 General.

(a) An FAA-Approved Airplane Flight Manual must be furnished with each airplane and it must contain the following:

(1) Information required by SC23.1583 through SC23.1589.

(2) Other information that is necessary for safe operation because of design, operating or handling characteristics.

(3) Further information necessary to comply with the relevant operating rules.

(b) Each part of the Airplane Flight Manual containing information prescribed in SC23.1583 through SC23.1589 must be approved, segregated, identified, and clearly distinguished from each unapproved part of that Airplane Flight Manual.

(c) The units used in the Airplane Flight Manual must be the same as those marked on the appropriate instruments and placards.

(d) All Airplane Flight Manual operational airspeeds must, unless otherwise stated, be presented as indicated airspeeds.

(e) Provisions must be made for stowing the Airplane Flight Manual in a suitable fixed container that is readily accessible to the pilot.

(f) Each Airplane Flight Manual must contain a means for recording the incorporation of revisions and/or amendments.

SC23.1583 Operating limitations.

The Airplane Flight Manual must contain operating limitations determined under the applicable regulations, including the following:

(a) *Airspeed limitations.*

(1) Information necessary for the marking of the airspeed limits on the indicator as required in § 23.1545, and the significance of each of those limits and of the color coding used on the indicator.

(2) The speeds V_O, V_{LE}, and V_{LO} and their significance.

(b) *Powerplant limitations.*

(1) Limitations required by § 23.1521.

(2) Explanation of the limitations, when appropriate.

(3) Information necessary for marking the instruments required by §§ 23.1549 through 23.1553.

(c) *Weight.*

(1) The maximum weight; and

(2) The maximum landing weight, if the design landing weight selected by the applicant is less than the maximum weight.

(3) The maximum takeoff weight for each airport altitude and ambient temperature within the range selected by the applicant not exceeding the weight at which the airplane complies with the climb requirements of SC23.63(b)(1).

(4) The maximum landing weight for each airport altitude and ambient temperature within the range selected by the applicant not exceeding the weight at which the airplane complies with the climb requirements of SC23.63(b)(2).

(5) The maximum zero fuel weight, where relevant.

(d) *Center of gravity.* The established center of gravity limits.

(e) *Maneuvers.* The following authorized maneuvers, appropriate airspeed limitations, and unauthorized maneuvers, as prescribed in this section:

(1) A list of approved acrobatic flight maneuvers demonstrated in the type flight tests, together with recommended entry speeds and any other associated limitations.

(2) Spin recovery procedure established to show compliance with § 23.221.

(f) *Maneuver load factor.* The positive and negative limit load factors in g's.

(g) *Minimum flight crew.* The number and functions of the minimum flight crew determined under § 23.1523.

(h) *Kinds of operation.* A list of the kinds of operation to which the airplane is limited or from which it is prohibited under § 23.1525, and also a list of installed equipment that affects any operating limitation and identification as to the equipment's required operational status for the kinds of operation for which approval has been granted.

(i) *Maximum operating altitude.* The maximum altitude established under § 23.1527.

(j) *Allowable lateral fuel loading.* The maximum allowable lateral fuel loading differential, if less than the maximum possible.

(k) Baggage cargo loading. The following information for each baggage and cargo compartment or zone:

(1) The maximum allowable load; and

(2) The maximum intensity of loading.

(l) *Systems.* Any limitations on the use of airplane systems and equipment.

(m) *Ambient temperatures.* Where appropriate, maximum and minimum ambient air temperatures for operation.

(n) *Smoking.* Any restrictions on smoking in the airplane.

(o) *Types of surface.* A statement of the types of surface on which operations may be conducted must be provided.

SC23.1585 Operating procedures.

Information concerning normal, abnormal (if applicable) and emergency procedures, and other pertinent information necessary for safe operation and the achievement of the scheduled performance, must be furnished, including:

(a) An explanation of significant or unusual flight or ground handling characteristics.

(b) The maximum demonstrated values of crosswind for takeoff and landing and procedures and information pertinent to operations in crosswinds.

(c) Procedures, speeds, and configuration(s) for making a normal takeoff in accordance with SC23.51 and SC23.53 and the subsequent climb in accordance with SC23.65 and SC26.59.

(d) Procedures for abandoning a takeoff due to engine failure or other cause.

(e) A recommended speed for flight in rough air. This speed must be chosen to protect against the occurrence, as a result of gusts, of structural damage to the airplane and loss of control (for example, stalling).

(f) Procedures, speeds, and configuration(s) for making a normal approach and landing in accordance with SC23.73 and SC23.75 and a transition to the balked landing condition.

(g) Procedures for restarting the engine in flight, including the effects of altitude.

(h) The procedures, speeds and configurations for a glide following engine failure in accordance with SC23.71 and the subsequent forced landing, must be furnished.

(i) For each airplane showing compliance with § 23.1353 (g)(2) or (g)(3), the operating procedures for disconnecting the battery from its charging source must be furnished.

(j) Information on the total quantity of usable fuel for each fuel tank and the effect on the unusable fuel quantity as a result of a failure of any pump, must be furnished.

(k) Procedures for the safe operation of the airplane's systems and equipment, both in normal use and in the event of malfunction, must be furnished.

SC23.1587 Performance information.

Unless otherwise prescribed, the following information must be furnished over the altitude and temperature ranges required by SC23.45(b):

(a) The stalling speeds V_{SO}, and V_{S1} with the landing gear and wing flaps retracted, determined at maximum weight under § 23.49 and the effect on these stalling speeds of angles of bank up to 60 degrees.

(b) The takeoff distance, determined under SC23.53 and the type of runway surface for which it is valid.

(c) The steady rate and gradient of climb with all engines operating, determined under SC23.69(a).

(d) The landing distance, determined under SC23.75, and the type of runway surface for which it is valid.

(e) The effect on takeoff and landing distances of operation on other than smooth hard surfaces, when dry, determined under SC23.45(g).

(f) The effect on takeoff and landing distances or runway slope and 50 percent of the headwind component and 150 percent of the tailwind component.

(g) The steady gradient of climb/descent, determined under SC23.66.

(h) The glide performance determined under SC23.71.

SC23.1589 Loading information.

The following loading information must be furnished:

(a) The weight and location of each item of equipment that can easily be removed, relocated, or replaced and that is installed when the airplane was weighed under § 23.25.

(b) Appropriate loading instructions for each possible loading condition between the maximum and minimum weights established under § 23.25, to facilitate the center of gravity remaining within the limits established under § 23.23.

Issued in Kansas City, Missouri on March 7, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–6688 Filed 3–17–95; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 150

[Docket No. 28149]

Policy on Approval and Funding of Part 150 Program Noise Mitigation Measures

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed policy; request for comment.

SUMMARY: This notice requests comments on a proposed change in the Federal Aviation Administration's (FAA) policy concerning approval and eligibility for Federal funding of certain noise mitigation measures. The proposed policy would increase the incentives for airport operators to prevent the development of new noncompatible land uses around airports and assure the most cost effective use of Federal funds spent on land use measures. The revised policy would more clearly distinguish between measures that are appropriate for application to existing noncompatible development and measures that are appropriate for application to new noncompatible development. This differentiation between the use of remedial measures for existing noncompatible development and preventive measures for new noncompatible development is necessary for the FAA to determine the appropriate approval or disapproval of actions on proposed land use measures in an airport's noise compatibility program.

DATES: Comments must be received on or before April 19, 1995.

ADDRESSES: Comments on this notice should be mailed, in triplicate, to the Federal Aviation Administration (FAA), Office of Chief Counsel, Attn.: Rules Docket (AGC–10), Docket No. 28149, 800 Independence Avenue SW., Room 915G, Washington, DC 20591. Comments may be inspected in Room 915G between 8:30 a.m. and 5:00 p.m., weekdays, except Federal holidays.

Commenters who wish the FAA to acknowledge the receipt of their comments must submit with their comments a pre-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 28149.'' The postcard will be date-stamped by the FAA and returned to the commenter.

FOR FURTHER INFORMATION CONTACT: Mr. William W. Albee, Policy and Regulatory Division (AEE–300), Office of Environment and Energy, FAA, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3553, facsimile (202) 267–5594.

SUPPLEMENTARY INFORMATION:

Background

The Airport Noise Compatibility Planning Program (14 CFR part 150, hereinafter referred to as part 150 or the part 150 program) was established under the Aviation Safety and Noise Abatement Act of 1979 (49 U.S.C. 47501 through 47509, hereinafter referred to as ASNA). The part 150 program allows airport operators to submit noise exposure maps and a noise compatibility program to the FAA voluntarily. According to the ASNA, a noise compatibility program sets forth the measures that an airport operator has taken or has proposed for the reduction of existing noncompatible land uses and the prevention of additional noncompatible land uses within the area covered by noise exposure maps.

The ASNA embodies strong concepts of local initiative and flexibility. The submission of noise exposure maps and a noise compatibility program is left to the discretion of local airport operators. Airport operators may also choose to submit noise exposure maps without preparing and submitting a noise compatibility program. The types of measures that airport operators may include in a noise compatibility program are not limited by the ASNA, allowing airport operators substantial latitude to submit a broad array of measures—including innovative measures—that respond to local needs and circumstances.

The criteria for approval or disapproval of measures submitted in a part 150 program are set forth in the ASNA. The ASNA directs the Federal approval of a noise compatibility program, except for measures relating to flight procedures: (1) If the program measures do not create an undue burden on interstate or foreign commerce; (2) if the program measures are reasonably consistent with the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses; and (3) if the program provides for its revision if necessitated by the submission of a revised noise exposure map. Failure to approve or disapprove a noise compatibility program within 180 days, except for measures relating to flight procedures, is deemed to be an approval under the ASNA. Finally, the ASNA sets forth broad eligibility criteria, consistent with the ASNA's overall deference to local initiative and flexibility. The FAA is authorized, but not obligated, to fund projects via the Airport Improvement Program (AIP) to carry out measures in a noise compatibility program that are not disapproved by the FAA.

In establishing this new program, which became embodied in FAR part 150, the ASNA did not change the legal authority of state and local governments to control the uses of land within their jurisdictions. Public controls on the use of land are commonly exercised by zoning. Zoning is a power reserved to the states under the U.S. Constitution. It is an exercise of the police powers of the states that designates the uses permitted on each parcel of land. This power is usually delegated in state enabling legislation to local levels of government. Neither the FAA nor any other agency of the Federal government has zoning authority.

Many local land use control authorities (cities, counties, etc.) have not adopted zoning ordinances or other controls to prevent noncompatible development (primarily residential) within the noise impact areas of airports. An airport's noise impact area, identified within noise contours on a noise exposure map, may extend over a number of different local jurisdictions that individually control land uses. For example, at five airports recently studied, noise contours overlaid portions of from two to twenty-five different jurisdictions.

While airport operators have included measures in noise compatibility programs submitted under part 150 to prevent the development of new noncompatible land uses through zoning and other controls under the authorities of appropriate local jurisdictions, success in implementing these measures has been mixed. A study performed under contract to the FAA, completed in January 1994, evaluated sixteen airport case studies for the implementation of land use control measures. This study found that of the sixteen airports, six locations have implemented the recommended zoning measures, seven locations have not implemented the recommended zoning measures, and three are in the process of implementation.

Another recent independent study evaluated ten airports that have FAA approved part 150 programs in place and found that four locations have

prevented new noncompatible land use development and six locations have not prevented such new development. At the latter six locations the study reported that twenty-six nonairport sponsor jurisdictions have approved new noncompatible development and twenty-eight nonairport sponsor jurisdictions and one airport sponsor jurisdiction have vacant land that is zoned to allow future noncompatible development.

The independent study identified the primary problem of allowing new noncompatible land uses near airports to be in jurisdictions that are different from the airport sponsor's jurisdiction. This is consistent with observations by the FAA and with a previous General Accounting Office (GAO) report that observed that the ability of airport operators to solve their noise problems is limited by their lack of control over the land surrounding the airports and the operator's dependence on local communities and states to cooperate in implementing land use control measures, such as zoning for compatible uses.

The FAA's January 1994 study explored factors that contribute to the failure to implement land use controls for noise purposes. A major factor is the multiplicity of jurisdictions with land use powers within airport noise impact areas. The greater the number of different jurisdictions, the greater the probability that at least some of them will not implement controls. Some jurisdictions have not developed cooperative relationships with the airport operator, which impedes appropriate land use compatibility planning. Some jurisdictions are not aware of the effects of aircraft noise and of the desirability of land use controls. This appears to be caused by a lack of ongoing education and communication between the airport and the jurisdictions, and to be worsened by lack of continuity in local government.

Some jurisdictions do not perceive land use controls as a priority because the amount of vacant land available for noncompatible development within the airport noise impact area is small, perhaps constituting only minor development on dispersed vacant lots, or because the current demand for residential construction near the airport is low to nonexistent. In such areas land use control change are not considered to have the ability to substantially change the number of residents affected by noise. Jurisdictions may also give noise a low priority compared to the economic advantages of developing more residential land or the need for additional housing stock within a community. A zoning change from residential to industrial or commercial may not make economic sense if little demand exists for this type of development opportunity. Therefore, a zoning change is viewed as limiting development opportunities and diminishing the opportunities for tax revenues.

In some cases, compatible land use zoning has met with organized public opposition by property owners arguing that the proposed zoning is a threat to private property rights, and that they deserve monetary compensation for any potential property devaluation. Further, basic zoning doctrine demands that the individual land parcels be left with viable economic value, i.e., be zoned for a use for which there is reasonable demand and economic return. Otherwise, the courts may determine a zoning change for compatibility to be a ''taking'' of private property for public use under the Fifth Amendment to the U.S. Constitution, requiring just compensation.

One or more of the factors hindering effective land use controls may be of sufficient importance to preclude some jurisdictions from following through on the land use recommendations of an airport's part 150 noise compatibility program. When either an airport sponsor's or a nonairport sponsor's jurisdiction allows additional noncompatible development within the airport's noise impact area, it can result in noise problems for the people who move into the area. This can, in turn, result in noise problems for the airport's operator in the form of inverse condemnation or noise nuisance lawsuits, public opposition to the expansion of the airport's capacity, and local political pressure for airport operational and capacity limitations to reduce noise. Some airport operators have taken the position that they will not provide any financial assistance to mitigate aviation noise for new noncompatible development. Other airport operators have determined that it is a practical necessity for them to include at least some new residential areas within their noise assistance program to mitigate noise impacts that they were unable to prevent in the first place—particularly if they have airport expansion plans. Over a relatively short period of time, the distinctions blur between what is ''new'' and what is ''existing'' residential development with respect to airport noise issues.

Airport operators currently have the local discretion to include new noncompatible land uses, as well as existing noncompatible land uses, within their part 150 noise compatibility programs and to recommend that remedial land use measures—usually either land acquisition or noise insulation—be applied to both situations. These recommendations have been considered to be approvable by the FAA under part 150. The part 150 approval enables noise mitigation measures to be eligible for Federal funding, although it does not guarantee that Federal funds will be provided.

Proposed Change in Policy

At issue is whether the FAA should revise its part 150 approval policy and its AIP noise set aside funding policy so as to approve and fund only preventative noise mitigation measures for new noncompatible land use development. The FAA's goal is to have a policy in place that provides airport operators with the maximum possible incentive available under the ASNA and the part 150 program, and the FAA with the maximum possible leverage to prevent the introduction of additional noncompatible development within an airport's noise contours. The FAA also seeks to make the most cost-effective use of limited Federal dollars that have been set aside for projects to implement part 150 programs. It is the FAA's intent to revise its policy within the parameters of the ASNA, but future legislative initiatives should not be ruled out.

Discussion

The continuing development of noncompatible land uses around airports is not a new problem. The FAA, airport operators, and the aviation community as a whole have for some years expended a great deal of effort to deal with the noise problems that are precipitated by such development.

With respect to the part 150 program and Airport Improvement Program (AIP) noise grants, the FAA considered in the 1989–1990 time frame whether to disallow federal assistance for new noncompatible development. The choice posed at that time was either (1) allow Federal funding for airport operator recommendations in part 150 programs that included new noncompatible land uses within the parameters of land use measures targeted for financial assistance from the airport (e.g., acquisition, noise insulation), or (2) disallow all Federal funding for new noncompatible development that local jurisdictions fail to control through zoning or other land use controls. No other alternatives were considered.

The FAA selected the first option—to continue to allow Federal funds to be

used to mitigate new noncompatible development as well as existing noncompatible development if the airport operator so chose. Several factors supported this decision. One factor was lack of authority by airport operators to prevent new noncompatible development in nonairport sponsor jurisdictions, although airport sponsors bear the brunt of noise lawsuits. Intense local opposition to an airport can be detrimental to its capacity, especially if any expansion of airport facilities is needed. The FAA also considered the plight of local citizens living with a noise impact that they may not have fully understood at the time of home purchase. Land use noise mitigation measures, funded by the airport either with or without Federal assistance, may be the only practical tool an airport operator has to mitigate noise impacts in a community. The FAA was hesitant to deny airport operators and the affected public Federal help in this regard. In addition, the FAA gave deference to the local initiative, the flexibility, and the broad eligibility for project funding under the ASNA.

Since this review in 1989–1990, the FAA has given extensive additional consideration to the subject of noncompatible land uses around airports. In 1993, the FAA established a study group on Compatible Land Use to assist in the development of a national strategy to prevent and reduce noncompatible land uses. Pending review of recommendations from this study group on future initiatives that may require legislation, the FAA is considering whether immediate modest changes in part 150 policy and funding, within the parameters of existing legislation, would be an appropriate interim step. The proposal presented here involves a more measured and multi-faceted approach than the proposal considered in 1989–1990.

A primary criterion in the ASNA for the FAA's approval of measures in an airport's part 150 noise compatibility program is that the measures must be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses. Until now, the FAA has applied this criterion as a whole when issuing determinations under part 150; that is, if a measure either reduces or prevents noncompatible development, no matter when that development occurs, it may be approved as being reasonably consistent. No distinction has been made by the FAA between remedial land use measures that reduce noncompatible development and preventive land use measures that prevent noncompatible development. Airport operators may, therefore, recommend and receive FAA approval under part 150 for remedial acquisition or soundproofing of new residential development.

The FAA is now considering whether it would be more prudent to distinguish between (1) Land use measures that are reasonably consistent with the goal of reducing existing noncompatible land uses (i.e., remedial measures) and (2) land use measures that are reasonably consistent with the goal of preventing the introduction of additional noncompatible land uses (i.e., preventive measures). Using such a distinction, airport operators would need to clearly identify within the area covered by noise exposure maps the location of existing noncompatible land uses versus the location of potentially new noncompatible land uses. Many airport operators currently record this distinction in their noise exposure map submissions, when identifying noncompatible land uses. Potentially new noncompatible land uses could include (1) areas currently undergoing residential or other noncompatible construction; (2) areas zoned for residential or other noncompatible development where construction has not begun; and (3) areas currently compatible but in danger of being developed noncompatibly within the time frame covered by the airport's noise compatibility program.

The purpose of distinguishing between existing and potential new noncompatible development is for airport operators to restrict their consideration of remedial land use measures to existing noncompatible development and to focus preventive land use measures on potentially new noncompatible development. The most commonly used remedial land use measures are land acquisition and relocation, noise insulation, easement acquisition, purchase assurance, and transaction assistance. The most commonly used preventive land use measure are comprehensive planning, zoning, subdivision regulations, easement acquisition restricting noncompatible development, revised building codes for noise insulation, and real estate disclosure. Acquisition of vacant land may also be a preventive land use measure. Often, combinations of these measures are applied to assure the maximum compatibility.

In a revised FAA policy, airport operators would not be limited to applying the most commonly used land use measures in their noise compatibility programs. Local flexibility to recommend other measures, including innovative measures, under part 150 would be retained. However, all land use measures applied to existing noncompatible development must clearly be remedial and serve the goal of reducing existing noncompatible land uses. Similarly, all land use measures applied to potential new noncompatible development must clearly be preventive and serve the goal of preventing the introduction of additional noncompatible land uses.

Any FAA determinations issued under part 150 would be consistent under this policy. The FAA's approval of remedial land use measures would be limited to existing noncompatible development. The FAA's approval of preventive land use measures would be applied to potential new noncompatible development. The FAA recognizes that there will be gray areas which will have to be addressed on a case-by-case basis within these policy guidelines. For example, minor development on vacant lots within an existing residential neighborhood, which clearly is not extensive new noncompatible development, may for practical purposes need to be treated with the same remedial measure applied to the rest of the neighborhood. Another example would be a remedial situation in which noise from an airport's operation has significantly increased, resulting in new areas that were compatible with initial conditions becoming noncompatible. Airport operators would be responsible for making the case for exceptions to the policy guidelines in their part 150 submittals.

Federal funding of noise projects through the noise set aside of the Airport Improvement Program (AIP) would follow the same policy as the FAA's part 150 determinations—remedial funding for existing noncompatible development and preventive funding for potential new noncompatible development. The FAA would apply the same policy to those few types of noise projects, such as soundproofing of schools and health care facilities, that are eligible for AIP funds under the noise set aside without an approved part 150 program.

The impact of revising the FAA's policy on part 150 land use determinations and AIP funding would be to preclude the use of the part 150 program and AIP funds to remediate new noncompatible development within the noise contours of an airport after the effective date of such a policy revision. By precluding this option while at the same time emphasizing the array of preventive land use measures

that may be applied to potential new noncompatible development, the FAA seeks to focus airport operators and local governments more clearly on using these Federal programs to the maximum extent to prevent noncompatible development around airports, rather than attempting to mitigate noise in such development after the fact. The FAA has determined that such a policy will better serve the public interest. Unlike the FAA's previous consideration of this issue in 1989–1990, Federal funding would be available to assist airport operators in dealing with new noncompatible development that is not being successfully controlled by local jurisdictions, so long as the airport's methods prevent the noncompatible development rather than mitigating it after development has occurred. This should be a more cost effective use of limited Federal dollars since remedial land use measures generally cost more for a given unit than preventive measure.

In selecting a date to implement this policy revision, the FAA must balance a desire to implement a perceived beneficial program change as rapidly as possible with practical transition considerations of ongoing part 150 programs. One approach would be to implement it on an airport-by-airport basis, selecting either the date of the FAA's acceptance of an airport's noise exposure maps or the date of the FAA's approval of an airport's noise compatibility program under part 150.

This approach would have the advantage of directly tying this policy to a point in time for which an airport operator has defined, in a public process, the size of the airport's noise impact area and has consulted with local jurisdictions on measures to reduce and prevent noncompatible land uses. There are, however, disadvantages to this approach. Approximately 200 airports have participated in the part 150 program, beginning in the early 1980's. Thus, selecting either the noise exposure map's acceptance date or the noise compatibility program's approval date for these airports, which includes the great majority of commercial service airports with noise problems, means either applying this policy revision retroactively or applying it prospectively at some future date as such airports update their maps and programs.

Retroactive application has been suggested, which could present serious legal issues. There is also an equity issue in applying new policy retroactively, especially in view of the FAA's reaffirmation of the 1989–1990 policy. This alternative would require the FAA and airport operators to review previous part 150 maps and programs, historically reconstructing which land use development was ''existing'' at that time and which development is ''new'' since then, to potentially withdraw previous FAA part 150 determinations approving remedial measures for ''new'' development, and not issue new AIP grants for any ''new'' development (which by 1995 may have already been built and in place for a number of years and be regarded locally as an integral part of the airport's mitigation program for existing development). There is the further practical consideration of benefits to be achieved. It may now be too late to apply preventive land use measures to noncompatible land uses that have been developed since an airport's noise exposure maps have been accepted or noise compatibility program has been approved. If remedial land use measures are now determined not to be applicable to such areas, the areas would be left in limbo, having had no advance warning of a Federal policy revision.

There are also disadvantages to applying this policy revision prospectively on an airport-by-airport basis as an airport either updates a previous part 150 program or completes a first-time part 150 submission. The major disadvantages would be in the timeliness of implementing the policy revision and the universality of its coverage. Since part 150 is a voluntary program, airport operators may select their timing of entry into the program and the timing of updates to previous noise exposure maps and noise compatibility programs. The result would be a patchwork implementation, with some airports operating under the new policy regarding part 150 land use measures and funding and other airports operating under the old policy for an unspecified number of years. An unintended and counterproductive side effect could be the postponement by some airports of updated noise exposure maps and noise compatibility programs in order to maintain Federal funding eligibility under the previous policy.

A better option appears to be to select one prospective date nationwide as the effective date for this policy revision rather than to implement it based on an individual airport's part 150 activities, either maps or program. A specific date would insure nationwide application on a uniform basis and would provide a more timely implementation than prospective airport-by-airport implementation dates. A specific date would also eliminate any perceived advantages in postponing new or updated part 150 programs. The selection of a specific date could either be (1) the date of issuance of a final policy revision following evaluation of comments received on this proposal or (2) a date, 180 days to a year after publication of the revised policy, allowing some amount of transition time for airport operators to accommodate previously approved part 150 programs, recent part 150 submissions, or those programs or submissions under development.

While the date of issuance of a policy revision has the advantage of timeliness, this may be outweighed by the disadvantage of too abrupt a transition from one policy to another without giving airport operators and local communities a chance to react. The FAA currently anticipates implementing a transition period from the date of issuance of a policy revision of at least 180 days to avoid disrupting airport operators' noise compatibility programs that have already been submitted to the FAA and undergoing statutory review. Provision for this period plus an additional margin of time beyond 180 days would allow airport operators adequate opportunity to amend previously completed noise compatibility programs or programs currently underway, in consultation with local jurisdictions, to make the appropriate adjustments in remedial and preventive land use measures in the programs. The revision of land use strategies submitted in a part 150 program cannot be accomplished overnight. Accordingly, the FAA is seeking comment on how long to extend a transition period beyond the 180 days noted—to a possible maximum of an additional 180 days, or 12 months from the date of issuance of the policy revision. Any time frame implemented will be established only after the careful consideration of public comments on this proposal.

The potential future expenditure of AIP funds for projects to remediate new noncompatible development during a transition period is believed to be minimal, based upon the FAA's review of the sample of airports included in the FAA's recent study and in an independent study, as well as general program knowledge. Not all airports have a problem of continuing uncontrolled noncompatible development. Among those that do have a problem, not all of them offer to provide remedial financial assistance for the new development, as shown in their part 150 submissions. Even in those cases where financial assistance for remediation is recommended for new noncompatible development, it is

generally limited in scope and identified as a lower priority than funding remediation for existing noncompatible development. Further, funding for such new noncompatible development may only be anticipated in the latter years of an airport's part 150 program when it may not be needed because of shrinking noise contours resulting from the national transition to the use of Stage 3 aircraft.

Since part 150 is a voluntary program, each airport operator has the discretion to make its own determinations regarding the impact of a revised policy on its noise compatibility program. If an impact is found, each operator could determine whether to immediately amend its program during the allowed transition period or to wait until the program is otherwise updated. However, any remedial land use measures for noncompatible development that are allowed to occur within the area of an airport's noise exposure maps after the effective date of a revised policy would not be approved under part 150 and would have to be funded locally, since they would no longer be eligible for AIP assistance from the noise set aside.

Accordingly beginning (not more than 12 months from the date of issuance of a revised policy), the FAA will approve under part 150 only remedial land use measures for existing noncompatible development and only preventive land use measures in areas of potential new noncompatible development. As of the same date, criteria for determining AIP eligibility under the noise set aside that are consistent with this policy will be applied by the FAA. Specifically, no remedial land use measures for new noncompatible development that occur after the effective date of the revised policy be eligible for AIP funding under the noise set aside, regardless of previous FAA determinations under part 150, the status of an individual airport's part 150 program, or whether the project is eligible for AIP funding under the noise set aside without a part 150 program.

Alternatives to the Proposed Policy

Depending on the comments received in response to this proposal, the FAA will consider several alternatives to the proposed policy revision, as listed below. All comments received on these alternatives, as well as other suggestions, will be considered prior to the adoption of any policy revision. Comments should focus on the extent to which an alternative would assist in preventing the development of new noncompatible land uses around airports and in assuring cost effective use of Federal funds spent on land use measures for noise purposes.

1. Retain the present policy of approving and funding under part 150 remedial land use measures without regard to the date the noncompatible development occurs.

2. Retain the present policy of approving and funding under part 150 remedial land use measures for those areas not under the control of either the airport of the airport's sponsor and for which the airport operator has taken earnest but unsuccessful steps to persuade the controlling jurisdiction to prevent the addition of new noncompatible development. New noncompatible development in areas under the land use control jurisdiction of either the airport or the airport operator would not be approved under part 150 nor be eligible for funding under the AIP.

3. Retain the present policy only with respect to noncompatible land uses that will remain within the DNL 65 dB contour after the transition to an all Stage 3 fleet.

4. Retain the present policy with respect to part 150 approval, but eliminate Federal funding eligibility for remedial measures for new noncompatible development.

5. Implement the proposed policy on an airport-by-airport basis, selecting either the date of the FAA's acceptance of an airport's noise exposure maps or the date of the FAA's approval of an airport's noise compatibility program under part 150. Includes consideration of whether implementation should be retroactive or prospective.

Issued in Washington, DC on March 14, 1995.

Paul R. Dykeman,

Acting Director of Environment and Energy.

[FR Doc. 95–6754 Filed 3–17–95; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 134

RIN 1515–AB68

Country of Origin Marking Requirements for Watches

AGENCY: Customs Service, Department of Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This document provides advance notice of a proposal to amend the Customs Regulations to prescribe specific rules regarding the country of origin marking of watches to ensure that the marking is conspicuous and legible. The purpose of this document is to assist in determining whether a rulemaking is needed to ensure a uniform standard for conspicuous and legible country of origin marking for watches, and if needed, the contents of that rulemaking.

DATES: Comments must be received on or before May 4, 1995.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1301 Constitution Ave., NW., Washington, DC. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1099 14th Street, Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Burton Schlissel, Special Classification and Marking Branch, Office of Regulations and Rulings (202–482–6980).

SUPPLEMENTARY INFORMATION:

Background

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Part 134, Customs Regulations (19 CFR part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304. Under § 134.41(b), Customs Regulations (19 CFR 134.41(b)), a country of origin marking is considered conspicuous if the ultimate purchaser in the United States is able to find the marking easily and read it without strain.

It has come to the attention of the Customs Service that over the years watches have been imported into the United States with very tiny country of origin markings. Usually these markings are in very small letters on the bottom of the dial (face) of the watch. Generally, these markings are exceptionally difficult to find and read. In fact, the country of origin markings on many watches are so tiny that a magnifying glass is needed in order to read them. Country of origin markings on watches which are so difficult to find and read

are not conspicuous or legible and are not acceptable country of origin marking under 19 U.S.C. 1304. Customs is reviewing its policy to ensure that the country of origin marking on watches is legible and conspicuous.

On March 10, 1993, Customs published a general notice in the Customs Bulletin and Decisions (27 Cust. Bull. Vol. 10, p. 31) indicating that Customs did not intend to permit the continued importation of watches into the United States unless they were conspicuously and legibly marked with their country of origin. The document further indicated that Customs was proposing stricter enforcement of conspicuous country of origin marking requirements for watches. Customs requested comments on proposed stricter enforcement and when the stricter enforcement should go into effect. On May 5, 1993, Customs extended the comment period in a document published in the Customs Bulletin and Decisions (27 Cust. Bull. Vol. 18, p. 13). The comment period closed on June 9, 1993. While Customs has concluded that there should be stricter enforcement of what is legible and conspicuous regarding the country of origin marking requirements for watches on a case-by-case basis, Customs is now considering an amendment to the Customs Regulations incorporating such standards in order to ensure a uniform standard for conspicuous and legible country of origin marking for watches.

Factors Which May Be the Subject of a Notice of Proposed Rulemaking in Connection With Specific Country of Origin Marking of Watches

The Customs Service is considering issuing a notice of proposed rulemaking to amend the Customs Regulations to prescribe specific rules regarding the country of origin marking of watches. It is noted that the special marking requirements of U.S. Note 4, chapter 91, Harmonized Tariff Schedules of the United States (HTSUS), that are applicable to watches are not the subject of this advance notice of proposed rulemaking. Among the factors which may be the subject of the proposed rules are the size of the marking, the location of the marking, whether the marking stands out, and the legibility of the marking.

Size and Legibility of Marking

Generally, in determining whether a watch is marked properly, Customs considers, on a case-by-case basis, whether the marking is legible and conspicuous. Customs believes that a marking on a watch which has a type size of 3 points is acceptable. (A point is a unit of measurement approximately equal to 0.01384 inches or nearly 1/72 inch and all type sizes are multiples of this unit.) Whether the marking stands out is dependent on where it appears in relationship to the other print on the watch and whether it is in contrasting letters to the background. The legibility of the marking is determined by the clarity of the letters and whether the ultimate purchaser is able to read the letters of the marking without strain. Whether a particular marking meets the conspicuous requirement of 19 CFR 134.41 and 19 U.S.C 1304 will depend on a combination of these factors.

Location and Method of Marking

The marking should be in a location where the ultimate purchaser could expect to find the marking or where he/she could easily notice it from a casual inspection. Although traditionally the country of origin marking has appeared on the dial (face) of a watch, there is no requirement that the marking appear in that location.

The marking may also appear on the back of the watch case, unless the watch is or will be packaged for retail sale in a manner which would prevent the ultimate purchaser from seeing the marking before buying the watch.

In addition, the country of origin marking can be done through a variety of different methods such as die stamping, etching, engraving, or by using a sticker or hang tag. Any method of marking is sufficient as long as it is permanent enough to ensure that the marking will stay on the watch through normal handling until it reaches the ultimate purchaser. No matter where the marking appears or what method of marking is used, the marking must be large enough and sufficiently clear so that the ultimate purchaser of the watch can easily find it and read it with the unaided eye.

Whether a Notice of Proposed Rulemaking With Regard to Specific Country of Origin Marking of Watches Should Be Issued: Specific Issues for Consideration

Customs is requesting interested parties to submit comments regarding specific standards which would ensure that the country of origin marking on watches is legible, conspicuous, and permanent. Relevant comments were received in response to the general notice published in the Customs Bulletin and Decisions (27 Cust. Bull., Vol. 10, p. 31.) However, in addition to comments regarding the nature of specific standards, interested parties are also invited to comment on the following issues before Customs decides whether to propose rulemaking on this matter:

(1) Is there a need for Customs to initiate a proposed rulemaking regarding country of origin marking of watches or should questions of whether watches are marked properly continue to be determined on a case-by-case basis?

(2) Whether there are current abuses in the country of origin marking of imported watches.

(3) Whether Customs should prescribe, by regulation, certain type size and style specifications for the country of origin marking of watches. If so, whether the regulations should specify one type size for all watches, or different type sizes depending upon the size of the watch. If one type size is prescribed for all watches, what type size should be recommended and why?

(4) Whether consumer behaviors and attitudes toward country of origin marking of watches can be documented with studies or surveys. If so, how much time would be needed for a study or survey to be conducted and for the data to be analyzed?

(5) If Customs goes forward with a notice of proposed rulemaking, what should be a sufficient period of time for public comment?

(6) If Customs issues a notice of proposed rulemaking, should a public hearing be held in connection with such proposed rulemaking?

(7) If Customs proposes and adopts new country of origin marking regulations, what would be an appropriate time frame between the publication of the final rule and the effective date of such regulations?

(8) What other issues should be addressed in the proposed rulemaking in order to afford a full opportunity for public comment?

Comments

In order to assist Customs in determining whether to proceed with a notice of proposed rulemaking to prescribe rules regarding the country of origin marking for watches, and the appropriate type size and style specifications for such marking, this notice invites written comments on the issues raised in this document as well as any other issues in connection with this matter. Comments which were previously submitted in response to the general notice published in the Customs Bulletin and Decisions need not be resubmitted, as they will be fully considered in any final determination in this matter.

Comments submitted will be available for public inspection in accordance with

the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1099 14th Street, NW., Suite 4000, Washington, DC.

Approved: February 24, 1995

Michael H. Lane,

Acting Commissioner of Customs.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–6760 Filed 3–17–95; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Chapter IX

[Docket No. N–95–3858; FR–3647–N–03]

RIN 2577–AB44

Vacancy Rule: Notice of Second and Third Meeting of Negotiated Rulemaking Advisory Committee

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

ACTION: Notice of meetings.

SUMMARY: The Department has established a Negotiated Rulemaking Advisory Committee to discuss and negotiate a proposed rule that would change the current method of determining the payment of operating subsidies to vacant public housing units. The Committee met for the first time on March 7–9, 1995, in Washington, D.C. This notice announces the time and place of the second and third Committee meetings, which will be open to the public.

DATES: The second meeting of the Committee will take place April 4–5, 1995, and the third meeting will take place on May 2–3, 1995. On April 4, 1995, the meeting will start at 9:00 a.m. and run until completion; on April 5, 1995, the meeting will start at 9:00 a.m. and run until approximately 5:00 p.m. On May 2, 1995, the meeting will start at 9:00 a.m. and run until completion; on May 3, 1995, the meeting will start at 9:00 a.m. and run until approximately 5:00 p.m.

ADDRESSES: The second and third meetings of the Committee will be held at the Channel Inn Hotel; 650 Water Street, Southwest; Washington, D.C. 20024.

FOR FURTHER INFORMATION CONTACT: John T. Comerford, Director, Financial Management Division, Public and Indian Housing, Room 4212, Department of Housing and Urban Development, 431 Seventh Street, SW, Washington, DC 20410–0500; telephone (202) 708–1872, or (202) 708–0850 (TDD). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Background

On February 24, 1995, HUD published a notice of establishment of a Negotiated Rulemaking Advisory Committee to discuss and negotiate a proposed rule that would change the current method of determining the payment of operating subsidies to vacant public housing units (60 FR 10339) (''February 24 notice''). The February 24 notice also announced the first meeting of this committee, which was held on March 7–9, 1995, in Washington, D.C.

The members of the Committee are as follows:

Housing Agencies

- Housing Authority of the City of Houston, TX.
- Cuyahoga Metropolitan Housing Authority, Cleveland, OH.
- Birmingham, AL Housing Authority.
- New York City, NY Housing Authority.
- Newark, NJ Housing Authority.
- Reno, NV Housing Authority.
- Littleton, CO Housing Authority.
- Housing Authority of the City of South Bend, IN.

Tenant Organizations and Public Interest Groups

- Bromley Heath Tenant Management Corporation, Jamaica Plains, MA.
- New Jersey Association of Public and Subsidized Housing Residents, Newark, NJ.
- Housing and Development Law Institute, Washington, DC.
- Illinois Association of Housing Authorities.

Federal Government

- U.S. Department of Housing and Urban Development.

The next two series of meetings of the Committee have been scheduled for April 4–5 and May 2–3, 1995 (see information under the headings **DATES** and **ADDRESSES** at the beginning of this notice). The meetings are open to the public, with limited seating available on a first-come, first-served basis.

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

Dated: March 13, 1995.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 95–6716 Filed 3–17–95; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Chapter II

Meetings of the Indian Gas Valuation Negotiated Rulemaking Committee

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meetings.

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

DATES: The Committee will have meetings on the dates and at the times shown below:

Wednesday, April 12, 1995—9:30 a.m. to 5:00 p.m.

Thursday, April 13, 1995—8:00 a.m. to 5:00 p.m.

Tuesday, May 9, 1995—9:30 a.m. to 5:00 p.m.

Wednesday, May 10, 1995—8:00 a.m. to 5:00 p.m.

Wednesday, June 14, 1995—9:30 a.m. to 5:00 p.m.

Thursday, June 15, 1995—8:00 a.m. to 5:00 p.m.

ADDRESSES: These meetings will be held in the auditorium of Building 85 on the Denver Federal Center, West Sixth Avenue and Kipling Street, Lakewood, Colorado.

Written statements may be submitted to Mr. Donald T. Sant, Deputy Associate Director for Valuation and Operations, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS–3100, Denver, CO 80225–0165.

FOR FURTHER INFORMATION CONTACT: Mr. Donald T. Sant, Deputy Associate Director for Valuation and Operations, Minerals Management Service, Royalty Management Program, P.O. Box 25165,

MS–3100, Denver, Colorado, 80225–0165, telephone number (303) 231–3899, fax number (303) 231–3194.

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

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

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

Dated: March 14, 1995.

Donald T. Sant,

Acting Associate Director for Royalty Management.

[FR Doc. 95–6786 Filed 3–17–95; 8:45 am]

BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH73–1–6809, OH74–1–6810, OH75–1–6811; FRL–5174–9]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The USEPA is reopening the comment period for a proposed rule published on January 17, 1995 (60 FR 3361). On January 17, 1995, USEPA proposed to approve exemptions from the nitrogen oxides (NO_x) requirements as provided for in Section 182(f) of the Clean Air Act (Act) for the following ozone nonattainment areas in Ohio: Canton (Stark County); Cincinnati (Hamilton, Butler, Warren, and Clermont Counties); Cleveland (Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit Counties); Columbus (Delaware, Franklin, and Licking Counties); Youngstown (Mahoning and Trumbull Counties); Steubenville (Jefferson and Columbiana Counties); Preble County; and Clinton County.

The USEPA is reopening the comment period for this action to honor a request from the Ohio Sierra Club. The original request was for an extension of the public comment period by 90 days. The USEPA believes that additional time may be necessary to develop comments, but feels that an extension of 90 days, at this time, is not appropriate since a total of two adverse comments were received (and one supporting); and that no additional adverse comments are expected to be submitted by other entities. Therefore, USEPA is extending the original comment period by 45 days (until April 2, 1995).

DATES: Written comments on this action must be received by April 2, 1995.

ADDRESSES: Written comments must be submitted to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Richard Schleyer, Environmental Engineer, Regulation Development Section, Air Enforcement Branch (AE–17J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–5089.

Authority: 42 U.S.C. 7401–7601q.

Dated: March 9, 1995.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 95–6768 Filed 3–17–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7131]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director, Mitigation Directorate, reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevations for each community are available for inspection at the Office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

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

SUPPLEMENTARY INFORMATION: The modified base (100-year) flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

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

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

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

Regulatory Flexibility Act. The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base (100-year) flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

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

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

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

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

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona: Maricopa	City of Phoenix	February 1, 1995, February 8, 1995, *Phoenix Gazette.*	The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 West Washington Street, Eleventh Floor, Phoenix, Arizona 85003.	January 24, 1995.	040051
California: Solano	City of Fairfield	January 4, 1995, January 11, 1995, *Daily Republic.*	The Honorable Chuck Hammond, Mayor, City of Fairfield, 1000 Webster Street, Fairfield, California 94533–4883.	December 5, 1994.	060370
California: Sacramento	City of Folsom	January 4, 1995, January 11, 1995, *Folsom Telegraph.*	The Honorable Bob Holderness, Mayor, City of Folsom, 50 Natoma Street, Folsom, California 95630.	November 18, 1994.	060263
California: Ventura	City of Moorpark	January 20, 1995, January 27, 1995, *Star Free Press.*	The Honorable Paul W. Lawrason, Mayor, City of Moorpark, 799 Moorpark Avenue, Moorpark, California 93021.	December 28, 1994.	060712
California: Solano	Unincorporated areas	January 4, 1995, January 11, 1995, *Daily Republic.*	The Honorable William Carroll, Chairman, Solano County Board of Supervisors, 580 Texas Street, Fairfield, California 94533–6378.	December 5, 1994.	060631
California: Ventura	Unincorporated areas	January 20, 1995, January 27, 1995, *Star Free Press.*	The Honorable Susan K. Lacey, Chairperson, Ventura County Board of Supervisors, 800 South Victoria Avenue, Ventura, California 93009.	December 28, 1994.	060413
Colorado: La Plata	Unincorporated areas	January 6, 1995, January 13, 1995, *Durango Herald.*	The Honorable Frank Joswick, Chairperson, La Plata County Board of Commissioners, 1060 East Second Avenue, Durango, Colorado 81301.	November 29, 1994.	080097
Missouri: Pemiscot	City of Hayti Heights	January 26, 1995, February 2, 1995, *Democrat Argus.*	The Honorable David R. Humes, Mayor, City of Hayti Heights, P.O. Box 426, Hayti, Missouri 63851.	January 6, 1995.	290277
Nebraska: Lancaster	City of Lincoln	January 18, 1995, January 25, 1995, *Lincoln Journal-Star.*	The Honorable Mike Johanns, Mayor, CIty of Lincoln, 555 South Tenth Street, Lincoln, Nebraska 68508.	December 29, 1994.	315273
Nebraska: Lancaster	City of Lincoln	January 19, 1995, January 26, 1995, *Lincoln Journal-Star.*	The Honorable Mike Johanns, Mayor, City of Lincoln, 555 South Tenth Street, Lincoln, Nebraska 68508.	December 30, 1994.	315273
Nebraska: Cheyenne	City of Sidney	February 16, 1995, February 23, 1995, *Sidney Telegraph.*	The Honorable E.C. Petroff, Mayor, City of Sidney, P.O. Box 79, Sidney, Nebraska 69162.	January 24, 1995.	310039
Texas: Dallas	City of Carrollton	January 5, 1995, January 12, 1995, *Metrocrest News.*	The Honorable Milburn Gravley, Mayor, City of Carrollton, P.O. Box 110535, Carrollton, Texas 75011–0535.	December 13, 1994.	480167

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Texas: Tarrant	City of Colleyville	January 4, 1995, January 11, 1995, *Fort Worth Star Telegram*.	The Honorable Cheryl Seigel, Mayor, City of Colleyville, P.O. Box 165, Colleyville, Texas 76034.	December 13, 1994.	480590
Texas: Dallas and Denton.	City of Coppell	February 17, 1995, February 24, 1995, *Citizen Advocate*.	The Honorable Tom Morton, Mayor, City of Coppell, 255 Parkway Boulevard, Coppell, Texas 75019.	January 25, 1995.	480170
Texas: Dallas, Denton, Collin, Rockwall, and Kaufman.	City of Dallas	January 13, 1995, January 20, 1995, *Daily Commercial Record*.	The Honorable Steve Bartlett, Mayor, City of Dallas, City Hall, 1500 Madrilla Street, Room 5E North, Dallas, Texas 75201.	December 15, 1994.	480171
Texas: El Paso	City of El Paso	January 3, 1995, January 10, 1995, *El Paso Times*.	The Honorable William S. Tilney, Mayor, City of El Paso, Two Civic Center Plaza, El Paso, Texas 79901.	December 12, 1994.	480214
Texas: Tarrant	City of Grapevine	January 4, 1995, January 11, 1995, *Fort Worth Star Telegram*.	The Honorable William D. Tate, Mayor, City of Grapevine, 413 South Main Street, Grapevine, Texas 76051.	December 13, 1994.	480598
Texas: Collin	City of Plano	January 4, 1995, January 11, 1995, *Dallas Morning News*.	The Honorable James N. Muns, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	November 29,1994.	480140
Utah: Salt Lake	City of Murray	February 23, 1995, March 2, 1995, *Murray Eagle*.	The Honorable Lynn Pett, Mayor, City of Murray, 5025 South State Street, Murray, Utah 84107.	January 26, 1995.	490103

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

Dated: March 13, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–6765 Filed 3–17–95; 8:45 am]

BILLING CODE 6718–03–M

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44 CFR Part 67

[Docket No. FEMA–7132]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

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

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

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

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

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

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

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

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

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

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

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

applicable standards of Section 29(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

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

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

PART 67—[AMENDED]

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

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 276.

§ 67.4 [Amended]

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

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Colorado	Denver (City) Denver City.	Sand Creek	Just downstream of Interstate Highway 70.	*5,236	*5,236
			Approximately 0.5 mile upstream of Interstate Highway 70.	*5,246	*5,252
			Approximately 500 feet upstream of Smith Road.	*5,261	*5,264
			Approximately 500 feet downstream of Havana Street.	*5,282	*5,284
			Approximately 4,000 feet upstream of Havana Street.	*5,298	*5,298
Maps are available for inspection at the City of Denver, Department of Public Works, Wastewater Management Division, 2000 West Third Avenue, Denver, Colorado.					
Send comments to The Honorable Wellington Webb, Mayor, City of Denver, 1437 Bannock Street, Room 350, Denver, Colorado 80202.					
Louisiana	Colfax (Town) Grant Parish.	Sugarhouse Bayou	At downstream corporate limits, approximately 2,200 feet downstream of State Highway 8.	*95	*92
			At north corporate limits, approximately 2,200 feet upstream of Fraenzie Road.	*95	*93
Maps are available for inspection at Town Hall, Town of Colfax, 1208 Main Street, Colfax, Louisiana.					
Send comments to The Honorable Constance Youngblood, Mayor, Town of Colfax, 1208 Main Street, Colfax, Louisiana 71417.					
	Grant Parish (Unicorporated Areas).	Bayou Rigolette	At confluence with Walden Bayou	None	*87
			Approximately 3,800 feet upstream of Parish Road 118.	None	*88
			Approximately 900 feet upstream of State Highway 492.	None	*89
			Approximately 1,800 feet upstream of U.S. Highway 71.	None	*90
			Just upstream of State Highway 3169	None	*92
		Sugarhouse Bayou	Approximately 4,600 feet upstream of confluence with Bayou Rigolette.	None	*92
			At confluence of Valentine Bayou	None	*93
		Bayou Grappe	Approximately 3,500 feet downstream of Richardson Road.	None	*93
			Just upstream of Richardson Road	None	*94
			Just upstream of U.S. Highway 71	None	*96
			At confluence of Corfeine Bayou	None	*97
		Corfeine Bayou	Just downstream of U.S. Highway 71	None	*97
		Flagon Bayou	At Grant Parish-Rapides Parish line, approximately 9,300 feet downstream of Flagon Creek Road.	None	*151
			Just downstream of Flagon Creek Road	None	*159
			Just upstream of Airpark Road	None	*175
			Just upstream of Airpark Road at State Highway 8.	None	*201
		Clear Creek	Approximately 17,600 feet upstream of confluence with Little River.	None	*61
			Approximately 1,000 feet downstream of Walker Ferry Road.	None	*85
			Just downstream of Clear Creek Road	None	*108
			Just downstream of U.S. Highway 165	None	*160

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
Maps are available for inspection at Grant Parish Tax Office, Court House Building, 200 Main Street, Colfax, Louisiana.					
Send comments to The Honorable Donnie Brown, President, Grant Parish Policy Jury, Court House Building, 200 Main Street, Colfax, Louisiana 71417.					
	New Roads (Town)	Portage Canal	Approximately 2,100 feet downstream of Hospital Road.	None	*26
	Pointe Coupee Parish.		At Missouri Pacific Railroad Bridge	None	*27
			At State Highways 1 and 10	None	*27
Maps are available for inspection at City Hall, 211 West Main Street, New Roads, Louisiana.					
Send comments to The Honorable Sylvester Muckelroy, Mayor, Town of New Roads, 211 West Main Street, New Roads, Louisiana 70760.					
	Pointe Coupee Parish. (Unincorporated Areas).	Portage Canal	Approximately 6,500 feet downstream of Louisiana Highway 10.	None	*27
			Just downstream of Louisiana Highway 10.	None	*27
Maps are available for inspection at 160 East Maine Street, New Roads, Louisiana.					
Send comments to The Honorable Clement Guildroz, Pointe Coupee Parish President, 160 East Main Street, New Roads, Louisiana 70760.					
Missouri	Branson (City) Taney County.	Roark Creek	At confluence with White River (Lake Taneycomo).	*714	*714
			Approximately 700 feet upstream of U.S. Highway 65.	*717	*720
			Approximately 8,200 feet upstream of U.S. Highway 65.	*748	*749
			Approximately 3,800 feet downstream of Shepherd of the Hills Expressway.	None	*772
			Approximately 3,400 feet upstream of Shepherd of the Hills Expressway.	None	*801
		Cooper Creek	Approximately 2,000 feet downstream of Fall Creek Road.	None	*727
			Approximately 200 feet upstream of Fall Creek Road.	None	*764
			Approximately 2,700 feet upstream of Fall Creek Road.	None	*804
Maps are available for inspection at City Hall, City of Branson, 110 West Maddux, Branson, Missouri.					
Send comments to The Honorable Wade Meadows, Mayor, City of Branson, P.O. Box 1309, Branson, Missouri 65616.					
Nevada	Elko (City) Elko County.	Humboldt River	Approximately 1,350 feet upstream of truss bridge at corporate limits.	*5,049	*5,048
			At confluence with 22 East Drainage (levee failed).	*5,053	*5,054
			At confluence with 22 East Drainage (levee not failed).	*5,053	*5,055
			Approximately 4,300 feet upstream of confluence with Metzler Wash at corporate limits.	*5,067	*5,064
		Metzler Wash	Approximately 350 feet downstream of Clarkson Drive.	N/A	*5,067
			Just upstream of Lamoille Highway	N/A	*5,096
			Approximately 2,000 feet upstream of Lamoille Highway.	N/A	*5,136
		Panorama Wash	At Lamoille Highway	N/A	*5,078
			Approximately 1,300 feet upstream of Lamoille Highway.	N/A	*5,106
		Culley's Gulley	Approximately 550 feet downstream of Wildwood Way.	N/A	*5,106
			Just upstream of Pinion Road	N/A	*5,152
			Approximately 450 feet upstream of Lamoille Highway.	N/A	*5,190
		Eightmile Creek	Approximately 550 feet downstream of Fairgrounds Road.	N/A	*5,096
			Just upstream of Mittry Avenue	N/A	*5,158
			Approximately 5,000 feet upstream of Mittry Avenue.	N/A	*5,210
		22 Middle Drainage	Approximately 150 feet upstream of Bullion Road.	N/A	*5,071

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 2,300 feet upstream of Bullion Road.	N/A	*5,119
		22 East Drainage	Approximately 150 feet downstream of Bullion Road.	N/A	*5,058
			Approximately 2,800 feet upstream of Bullion Road.	N/A	*5,128
		Fifth Street Drainage	Just upstream of Chris Avenue	N/A	*5,206
			Just upstream of Cooper Street	N/A	*5,254
			Approximately 3,900 feet upstream of Rolling Hills Drive.	N/A	*5,305
		Golf Course Drainage	At confluence with Humboldt River	N/A	*5,064
			Just upstream of Idaho Street	N/A	*5,080
			Approximately 4,650 feet upstream of Interstate Highway 80.	N/A	*5,192
		East Adobe Creek	Approximately 200 feet upstream of Idaho Street.	N/A	*5,042
			Approximately 2,250 feet downstream of Interstate Highway 80.	N/A	*5,080
			Approximately 400 feet upstream of Connolly Drive.	N/A	*5,175
Maps are available for inspection at the City of Elko, Department of Engineering Services, 1751 College Avenue, Elko, Nevada. Send comments to The Honorable Jim Polkinghorne, Mayor, City of Elko, 1751 College Avenue, Elko, Nevada 89801.					
	Elko County (Unincorporated Areas).	Humboldt River at Elko	Approximately 4,800 feet downstream of truss bridge—north side or railroad.	None	*5,035
			Approximately 4,800 feet downstream of truss bridge—south side of railroad.	#2	*5,040
			Approximately 1,350 feet upstream of truss bridge.	*5,049	**5,048
			At confluence with Culley's Gulley	*5.067	*5,064
			Approximately 4,550 feet upstream of confluence with Culley's Gulley.	*5,071	*5,070
		Culley's Gulley	Approximately 300 feet upstream of confluence with Humboldt River.	None	*5,068
			Approximately 100 feet upstream of Last Chance Road.	None	*5,106
		22 Middle Drainage	Approximately 1,600 feet upstream of Bullion Road.	None	*5,106
			Approximately 1,900 feet upstream of Bullion Road.	None	*5,110
		East Adobe Creek	Approximately 250 feet downstream of Interstate Highway 40.	None	*5,042
			Approximately 200 feet upstream of Interstate Highway 40.	None	*5,042
Maps are available for inspection at the County Manager's Office, Elko County, 569 Court Street, Elko, Nevada. Send comments to The Honorable Llee Chapman, Chairman, Elko County Board of Supervisors, 569 Court Street, Elko, Nevada 89801.					
North Dakota	Velva (Township) McHenry County.	Souris River	Approximately 2,700 feet downstream of Main Street.	None	*1,507
			Approximately 1,700 feet downstream of Main Street.	None	*1,508
			Approximately 200 feet downstream of Main Street.	None	*1,508
			Approximately 2,700 feet upstream of Main Street.	None	*1,509
			Approximately 4,500 feet upstream of Main Street.	None	*1,510
Maps are available for inspection at McHenry County Auditor's Office, 407 South Main Street, Towner, North Dakota. Send comments to The Honorable John Thomas, Chairman, Township of Velva, RR #2, Box 4, Velva, North Dakota 58790.					
Texas	Comanche (City) Comanche County.	Indian Creek	At eastern corporate limits of the City of Comanche.	None	*1,333
			At confluence with Tributary 1	None	*1,342
			At confluence with Horse Creek	None	*1,348
			50 feet downstream of State Highway 16	None	*1,360

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. * Elevation in feet. (NGVD)	
				Existing	Modified
			200 feet downstream of confluence with Tributary 2.	None	*1,370
			200 feet downstream of confluence with South Fork of Indian Creek.	None	*1,375
			100 feet downstream of Indian Creek Drive.	None	*1,390
			At corporate limits	None	*1,393
		South Fork of Indian Creek.	At confluence with Indian Creek	None	*1,376
			50 feet upstream of Indian Creek Drive	None	*1,391
			At western corporate limits	None	*1,416
		Horse Creek	At confluence with Indian Creek	None	*1,348
			At upstream face of Summit Avenue	None	*1,360
			At southern corporate limits	None	*1,374
		Tributary 1	At confluence with Indian Creek	None	*1,342
			50 feet upstream of Central Avenue (U.S. Highway 67)—.	None	*1,361
			100 feet upstream of Walcott Avenue	None	*1,374
			At downstream face of Austin Street	None	*1,394
		Tributary 2	At confluence with Indian Creek	None	*1,371
			50 feet upstream of Central Avenue (U.S. Highway 67).	None	*1,381
			100 feet upstream of State Highway 36	None	*1,395
			1,000 feet upstream of FM 1689	None	*1,420
		Tributary 3	At confluence with Indian Creek	None	*1,372
			100 feet upstream of Indian Creek Drive	None	*1,390
			At southern corporate limits	None	*1,428
		Tributary 4	At confluence with Tributary 3	None	*1,420
			At limit of study	None	*1,435
		Tributary 5	At downstream face of State Highway 16	None	*1,351
			100 feet upstream of airport runway	None	*1,373
			At limit of study	None	*1,401

Maps are available for inspection at City Hall, City of Comanche, 114 West Central, Comanche, Texas.

Send comments to The Honorable Johnny Livingston, Mayor, City of Comanche, 114 West Central, Comanche, Texas 76442.

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

Dated: March 13, 1995.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 95–6764 Filed 3–17–95; 8:45 am]

BILLING CODE 6718–03–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. PS–101A]

RIN 2137–AC 57

Mandatory Participation in Qualified One-Call Systems by Pipeline Operators

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to require that operators of onshore gas, hazardous liquid, and carbon dioxide pipelines participate in qualified one-call systems as part of the required excavation damage prevention programs. The proposed rule would also limit the current exclusion of certain small gas systems from compliance with the damage prevention program requirements.

This notice is accompanied by a final rule (Docket No. PS–101), which addresses other requirements for excavation damage prevention programs and line markers. This notice and the final rule are intended to reduce excavation damage, the largest single cause of pipeline failures.

DATES: Interested persons are invited to submit written comments in duplicate by May 19, 1995. Late filed comments will be considered to the extent practicable. Interested persons should submit as part of their written comments all of the material that is considered relevant to any statement of fact or argument made.

ADDRESSES: Written comments must be submitted in duplicate and mailed or hand delivered to the Dockets Unit, Room 8421, U.S. Department of Transportation, RSPA, 400 Seventh Street, SW., Washington, DC 20590–0001. Please identify the docket and notice numbers stated in the heading of this notice. All comments and materials cited in this document will be available for inspection and copying in Room 8421 between 8:30 a.m. and 4:30 p.m. each business day. Non-federal employee visitors are admitted to the DOT headquarters building through the southwest quadrant at Seventh and E Streets.

FOR FURTHER INFORMATION CONTACT: Albert Garnett, (202) 366–2036, or Christina Sames, (202) 366–4561, regarding the content of this notice; or the Dockets Unit, (202) 366–5046, for copies of this document or other material in the docket.

SUPPLEMENTARY INFORMATION:

Related Document

RSPA has issued a final rule titled ''Excavation Damage Prevention Programs for Gas and Hazardous Liquid and Carbon Dioxide Pipelines'' (Docket No. PS–101). The final rule addresses

aspects of damage prevention programs that were proposed in a notice of proposed rulemaking (NPRM) titled ''Natural Gas and Hazardous Liquid Pipeline Damage Prevention Program'' (53 FR 24747; June 30, 1988). In particular, the final rule amends the pipeline safety regulations by (1) extending existing requirements governing excavation damage prevention programs for gas pipelines in urban areas to gas pipelines in rural areas; (2) establishing excavation damage prevention program requirements for hazardous liquid and carbon dioxide pipelines; (3) requiring, with limited exceptions, line markers for gas transmission lines in urban areas; and (4) permitting smaller lettering on line markers for hazardous liquid and carbon dioxide pipelines in heavily developed urban areas.

This NPRM proposes to amend §§ 192.614 and 195.442 of that final rule by requiring that operators of interstate and intrastate pipelines participate in qualified one-call systems. This NPRM further proposes less stringent standards for the participation of small entities, including operators of master meter systems (defined by 49 CFR 191.3), whose primary activity does not include the transportation of gas.

One-Call Systems

A one-call system is a communication system established individually or jointly by utilities, government agencies, or other operators of underground facilities to provide a single telephone number (other methods of communication are also used) for excavators and the general public to call to notify participating members of their intent to engage in excavation activities. Notices of intent to excavate are received by the operational center and are transmitted to the operators of underground pipeline facilities and other underground facilities that participate in the system. Upon receipt of notices of intended excavation activities, participating operators that have underground facilities in that vicinity arrange for the timely identification and the temporary marking of their underground facilities. Underground operators may inspect the site during the excavation activities to insure the safety of their underground facilities.

National One-Call Campaign

Presently, there are 74 one-call systems in the United States operating in 48 states and the District of Columbia. Not all of the operating one-call systems meet the qualifications of a ''one-call notification system,'' as defined in 49 CFR 198.39. Two states and Puerto Rico are currently without a one-call system.

Approximately 45 states and the District of Columbia have damage prevention laws that, to a varying extent, govern the activities performed by excavators and persons locating and temporarily marking underground facilities. However, most of the existing state damage prevention programs do not meet all of the requirements of § 198.37, ''State one-call damage prevention program.''

To address the problem of incomplete national one-call coverage and the deficiencies in some of the existing one-call systems, RSPA has launched a national campaign to encourage states to adopt improved one-call notification systems. The national campaign will target states for concentrated outreach to assist these states in their efforts to upgrade their current one-call systems. The national campaign will also work with selected states currently without one-call legislation or where there is a need to strengthen the one-call legislation.

Notice of Proposed Rulemaking (Docket No. PS–101)

The issue of mandatory participation in one-call systems by pipeline operators was touched upon, but not proposed, in the NPRM titled ''Natural Gas and Hazardous Liquid Pipeline Damage Prevention Program'' (53 FR 24747; June 30, 1988). The NPRM requested comments on: (1) Whether RSPA should require pipeline operators to participate in a one-call system, even though other underground utilities are not required to participate; and (2) Whether RSPA should require mandatory participation where state or local law requires participation by other utilities.

Comments to the NPRM

Of the 43 comments received to question (1), 17 were in full or partial support and 26 were opposed. Among those in support, a state regulatory agency recommended that operators not be required to participate if the service available is insufficient for the operators' needs or unreasonably priced for the service rendered. A municipal utility, opposed to mandatory participation, stated that if an excavator must make more than one call, there is no true one-call system.

Thirty commenters to question (2) expressed full or partial support, and seven were opposed. Among those in support, a state regulatory agency said that requiring interstate operators to participate in one-call programs would enhance public safety. A gas transmission company, opposed to mandatory participation, stated that until one-call systems are required to meet minimum requirements, gas pipeline operators should not be singled out for mandatory participation.

Commenters opposed to mandatory participation of pipeline operators in one-call systems based their opposition on the lack of required participation by all other operators of underground utilities and other facilities, the lack of required participation by all excavators, and the lack of required standards for the operation of one-call systems. However, RSPA finds it significant that none of the commenters expressed doubt about the effectiveness of the one-call system concept.

Presentation to Advisory Committees

On September 10 and 11, 1991, RSPA presented an issue paper titled ''Mandatory Participation in Certain One-call Systems'' to its two pipeline advisory committees, the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee. The informal presentation was made to brief committee members on the topic of mandatory one-call participation. Although a formal vote was not taken, the advisory committees generally supported the idea of requiring pipeline operators to participate in a qualified one-call system.

After the briefing, members discussed various issues including the overlapping coverage of a few one-call systems. RSPA has researched this problem and has determined that overlapping coverage occurs in limited areas of about seven states. In these areas, pipeline operators with underground facilities would be required to participate in both one-call systems. RSPA, however, recognizes that excavators having to call two one-call systems or one-call systems having to transmit notifications of intent to excavate between themselves is confusing and burdensome and encourages the one-call systems or states where overlapping coverage occurs to resolve the issue.

Requests for Mandatory Participation and the Initiatives of Industry

Several sources have recommended that the Federal government require all operators of underground facilities mandatorily participate in one-call systems. The Transportation Research Board (TRB) of the National Research Council recommended that RSPA ''require gas and liquids pipeline operators to join existing one-call

systems * * *'' (Special Report 219, ''Pipelines and Public Safety''). TRB also recommended that one-call systems meet minimum standards set to provide the services pipeline operators need.

On August 3, 1994, various representatives from government and industry testified before the Senate Committee on Commerce, Science, and Transportation on the Comprehensive One-Call Notification Act of 1994. The National Transportation Safety Board recommended the passage of one-call legislation which would include requiring full participation by all organizations that operate buried facilities. Representatives for the Interstate Natural Gas Association of America and for the American Gas Association also encouraged the passage of one-call legislation which would include the requirement that all operators of underground facilities that are at risk of being struck by outside excavators participate in one-call systems. A representative for the Association of Oil Pipe Lines also supported one-call legislation that would include participation in one-call systems by excavators and by owners of underground facilities, including hazardous liquid pipelines regulated by RSPA.

The overwhelming support for mandatory one-call legislation from both government and industry representatives supports the need for the regulations proposed in this notice.

49 CFR Part 198

Pursuant to 49 U.S.C. 60114, DOT was mandated to require each state, as a condition to full grant-in-aid, to require intrastate pipeline operators to participate in one-call notification systems. RSPA implemented this mandate by publishing 49 CFR part 198, ''Grants for Pipeline Safety Programs: State Adoption of One-Call Damage Prevention Program'' (55 FR 38688; September 20, 1990).

Not all states have adopted one-call damage prevention programs that comply with part 198, nor are all states seeking to actively and effectively adopt them. Six states do not participate in the Federal pipeline safety grant program and thus do not come under part 198. In addition, because Federal law preempts state safety regulations of interstate pipelines, states with one-call damage prevention programs meeting part 198 requirements could have difficulty enforcing them against interstate pipelines. Thus, a need exists for a Federal rule mandating that all pipelines subject to parts 192 and 195 participate in qualified one-call systems.

Proposed Regulations

RSPA proposes to remove the option in §§ 192.614(a) and 195.442(a) that permits a pipeline operator to receive and record notification of planned excavation activities rather than to participate in a qualified one-call system covering the area where the operator's pipeline is located. Moreover, in response to the concerns expressed by commenters to the NPRM, RSPA proposes to require that pipeline operators only participate in qualified one-call systems. A one-call system would be considered qualified if the state has adopted a one-call damage prevention program under § 198.37. A one-call system would also be considered qualified if it is operated in accordance with § 198.39, provides a pipeline operator an opportunity similar to a voluntary participant to have a part in management responsibilities, and does not assess a participating pipeline operator a fee disproportionate to the costs of the one-call system's coverage of the operator's pipeline.

RSPA also proposes to extend the excavation damage prevention program requirements to petroleum gas systems subject to § 192.11 and to small gas systems whose primary activity includes the transportation of gas.

RSPA proposes to limit the current exemption for operators of gas systems, including operators of master meter systems, whose primary activity does not include the transportation of gas. However, the proposed regulations are sensitive to the minimum resources of these small operators. These operators would be exempted from the requirements to identify persons who normally engage in excavation activities in the area in which the pipeline is located, and to provide for actual notification of those identified persons on the damage prevention program's existence and purpose and on how to learn the location of underground pipelines before excavation activities begin. These small operators would also be exempted from the requirement that the damage prevention program be written. These operators would still be required to provide a means of receiving and recording notification of planned excavation activities; provide for actual notification of persons who give notice of their intent to excavate of the type of temporary marking to be provided and how to identify the markings; provide for temporary marking of buried pipelines in the area of excavation activity before, as far as practical, the activity begins; and provide for the inspection of the pipelines that the operator has reason to believe could be damaged by excavation activities.

Under the current damage prevention program requirements, a pipeline operator may voluntarily perform any of the duties required by the damage prevention program through participation in a public service program, such as a one-call system. This voluntary participation is still acceptable to meet the requirements of the damage prevention program but such participation does not relieve the operator of responsibility for compliance with the damage prevention program.

Under the proposed regulation, pipeline operators in areas where one-call systems are not yet established, or where a qualified one-call system is not yet in place, would continue to receive and record the notification of planned excavation activities with their own personnel. However, operators would be required to join a qualified one-call system once it has been established.

Rulemaking Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to review by the Office of Management and Budget. The notice is also not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). A regulatory evaluation is available for review in this docket.

Executive Order 12612

The proposed rule has been analyzed in accordance with the principles and criteria in Executive Order 12612 (''Federalism''), and does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

Regulatory Flexibility Act

Based on the facts available, I certify that this proposal will not, if promulgated, have a significant economic impact on a substantial number of small entities. This certification is subject to modification as a result of a review of comments received in response to this proposal.

Paperwork Reduction Act

The cumulative effect of this NPRM will be no additional increase in the current information collection burden requirements for gas pipeline operators and hazardous liquid and carbon dioxide operators.

List of Subjects

49 CFR Part 192

Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 195

Anhydrous ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA proposes to amend 49 CFR parts 192 and 195 to read as follows:

PART 192—[AMENDED]

1. The authority citation for part 192 is revised to read as follows:

Authority: 49 U.S.C. 5102, 60102, 60104, 60108, 60109, 60110, 60113, 60118; 49 CFR 1.53.

2. Section 192.614 would be amended by revising paragraph (a), by removing paragraph (c)(4), by redesignating paragraphs (b) and (c) as (c) and (d), by revising the introductory text of newly redesignated (c)(2), and by adding paragraphs (b) and (e) as follows:

§ 192.614 Damage Prevention Program.

(a) Except as provided in paragraphs (d) and (e) of this section, each operator of a buried pipeline shall carry out in accordance with this section a written program to prevent damage to that pipeline by excavation activities. For the purpose of this section, ''excavation activities'' include excavation, blasting, boring, tunneling, backfilling, the removal of above ground structures by either explosive or mechanical means, and other earth moving operations.

(b) An operator may comply with any of the requirements of paragraph (c) of this section through participation in a public service program, such as a one-call system, but such participation does not relieve the operator of responsibility for compliance with this section. However, an operator must perform the duties of paragraph (c)(3) of this section through participation in a one-call system, if that one-call system qualifies under either of the following:

(1) The state has adopted a one-call damage prevention program under § 198.37 of this chapter; or

(2) The one-call system—

(i) Is operated in accordance with § 198.39 of this chapter;

(ii) Provides a pipeline operator an opportunity similar to a voluntary participant to have a part in management responsibilities; and

(iii) Assesses a participating pipeline operator a fee that is not disproportionate to the costs of the one-call system's coverage of the operator's pipeline.

(c) * * *

(2) Provide for notification of the public in the vicinity of the pipeline and actual notification of the persons identified in paragraph (c)(1) of this section of the following as often as needed to make them aware of the damage prevention program: * * *

* * * * *

(e) Pipelines operated by persons (including operators of master meters) whose primary activity does not include the transportation of gas need not comply with the following:

(1) The requirement of paragraph (a) of this section that the damage prevention program be written; and

(2) The requirements of paragraphs (c)(1) and (c)(2) of this section.

PART 195—[AMENDED]

3. The authority citation for part 195 is revised to read as follows:

Authority: 49 U.S.C. 60102 60104, 60108, 60109; 49 CFR 1.53.

4. Section 195.442 would be amended by revising paragraph (a), by redesignating paragraphs (b) and (c) as (c) and (d), by revising the introductory text of newly redesignated (c)(2), and adding paragraph (b) to read as follows:

§ 195.442 Damage Prevention Program.

(a) Except as provided in paragraph (d) of this section, each operator of a buried pipeline shall carry out in accordance with this section a written program to prevent damage to that pipeline by excavation activities. For the purpose of this section, ''excavation activities'' include excavation, blasting, boring, tunneling, backfilling, the removal of above ground structures by either explosive or mechanical means, and other earth moving operations.

(b) An operator may comply with any of the requirements of paragraph (c) of this section through participation in a public service program, such as a one-call system, but such participation does not relieve the operator of responsibility for compliance with this section. However, an operator must perform the duties of paragraph (c)(3) of this section through participation in a one-call system, if that one-call system qualifies under either of the following:

(1) The state has adopted a one-call damage prevention program under § 198.37 of this chapter; or

(2) The one-call system—

(i) Is operated in accordance with § 198.39 of this chapter;

(ii) Provides a pipeline operator an opportunity similar to a voluntary participant to have a part in management responsibilities; and

(iii) Assesses a participating pipeline operator a fee that is not disproportionate to the costs of the one-call system's coverage of the operator's pipeline.

(c) * * *

(2) Provide for notification of the public in the vicinity of the pipeline and actual notification of persons identified in paragraph (c)(1) of this section of the following as often as needed to make them aware of the damage prevention program: * * *

* * * * *

Issued in Washington, D.C. on March 14, 1995.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety.

[FR Doc. 95–6724 Filed 3–17–95; 8:45 am]

BILLING CODE 4910–60–P

National Highway Traffic Safety Administration

49 CFR Chapter V

[Docket No. 95–16, Notice 01]

Meeting on Regulatory Reform

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of public meeting; request for comments.

SUMMARY: This notice announces a public meeting at which NHTSA will seek information from the public on regulatory reform actions the agency should take related to its motor vehicle regulations. This notice also invites written comments on the same subject.

DATES: Public meeting: The meeting will be held on March 29, 1995 at 1:00 p.m. Those wishing to make oral presentations at the meeting should contact Deborah Parker, at the address or telephone number listed below, by March 27, 1995.

Written comments: Written comments are due by April 7, 1995.

ADDRESSES: Public meeting: The public meeting will be held at the following location: Ramada Inn (near the Detroit Metro Airport), 8270 Wickham Road, Romulus, MI 48174.

Written comments: All written comments should be mailed to the Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 7th Street SW., Washington, DC 20590. Please refer to the docket number when submitting written comments.

FOR FURTHER INFORMATION CONTACT: Deborah Parker, Director, Special Projects Staff, NPS 01.1, NHTSA, 400 7th Street SW., Washington, DC 20590 (telephone 202–366–4931).

SUPPLEMENTARY INFORMATION: Calling for a new approach to the way Government regulates the private sector President Clinton asked Executive Branch agencies to report to him by June 1, 1995, on ways to improve the regulatory process. Specifically, the President requested that agencies: (1) Cut obsolete regulations; (2) reward agency and regulator performance by rewarding results, not red tape; (3) create grassroots partnerships by meeting, outside of Washington, D.C., with those affected by regulations and other interested parties; and (4) use consensual rulemaking, such as regulatory negotiation, more frequently. This public meeting will help NHTSA to comply with the President's directives.

The Agency is focusing at this time on items (1) and (4) described above. For item (1), cut obsolete regulations, the President requested that we ''conduct a page-by-page review of all. . .agency regulations now in force and eliminate or revise those that are outdated or otherwise in need of reform.'' The President requested that our review include consideration of at least the following:

'' • Is this regulation obsolete?

• Could its intended goal be achieved in more efficient, less intrusive ways?

• Are there better private sector alternatives, such as market mechanisms, that can better achieve the public good envisioned by the regulation?

• Could private business, setting its own standards and being subject to public accountability, do the job as well?

• Could the States or local governments do the job, making Federal regulation unnecessary? ''

To assist NHTSA in responding to this directive, the public's views on which Motor Vehicle-related regulations (standards, rules, etc., are all used interchangeably for this purpose) should be rescinded or revised are requested (the agency also is reviewing its non-motor vehicle related regulations but they are not the subject of this meeting). Both administratively issued and statutorily mandated regulations are the subject of this review. Suggestions should be accompanied by a rationale for the action and the expected consequences. Recommendations should be based on at least the following considerations:

• Cost-effectiveness.

• Administrative/compliance burdens.

• Whether the standard is performance-oriented, as opposed to design-oriented or is technology-restricting.

• Small business effects.

• Frequency of rulemaking to amend or clarify requirements (including inconsequentiality petitions).

• Availability of voluntary industry standards.

• Obsolete requirements.

• Enforceability of the standard.

• Whether the standard reflects a ''common sense'' approach to solving the problem.

In considering the consequences of any recommendation please provide the best available information on any effects on safety, consumer costs, regulated party testing/certification costs, small business impacts, competition, etc.

By motor vehicle-related regulations, NHTSA means all those standards/rules related to safety, fuel economy, theft, consumer information, damageability, and domestic content. The standards themselves and all related record-keeping and procedural requirements are included. Parts 520–594 of Title 49, Transportation, of the Code of Federal Regulations are encompassed.

The public meeting will be held in conjunction with and immediately after the agency's previously scheduled quarterly technical meeting.

With regard to item (4), consensual rulemaking, the agency wants recommendations on which active rulemakings—not those rules already in effect—would be appropriate candidates for the regulatory negotiation process. Bear in mind that these must be rulemakings in which the various interested parties would be willing to negotiate solutions. Currently, the agency is conducting a regulatory negotiation on the subject of optical headlamp aim.

Procedural Matters

As noted at the beginning of this notice, persons wishing to speak at the public meeting should contact Deborah Parker by the indicated date. To facilitate communication, NHTSA will provide auxiliary aids (e.g., sign-language interpreter, braille materials, large print materials and/or a magnifying device) to participants as necessary, during the meeting. Thus, any person desiring assistance of auxiliary aids should contact Ms. Barbara Carnes, NHTSA Office of Safety Performance Standards, telephone (202) 366–1810, no later than March 23, 1995.

Those speaking at the public meeting should limit their presentation to 20 minutes. If the presentation will include slides, motion pictures, or other visual aids, the presenters should bring at least one copy to the meeting so that NHTSA can readily include the material in the public record.

NHTSA staff at the meeting may ask questions of any speaker, and any participant may submit written questions for the NHTSA staff, at its discretion, to address to other meeting participants. There will be no opportunity for participants directly to question each other. If time permits, persons who have not requested time, but wold like to make a statement, will be afforded an opportunity to do so.

A schedule of participants making oral presentation will be available at the designated meeting room. NHTSA will place a copy of any written statement in the docket for this notice. A verbatim transcript of the meeting will be prepared and also placed in the NHTSA docket as soon as possible after the meeting.

Participation in the meeting is not a prerequisite for the submission of written comments. NHTSA invites written comments from all interested parties. It is requested but not required that 10 copies be submitted.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above will be considered. Comments will be available for inspection in the docket.

NHTSA will continue to file relevant information as it becomes available in the docket after the closing date. It is therefore recommended that interested persons continue to examine the docket for new material.

Issued: March 14, 1995.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 95–6777 Filed 3–15–95; 1:03 pm]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 60, No. 53
Monday, March 20, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Soutwestern Region, Arizona; Timber Resource Analysis—Kaibab National Forest

AGENCY: Forest Service, USDA.

ACTION: Cancellation of notice of intent to prepare an environmental impact statement.

SUMMARY: The Southwestern Region of the Forest Service filed a Notice of Intent to prepare an environmental impact statement in the **Federal Register** (Vol. 56, No. 37, pages 7659–7660) on February 25, 1991. Because of changing resource conditions and new planning issues, the original Notice of Intent is cancelled.

RESPONSIBLE OFFICIAL: The Regional Forester, Southwestern Region, is the responsible official for decisions that affect the Kaibab National Forest Land and Resource Management Plan.

FOR FURTHER INFORMATION CONTACT: Director of Ecosystem Management Planning, Southwestern Regional Office, 517 Gold Avenue SW., Albuquerque, NM 87102, (505) 842–3210.

SUPPLEMENTARY INFORMATION: The original environmental impact statement process was initiated to reanalyze the timber resource and to amend the Kaibab Land and Resource Management Plan as needed. A draft environmental impact statement was circulated for comment in July, 1994.

Concurrent to the Kaibab process, the Regional Forester conducted another environmental impact statement process to amend Southwestern Region Forest Plans to include guidelines for management for the Mexican spotted owl and northern goshawk. This process did not include the Kaibab National Forest. The Notice of Intent for the region-wide amendment was filed in the **Federal Register** (Vol. 57, No. 122, pages 28171–28172) on June 24, 1992. A draft environmental impact statement for this process was circulated in December, 1994.

Public comments received from both environmental impact statement efforts requested that the two separate forest plan amendment procedures be combined. Other comments suggested that other alternatives need to be considered. Additionally, the Mexican spotted owl was listed as a threatened species under the Endangered Species Act with a recovery plan and critical habitat designation currently under consideration by the U.S. Fish and Wildlife Service.

The Regional Forester decided to combine both environmental impact statement processes and issue a revised draft environmental impact statement that covers amendment of all forest plans in the Southwestern Region. Comments received from review of both draft environmental impact statements will be considered.

Dated: March 14, 1995.

Arthur S. Briggs,

Acting Deputy Regional Forester, Southwestern Region.

[FR Doc. 95–6775 Filed 3–17–95; 8:45 am]

BILLING CODE 3410–11–M

Southwestern Region, Arizona, New Mexico, West Texas and Oklahoma; Amendment of National Forest Plans in the Southwestern Region To Include Guidelines for Management of Habitat for the Mexican Spotted Owl and Northern Goshawk

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: The Southwestern Region of the Forest Service filed a Notice of Intent to prepare an environmental impact statement in the **Federal Register** (Vol. 57, No. 122, pages 28171–28172) on June 24, 1992. Because of changing resource conditions and new planning issues, the original Notice of Intent is revised.

DATES: This notice is effective March 20, 1995.

RESPONSIBLE OFFICIAL: The Regional Forester, Southwestern Region, is the responsible official for decisions that affect Southwestern Region Forest Land and Resource Management Plans.

FOR FURTHER INFORMATION CONTACT: Director of Ecosystem Management Planning, Southwestern Regional Office, 517 Gold Avenue SW., Albuquerque, NM 87102, (505) 842–3210.

SUPPLEMENTARY INFORMATION: The original environmental impact statement process was initiated to amend Southwestern Region Forest Plans to include guidelines for management for the Mexican spotted owl and northern goshawk. This process did not include the Kaibab National Forest. A draft environmental impact statement for this process was circulated in December, 1994.

Concurrent to this process, a separate timber analysis and forest plan amendment process was being conducted for the Kaibab National Forest. A Notice of Intent to prepare an environmental impact statement for this process was filed in the **Federal Register** (Vol. 56, No. 37, pages 7659–7660) on February 25, 1991. A draft environmental impact statement was circulated for comment in July, 1994.

Public comments received from both environmental impact statement processes requested that the two separate procedures be combined. Other comments suggested that other alternatives need to be considered. Additionally, the Mexican spotted owl was listed as a threatened species under the Endangered Species Act with a recovery plan and critical habitat designation currently under consideration by the U.S. Fish and Wildlife Service.

The Regional Forester decided to combine both environmental impact statement processes and issue a revised draft environmental impact statement that covers amendment of all forest plans in the Southwestern Region. Comments received from review of both draft environmental impact statements will be considered.

A revised draft environmental impact statement will be available for public comment for 90 days in January, 1996. A final environmental impact statement should be released in fall of 1996.

Dated: March 14, 1995.

Arthur S. Briggs,

Acting Deputy Regional Forester, Southwestern Region.

[FR Doc. 95–6773 Filed 3–17–95; 8:45 am]

BILLING CODE 3410–11–M

Southwest Washington Provincial Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Washington Provincial Advisory Committee will meet on April 20, 1995 in Kelso, Washington, at the Red Lion Inn, near Interstate 5 at Exit No. 39. The meeting will begin at 9 a.m. and continue until 4 p.m. Meeting purpose is to orient new Advisory Committee members to the President's Northwest Forest Plan and the Advisory Committee process. Agenda items to be covered include: (1) Introductions of Committee members; (2) context of the Advisory Committee, including background on the Forest Plan; (3) mission and purpose of the Province Advisory Committee; (4) overview of Federal agency missions; (5) Advisory Committee roles; (6) Public Involvement strategy; (7) Decision Process and Criteria; (8) Travel Requirements; (9) Public Open Forum.

All Southwest Washington Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The ''open forum'' provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The ''open forum'' is scheduled near the conclusion of the meeting. Interested speakers will need to register at the door. The Committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Mark Maggiora, Public Affairs Officer, at (360) 750-5007, or write Forest Headquarters Office, Gifford Pinchot National Forest, 6926 E Fourth Plain Blvd., PO Box 8944 Vancouver, WA 98668.

Dated: March 10, 1995.

Ted C. Stubblefield,

Forest Supervisor.

[FR Doc. 95–6710 Filed 3–17–95; 8:45 am]

BILLING CODE 3410–11–M

RIN 0596–AA

Use of Bait in Hunting

AGENCY: Forest Service, USDA.

ACTION: Notice; adoption of final policy.

SUMMARY: The Forest Service gives notice of its final policy on the use of bait in hunting resident game on National Forest System lands. This policy has been issued to Agency employees as an amendment to the Forest Service Manual 2640. The intended effect of the final policy is to clarify the Agency's role with regard to baiting in relation to the role of the States and, thus, to provide a consistent approach to the regulation of baiting resident game on National Forest System lands.

EFFECTIVE DATE: This policy is effective March 20, 1995.

FOR FURTHER INFORMATION CONTACT: Questions about this policy should be addressed to Robert Nelson, Wildlife, Fish, and Rare Plants Staff, Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090, (202) 205–1205.

SUPPLEMENTARY INFORMATION:

Background

On April 14, 1994, the Forest Service published a proposed policy on the Agency's role in regulating the placement of bait to attract resident game on National Forest System lands (59 FR 17758). Public comment was invited. The comment period closed June 13, 1994.

The focus of the proposed policy was that the Forest Service would continue to honor State regulations of fish and wildlife populations, including hunting and hunting practices. Where baiting is allowed by States, the practice would continue on National Forest System lands unless the authorized officer was to determine on a site-specific basis that the use of bait conflicts with Federal laws or regulations, forest plan direction, or other uses or users. In such case, the authorized officer could prohibit or restrict use of bait, in an area, by issuing a closure order. However, the authorized officer would first consult with the State fish and wildlife agency to see if the conflict could be resolved without a closure or restrictive order.

During the public comment period, the Forest Service received 1,249 comments on the proposed policy. Comments were received from 76 groups and private organizations, 29 State fish and wildlife agencies, 1 American Indian Tribal government, 1 Federal agency, and from private citizens located in 46 States and the District of Columbia. Of the total comments received, 86 percent were from individuals representing themselves. Forty-five percent of the comments agreed with the proposed policy either in its entirety or with suggested modifications, while fifty-one percent did not support the proposed policy. The analysis of the public comments was accomplished using standard Forest Service procedures designed to ensure an objective and systematic analysis. The Agency has considered these comments and, in response, where appropriate the Agency is adopting modifications in the final policy. A summary of the comments received and the Agency's response to them follows.

Summary of Comments Received

Form letters and modified form letters made up 61 percent of the 1,249 total comments. The majority of these letters were not directed at specific provisions of the policy; rather, most of these comments objected to the practice of baiting in hunting but did not address State and Federal roles in the administration of a hunting practice. These respondents simply stated that they were against the use of bait in hunting and that this practice should not be allowed on National Forest System lands. Among reasons cited were that bait is detrimental to the non-hunting recreation experience; and bait may cause pollution or may be a risk to human health and safety. Other topics addressed were the need for environmental documentation under the National Environmental Policy Act, State versus Federal jurisdiction over wildlife resources, population decimation and species viability, threatened and endangered species being killed, conditioning of wildlife to human food sources, and disruption of biological diversity and ecological processes.

A summary of specific comments by broad subject and the Agency's response to these comments follows.

1. *Comment:* Impact of Baiting on Recreation. A number of respondents feel that baiting causes a garbage problem, is detrimental to recreation experience, is a source of pollution, and poses health and safety risks. The reviewers feel that baiting has a negative impact on the majority of forest users and, therefore, grants a small group ''special advantages on land meant to be enjoyed by all.''

Response: The fact that an activity is enjoyed by a minority of forest users does not mean that the activity should be banned. The Forest Service has consistently cooperated with State agencies to help them develop regulations that minimize conflict between hunters using baits and other forest users. Under the proposed policy, the Forest Service would close specific

areas to baiting if conflicts cannot be resolved with the State agencies regarding the protection of Federal resources and uses, including recreation. This has been retained in the final policy.

2. *Comment:* Retention of Baiting Practices. Many reviewers characterized bear baiting as ''disgusting,'' ''offensive,'' ''revolting,'' ''repulsive,'' ''inhumane,'' ''unsporting,'' and ''unethical.'' These persons feel strongly that the practice of baiting should be outlawed on National Forest System lands.

Response. While the Agency respects the reviews of those who object to baiting, the final policy is not intended to determine whether or not the practice of using bait in hunting is to be allowed on National Forest System lands, but whether the use of bait needs regulation by the Forest Service beyond that required by the State. The practice of placing bait (food or scent to attract wildlife) is a hunting activity subject to State law and regulations. Federal land management statutes acknowledge the States' traditional role in managing fish and wildlife; see the National Forest System Organic Administration Act at 16 U.S.C. 480, the Multiple Use-Sustained Yield Act at 16 U.S.C. 528, the Sikes Act at 16 U.S.C. 670h, and the Federal Land Policy and Management Act, at 43 U.S.C. 1732. Generally, the use of bait in hunting is not contrary to Federal interests. The final policy acknowledges the State fish and wildlife agencies' authority to adopt hunting regulations and provides for Federal action if State regulations do not protect Federal interests.

3. *Comment:* Clarity of Policy. Several reviewers felt that the reasons for closing an area to baiting were not clearly stated in the proposed policy. In addition, concerns were raised that the policy would not require review of State regulation and that Forest Service officers therefore would not identify problems that would be the basis for closure actions.

Response. In consideration of these comments, the Forest Service has modified the April 14, 1994 proposal to emphasize the Agency's intent to monitor State regulations. Such monitoring is a routine practice under Agency Memorandums of Understanding (MOUs) with State wildlife agencies. Direction to Forest Service employees on entering into and operating under such MOU's is set out in a different chapter of FSM 2600 than the use of bait policy. Nevertheless, Forest Service monitoring of State regulations has been emphasized in the FSM 2640 baiting use policy as a show of good faith to those who raised the concern about Forest Service review of State regulations. It should also be pointed out that, in the day-to-day monitoring of activities on National Forest System lands, Agency employees will be aware of practices under those regulations that appear to conflict with land and resource management plan standards and guidelines, which must be consistent with Federal law. The final policy makes explicit the circumstances under which the authorized officer must close an area to baiting as follows:

a. The State laws and regulations on placement of bait are not adequate to protect forest land or other resources or users in a particular location. The determination of the adequacy of State laws and regulations shall be based on consideration of the likely impact of baiting on such matters as water quality, public health and safety, the potential for litter, sanitation problems, or the potential to threaten the viability of wildlife;

b. The effects of baiting are inconsistent with direction in the applicable forest plan; or

c. The State laws and regulations conflict with Federal law, such as the Endangered Species Act.

2. Where the authorized officer determines that baiting should be restricted or prohibited, the following actions are necessary:

a. The officer shall immediately inform the State fish and wildlife agency of the determination; and

b. If, after consultation and coordination, the State is unable to resolve the matter with the Forest Service, the authorized officer shall close the area to baiting or otherwise restrict baiting by issuing an order pursuant to Part 261 of Title 36 of the Code of Federal Regulations (36 CFR Part 261).''

4. *Comment:* Impact on American Indians. Two reviewers specifically asked what impact the proposed policy would have on American Indian Tribes and their treaty rights regarding hunting and fishing.

Response. The final policy will not affect valid treaty rights reserved to American Indian Tribes on National Forest System lands. An explicit statement to this effect has been added to the final policy.

5. *Comment:* Impact on Protection of Inventoried Resources. Some reviewers expressed the view that the proposed policy would not allow the Forest Service to adequately ''protect inventoried resources'' required by the National Forest Management Act.

Response. The Multiple-Use Sustained-Yield Act (MUSYA) and the National Forest Management Act (NFMA) directs the Forest Service to manage and conserve the land and resources of the National Forest System for multiple uses. The Multiple-Use Sustained-Yield Act (MUSYA) specifically maintains the States' traditional wildlife management roles with regard to fish and wildlife on National Forest System lands. Accordingly, the final policy (2643.12) establishes the conditions under which Federal action will be taken when State regulations are not sufficiently protective and incorporates procedures for consulting with the responsible State agencies to ensure that Federal interests are protected.

6. *Comment:* National Environmental Protection Act (NEPA) Compliance. The Forest Service, has made a preliminary finding using a Categorical Exclusion, but a number of respondents believe that an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required because the proposed policy is highly controversial, and in the view of these respondents, a major Federal action of wide scope that will have a significant impact on wildlife.

Response. In publishing the proposed policy, the Agency indicated that its preliminary conclusion was that the proposal should be categorically excluded from documentation in an EA or EIS. However after reviewing the public comments received during the 60-day comment period, the Forest Service prepared an Environmental Assessment and based on a Finding of No Significant Impact (FONSI), has determined that an EIS is not needed. A copy of the environmental assessment, decision notice and FONSI may be obtained by calling the number listed earlier in this notice under **FOR FURTHER INFORMATION CONTACT**.

7. *Comment:* Use of Special Use Permits. Several reviewers indicated that the agency should issue special use permits for baiting and that this process would alleviate some of the problems associated with bear baiting, such as litter.

Response. As noted in the preamble to the proposed policy, some Forest Service units have used special use permits in the past to regulate baiting. However, the policy review that has been undertaken over the past few years has clearly shown that the issuance of special use permits is not appropriate. Specifically, the Forest Service special use authorization regulations at 36 CFR 251.50 exempt certain noncommercial use and occupancy, including

''hunting,'' from the special use authorization requirement.

This was the basis for the provision in the April 14, 1994 proposed policy stating, ''Special use authorizations shall not be issued for placing bait on National Forest System lands for hunting purposes (36 CFR 251.50(c)).'' However, since the final policy now clearly indicates the circumstances and process by which the authorized officer may restrict or prohibit baiting through the use of closure orders, the explicit prohibition on the issuance of special use permits to regulate baiting is unnecessary and, therefore, has not been retained in the final policy.

8. *Comment:* State Jurisdiction Over National Forest System Land. Many reviewers felt that State wildlife agencies should not be given control over hunting practices on NFS lands.

Response. As noted in the notice of proposed policy, Federal land management statutes acknowledge the States' traditional role in managing fish and wildlife. The Forest Service, therefore, is generally reluctant to override State fish and wildlife regulation, except where Federal interest, such as protection of forest land, resources, and users, require Federal intervention. The practice of placing bait is a hunting activity subject to State laws and regulations and the final policy retains the explicit statement to this effect.

9. *Comment:* Impact on Grizzly Bear and Other At Risk Species. One group indicated that it was greatly concerned about the direct and indirect danger of mortality posed to grizzly bear and other at-risk, threatened, and endangered species in the Greater Yellowstone Ecosystem by the practice of baiting for bear.

Response. States as well as Federal agencies have extensive responsibilities under the Endangered Species Act to conserve resident species determined to be endangered or threatened. If State regulations are adequate to protect grizzly bears or any other threatened or endangered species, no action is needed by the Forest Service. The final policy will not allow any practices that would endanger any species. By interagency agreement, and the policy already stated in FSM, 2676.16b, for baiting for black bear hunting is as follows:

''Reduce the potential for preventable mortality on National Forest System lands by enforcing the Inter-agency [Grizzly Bear] Guidelines which specify no baiting for black bear hunting in areas designated as Management Situation 1(FSM 2676.11, ex. 1). Make this information available to hunters at Forest Service offices and at campsites in black bear hunting areas. Work with appropriate State wildlife law enforcement officials to ensure compliance.

Work with State wildlife agencies toward the elimination of baiting for black bear hunting in Management Situation 2 areas where grizzlies are know or are likely to occur. Inform black bear hunters in Management Situation 2 areas about the risk of shooting a grizzly bear (as a result of mistaking it for a black bear) that may be attracted to the bait.''

10. *Comment:* Human Health and Safety. A number of reviewers felt that baiting will cause an increase in conflicts between bears and people, creating human health and safety issues.

Response. There is no evidence that baiting increases human-wildlife conflicts; moreover, the final policy specifically provides that the Forest Service, may close an area to baiting in cases where a threat to human health and safety from conflicts with bears, are likely to arise.

11. *Comment:* Impact on Other Wildlife. One frequently raised concern is that other species will be attracted to bait stations only to be shot or otherwise harmed. These respondents assert that baiting practices will lead to wildlife being conditioned to search for unnatural food sources, thereby increasing the prevalence of campsite raids and other conflicts.

Response. It is possible that wildlife species other than black bears could be attracted to baits. Such an occurrence does not necessarily mean that the species would be either shot or harmed. Baiting actually improves the chance that the hunted species is clearly identified before being shot, and therefore should improve the chances that other species are not shot accidentally.

Bears do not become conditioned to baits. Bear baits are temporary features. Once the bait is removed, bears revert to natural foods. However if the authorized officer determined that the State law and regulations on placement of bait are not adequate to protect other wildlife in a particular location, the area could be closed to baiting. The policy provides explicitly that the determination of the adequacy of State laws and regulations shall be based on consideration of the likely impact of baiting on such matters as water quality, public health and sanitation, the potential for litter, or the potential to threaten the viability of wildlife.

12. *Comment:* Ecosystem Management. A number of respondents commented that bear baiting has negative implications for ecosystem management and disrupts the social and ecological balance of the forest environment.

Response. Where properly regulated, baiting is not known to affect ecological processes. Forest Service management of the National Forest System is aimed at promoting the sustainability of ecosystems. The Agency's land ethic is to promote the sustainability of ecosystems by ensuring their health, diversity, and productivity. Ecosystem management is based on resource sustainability and recognizes that people are part of ecosystem management. The Agency believes this is fully consistent with its purpose and mission and therefore no change is made to the policy in response to this concern.

Conclusion

Having considered the comments received, the Forest Service is adopting a final policy on the use of bait on National Forest System lands. The policy retains the long-standing reliance on State regulation of baiting resident game. Where State law and regulation permit baiting the practice is permitted on National Forest System lands unless the authorized officer determines on a site specific basis that the practice conflicts with Federal laws or regulations, or forest plan direction, or would adversely affect other forest uses or users. The text of the final policy as it is being issued to Forest Service employees is set out at the end of this notice.

Environmental Analysis

An environmental assessment was prepared to identify the environmental effects of this policy and three alternative baiting policies. A finding of no significant impact (FONSI) was made, documenting that there are no direct, indirect or cumulative significant impacts to the human environment arising from the implementation of this policy. A copy of the environmental assessment, finding of no significant impact, and decision notice will be sent to interested publics upon request.

Controlling Paperwork Burden On The Public

This policy will not result in additional paperwork. Therefore, the review provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) and implementing regulations at 5 CFR part 1320 do not apply.

Regulatory Impact

This policy has been reviewed under USDA procedures and Executive Order 12888 on Federal Regulations. It has been determined that this is not a significant policy.

Dated: March 15, 1995.

David G. Unger,

Associate Chief.

Forest Service Manual

Chapter 2640—Stocking and Harvesting Amendment No. 95–2600

(Note: The Forest Service organizes its directive system by alpha-numeric codes and subject headings. Only those sections of the Forest Service Manual that are relevant to this notice are set out here. The final policy also includes minor revisions to existing codes and subject headings. The audience for this direction is Forest Service employees responsible for coordinating wildlife management on National Forest System lands with State fish and wildlife agencies.)

2643—Applicability of State Fish and Wildlife Laws and Regulations. The Forest Service actively cooperates in the development of State fish and wildlife laws and regulations and may assist in the enforcement of State fish and wildlife laws on National Forest System lands. Pursuant to FSM 2610, Regional Foresters shall ensure that memorandums with State fish and wildlife agencies recognize the role of the Forest Service in cooperating in the development of State fish and wildlife laws and regulations, especially those addressing hunting, fishing, and trapping as they would apply to occupancy and use of National Forest System lands.

2643.1—Hunting, Fishing, and Trapping Regulations. Hunting, fishing, and trapping of fish and wildlife and associated practices on National Forest System lands are subject to State fish and wildlife laws and regulations, unless one or both of the following apply:

1. State fish and wildlife laws and regulations conflict with Federal laws; or

2. State laws and regulations would permit activities that conflict with land and resource management responsibilities of the Forest Service or that are inconsistent with direction in forest plans.

2643.12—Use of Bait for Resident Game Hunting. The use of bait for the purpose of taking resident game on National Forest System lands in a hunting practice.

The practice is prohibited on National Forest System lands where State hunting regulations prohibit its use. Where States permit the use of bait for attracting resident game, this activity is allowed on National Forest System lands, subject to State hunting laws and regulation, unless the authorized officer determines on a site-specific basis that there is a need to prohibit or restrict the practice.

1. The authorized officer shall continually monitor State hunting regulations with regard to the use of bait. A site-specific restriction or prohibition on baiting shall occur when the authorized officer determines that one or more of the following circumstances exists:

a. The State laws and regulations on placement of bait are not adequate to protect forest land, other resources, or users in a particular location. The determination of the adequacy of State laws and regulations shall be based on consideration of the likely impact of baiting on such matters as water quality, public health and safety, the potential for litter, sanitation problems, or the potential to threaten the viability of wildlife;

b. The effects of baiting are not consistent with direction in the applicable forest plan; and

c. The State laws and regulations conflict with Federal law, such as the Endangered Species Act.

2. Where the authorized officer determines that baiting must be restricted or prohibited, the following actions are necessary:

a. The officer shall immediately inform the State fish and wildlife agency of the determination; and

b. If, after consultation and coordination, the State is unable to resolve the matter with the Forest Service, the authorized officer shall close the area to baiting or otherwise restrict baiting by issuing an order pursuant to Part 261 of Title 36 of the Code of Federal Regulations (36 CFR Part 261).

3. Where the hunting season is underway and it would be impracticable to issue an order to close an area to baiting, the authorized officer shall take such measures as appropriate and practicable to ensure consistency with forest plan management direction; compliance with Federal laws, orders, and regulations; and protection of forest users and resources. For example, the officer might close a road or gate to restrict access.

Closure of an area to baiting is not the only way to address the practice of baiting. It is expected that land managers as part of their day-to-day management of National Forest System lands and resources will be cognizant of the effects of hunting activities and take such proactive measures as may be necessary to ensure resource protection. Also hunter education programs could be implemented in consultation with the State agencies.

The policy in this section, in and of itself, does not compel an authorized officer to undertake a specific decision to allow baiting on National Forest System lands in those States where the practice is permitted. Nothing in this section shall be construed to affect valid existing treaty rights of American Indian Tribes. For the purposes of this section and to assure consistency in coordination of national forest wildlife matters with State agencies, the authorized officer is the Regional Forester or Forest Supervisor responsible for executing memorandums of understanding with the State wildlife agency (FSM 2610).

[FR Doc. 95–6904 Filed 3–17–95; 8:45 am]

BILLING CODE 3410–11–M

Grain Inspection, Packers and Stockyards Administration

Designation of Keokuk (IA) and Springfield (IL) for the Former Quincy (IL) Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA announces the designation of Keokuk Grain Inspection Service (Keokuk) and Springfield Grain Inspection, Inc. (Springfield), to provide official services under the United States Grain Standards Act, as amended (Act) in the former Quincy area.

EFFECTIVE DATES: April 1, 1995.

ADDRESSES: Janet M. Hart, Chief, Review Branch, Compliance Division, GIPSA, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the October 3, 1994, **Federal Register** (59 FR 50221), GIPSA asked persons interested in providing official services in the geographic area assigned to Quincy to submit an application for designation. Applications were due by November 1, 1994. There were three applicants; all designated official agencies: Keokuk; Quincy Grain Inspection & Weighing Service, Inc. (Quincy); and Springfield. Keokuk applied for the entire Quincy area or any part which includes Adams and/or Pike Counties. Quincy applied for the entire area currently assigned to them. Springfield applied for the entire Quincy area or any part thereof.

GIPSA requested comments on the applicants in the December 2, 1994, **Federal Register** (59 FR 61869). Comments were due by December 30, 1994. GIPSA received four comments postmarked by the due date. Two of Keokuk's current customers supported designation of Keokuk for the Quincy area. Two of Quincy's current customers supported designation of Quincy for the area they currently serve. There were no comments regarding Springfield.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act; and according to Section 7(f)(l)(B), determined that Keokuk is better able than Quincy and Springfield to provide official services in the northern portion of the Quincy geographic area, as follows: Adams, Brown, and Pike (northwest of a line bounded by U.S. Route 54 northeast to State Route 107; State Route 107 northeast to State Route 104; State Route 104 east to the eastern Pike County line) Counties, Illinois. GIPSA also evaluated all available information regarding the designation

criteria in Section 7(f)(l)(A) of the Act; and according to Section 7(f)(l)(B), determined that Springfield is better able than Keokuk and Quincy to provide official services in the southern portion of the Quincy geographic area, as follows: Greene, Macoupin (southwest of a straight line from the junction of State Route 111 and the northern Macoupin County line southeast to the junction of Interstate 55 and State Route 16), and Pike (southwest of a line bounded by U.S. Route 54 northeast to State Route 107; State Route 107 northeast to State Route 104; State Route 104 east to the eastern Pike County line) Counties, Illinois.

Effective April 1, 1995, and ending April 30, 1995 (the end of their present designation), Keokuk is designated to provide official inspection services in the geographic area specified above in addition to the area they are already designated to serve. Effective April 1, 1995, and ending March 31, 1997 (the end of their present designation), Springfield is designated to provide official inspection services in the geographic area specified above in addition to the area they are already designated to serve.

Interested persons may obtain official services by contacting Keokuk at 319–524–6482 and Springfield at 217–522–5233.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: March 13, 1995

Neil E. Porter

Director, Compliance Division

[FR Doc. 95–6646 Filed 3–17–95; 8:45 am]

BILLING CODE 3410–EN–F

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Income and Program Participation – 1993 Panel Waves 9 and 10.

Form Number(s): SIPP–13900.

Agency Approval Number: 0607–0759.

Type of Request: Revision of a currently approved collection.

Burden: 42,000 hours.

Number of Respondents: 42,000.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Survey of Income and Program Participation (SIPP) is a longitudinal, demographic, household survey in which the Census Bureau interviews sample households in waves occurring every 4 months over a 2 ½ year period. The survey is molded around a central ''core'' of labor force and income questions that remain fixed during each wave of a panel. The core is periodically supplemented with questions designed to answer specific needs. These supplemental questions are referred to as ''topical modules.'' The Census Bureau is requesting an extension of the 1993 Panel to conduct two additional waves of interviews extending the life of the 1993 Panel to three years. The topical modules for Wave 9 include the following: 1) Retirement Expectations and Pension Plan Coverage, 2) Work Schedule, 3) Child Care, 4) Children's Well–being, 5) Child Support Agreements, 6) Support for Nonhousehold Members, and 7) Basic Needs. Wave 9 interviews will be conducted from October 1995 through January 1996. Wave 10 interviews will have no topical modules and will be conducted from October 1995 through January 1996.

Affected Public: Individuals or households.

Frequency: Each Wave is done once during the panel.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: March 14, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–6808 Filed 3–17–95; 8:45 am]

BILLING CODE 3510–07–F

Economics and Statistics Administration

Advisory Committee of the Task Force for Designing the Year 2000 Census and Census-Related Activities for 2000–2009

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of Public Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Public Law 92–463, as amended by Public Law 94–409), we are giving notice of a meeting of the Advisory Committee of the Task Force for Designing the Year 2000 Census and Census-Related Activities for 2000–2009. The meeting will convene on Friday, March 31, 1995, at The Embassy Row Hotel, 2015 Massachusetts Avenue, NW., Washington, DC.

The Advisory Committee is composed of a Chair, Vice Chair, and twenty-five member organizations, all appointed by the Secretary of Commerce. The Advisory Committee will consider the goals of the census and user needs for information provided by the census, and provide a perspective from the standpoint of the outside user community on how proposed designs for the year 2000 census realize those goals and satisfy those needs. The Advisory Committee shall consider all aspects of the conduct of the census of population and housing for the year 2000, and shall make recommendations for improving that census.

DATES: The meeting will begin at 8:00 a.m. and adjourn at 11:30 a.m. on Friday, March 31, 1995.

ADDRESSES: The meeting will take place at The Embassy Row Hotel, 2015 Massachusetts Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Persons wishing additional information regarding this meeting, or who wish to submit written statements or questions, may contact Susan M. Knight, Department of Commerce, Bureau of the Census, Room 2066, Federal Building 3, Washington, D.C. 20233. Telephone: (301) 457–2095.

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes a presentation to Commerce Secretary Ronald H. Brown of the final report of the Committee on the design phase of the 2000 census, a status report on the 1995 Census Test, and any other business the Chair and Advisory Committee members deem appropriate for this meeting. The meeting is open to the public. A brief period will be set aside for public comment and questions. However, persons with extensive questions or statements for the record must submit them in writing to the Commerce Department official named above at least three working days prior to the meeting. The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids

should be directed to Pat Ellis on (301) 457–2095.

Dated: March 15, 1995.

Everett M. Ehrlich,

Under Secretary for Economic Affairs, Economics and Statistics Administration.

[FR Doc. 95–6809 Filed 3–17–95; 8:45 am]

BILLING CODE 3510–EA–M

Bureau of Export Administration

In the matter of Joseph P.M. D'Haens, Respondent

[Docket No. 7102–01]

Related Person Order

Whereas, on April 25, 1988, then-Under Secretary for Export Enforcement Paul Freedenberg entered an order affirming a March 25, 1988 Recommended Decision and Order entered against Respondent Joseph P.M. d'Haens (d'Haens) by the Administrative Law (ALJ), which, in pertinent part, provided that:

For a period of 20 years * * * Respondent, Joseph P.M. d'Haens, Amerikalei 96, 2000 Antwerp, Belgium, and all successors, assignees, officers, partners, representatives, agents, and employees are hereby denied all privileges of participating, directly or indirectly, in any manner of [sic] capacity, in any transaction involving commodities or technical data exported from the United States * * *.

* * * * *

After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services.

Whereas, on May 28, 1993, the ALJ issued an Order to, *inter alia*,[1] Discom NV, Endymion NV, and Kronatech NV directing them to show cause why the sanctions in the April 25, 1988 Order entered against d'Haens should not be made applicable to them because of their relationship to d'Haens in the conduct of export trade or related services;

Whereas, on December 25, 1993, d'Haens responded to the Order to Show Cause by admitting that he has a business relationship with Discom NV, Endymion NV, and Kronatech NV;

Whereas, the ALJ has recommended, based on the evidence of record, that I enter an Order finding that the above persons are related to d'Haens by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services;

Whereas, I find, based on the evidence of record, that each of the above persons is related to d'Haens by affiliation, ownership, control, position of responsibility, or other connection in the conduct of export trade or related services;

It is therefore ordered: That paragraph III of the ALJ's Recommended Decision and Order of March 25, 1988, as affirmed by the Under Secretary's April 25, 1988 Order, entered against Joseph P.M. d'Haens, be amended by adding the following as persons related to d'Haens:

Discom NV, Liersesteenweg 96, 2520 Ranst, Belgium

and

Endymion NV, Liersesteenweg 98, 2520 Ranst, Belgium

and

Kronatech NV, Amerikalei 96, 2000 Antwerpen, Belgium

Each of the above persons is therefore subject to the same sanctions as are imposed against d'Haens by the April 25, 1988 Order, which continues in full force and effect.

This Order is effective immediately. A copy of this Order shall be served on each named related person and published in the **Federal Register**.

This constitutes the final agency action in this matter.

Dated: March 13, 1995.

William A. Reinsch,

Under Secretary for Export Administration.

[FR Doc. 95–6720 Filed 3–17–95; 8:45 am]

BILLING CODE 3510–DT–M

[1] Several other companies were identified in the Order to Show Cause as possible being related to d'Haens. Based on the response to the Order to Show Cause, it has been determined that those companies are no longer related to d'Haens.

International Trade Administration

[A–570–838]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 20, 1995.

FOR FURTHER INFORMATION CONTACT: Karla Whalen or David J. Goldberger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–6309 or (202) 482–4136, respectively.

Preliminary Determination

We preliminarily determine that honey from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

Since the initiation of this investigation on October 24, 1994, (59 FR 54434, October 31, 1994), the following events have occurred:

On November 1, 1994, we sent a survey to the PRC's Ministry of Foreign Trade and Economic Cooperation (MOFREC) and the China Chamber of Commerce for Foodstuffs, Native Produce and Animal By-products Importers and Exporters (the Chamber) requesting the identification of producers and exporters, and information on production and sales of honey exported to the United States.

A response to the survey was received on November 29, 1994. Based on this information, the Department sent full questionnaires including Attachment I (dealing with claims for Market Oriented Industry (MOI) status) and Attachment II (dealing with claims for Separate Rates), to MOFTEC and the Chamber, requesting that the questionnaire be transmitted to all companies that process honey for export to the United States and to all companies that were engaged in exporting honey to the United States during the period of investigation (POI). On December 13 1994, MOFTEC responded that it had done so.

On November 17, 1994, the U.S. International Trade Commission (ITC) notified the Department of Commerce (the Department) of its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of honey from the PRC that are allege to be sold at less than fair value.

On January 3, 1995, the Department received section A responses from the Chamber and 28 Chinese exporters and their respective producers. Supplemental information was received on January 5 and 23, 1995. Each exporter is listed with its supplier(s):

Kunshan Xinlong Food, Ltd.
  Kunshan Xinlong
Jiangsu Native Produce Import and Export
  Jiangsu Sweet and Qinghai Provincial Bee Products
Jiangxi Native Produce Import and Export
  Jianxi Ao Shan Duo Qi Beverage Factory

Zhejiang Native Produce & Animal By-product Import and Export
Hangzhou Lewei Food Factory
Heilongjiang Native Produce and Animal By-product Import and Export
Baoji Kanda Honey Corportion
Inner Mongolia Native Produce and Animal By-product
Inner Mongolia Shengli Food Co.
Chang Cheng Industrial Co., Ltd.
Changcheng Industrial Co., ltd.
Shaanxi Native Produce Import and Export
Shaanxi Export Food Factory
Kunshan Foreign Trade Co.
Kunshan Xinlong Foods Ltd.
China (TUHSU) Super Food Import and Export
Xinle Hebei Honey Factory
Shanghai Bee Product Factory
Baoji Kanda Honey Corporation
Hubei Native Produce Import and Export
Tianjin Native Produce Import and Export
Hebei Province Bee Product Company
Shandong Native Produce Import and Export
Hu Shan Dried Fruits Processing Company
Qinghai Cereals and Oils Import and Export
Qinghai Provincial Bee Products Company
Shanghai Native Produce Import and Export
Jiangsu Sweet
Guangxi Cereals, Oils and Foodstuffs Import and Export Corporation
Kunshan Xinlong Foods Company, Ltd.
Sichuan Native Produce Import and Export
Anhui Tianxin Honey Product Co.
China (TUHSU) Flavors and Fragrances Import and Export
Kunshan Xinlong Food Ltd.
Shandong Cereals and Oils Import and Export
Weifang Hua Yuan Foodstuffs, Co., Ltd.
Ningbo Native Produce Import and Export
Ningbo Natural Bee Products Factory
Anhui Cereals & Oils Import and Export
Chaohu Baichun Pharmaceutical Ltd.
Jiangsu Sweet Foods Ltd.
Jiangsu Sweet
Hebei Native Produce Import and Export
Xinle Hebei Honey Factory
Anhui Medicines and Health Produce Import and Export
Zhuzhou General Trade Honey Product Factory
Xian Native Produce and Animal By-product Import and Export
Shaanxi Jingbian Honey Processing Factory
Liaoning Native Produce Import and Export
Liaoning Honey Factory
Anhui Native Produce Import and Export
Anhui Wuhu Milk Products Factory
Henan Native Produce Import and Export
Xinyang Honey Processing Factory

On January 19, 1995, we received responses to the remaining sections of the questionnaire from the above-mentioned exporters that had sales to the United States and their suppliers during the POI. We also received responses from the Additional information concerning Attachment II of the questionnaire was received on January 23, 1995.

In January and February 1995, we received comments from petitioners and respondents regarding separate rates and other issues.

In February 1995, the Department issued a supplemental questionnaire based on its analysis of the questionnaire response. We also sent a supplemental ''Separate Rates'' questionnaire to MOFTEC and to the Chamber.

On January 27, 1995, the Department requested parties to submit publicly available published information concerning surrogate values for valuating the factors of production for honey. On February 10 and February 24, 1995, petitioners and respondents, respectively, did so.

On February 27, 1995, responses to the Department's supplemental questionnaires were submitted. In addition, on March 3 and March 6, 1995, responses to the supplemental ''Separate Rates'' questionnaire were received.

Scope of Investigation

The products covered by this investigation are natural honey, artificial honey containing more than 50 percent natural honey by weight, and preparations of natural honey containing more than 50 percent natural honey by weight. The subject products include all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The subject merchandise is currently classifiable under subheadings 0409.00.00, 1702.90.50, 2106.90.61, and 2106.90.69 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Standing

On January 23, 1995, respondents challenged petitioners' standing to file this case with regard to ''artificial honey containing more than 50 percent natural honey by weight'' and ''preparations of natural honey containing more than 50 percent natural honey by weight'' because the ITC could not be certain that there was substantial production of ''mixtures of honey'' or ''honey preparations'' in the United States.

Pursuant to section 732(b)(1) of the Act, in order to have standing to file an antidumping petition, the petitioner must be an ''interested party.'' The term ''interested party'' is defined, in relevant part, as ''a manufacturer, producer, or wholesaler in the United States of the like product.'' (Section 771(9)(C) of the Act) Therefore, in determining whether the petitioners have standing as interested parties to file a petition on the class or kind of merchandise, the Department must determine whether the petitioners produce the like product.

For purposes of determining standing, as is our usual practice, the Department has determined that it is appropriate to adopt the ITC's definition of like product in this case. The ITC has determined that there is a single like product consisting of ''natural honey, artificial honey containing more than 50 percent natural honey by weight, and preparations of natural honey containing more than 50 percent natural honey by weight.'' Because it is undisputed that petitioners produce merchandise that falls within the like product category, as defined by the Department, they have standing with respect to all imports within the class or kind of merchandise, including mixtures of honey and honey preparations. *See Sandvik AB* v. *United States*, 721 F. Supp. 1322 (CIT, 1989), *aff'd without op., Sandvik AB* v. *United States*, 904 F. 2d 46 (1990).

Period of Investigation

The period of investigation (POI) is May 1, 1994, through October 31, 1994.

Selection of Respondents

On February 7, 1995, the Department solicited comments on its intention to focus the investigation on four exporters and their suppliers due to the administrative burden of analyzing and verifying such a large number of cooperating exporters located throughout the PRC (*see* Memorandum from Louis Apple, Program Manager, Office of Antidumping Investigations, to Gary Taverman, Acting Director, Office of Antidumping Investigations, dated February 6, 1995). Comments on this decision were received form respondents, petitioners, and U.S. importers of honey.

After a review of the comments received, the Department determined that a full analysis and verification of the four largest exporters that account for over 75 percent by volume of the subject merchandise imports from the PRC during the POI would provide an adequate basis for calculating a margin for purposes of collecting estimated duties. Thus, the analysis in this notice is based on the following exporters and their respective suppliers: (1) Kunshan Xinlong; (2) Jiangsu Native; (3) Jiangxi Native; and (4) Zhejiang Native. On March 2, 1995, the Department notified MOFTEC of this decision, pursuant to section 353.42(b)(2) of the Department's regulations.

Separate Rates

Each of the responding Chinese companies has requested a separate,

company-specific rate Kunshan Xinlong is a foreign joint venture which was established in 1992 and is owned by both PRC and foreign investors. Jiangsu Native is a limited liability corporation which is owned in part by its employees and in part by ''all the people.'' According to their business licenses, Jiangxi Native and Zhejiang Native are state-owned enterprises (''owned by all the people'').

As stated in the *Final Determination of Sales at Less than Fair Value: Silicon Carbide from the People's Republic of China* (59 FR 22585, 22586, May 2, 1994) (*Silicon Carbide*), and the *Final Determination of Sales at Less than Fair Value: Sebacic Acid from the People's Republic of China* (59 FR 28053, May 31, 1994 (''*Sebacic Acid*''), ownership of a company by all the people does not require the application of a single rate. Accordingly, each of the four respondents is eligible for consideration for a separate rate.

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising our of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* (56 FR 20588, May 6, 1991) (''*Sparklers*'') and amplified in *Silicon Carbide*. Under the separate rates criteria, the Department assigns separate rates in nonmarket economy cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of De Jure Control

The respondents in this investigation have submitted a number of documents to demonstrate absence of *de jure* control, including two enactments indicating that the responsibility for managing enterprises ''owned by all of the people'' is with the enterprises themselves and not with the government. These are the ''Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People,'' adopted on April 13, 1988, (*1988 Law*) and the ''Regulations for Transformation of Operational Mechanism of State-Owned Industrial Enterprises,'' approved on August 23, 1992 (*1992 Regulations*).

The *1988 Law* and *1992 Regulations* shifted control of enterprises owned by all the people from the government to the enterprises themselves. The *1988 Law* provides that enterprises owned ''by the whole people'' shall make their own management decisions, be responsible for their own profits and losses, choose their own suppliers, and purchase their own goods and materials. The *1988 Law* also has other provisions which support a finding that such enterprises have management independence from the government in making management decisions. The *1992 Regulations* provide that these same enterprises can, for example, set their own prices (Article IX); make their own production decisions (Article XI); use their own retained foreign exchange (Article XII); allocate profits (Article II); sell their own products without government interference (Article X); make their own investment decisions (Article XIII); dispose of their own assets (Article XV); and hire and fire their employees without government approval (Article XVII).

Honey exports are also affected by another law, passed by the State Council in 1994, which the Department has not previously considered in the context of the Separate Rates issue. In April 1994, the ''Emergent Notice of Changes in Issuing Authority for Export Licenses Regarding Public Quota Bidding for Certain Commodities'' *(1994 Quota Measure)* entered into force, superseding earlier laws dealing with the export of the named commodities. Companies exporting honey during the POI, including the respondents, were subject to this law.

The *1994 Quota Measure* cancelled previous export licenses for honey and put into place a licensing system based on a public bidding process. Now, any company (including barter, joint venture, solely foreign owned enterprises, etc.) wishing to export honey to any country must submit bids for a portion of a global quota of honey to be exported.

The global quota is determined by the Chamber in consultation with the exporting companies, based on an analysis of the annual exports over the last three years, the current supply and demand in the international market, and the Chinese domestic supply. The Chamber recommends this quota amount to MOFTEC, which to date has accepted every such recommendation made by the Chamber.

The process of bidding for a portion of the quota is administered by representatives of MOFTEC and the Chamber. MOFTEC stated that each bidding company decides its own bid price, which reflects the amount it is willing to pay for a portion of the quota, and the quantity for which it intends to bid. Winning companies are selected by a computer program based on the tendered prices and a publicly available mathematical formula, as detailed in Article XIV and Article XVI of the ''Guidelines of Public Quota Bidding for Export Commodities.'' Each winning company earns the right to an export license. Companies that have earned the right to export honey must deposit a portion of the bid price with the government in the form of a bond upon notification of their winning status and pay the balance of the bid price times the quantity allotted to the government upon claiming their honey export license.

After the bidding process is completed, the Chamber consults with winning bidders and analyzes past years' export prices to determine the appropriate minimum floor price in light of prices in the international market. The licensed exporters are free to negotiate prices above this floor. However, the program's regulations state that there are severe penalties for selling below the floor price, including revocation of the right to bid for or hold an export license for that commodity for up to two years. Despite this restriction in the regulations, respondent's counsel has stated that certain exporters have reported that they, in fact, sell honey below the floor price.

Respondents argue that: (1) the licensing process should not be seen as the Chinese government's reassertion of control over the companies, and (2) the *1994 Quota Measure* and the bidding process do not allow the Chinese government to manipulate the price of exported honey. Respondents view this procedure as an effort by the Chinese government to provide every company an equal opportunity to bid for part of the quota on a fair and impartial basis and to increase the price of PRC honey through macro-economic means.

Petitioners, on the other hand, view the *1994 Quota Measure* as evidence that the honey industry in the PRC is controlled by the Chinese central government. Petitioners state that the *1994 Quota Measure* extends the quota system on honey ''to cover worldwide exports and to control worldwide prices of exported honey,'' and see this measure as evidence of *de jure* control of the honey industry by the Chinese government.

After a thorough examination of the nature of the government involvement associated with the *1994 Quota Measure* described above, the Department has preliminarily determined that, although there is some government involvement with respect to the export of products subject to investigation, there is an absence of government control over exporting pricing and marketing decisions of firms.

We find that the bidding process, as described in detail in the official

documents provided for the record, permits independent export pricing decisions. The quota system operates on the basis of transparent and well-defined rules. All companies are free to bid for the right to export honey according to their own business plans. Further, companies are free to independently negotiate export prices with their customers above the floor price, which the exporting companies themselves are instrumental in setting. MOFTEC has claimed that it does not involve itself in the price-setting or market destination of companies that have won the right to export honey. Thus, allocation of the export quota is arrived at in a competitive form, and separate prices are set by each enterprise with industry input as to the floor price and in open competition with respect to the final price. Furthermore, under the *1994 Quota Measure,* honey exporters compete with each other for customers in the global marketplace. Thus, the 1994 measure does not involve the type of *de jure* government control over export pricing and marketing decisions contemplated in the separate rates test.

As stated in previous cases, there is some evidence, that the provisions of the above-cited *1988 Law* and *1992 Regulations* regarding enterprise autonomy have not been implemented uniformly among different sectors and/or jurisdictions in the PRC (*see* ''PRC Government Findings on Enterprise Autonomy,'' in *Foreign Broadcast Information Service—China—93–133* (July 14, 1993)). Therefore, the Department has determined that an analysis of *de facto* control is critical to determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (*see Silicon Carbide* and *Sebacic Acid*).

Kunshan Xinlong, Jiangsu Native, Jiangxi Native and Zhejiang Native have each asserted that (1) it establishes its own export prices above the floor in conformance with the *1994 Quota Measure* and the PRC government does not set or approve the actual prices negotiated between buyers and sellers for honey imports into the United States; (2) it negotiates contracts on a case-by-case basis based on market conditions, without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions, and there is no information on the record that suggests central government control over selection of management; and (4) it retains the proceeds of its export sales, uses profits according to its business needs and has the authority to sell its assets and to obtain loans. In addition, questionnaire responses indicate that company-specific pricing during the POI does not suggest coordination among exporters (*i.e.*, the prices for the same grades of honey differ among companies). This information supports a preliminary finding that there is a *de facto* absence of governmental control of the management of these firms. The *de facto* impact of the regulatory provisions embodied in the *1994 Quota Measure* does not constitute the degree of control of these firms which would preclude the calculation of antidumping rates based on their own, separate competitively-set prices.

Consequently, we preliminarily determine that Kunshan Xinlong, Jiangsu Native, Jiangxi Native and Zhejiang Native have met the criteria for the application of separate rates.

Market Oriented Industry

The respondents participating in this investigation have claimed that their material inputs are acquired at market prices and that, accordingly, we should find that the Chinese honey industry is a market oriented industry (MOI) and the Department should use the actual PRC prices for valuing these inputs.

The criteria for determining whether a MOI exists are: (1) For the merchandise under investigation, there must be virtually no government involvement in setting prices or amounts to be produced; (2) the industry producing the merchandise under investigation should be characterized by private or collective ownership; and (3) market-determined prices must be paid for all significant inputs, whether material or non-material *e.g.*, labor and overhead), and for all but an insignificant proportion of all the inputs accounting for the total value of the merchandise under investigation. (*See, Amendment to Final Determination of Sales at Less than Fair Value and Amendment to Antidumping Duty Order: Chrome Plated Lug Nuts from the People's Republic of China*, 57 FR 15052, 15054, April 24, 1992) (Lug Nuts Redetermination).

We recognize that certain sectors in the PRC may be becoming more market-oriented and that honey appears to be one of the more decentralized industries. However, we have determined that the MOI criteria outlined above have not been met in this investigation. For example, the third prong has clearly not been met in this case. Respondents have merely made unsubstantiated claims that the prices for significant inputs in processing honey are market-determined. Respondents have provided no information regarding the relevant real estate and capital markets. There is no description of the supply and demand factors supporting the claim that raw honey prices in China are market-driven, nor is there evidence on the record regarding supply and demand conditions in the labor market. Although the Ministry of Agriculture submitted a statement that coal and electricity prices are ''set by the market,'' respondents do not elaborate on this statement nor do they provide any factual support for such a statement. It is known that electricity is rationed in the PRC, but respondents have not explained if and how electricity is rationed in the case of honey producers and on what basis.

Therefore, we preliminarily find that a MOI does not exist, and accordingly have calculated foreign market value in accordance with section 773(c) of the statute.

Nonmarket Economy Country Status

The Department has treated the PRC as a nonmarket economy country (NME) in all past antidumping investigations and administrative reviews (see, *e.g.*, *Sebacic Acid* and *Silicon Carbide*). Neither respondents nor petitioners have challenged such treatment. Therefore, in accordance with section 771(18)(c) of the Act, we will continue to treat the PRC as an NME in this investigation.

When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs us to base FMV on the NME producers' factors of production, valued in a comparable market economy that is a significant producer of the merchandise. Section 773(c)(2) of the Act alternatively provides that when available information is inadequate for using the factors of production methodology, FMV may be based on the

export prices for comparable merchandise from market economy countries at a comparable level of economic development.

For purposes of the preliminary determination, we have relied on the methodology provided by section 773(c)(1) of the Act to determine FMV. The sources of individual factor prices are discussed under the FMV section, below.

Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producers' factors of production, to the extent possible, in one or more market economy countries that (1) Are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. The Department has determined that India, Kenya, Nigeria, Pakistan, Sri Lanka, and Indonesia are the countries most comparable to the PRC in terms of overall economic development (*see* Memorandum from David Mueller, Director, Office of Policy, to Gary Taverman, Acting Director, Office of Antidumping Investigations, dated January 25, 1995). According to the information we have developed, India appears to be the most significant producer of honey among these six potential surrogate countries. Accordingly, we have calculated foreign market value (FMV) using Indian prices for the PRC producers' factors of production. We have obtained and relied upon published, publicly available information wherever possible.

Fair Value Comparisons

To determine whether sales of honey from the PRC to the United States by Kunshan Xinlong, Jiangsu Native, Jiangxi Native and Zhejian Native were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the ''United States Price'' and ''Foreign Market Value'' sections of this notice.

United States Price

We based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold directly by the Chinese exporters to unrelated parties in the United States prior to importation into the United States.

For the four investigated exporters, we calculated purchase price based on packed, CIF and C&F foreign-port prices to unrelated purchasers in the United States. Where necessary, we made deductions for foreign inland freight and transportation insurance, valued in India.

The four respondents reported commissions incurred on certain sales. Our analysis of these expenses, based on respondents' submissions, indicates that these expenses are actually discounts from price. Accordingly, we have deducted them from gross price.

Two exporters, Jiangsu Native and Zhejian Native reported that their merchandise was shipped on market-economy carriers and that they paid for these services in U.S. dollars. These expenses included containerization and loading charges. Accordingly, for those companies, we deducted the reported ocean freight expense. The other two exporters, Kunshan Xinlong and Jiangxi Native, reported the use of both market economy and PRC based shipping companies. However, neither identified which sales were shipped by the relevant ocean freight companies. As best information available (BIA), we applied the higher of the reported expense or the amount provided by an international shipping company for transportation between Shanghai, the port of exportation, and various U.S. destinations. Where an international shipping rate was used, we also deducted containerization and loading fees valued in India, because these charges were included in the ocean freight value.

Foreign Market Value

In accordance with section 773(c) of the Act, we calculated FMV based on factors of production reported by the factories in the PRC which produced the subject merchandise for the four exporters. The factors used to produce the subject merchandise include raw honey, labor, factory overhead, selling, general and administrative expenses, and packing. The reported factor quantities were multiplied by Indian values. Where possible, we used public information. For a complete analysis of surrogate values, *see* the Valuation Memorandum, dated March 13, 1995, for this investigation.

We did not add separately a freight expense for transporting raw material from the supplier to the processor because this expense appears to be included in the surrogate values used (*see* the Valuation Memorandum).

To value raw honey, we used public information from the August-September, 1993, edition of *Khadigramodyog,* an English-language Indian agricultural journal. We adjusted the factor values from 1993 to the POI using wholesale price indices published in *International Financial Statistics (IFS)* by the International Monetary Fund.

To value labor, we used information regarding the Indian trade industry from the International Labor Office's *1993 Yearbook of Labor Statistics.* We adjusted the factor value to the POI using consumer price indices published in the *International Financial Statistics,* consistent with our treatment of this value in past NME cases *(see, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Coumarin from the People's Republic of China* 59 FR 66895, December 28, 1994).

To value factory overhead, including energy, we calculated a percentage based on data from the August-September, 1993 edition of *Khadigramodyog.* For selling, general and administrative (SG&A) expenses, we used the ten percent statutory minimum because we were unable to obtain an Indian value. For profit, we used the statutory minimum of eight percent of materials, labor, factory overhead, and SG&A expenses because we were unable to obtain an Indian value. We added packing, using Indian values obtained from *Indian Import Statistics.*

Margins for Exporters Whose Responses Were Not Analyzed

For the responding companies that provided all the questionnaire responses requested of them and otherwise fully cooperated with the Department's investigation, but nonetheless, were not fully analyzed by the Department, due to limited resources, (*see Selection of Respondents* section above), we are assigning the weighted-average of the rates of the four fully analyzed companies. Companies receiving this rate are identified by name in the Suspension of Liquidation section of this notice.

We are not assigning a single country-wide rate to all exporters other than those which had been individually determined to have met the criteria for a separate rate. This change in methodology was necessitated by the particular circumstances of this case. The parties who responded but were not analyzed have applied for separate rates, and provided materials for the Department to consider in this request. Although the Department is unable, due to administrative constraints, to consider the request for separate rates status, and to calculate a separate rate for each of these named parties, there has been no failure on the part of these firms to provide requested information. Because it would not be appropriate for the Department to refuse to consider an affirmative documented request for an examination of whether these companies were independent of any

non-respondent firms and then assign to the cooperative firms the rate for the noncooperative firms, which in this case is an adverse margin based on best information available, the Department has assigned a special single rate for these firms.

Best Information Available (BIA)

The following discussion regarding the application of BIA applies to all exporters other than those that have responded to our questionnaires. Because no information has been presented to the Department to prove otherwise, any exporter of subject merchandise that did not respond to the Department's questionnaires is presumed to be under government control, and, therefore, is not entitled to its own separate dumping margin. The evidence on record indicates the responding companies may not account for all exports of the subject merchandise. In the absence of responses from all exporters, therefore, we are basing the All PRC rate on BIA, pursuant to section 776(c) of the Act *(see Silicon Carbide).*

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents that cooperated in an investigation and more adverse margins to those respondents that did not cooperate in an investigation. When a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (a) the highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation (*see Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Belgium* (58 FR 37083, July 9, 1993). In this investigation, since the evidence indicates that not all PRC exporters of honey responded to our questionnaire, we are assigning to any PRC company, other than those specifically identified below, the highest calculated margin, which is higher than the margin alleged in the petition, as revised by the Department (*see Initiation of Antidumping Duty Investigation: Honey from the People's Republic of China,* (59 FR 54434, October 31, 1994).

Verification

As provided in section 776(b) of the Act, we will verify all information determined to be acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of honey from the PRC, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV exceeds the USP as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Kunshan Xinlong Food, Ltd.	146.37
Jiangsu Native Produce Import & Export	127.52
Jiangxi Native Produce Import & Export	157.16
Zhejiang Native Produce & Animal By-Product Import & Export	131.86
For the Following Other Responding Firms:	144.61
Heilongjiang Native Produce and Animal By-product Import and Export	
Inter Mongolia Native Produce and Animal By-product	
Chang Cheng Industrial Co. Ltd	
Shaanxi Native Produce Import and Export	
Kunshan Foreign Trade Co	
China (TUHSU) Super Food Import and Export	
Hubei Native Produce Import and Export	
Tianjin Native Produce Import and Export	
Chanting Native Produce Import and Export	
Qinghai Cereals and Oils Import and Export	
Shanghai Native Produce Import and Export	
Guangxi Cereals, Oils and Foodstuffs Import and Export Corporation	
Sichuan Native Produce Import and Export	
China (TUHSU) Flavors and Fragrances Import and Export	
Shandong Cereals and Oils Import and Export	
Ningbo Native Produce Import and Export	
Anhui Cereals & Oils Import and Export	
Jiangsu Sweet Foods, Ltd	
Hebei Native Produce Import and Export	
Anhui Medicines and Health Produce Import and Export	
Xian Native Produce and Animal By-product Import and Export	
Liaoning Native Produce Import and Export	
Anhui Native Produce Import and Export	
Henan Native Produce Import and Export	
All PRC	157.16

The All PRC rate applies to all entries of subject merchandise except for entries from exporters that are identified above.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary

determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than May 4, 1995, and rebuttal briefs, no later than May 11, 1995. In accordance with 19 CFR 353.38(b), we will hold a public hearing if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held at 1:00 p.m. on May 16, 1995, at the U.S. Department of Commerce, Room 4803, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice. Request should contain: (1) The party's name, address, and telephone number; (2) the number of participants: and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs. In this investigation proceeds normally, we will make our final determination within 75 days after the preliminary determination.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: March 13, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–6810 Filed 3–17–95; 8:45 am]

BILLING CODE 3510–DS–M

[A–351–806]

Silicon Metal From Brazil; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests from petitioners and four respondents, the Department of Commerce (the Department) has conducted an administrative review of the antidumping duty order on silicon metal from Brazil. This review covers four manufacturers/exporters and the period July 1, 1992, through June 30, 1993.

We have preliminarily determined that sales have been made below the foreign market value (FMV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between United States price (USP) and the FMV.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 20, 1995.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Zev Primor, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 482–5255.

SUPPLEMENTARY INFORMATION:

Background

On July 31, 1991, the Department published in the **Federal Register** (56 FR 36135) the antidumping duty order on silicon metal from Brazil. On July 7, 1993, the Department published (58 FR 36391) a notice of ''Opportunity to Request an Administrative Review'' of this antidumping duty order for the period July 1, 1992, through June 30, 1993. We received timely requests for review from Companhia Brasileira Carburetto de Calcio (CBCC), Companhia Ferroligas Minas Gerais Minasligas (Minasligas), Electroila, S.A. (currently known as Eletrosilex Belo Horizonte (Eletrosilex)), and Rima Eletrometalurgia S.A. (RIMA). We also received a request for review of the same four manufacturers/exporters of silicon metal from a group of five domestic producers of silicon metal (the petitioners). The five domestic producers are American Alloys, Inc., Elkem Metals Co., Globe Metallurgical, Inc., SMI Group, and SKW Metals and Alloys, Inc.

On August 24, 1993, the Department published a notice of initiation (58 FR 44653) covering the four manufacturers/exporters named above. We verified the cost responses of Eletrosilex, RIMA, and CBCC in June and July 1994. The Department has now completed the preliminary results of this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

The merchandise covered by this review is silicon metal from Brazil containing at least 96.00 percent but less than 99.99 percent silicon by weight. Also covered by this review is silicon metal from Brazil containing between 89.00 and 96.00 percent silicon by weight but which contains a higher aluminum content than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor grade silicon (silicon metal containing by weight not less than 99.99 percent silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to the order. HTS item numbers are provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of product coverage.

The review period is July 1, 1992, through June 30, 1993. This review involves four manufactueres/exporters of Brazilian silicon metal.

United States Price

In calculating USP, we used purchase price as defined in section 772 of the Tariff Act. Purchase price was based on the packed, F.O.B., C.I.F., or C&F price to the first unrelated purchaser in the United States, or to unrelated trading companies who export to the United States.

We made deductions from USP, where appropriate, for foreign inland freight, ocean freight, and brokerage and handling. We made an addition to USP, where appropriate, for duty drawback. These adjustments were in accordance with section 772(d)(2) of the Tariff Act. We also adjusted USP for taxes in accordance with our practice as outlined in *Silicomanganese from Venezuela, Preliminary Determination of Sales at Less Than Fair Value,* 59 FR 31204 (at 31205), June 17, 1994.

No other adjustments were claimed or allowed.

Foreign Market Value

In order to determine whether there were sufficient sales of silicon metal in the home market to serve as a viable basis for calculating FMV, we compared the volume of each respondent's home market sales to the volume of its third-country sales, in accordance with section 773(a)(1)(B) of the Tariff Act. In each case we found that the respondent's sales of silicon metal in

the home market constituted at least five percent of its sales to all other markets. Thus, other than where we relied upon constructed value (CV) (as described below), we based FMV on sales in the home market. *See* 19 C.F.R. 353.46(a).

Based on findings in the previous review and the less-than fair-value (LTFV) investigation that the respondents sold subject merchandise in the home market below the cost of production (COP), we conducted a cost investigation in this review in accordance with section 732(a) of the Tariff Act. We calculated each respondent's COP as the sum of all reported material costs, labor expenses, factory overhead, selling, general, and administrative (SG&A) expenses, and packing expenses. Because the Brazilian economy was hyperinflationary during the period of review (POR), we instructed respondents to follow our long-standing methodology for hyperinflationary economies, including the use of replacement costs. (*See Silicon Metal from Brazil, Final Results of Antidumping Duty Administrative Review,* 59 FR 42806 (August 19, 1994.)

We compared individual home market prices, net of the *imposto de circulacao de mercadorias e servicos* (ICMS) tax (a home market, valued-added tax), to monthly COPs. For CBCC, Eletrosilex, and RIMA, we found that, for each model sold in the home market, more than 90 percent of sales were made at below-COP prices, and were made over an extended period of time. Since CBCC, Eletrosilex, and RIMA provided no indication that these sales were at prices that would permit recovery of all costs within a reasonable period of time and in the normal course of trade, we disregarded all of their home market sales, and based FMV on CV in accordance with 19 C.F.R. 353.50. For Minasligas, we found that between 10 and 90 percent of home market sales were made at below-COP prices. However, since we determined that such sales were not made over an extended period of time, we did not disregard them in our calculation of FMV.

In order to determine whether below-cost sales and been made over an extended period of time, we compared the number of months in which below-cost sales occurred for each model to the number of months during the POR in which each model was sold. If a model was sold in fewer than three months during the review period, we did not exclude the below-cost sales unless there were below-cost sales in each month of sale. If a model was sold in three or more months, we did not exclude the below cost sales unless there were below-cost sales in at least three months during the POR.

In accordance with section 773(e) of the Tariff Act, where we based FMV on CV, it consisted of the sum of the cost of manufacture (COM) of silicon metal, home market SG&A expenses, home market profit, and the cost of export packing. The COM of silicon metal is the sum of direct material, direct labor, and variable and fixed overhead expenses. For home market SG&A expenses, we used the larger of the actual SG&A expenses reported by the respondents or 10 percent of the COM, the statutory minimum for foreign SG&A expenses. For home market profit, we used the larger of the actual profit reported by the respondents, or the statutory minimum of eight percent of the sum of COM and SG&A expenses. *See* section 773(e)(1)(B) of the Tariff Act. We also made adjustments, where applicable, for differences between home market and U.S. market expenses for credit and warehousing.

We based FMV for Minasligas on prices to unrelated purchasers in the home market. We calculated a monthly, weighted-average price. Where applicable, we made adjustments for post-sale inland freight. We also made adjustments, where applicable, for differences between home market and U.S. market expenses for packing, credit, and warehousing.

No other adjustments were claimed or allowed.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margins exist for the period July 1, 1992, through June 30, 1993:

Manufacturer/exporter	Margin (percent)
CBCC	21.39
Minasligas	0.00
Eletrosilex	11.28
RIMA	20.83

Interested parties may request a disclosure within 5 days of publication of this notice and may request a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such case briefs.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of silicon metal from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) the cash deposit rates for the reviewed companies will be those rates established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 91.06 percent, the ''all others'' rate established in the LTFV investigation.

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 C.F.R. 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 C.F.R. 353.22.

Dated: March 9, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–6811 Filed 3–17–95; 8:45 am]

BILLING CODE 3510–DS–M

[C–517–501]

Carbon Steel Wire Rod From Saudi Arabia; Termination of Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Termination of Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce (the Department) is terminating the 1992 and 1993 administrative reviews on carbon steel wire rod from Saudi Arabia because the countervailing duty order has been revoked effective December 31, 1991 (59 FR 58814 (November 15, 1994)). The reviews were initiated on March 26, 1993, for the period January 1, 1992, through December 31, 1992, and March 14, 1994, for the period January 1, 1993, through December 31, 1993.

EFFECTIVE DATE: March 20, 1995.

FOR FURTHER INFORMATION CONTACT: Stephen Lebowitz or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 16, 1992, after timely receipt of a request for an administrative review and a properly filed request for revocation from the Saudi Iron and Steel Company (HADEED), the Department initiated an administrative review of the countervailing duty order on carbon steel wire rod from Saudi Arabia covering the period of January 1, 1991, through December 31, 1991 (57 FR 9104 (March 16, 1992)). On November 2, 1993, the Department issued preliminary results of the 1991 administrative review, including a preliminary determination that it intended to revoke the order (58 FR 58537 (March 26, 1993)).

On November 15, 1994, the Department issued the final results of the administrative review for the 1991 period of review, and revoked the entire countervailing duty order effective December 31, 1991 (59 FR 58814 (November 15, 1994)). The Department found that the respondent company had met the requirements for revocation of the countervailing duty order pursuant to 19 CFR 355.25(b)(2). Based upon certifications by HADEED and the Government of the Kingdom of Saudi Arabia, as well as from the Department's previous four consecutive administrative reviews, the Department determined that HADEED, the only Saudi producer of the subject merchandise, had not applied for or received any net subsidy under any programs deemed by the Department to be countervailable for the requisite five administrative reviews. The Department further determined that there was no likelihood that this company would apply for nor receive any net subsidy in the future.

Prior to the Department's final determination to revoke the order, there were two opportunities for interested parties to request administrative reviews of this order for the periods January 1, 1992, through December 31, 1992, and January 1, 1993, through December 31, 1993. HADEED submitted requests for administrative reviews of these periods and the Department initiated the reviews (58 FR 16397 (March 26, 1993) and 59 FR 11768 (March 14, 1994)).

Since the Department revoked the order effective December 31, 1991, there is no basis for completing the administrative reviews covering the 1992 and 1993 periods. Therefore, the Department is hereby terminating these reviews.

Dated: March 10, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–6812 Filed 3–17–95; 8:45 am]

BILLING CODE 3510–DS–P

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews: Notice of Completion of Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review of the final affirmative injury determination made by the U.S. International Trade Commission, respecting Certain Softwood Lumber Products from Canada, Secretariat File No. USA–92–1904–02.

SUMMARY: In accordance with the memorandum Opinion and Order of the Binational Panel dated January 27, 1995, dismissing the panel review described above and the *Article 1904 Panel Rules*, the panel review was completed on March 10, 1995.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: On January 27, 1995, the Binational Panel issued an order dismissing the panel review of the final affirmative injury determination of the United States International Trade Commission (''ITC'') concerning Certain Softwood Lumber Products from Canada. The Secretariat was instructed to issue a Notice of Completion of Panel Review on the 31st day following the issuance of the Notice of Final Panel Action, if no Request for an Extraordinary Challenge was filed. The Notice of Final Panel Action was issued on February 7, 1995. No Extraordinary Challenge request was filed in the time permitted by the FTA and the relevant rules of procedure. Therefore, on the basis of the Panel Order and Rule 80 of the *Article 1904 Panel Rules*, the Panel Review was completed and the panelists discharged from their duties effective March 10, 1995.

Dated: March 13, 1995.

James R. Holbein,

United States Secretary NAFTA Secretariat.

[FR Doc. 95–6813 Filed 3–17–95; 8:45 am]

BILLING CODE 3510–GT–M

Minority Business Development Agency

Business Development Center Applications: Jacksonville, FL

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Cancellation.

SUMMARY: The Minority Business Development Agency is cancelling the announcement to solicit competitive applications under its Minority Business Development Center (MBDC) Program to operate its Jacksonville, Florida MBDC. This solicitation was originally published in the **Federal Register**, Wednesday, March 8, 1995, Vol. 60, No. 45, 12739.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: March 13, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–6818 Filed 3–17–95; 8:45 am]

BILLING CODE 3510–21–P

Minority Business Development Agency Business Development Center Applications: Miami, FL

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Cancellation.

SUMMARY: The Minority Business Development Agency is cancelling the announcement to solicit competitive applications under its Minority Business Development Center (MBDC) Program to operate the Miami MBDC. This solicitation was originally published in the **Federal Register**, Wednesday, February 15, 1995, Vol. 60. No. 31, 8639.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: March 13, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–6819 Filed 3–17–95; 8:45 am]

BILLING CODE 3510–21–P

Minority Business Development Agency

Business Development Center Applications: Baton Rouge, LA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Cancellation.

SUMMARY: The Minority Business Development Agency is cancelling the announcement to solicit competitive applications under its Minority Business Development Center (MBDC) Program to operate its Baton Rouge MBDC. This solicitation was originally published in the **Federal Register**, Tuesday, February 21, 1995, Vol. 60, No. 34, 9662.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: March 13, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–6820 Filed 3–17–95; 8:45 am]

BILLING CODE 3510–21–P

Business Development Center Applications: Cincinnati, OH

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Cancellation.

SUMMARY: The Minority Business Development Agency is cancelling the announcement to solicit competitive applications under its Minority Business Development Center (MBDC) Program to operate the Cincinnati, Ohio MBDC. This solicitation was originally published in the **Federal Register**, Friday, March 3, 1995, Vol. 60, No. 42, 11955.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: March 13, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–6821 Filed 3–17–95; 8:45 am]

BILLING CODE 3510–21–P

Business Development Center Applications: Portland, OR

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Cancellation.

SUMMARY: The Minority Business Development Agency is cancelling the announcement to solicit competitive applications under its Minority Business Development Center (MBDC) Program to operate its Portland MBDC. This solicitation was originally published in the **Federal Register**, Wednesday, February 15, 1995, Vol. 60, No. 31, 8633.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: March 13, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–6822 Filed 3–17–95; 8:45 am]

BILLING CODE 3510–21–P

Business Development Center Applications: Pittsburgh, PA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Cancellation.

SUMMARY: The Minority Business Development Agency is cancelling the announcement to solicit competitive applications under its Minority Business Development Center (MBDC) Program to operate its Pittsburgh MBDC. This solicitation was originally published in the **Federal Register**, Wednesday, March 8, 1995, Vol. 60, No. 45, 12741.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: March 13, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–6823 Filed 3–17–95; 8:45 am]

BILLING CODE 3510–21–P

Business Development Center Applications: San Juan, PR

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Cancellation.

SUMMARY: The Minority Business Development Agency is cancelling the announcement to solicit competitive applications under its Minority Business Development Center (MBDC) Program to operate its San Juan MBDC. This solicitation was originally published in the **Federal Register**, Wednesday, March 8, 1995, Vol. 60, No. 45, 12742.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: March 13, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–6824 Filed 3–17–95; 8:45 am]

BILLING CODE 3510–21–P

Business Development Center Applications: Charleston, SC

AGENCY: Minority Business Development Agency, Commerce

ACTION: Cancellation.

SUMMARY: The Minority Business Development Agency is cancelling the announcement to solicit competitive applications under its Minority Business Development Center (MBDC) Program to operate the Charleston, South Carolina MBDC. This solicitation was originally published in the **Federal Register**, Wednesday, January 25, 1995, Vol. 60, No. 16, 4885.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: March 13, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–6825 Filed 3–17–95; 8:45 am]

BILLING CODE 3510–21–P

Business Development Center Applications: Seattle, Washington

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Cancellation.

SUMMARY: The Minority Business Development Agency is cancelling the announcement to solicit competitive applications under its Minority Business Development Center (MBDC) Program to operate its Seattle MBDC. This solicitation was originally published in the **Federal Register**, Wednesday, February 15, 1995, Vol. 60, No. 31, 8641.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: March 13, 1995.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 95–6826 Filed 3–17–95; 8:45 am]

BILLING CODE 3510–21–P

National Oceanic and Atmospheric Administration

[I.D. 031495E]

Endangered Species; Permits

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

ACTION: Notice of receipt of two applications for scientific research permits (P497C and P45S) and receipt of an application for Modification 4 to scientific research Permit 817 (P45K).

Notice is hereby given that Dr. Theodore Bjornn of the Idaho Cooperative Fish and Wildlife Research Unit (ICFW) in Moscow, ID, in association with Lowell Stuehrenberg of NMFS, and Stanley Smith of the National Biological Service (NBS) in Cook, WA have applied in due form for scientific research permits (P497C and P45S respectively) and that Stanley Smith of NBS has applied for Modification 4 to scientific research Permit 817 (P45K) to take listed species as authorized by section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217-227).

ICFW requests an ESA section 10 permit to capture adult, endangered, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) to test the efficiency of Merwin traps at six sites downstream of Bonneville Dam on the Columbia River under variable flow conditions. The Merwin traps will be used for a study, which will begin in 1996, to evaluate the passage of migrating adult salmon and steelhead around the dams and through the reservoirs on the lower Columbia River and the lower Snake River. The adult anadromous fish will be migrating to upstream natal tributaries to spawn. A separate ESA section 10 permit will be requested for the study. The requested duration of this permit is mid-April to the end of May and mid-June to the end of July in 1995 only.

NBS requests an ESA section 10 scientific research permit to take juvenile, endangered, artificially propagated Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) as part of a study designed to provide managers with data on the distribution, abundance, movement, and habitat use by the anadromous fish that migrate through Lower Granite Reservoir. The study will provide detailed information on the response of migrating smolts to environmental changes that attend proposed reservoir drawdown and other river regulation scenarios. Project objectives and sampling plans will accommodate endangered species recovery needs and constraints. The juvenile fish to be used for the study will be collected at trap sites and by using purse seines, tagged with radio transmitters, and monitored electronically for their migratory patterns as far downriver as possible. The annual dates of collection will be from April 1 to May 26. The requested duration of the permit is 4 years.

Permit 817 authorizes NBS to take juvenile, endangered, Snake River fall and spring/summer chinook salmon (*Oncorhynchus tshawytscha*) as part of a study designed to assess the migration timing of juvenile anadromous salmon using passive integrated transponder (PIT) tags and Panjet marks. For Modification 4, NBS requests an increase in the number of their annual authorized take and approval to use an additional sampling gear type. The increase in the annual take is requested to obtain a sufficient sample size to estimate the migration timing of fish produced in the upper Snake and Clearwater Rivers to Lower Monumental Dam on the lower Snake River. Similar increases in the authorized take for this permit were processed in 1993 and 1994. In addition, NBS requests approval to use modified fyke nets instead of beach seines to capture fish for tagging and to assess nearshore movements of the marked fish in the Snake and Clearwater Rivers. Modification 4 is requested for the duration of the permit. The permit expires on December 31, 1996.

Written data or views, or requests for a public hearing on these applications should be submitted to the Chief, Endangered Species Division, Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226, within 30 days of the publication of this notice. Those individuals requesting a hearing should set out the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, NMFS, NOAA, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Environmental and Technical Services Division, NMFS, NOAA, 525 North East Oregon St., Suite 500, Portland, OR 97232 (503-230-5400).

Dated: March 14, 1995.

Russell J. Bellmer,

Chief, Endangered Species Division, National Marine Fisheries Service.

[FR Doc. 95–6785 Filed 3–17–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 030695C]

Marine Mammals

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

ACTION: Modification no. 3 to scientific research permit no. 717 (P77#44).

SUMMARY: Notice is hereby given that a request for modification of scientific research permit no. 717 submitted by Dr. Howard W. Braham, Alaska Fisheries Science Center, NMFS, NOAA, National Marine Mammal Laboratory, 7600 Sand Point Way, NE., Building 4, Seattle, WA 98115, has been granted.

ADDRESSES: The modified permit is available for review by interested persons in the following offices by appointment:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Northwest Region, NMFS, NOAA, 7600 Sand Point Way, NE., BIN C15700, Seattle, WA 98115 (206/526–6150); and

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200,

Long Beach, CA 90802–4213 (310/980–4016).

SUPPLEMENTARY INFORMATION: On January 20, 1995, notice was published in the **Federal Register** (60 FR 4148) that a modification of permit no. 717, issued October 22, 1990 (55 FR 35923), had been requested by the above-named organization. The requested modification has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The modification authorized the holder to take an additional 10 California sea lions (*Zalophus californianus*) for instrumentation and the permit was extended until December 31, 1996.

Dated: March 14, 1995.

Art Jeffers,

Acting Chief, Permits & Documentation Division, National Marine Fisheries Service.

[FR Doc. 95–6784 Filed 3–17–95; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan; Correction

March 13, 1995.

In the table of the letter to Commissioner of Customs published on February 16, 1995 (60 FR 9014), delete the entry for Category 617 at the level of 15,286,929 square meters.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 95–6807 Filed 3–17–95; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Agricultural Advisory Committee Meeting

This is to give notice, pursuant to Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, Section 10(a) and 41 CFR 101–6.1015(b), that the Commodity Futures Trading Commission's Agricultural Advisory Committee will conduct a public meeting on April 3, 1995 from 9:00 a.m. to 12:00 p.m. in the lower-level hearing room of the Commodity Futures Trading Commission, 2033 K Street N.W., Washington, D.C. 20581. The agenda will consist of:

Agenda

I. Introductory Remarks, Commissioner Joseph B. Dial;
II. Summary of the 1994 Summit on Risk Management in American Agriculture;
III. 1995—The beginning of the new age of combining yield and price risk management for agricultural commodities.
  1. The Chicago Board of Trade's Area Yield Insurance Futures/Options contract.
  2. Combining Multi-Peril Crop Insurance (MPCI) with replacement coverage, options, and forward contracts.
IV. The proposed merger of the CFTC and the SEC;
V. Updates on dual trading/audit trail;
VI. The change in delivery specifications for the CME live cattle contract effective June 1995;
VII. Other Committee Business; and
VIII. Closing Remarks by Commissioner Joseph B. Dial.

The purpose of this meeting is to solicit the views of the Committee on the above-listed agenda matters. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of receiving advice and recommendations on agricultural issues. The purposes and objectives of the Advisory Committee are more fully set forth in the fifth renewal charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner Joseph B. Dial, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: the Commodity Futures Trading Commission Agricultural Advisory Committee c/o Kimberly N. Griles, Commodity Futures Trading Commission, 2033 K Street N.W., Washington, D.C. 20581, before the meeting. Members of the public who wish to make oral statements should also inform Ms. Griles in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, D.C. on March 15, 1995.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–6761 Filed 3–17–95; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

2nd Annual Product Shelf-Life Symposium

AGENCY: Defense Logistics Agency, Navy Ships Parts Control Center.

ACTION: Notice of symposium; call for papers.

SUMMARY: The Defense Logistics Agency and the Navy Ships Parts Control Center will conduct the 2nd Annual Product Shelf-Life Symposium, June 27–29, 1995 at the Hyatt Regency Hotel, San Diego, California. The purpose of this Symposium is to bring together government and industry representatives, in an open forum, to exchange ideas and discuss policies associated with product shelf-life. The 1995 symposium theme, ''Partnering to Preserve Our Future'' has been selected to reflect the need to continue a joint discussion of the many topics and issues affecting our nation's military readiness, as well as our national environment. Specifically, there are many questions within the government and industrial community that currently remain unanswered. We are confident that this symposium, by providing an open forum for the exchange of ideas and opportunities, will yield positive results for future methods of product shelf-life.

DATES: June 27–29, 1995.

ADDRESSES: Hyatt Regency Hotel—San Diego CA.

EFFECTIVE: Upon publication of this notice.

CONTACT: For information on submitting an abstract for the Product Shelf-Life Symposium contact Ms. Debbie Trautman, Navy Shelf-Life Program Administrator at (717) 790–1506, fax (717) 790–1615 or Ms. Heather Brinton at the American Defense Preparedness Association, at (703) 522–1820, fax (703) 522–1885.

Michael S. Pipan,

Director, DoD Shelf-Life Program.

[FR Doc. 95–6699 Filed 3–17–95; 8:45 am]

BILLING CODE 3620–01–M

Department of the Air Force

Notice of Intent To Prepare an Environmental Impact Statement for the Airborne Laser Demonstration Phase

AGENCIES: Department of Defense, United States Air Force, Air Force Materiel Command, Space and Missile Systems Center, Phillips Laboratory, DOD.

SUMMARY: The United States Air Force (USAF) will prepare an Environmental Impact Statement (EIS) to assess the potential impacts of the Demonstrator Phase of the Airborne Laser (ABL) Program. This program is an Air Force Advanced Technology Demonstration program to develop and then demonstrate the necessary technologies required to acquire, track, and then destroy theater ballistic missiles during boost phase. The ABL Demonstrator Phase includes the design, development, integration, and testing of a weapons-class Chemical Oxygen Iodine Laser (COIL) on the aircraft. The ABL Demonstrator Phase is scheduled to begin in January 1997 and be completed by the end of 2001. The decision to be made by the Air Force, is to determine where the ABL Demonstrator Phase test activities will occur.

The ABL Program will require a Home Base, a Diagnostic Test Range and an Expanded-Area Test Range. The Home Base will be the location for the ABL Demonstrator Aircraft, its flightline maintenance, ground test facilities, fuel storage and transfer, laser pressure recovery systems, and technical and support personnel. The Diagnostic Test Range is the location for aircraft worthiness and flight certification testing, air refueling, modification testing, communication and navigation system testing, integrated weapon system checkouts without laser operations, short range integrated aircraft and weapons system checkouts and engagements with low- and high-power laser operations, short range launch and recovery operations, and target and debris recovery. The Expanded-Area Test Range is the location for long-range integrated aircraft and weapon system checkouts and low- and high-power laser operations, and target and debris recovery.

Alternative sites for the Home Base include Phillips Laboratory at Kirtland AFB, Albuquerque, NM, and Edwards AFB near Lancaster, CA. Potential Test Ranges include: the Western Test Range adjacent to Vandenberg AFB near Lompoc, CA; White Sands Missile Range near Las Cruces, NM; and Edwards AFB near Lancaster, CA.

The Air Force is planning to conduct a series of scoping meetings to assist in determining the issues to be analyzed in depth in the EIS, and to involve the public to help the USAF identify those areas of concern. Comments received as a result of the scoping process will be used to assist in identifying potential impacts to the quality of the human environment. To provide a forum for the community to make oral comments, scoping meetings are scheduled for:

April 4, 1995, 7 p.m. at the Ramada Classic Hotel, Albuquerque, NM.

April 18, 1995, 7 p.m. at the Holiday Inn, Las Cruces, NM.

May 3, 1995, 7 p.m. at the Desert Inn, Lancaster, CA.

May 10, 1995, 7 p.m. at the Best Western Porto Finale, Lompoc, CA.

The purpose of these meetings is to identify the environmental issues and concerns that should be analyzed to (1) support the ABL, (2) solicit comments on the proposed action and (3) solicit potential alternatives for consideration in developing the ABL EIS. Public hearings are proposed to be conducted in 1996 for the purpose of obtaining comments on the Draft EIS. Dates, times, and places will be determined and public notification will be made.

To ensure the USAF will have sufficient time to consider public scoping comments on environmental issues to be included in the Draft EIS, and alternatives to be included in the final plan, comments and proposals should be forwarded to the address below by May 26, 1995. However, comments will be accepted and considered through the process.

Please direct comments or requests for further information concerning the ABL EIS to: Michelle Hedrick, Phillips Laboratory/S,E, 3550 Aberdeen Ave. S.E., Bldg. 434,Albuquerque, NM 87117–5776, Toll free number: 1–800–343–1282.

List of Subjects

Environmental protection, Environmental impact statement, U.S. Air Force, Phillips Laboratory, Notice of intent, Airborne laser, Kirtland AFB, Edwards AFB, White Sands Missile Range, Vandenberg AFB.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 95–6721 Filed 3–17–95; 8:45 am]

BILLING CODE 3910–01–P

Department of the Navy

Government Owned Inventions; Availability for Licensing

AGENCY: Department of the Navy.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy.

Request for copies of the patent applications cited should be directed to the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660 and must include the application serial number.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Balston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Patent Application Serial No. 08/287,027: Fiber-Optic Rotary Joint with Bundle Collimator Assemblies; filed August 8, 1994;

Patent Application Serial No. 08/287,029: A Fiber-Optic Bundle and Collimator Assembly; filed August 8, 1994; and

Patent Application Serial No. 08/287,028: Method For Making Fiber-Optic Bundle Collimator Assembly; filed August 8, 1994.

Dated: March 14, 1995.

M.D. Schetsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–6718 Filed 3–17–95; 8:45 am]

BILLING CODE 3810–AE–M

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Task Force on Naval Surface Warship Design will meet April 10-11, 1995, from 9 a.m. to 4 p.m., each day at 4401 Ford Avenue, Alexandria, Virginia. These sessions will be closed to the public.

The purpose of this meeting is to conduct discussions about Future Surface Warships Designs. Matters to be examined constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified

pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Timothy J. Galpin, Assistant for CNO Executive Panel Management, 4401 Ford Avenue, Suite 601, Alexandria, VA 22302-0268, Phone: (703) 756-1205.

Dated: March 14, 1995.

L. R. McNees,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 95–6719 Filed 3–17–95; 8:45 am]

BILLING CODE 3810–FF–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by March 31, 1995.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (RIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: March 14, 1995.

Gloria Parker,

Director, Information Resources Group.

Office of Educational Research and Improvement

Type of Review: Expedited
Title: Fast Response Survey System—Nutrition Education in U.S. Public Schools, K–12
Frequency: One time
Affected Public: Individuals and households
Reporting Burden:
Responses: 900
Burden Hours: 450
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This survey of 1,000 public elementary, middle, and secondary schools was requested by the U.S. Department of Agriculture. The survey requests information on the way schools provide nutrition education to students, the topics covered in nutrition education to students, the topics covered in nutrition education, training or education of school nutrition coordinator, materials and resources used in the instruction of nutrition education, and the perceived importance of nutrition education. With the information from the survey, the U.S. Department of Agriculture can identify any gaps and determine what additional efforts might be needed.
Additional Information: Clearance for this information collection is requested for March 31, 1995. An expedited review is requested in order to implement the program before the start of the new year.

[FR Doc. 95–6706 Filed 3–17–95; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Availability of the Tritium Supply and Recycling Draft Programmatic Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Notice of Availability and Public Hearings.

SUMMARY: The Department of Energy (DOE) announces the availability of the Tritium Supply and Recycling Draft Programmatic Environmental Impact Statement (PEIS), and the dates and locations for public hearings to receive comments on the Draft PEIS. The purpose of the Tritium Supply and Recycling PEIS is to evaluate alternatives for an assured, long-term supply of tritium, a radioactive gas which is a necessary component of every warhead in the Nation's nuclear weapons stockpile.

ADDRESSES AND FURTHER INFORMATION: A copy of the Draft PEIS and/or its Executive Summary may be obtained upon request by calling 1–800–776–2765, or by mail to: Office of Reconfiguration, DP–25, U.S. Department of Energy, P.O. Box 3417, Alexandria, Virginia 22302.

Specific information regarding the public hearings, including registration information, can also be obtained by calling the above toll free number, writing to the address above, or electronically via computer as follows: Federal Information Exchange Bulletin Board, InterNet Address: FEDIX.FIECOM, Modem Toll-Free: 1–800–783–3349, DC Metro Modem: 301–258–0953.

SUPPLEMENTARY INFORMATION: Section 3145 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103–160, requires the Department of Energy to issue a Programmatic Environmental Impact Statement (PEIS) assessing the Department's capacity to produce tritium not later than March 1, 1995. In accordance with that law, the Tritium Supply and Recycling Draft PEIS was completed and distributed to Congress on March 1, 1995. That same Draft PEIS has also been distributed to individuals and organizations on the program's mailing list. Additional copies of the Draft PEIS are available to any other

interested persons and can be requested as described above.

The Draft PEIS evaluates siting and technology alternatives related to tritium supply and recycling. Four technologies for tritium supply are assessed in the PEIS: Heavy Water Reactor, Modular High-Temperature Gas-Cooled Reactor, Advanced Light Water Reactor, and Accelerator Production of Tritium. Five sites for new tritium supply facilities and tritium recycling facilities are assessed: the Idaho National Engineering Laboratory (Idaho Falls, Idaho); the Nevada Test Site (Las Vegas, Nevada); the Pantex Plant (Amarillo, Texas); the Savannah River Site (Aiken, South Carolina); and the Oak Ridge Reservation (Oak Ridge, Tennessee). Two options for tritium recycling are evaluated: upgrade of existing tritium recycling facilities at the Savannah River Site, or collocation of a new tritium recycling facility with the tritium supply facility at one of the other sites.

Two of the three reactor technologies (Advanced Light Water Reactor and Modular High Temperature Gas-Cooled Reactor) are also evaluated in the Draft PEIS as ''triple play'' reactors which are capable of ''burning'' plutonium in addition to producing tritium and generating electricity. Additionally, the Draft PEIS includes an assessment of the generic environmental impacts of producing tritium in an existing commercial reactor, either as a contingency option in the event of a national emergency, or if the Department should choose to purchase such a reactor and convert it to defense purposes. The Department does not have a preferred alternative at this time for tritium supply and recycling sites, or for a tritium supply technology. The Final PEIS will include any preferred alternative. However, the Department may choose to identify a preferred alternative prior to issuing the Final PEIS.

Six public hearings to receive comments on the Draft PEIS will be held as follows:

Washington, DC—April 5, 1995, Forrestal Building, 1000 Independence Avenue, S.W., Morning Hearing 8:30am–1:00pm; Afternoon Hearing 1:30pm–6:00

Las Vegas, NV—April 5, 1995, Cashman Field Convention Center, 850 North Las Vegas Blvd., Morning Hearing 8:30am–1:00pm; Evening Hearing 6:00pm–10:30pm

Oak Ridge, TN—April 12, 1995, Pollard Auditorium, 210 Badger Avenue, Morning Hearing 8:30am–1:00pm; Evening Hearing 6:00pm–10:30pm

Pocatello, ID—April 12, 1995, Quality Inn Pocatello Park Hotel, 1555 Pocatello Creek Road, Morning Hearing 8:30am–1:00pm; Evening Hearing 6:00pm–10:30pm

North Augusta, SC—April 20, 1995, North Augusta Community Center, 101 Brookside Drive, Afternoon Hearing 1:00pm–5:30pm; Evening Hearing 6:00pm–10:30pm

Amarillo, TX—April 20, 1995, Sunset Convention Center, 3701 Plains Blvd., Suite 135, Afternoon Hearing 1:00pm–5:30pm; Evening Hearing 6:00pm–10:30pm

The public comment period will extend until May 15, 1995. A Final PEIS for Tritium Supply and Recycling is expected to be completed by October 1995. A Record of Decision would be completed no sooner than 30 days after the Final PEIS is issued.

Signed in Washington, D.C. this 13Th day of March, 1995.

Victor H. Reis,

Assistant Secretary for Defense Programs.

[FR Doc. 95–6793 Filed 3–17–95; 8:45 am]

BILLING CODE 6450–01–p

Office of Civilian Radioactive Waste Management; Waste Acceptance Issues

AGENCY: Office of Civilian Radioactive Waste Management, Department of Energy.

ACTION: Notice of Availability of the Response Summary Report for the Department of Energy's Notice of Inquiry on Waste Acceptance Issues.

SUMMARY: The Department of Energy published a Notice of Inquiry on May 25, 1994, to elicit the views of affected parties on: (1) The Department's preliminary view that it does not have a statutory obligation to accept spent nuclear fuel in 1998 in the absence of an operational repository or a suitable storage facility constructed under the Nuclear Waste Policy Act of 1982, as amended; (2) the need for an interim, away-from-reactor storage facility prior to repository operations; and (3) options for offsetting, through the use of the Nuclear Waste Fund, a portion of the financial burden that may be incurred by utilities in continuing to store spent nuclear fuel at reactor sites beyond 1998 (59 FR 27007). The Notice of Inquiry implemented the Secretary's initiative to invite the views of interested parties and to advance the consensus-building process on resolving these important issues.

The Notice of Inquiry requested written comments on or before September 22, 1994. In response to a request from six organizations, the Department published a Notice on October 18, 1994, announcing the reopening of this comment period until December 19, 1994 (59 FR 52524). The Department received more than 1,100 comment letters in response to the Notice of Inquiry.

The purpose of this Notice is to announce the availability of the *Notice of Inquiry on Waste Acceptance Issues — Response Summary Report* which the Department prepared to present a summary of the comments received in response to the Notice of Inquiry. The Department is currently reviewing the comments for the purpose of preparing its response to the issues set forth in the Notice of Inquiry.

ADDRESSES: Copies of the report may be obtained by writing: OCRWM Information Center, P.O. Box 44375, Washington, DC 20026, or by phone: (800) 225–NWPA (6972), (202) 488–5513 (in the Washington, DC area).

FOR FURTHER INFORMATION CONTACT: Mr. David Zabransky at the address above, or by telephone at (202) 586–7346 or Mr. Robert Waxman of the Office of General Counsel at (202) 586–6975.

Issued in Washington, DC, March 15, 1995.

Daniel A. Dreyfus,

Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 95–6791 Filed 3–17–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ER94–1593–001, et al.]

National Power Exchange, et al. Electric Rate and Corporate Regulation Filings

March 10, 1995

Take notice that the following filings have been made with the Commission:

1. National Power Exchange

[Docket No. ER94–1593–001]

Take notice that on February 21, 1995, National Power Exchange filed certain information as required by the Commission's order issued October 7, 1994.

2. Associated Power Services, Inc.

[Docket No. ER95–7–002]

Take notice that on February 10, 1995, Associated Power Services, Inc. tendered for filing additional information in the above-referenced docket.

Comment date: March 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Pacific Gas and Electric Company

[Docket No. ER95–262–000]

Take notice that on February 15, 1995, Pacific Gas and Electric Company (PG&E) tendered for filing an amendment (Amendment) to the Control Area and Transmission Service Agreement (Agreement) between PG&E and Destec Power Services, Inc. (DPS) which was filed previously with the Commission on December 6, 1994 in the above docket.

The filing seeks to: (1) Modify the rate approach for Distribution Service provided for in the Agreement; (2) confirm that PG&E will file for approval of the construction agreement if DPS is requested to pay for any incremental transmission system upgrades; (3) provide more detailed description of Inter-Hour Load Balancing Service; (4) clarify the rate derivation for ancillary services, the Monthly Billing Charge and the charges for Power Deviations.

PG&E is requesting certain waivers.

Copies of this filing were served upon DPS, various intervenors and the California Public Utilities Commission.

Comment date: March 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Illinois Power Company

[Docket No. ER95–431–000]

Take notice that on March 2, 1995, Illinois Power Company (Illinois) tendered for filing an amendment between Illinois and Citizens Lehman Power Sales (CLP Sales). Illinois states that the purpose of this amendment is to revise the charges when Illinois is buying from a third party and selling to CLP Sales.

Comment date: March 24, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Connecticut Valley Electric Co. Central Vermont Public Service Corporation

[Docket Nos. ER95–679–000 and ER95–680–000]

Take notice that on March 1, 1995, Central Vermont Public Service Corporation tendered for filing a tariff providing for comprehensive transmission service. Central Vermont states that the tariff provides for transmission service on a basis comparable to the uses the Company makes of its transmission system to serve its own requirements customers. Central Vermont also tendered for filing a notice of cancellation of service by its subsidiary, Connecticut Valley Electric Company Inc., to New Hampshire Electric Cooperative.

Comment date: March 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Blackstone Valley Electric Company

[Docket No. ER95–682–000]

Take notice that on March 2, 1995, Blackstone Valley Electric Company filed a Notice of Cancellation of Rate Schedule No. 31. Rate Schedule No. 31 provided for subtransmission service by Blackstone to Roosevelt Hydro Electric Company. The provision for subtransmission service to Roosevelt expired by its own terms on October 31, 1994.

Comment date: March 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Delmarva Power & Light Company

[Docket No. ER95–683–000]

Take notice that on March 2, 1995, Delmarva Power & Light Company (Delmarva) of Wilmington, Delaware, filed under the provisions of section 205 of the Federal Power Act a twelve-year power supply contract (the Service Agreement) under which Delmarva will provide all requirements service to the Town of Middletown, Delaware (Middletown). Delmarva states that the Service agreement supersedes Delmarva's Rate Schedule No. 65 under which Middletown currently receives service.

Delmarva, with Middletown's concurrence, requests an effective date of March 1, 1995 for the new Service Agreement. This effective date is specified by the terms of the Service Agreement.

The Service Agreement provides for the continuation of the requirements service previously furnished Middletown under Rate Schedule No. 65, but changes certain terms and conditions. The chief differences between the Service Agreement and Rate Schedule No. 65 are that the Service Agreement provides for all requirements service as a change from the partial requirements service Middletown was receiving, establishes a new rate for Middletown which is below the level of the rate currently charged Middletown and provides for future adjustments to the Middletown rate based on changes in the level of Delmarva's retail rates. The Service Agreement has a twelve year term.

Delmarva states that the filing has been posted and has been served upon the affected customer and the Delaware Public Service Commission.

Comment date: March 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Central Illinois Public Service Company

[Docket No. ER95–684–000]

Take notice that on March 2, 1995, Central Illinois Public Service company (CIPS), submitted for filing a Letter Agreement dated December 1, 1994, modifying the Interconnection Agreement dated November 1, 1969, between Tennessee Valley Authority, Central Illinois Public Service Company, Illinois Power Company and Union Electric Company.

The Letter Agreement provides for TVA's notification and consultation with CIPS, IP and UE regarding any changes TVA plans to make to the rental facilities at the Shawnee 345 kV Interconnection Point.

Copies of this filing have been mailed to Illinois Power Company, Union Electric Company, Tennessee Valley Authority, the Illinois Commerce Commission and the Missouri Public Service Commission.

Comment date: March 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–686–000]

Take notice that on March 2, 1995, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an agreement to provide interruptible transmission service for Electric Clearinghouse, Inc. (ECI).

Con Edison states that a copy of this filing has been served by mail upon ECI.

Comment date: March 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Northeast Utilities Service Company

[Docket No. ER95–687–000]

Take notice that on March 2, 1995, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement with Rochester Gas & Electric Corporation (RG&E) under the NU System Companies System Power Sales/Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to RG&E.

NUSCO requests that the Service Agreement become effective on March 15, 1995.

Comment date: March 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Southern California Edison Company

[Docket No. ER95–688–000]

Take notice that on March 3, 1995, Southern California Edison Company tendered for filing a supplemental

agreement, associated procedure and letter agreement to the 1990 Integrated Operations Agreement with the City of Azusa (Azusa), Commission Rate Schedule No. 247.

The supplemental agreement procedure and letter agreement establish the terms and conditions for the integration of Replacement Capacity Resources purchased by Azusa under the Conformed Western Systems Power Pool Agreement. Edison is requesting waiver of the Commission's 60 day notice requirements and is requesting an effective date of March 4, 1995.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: March 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Southern California Edison Company

[Docket No. ER95–689–000]

Take notice that on March 3, 1995, Southern California Edison Company tendered for filing a supplemental agreement, associated procedure and letter agreement to the 1990 Integrated Operations Agreement with the City of Anaheim (Anaheim), Commission Rate Schedule No. 246.

The supplemental agreement, procedure and letter agreement establish the terms and conditions for the integration of Replacement Capacity Resources purchased by Anaheim under the Conformed Western Systems Power Pool Agreement. Edison is requesting waiver of the Commission's 60 day notice requirements and its requesting an effective date of March 4, 1995.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: March 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6746 Filed 3–17–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EL95–30–000, et al.]

West Penn Power Company, et al.; Electric Rate and Corporate Regulation Filings

March 13, 1995.

Take notice that the following filings have been made with the Commission:

1. West Penn Power Company

[Docket No. EL95–30–000]

Take notice that on March 10, 1995, West Penn Power (West Penn'') filed a Petition for Issuance of a Declaratory Order (''Petition''). The Petition requests that this Commission: (1) Issue a declaratory order stating that West Penn has no current purchase obligation from Washington Power Company, L.P. (''Washington Power''); (2) find that the Public Utility Regulatory Policies Act of 1978 prohibits purchase rates for capacity that exceeds current avoided costs when (a) such rates are based on stale avoided cost data, (b) the utility no longer needs the capacity, and (c) the proposed generating plant is unbuilt; (3) find that a state utility commission may not modify a privately negotiated purchase agreement or, in the alternative, if a state utility commission may modify such an agreement, the utility must have the opportunity to demonstrate the purchase price is higher than the utility's avoided cost as of the date of the modification; and (4) find that a change in the type of qualifying facility from that originally granted rate approval voids that purchase agreement and requires that capacity charges must be recalculated at current avoided cost rates.

Comment date: April 3, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. Orange and Rockland Utilities Inc.

[Docket Nos. ER94–1262–000, ER94–1264–000, ER94–1292–000, ER94–1293–000, ER94–1327–000, and ER94–1360–000]

Take notice that on February 24, 1995, Orange and Rockland Utilities, Inc. tendered for filing additional information requested by staff in the above-referenced dockets.

Comment date: March 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Western Regional Transmission Association

[Docket No. ER94–1288–002]

Take notice that on March 1, 1995, Western Regional Transmission Association tendered for filing revised copies of the amended Western Regional Transmission Association Governing Agreement filed on January 25, 1995.

Comment date: March 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Kimball Power Company

[Docket No. ER95–232–001]

Take notice that on March 3, 1995, Kimball Power Company tendered for filing revised copies of FERC Rate Schedule No. 1 pursuant to the Commission's order issued February 1, 1995 in the above-referenced docket.

Comment date: March 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Commonwealth Electric Company, Cambridge Electric Light Company

[Docket No. ER95–453–000]

Take notice that on March 2, 1995, Commonwealth Electric Company and Cambridge Electric Light Company each filed amendments to their respective FERC Electric Tariffs for Power Sales and Exchanges. The amendments reflect that the maximum duration of a transaction under the Tariff is one month and that the System Reservation Charge is calculated on a per-hour basis.

Comment date: March 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Potomac Electric Power Company

[Docket No. ER95–543–000]

Take notice that on February 3, 1995, Potomac Electric Power Company tendered for filing supplemental information to its February 2, 1995 filing in the above-referenced docket.

Comment date: March 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Metropolitan Edison Company

[Docket No. ER95–685–000]

Take notice that on March 2, 1995, Metropolitan Edison Company tendered for filing Supplement Nos. 3 and 15 of Exhibit C–1 (Revised November 23, 1994).

Comment date: March 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Northeast Utilities Service Company

[Docket No. ER95–690–000]

Take notice that Northeast Utilities Service Company (NUSCO), on March 2, 1995, tendered for filing a Service Agreement with Long Island Lighting Company (LILCO) under the NU System Companies' System Power Sales/ Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to LILCO.

NUSCO requests that the Service Agreement become effective on March 15, 1995.

Comment date: March 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER95–691–000]

Take notice that on March 3, 1995, GPU Service Corporation (GPU), on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (jointly referred to as the ''GPU Operating Companies''), filed an executed Service Agreement between GPU and LG&E Power Marketing Inc. (LG&E), dated February 16, 1995. The Service Agreement specifies that LG&E has agreed to the rates, terms and conditions of the GPU Operating Companies' Operating Capacity and/or Energy Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Original Volume No. 1. The Sales Tariff was accepted by the Commission by letter order issued on February 10, 1995 in Jersey Central Power & Light Co., Metropolitan Edison Co. and Pennsylvania Electric Co., Docket No. ER95–276–000 and allows GPU and LG&E to energy into separately scheduled transactions under which the GPU Operating Companies will make available for sale, surplus operating capacity and/or energy at negotiated rates that are no higher than the GPU Operating Companies' cost of service.

GPU requests a waiver of the Commission's notice requirements for good cause shown and an effective date of February 16, 1995 for the Service Agreement.

GPU has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: March 27, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Kamine/Besicorp Allegany L.P.

[Docket Nos. QF88–292–003 and EL95–29–000]

Take notice that on March 7, 1995, Kamine/Besicorp Allegany L.P. (Kamine/Besicorp) tendered for filing a supplement to its filing in these dockets.

This supplement pertains to operational aspects and legal proceedings relating to the facility. No determination has been made that this submittal constitutes a complete filing.

Comment date: March 28, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6747 Filed 3–17–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER94–1639–000, et al.]

Wisconsin Public Service Corporation, et al. Electric Rate and Corporate Regulation Filings

March 14, 1995.

Take notice that the following filings have been made with the Commission:

1. Wisconsin Public Service Corporation

[Docket No. ER94–1639–000]

Take notice that on February 24, 1995, Wisconsin Public Service Corporation (WPSC) of Green Bay, Wisconsin, tendered for filing revisions relating to the Commission's policy against ''and'' transmission pricing to its network transmission service tariff in compliance with the Commission's order issued January 25, 1995.

WPSC states that the filing has been served on the affected parties and posted as required by the Commission's regulations.

Comment date: March 28, 1995, in accordance with Standard Paragraph E at the end of this notice.

2. TransCanada Northridge Power Ltd.

[Docket No. ER95–692–000]

Take notice that on March 3, 1995, TransCanada Northridge Power Ltd. (TNPL), tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective May 2, 1995, unless an accelerated date (March 3, 1995), as requested by TNPL, is approved.

TNPL intends to engage in wholesale electric power and energy transactions as a marketer and a broker. In transactions where TNPL sells electric energy, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party. TNPL is not engaged in the business of generating, transmitting or distributing electric power in the United States, although an affiliate has a minority ownership interest in a power generating facility located in Rhode Island.

Rate Schedule No. 1 provides for wholesale sales of energy and capacity at agreed prices. Rate Schedule No. 1 also provides that no sales of electric power may be made to affiliates.

Comment date: March 28, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Portland General Electric Company

[Docket No. ER95–693–000]

Take notice that on March 3, 1995, Portland General Electric Company (PGE), tendered for filing a Surplus Firm Capacity Sale Agreement between PGE and the Bonneville Power Administration (BPA) under which PGE will return energy to BPA.

Pursuant to 18 CFR 35.11, PGE has requested that the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the Surplus Firm Capacity Sale Agreement to become effective on April 1, 1995.

Copies of the filing have been served on the parties included in the Certificate of Service attached to the filing letter.

Comment date: March 28, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Midwest Power Systems Inc.

[Docket No. ER95–695–000]

Take notice that on March 6, 1995, Midwest Power Systems Inc. (MPSI),

tendered for filing a Transmission Service Agreement between MPSI and Rainbow Energy Marketing Corporation (Rainbow).

MPSI states that copies of this filing were served on the Iowa Utilities Board, the South Dakota Public Service Commission, and Rainbow.

MPSI requests the Agreement become effective upon the expiration of the Commission's 60-day notice period, or as soon thereafter as may be practical.

Comment date: March 28, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Madison Gas and Electric Company

[Docket No. ER95–696–000]

Take notice that on March 6, 1995, Madison Gas and Electric Company (MGE), tendered for filing a service agreement with Electric Clearinghouse, Inc., under MEG's Power Sales Tariff. MGE requests an effective date 60 days from the date of filing.

Comment date: March 28, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. Madison Gas and Electric Company

[Docket No. ER95–697–000]

Take notice that on March 6, 1995, Madison Gas and Electric Company (MGE), tendered for filing a service agreement with MidCon Power Services Corporation under MGE's Power Sales Tariff. MGE requests an effective date 60 days from the date of filing.

Comment date: March 28, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Madison Gas and Electric Company

[Docket No. ER95–698–000]

Take notice that on March 6, 1995, Madison Gas and Electric Company (MGE), tendered for filing a service agreement with Louis Dreyfus Electric Power, Inc., under MGE's Power Sales Tariff. MGE requests an effective date 60 days from the date of filing.

Comment date: March 28, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Madison Gas and Electric Company

[Docket No. ER95–699–000]

Take notice that on March 6, 1995, Madison Gas and Electric Company (MGE), tendered for filing a service agreement with AES Power, Inc., under MGE's Power Sales Tariff. MGE requests an effective date 60 days from the date of filing.

Comment date: March 28, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Niagara Mohawk Power Corporation

[Docket No. ER95–701–000]

Take notice that on March 6, 1995, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Service Agreement between NMPC and Maine Public Service Company. This Service Agreement specifies that MPSC has signed on to and has agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April 15, 1994, and which has an effective date of March 13, 1993, will allow NMPC and MPSC to enter into separately scheduled transactions under which NMPC will sell to MPSC capacity and/or energy as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence executed by the Purchaser.

NMPC requests an effective date of February 23, 1995. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and MPSC.

Comment date: March 28, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6744 Filed 3–17–95; 8:45 am]

BILLING CODE 6717–01–P

[FERC Docket No. CP95–35–000; PRPB Docket No. 94–62–1219–JPU]

EcoEléctrica, L.P.; Notice of Intent to Prepare a Joint Draft Environmental Impact Statement/Preliminary Environmental Impact Statement for the Proposed EcoEléctrica LNG Import Terminal and Cogeneration Project in Guayanilla Bay, Puerto Rico; Request for Comments on Environmental Issues and Notice of Scoping Meetings

March 14, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare a joint environmental impact statement (EIS) with the Puerto Rico Planning Board (PRPB or Board). The document will discuss the environmental impacts of the construction and operation of facilities proposed for EcoEléctrica L.P. (EcoEléctrica) Liquefied Natural Gas (LNG) Import Facility and Cogeneration Project in Guayanilla Bay, Puerto Rico. The FERC and the PRPB will use this joint EIS in their decision-making process (whether or not to authorize the proposed project).[1]

The PRPB will be the lead agency for the Commonwealth of Puerto Rico and the FERC will be the lead Federal agency in the preparation of this joint EIS. The joint document will avoid duplication of environmental analyses, and satisfy the requirements of Puerto Rico's law requiring an EIS under the Puerto Rico Environmental Quality Board (PREQB) Regulations (Article 4[c] of Law No. 9) and the National Environmental Policy Act (NEPA).

Summary of the Proposed Project

EcoEléctrica is seeking approval for a 36-acre site in Guayanilla Bay near Ponce, Puerto Rico, to import LNG for power generation. The facilities that require Commission approval (''jurisdictional'' facilities) include the construction and operation of the LNG facilities. This would consist of a marine unloading facility, two LNG storage tanks with individual capacities of up to 1,000,000 barrels, a vaporization system, and a natural gas accumulator pipeline.

In addition, EcoEléctrica proposes to construct a ''non-jurisdictional'' cogeneration facility that will use the imported LNG as a fuel source for power

[1] EcoEléctrica filed an application with the Commission on October 25, 1994 pursuant to Section 3 of the Natural Gas Act and Parts 153 and 380 of the Commission's regulations. The action involves authorization of a place of import and the construction and operation of facilities at this place of import. On November 23, 1994, the Land Use Consultation was filed with the PRPB pursuant to Law 75 of June 24, 1975.

generation. The power plant facility would consist of two gas turbines operating on natural gas and one steam turbine with a net station output of 461 megawatts (MW) at 230 kilovolts (kV). The gas turbines could also use propane (LPG) as a secondary fuel and high grade fuel oil as an emergency fuel.

The electricity generated by EcoEléctrica's cogeneration facility would be purchased by the Puerto Rico Electric Power Authority (PREPA), the government-created public utility that supplies nearly all of the electric power consumed in Puerto Rico. PREPA has identified a need for additional electric generating capacity of 1,200 MW by the year 2000 to meet future demand growth, enhance system reliability and to diversify the fuel sources that generate electricity.

EcoEléctrica also proposes to construct a desalination facility that would generate up to 4,000,000 gallons of freshwater per day. Freshwater uses at the power plant could require up to 1,000,000 gallons per day. The surplus capacity would be sold for public use.

Other facilities necessary for the operation of the cogeneration facility include a 2.3-mile long, 230-kV transmission line connecting the plant substation to an existing PREPA substation; a 3.5-mile long, 10-inch diameter pipeline to supply LPG to the facility; and a water pipeline for connecting into an existing offsite water supply or to outside delivery systems.

Summary of the Proposed Facilities

The general location of the proposed facilities for the EcoEléctrica LNG/Cogeneration Project is shown in figure 1. The proposed LNG import terminal, cogeneration power plant, and desalination plant will be located in Peñuelas, about 9 miles west of the City of Ponce on the south coast of Puerto Rico. The proposed 36-acre site is at the end of a peninsula presently owned by Union Carbide Caribe, Inc. (Union Carbide). The site is bordered on the north by Union Carbide's existing fuel storage tank farm operations and on the east, west, and south by Tallaboa and Guayanilla Bays (see figure 2). The site currently contains a decommissioned naptha storage tank and ring foundation for a demolished storage tank.

Major facilities of the proposed project can be divided between LNG import facilities and cogeneration/desalination facilities.

LNG Import Facilities

The LNG import facilities include a ship unloading system, two LNG storage tanks, and LNG vaporization and vapor handling systems. The proposed project facilities would be designed, constructed, and maintained to comply with the Department of Transportation (DOT) Federal Safety Standards for Liquefied Natural Gas Facilities (49 Code of Federal Regulation (CFR) Part 193). The facilities constructed at the site would also meet the National Fire Protection Association 59A LNG standards. The marine cargo transfer system and any appurtenances located between the vessel and the last valve located immediately before a storage tank will comply with the U.S. Coast Guard (USCG) regulations in 33 CFR Part 127 and Executive Order 10173.

Liquefied natural gas would be imported to Puerto Rico for use in the power plant portion of the project. No firm supply of LNG has been identified at this time. EcoEléctrica is considering potential LNG suppliers from Trinidad and Nigeria. It is anticipated that the project would import up to 130 million MMBtu per year, requiring between 10 and 60 LNG tanker unloadings annually.

The LNG tankers that would be used to transport the LNG would be the 125,000 cubic meter class and would use any of six Coast Guard approved containment systems. Any LNG carrier used for the project would be built in strict accordance with all current regulatory and classification society requirements.

The ship unloading system would consist of unloading facilities and a pier. The unloading facilities are designed to handle LNG ships with a capacity of up to 135,000 cubic meters with a draft of up to 40 feet. Four breasting and mooring dolphins are proposed for securing the LNG ships to the pier's berth. The tanker berth would be roughly parallel to the shore in 50 feet of water. The unloading platform would be a two-level structure with a 40-foot wide by 100-foot long lower level and a 20-foot wide by 76-foot long upper level. The pier is proposed to be 27 feet wide and 1,800 feet long. It would be constructed on 20- to 30-inch diameter steel pipe piles, or prestressed concrete tubes. The pile bents are expected to be constructed on 70-foot spacings. Pier framing, roadway, and spill impoundment system contained within the pier would be constructed of reinforced and prestressed concrete.

On-board pumps would deliver the LNG to the terminal. Four articulated marine unloading arms would be installed on the berth for this purpose. Three of the arms would be used to receive LNG from the ship, and one would return natural gas vapor to the ship. Fire fighting and fire and leak detection systems would be installed on the pier to comply with 33 CFR Part 127. Potential LNG spills from piping at the unloading platform, on the piping pier, and onshore would be impounded in concrete trenches located below the piping. The impoundment trenches would drain to a single impoundment basin located onshore near the end of the pier.

LNG would be stored in two double-containment insulated tanks. The tanks would be 166 feet in height and 254 feet in diameter with an individual capacity to store up to 1,000,000 barrels of LNG each at a temperature of minus 260°F and a pressure of 2.0 pounds per square inch gauge (psig). Each storage tank would consist of an inner tank constructed of 9 percent nickel steel, and an outer tank constructed of carbon steel. Outer walls would be designed to contain the product vapors and protect the insulation systems from moisture. Insulation would consist of perlite installed between the inner and outer tank walls. Each LNG tank would be surrounded by a concrete wall capable of containing 110 percent of the tank's LNG contents. This method of construction would ensure spill containment even if there were a complete rupture of the double walled metal tanks.

LNG from the storage tanks would be pressurized, vaporized, and heated so that natural gas can be delivered to the power plant turbines at the required pressure, temperature, and flow. Pumps in the LNG tanks would transfer and pressurize the LNG to between two and six 95 million cubic feet per day vaporizers. Two shell and tube vaporizers would use a water-ethylene glycol solution heated by the air intakes of the gas turbines. Four open rack vaporizers would use warm seawater to provide the heat required for vaporization. These are two independent systems.

Cogeneration Facilities

The cogeneration facilities can be subdivided into three distinct aspects: power plant facilities, cooling water systems, and desalination facilities. All facilities will meet all applicable Federal and Commonwealth laws. The cogeneration facilities are ''non-jurisdictional'' from the FERC perspective, and will not have any permitting authority for the ''non-jurisdictional'' facilities. The PRPB will have a primary role in assuring that all aspects of the cogeneration facilities meet the Commonwealth of Puerto Rico laws and regulations, including environmental regulations. Since both agencies require a NEPA document, this joint EIS will serve the needs of both agencies.

The power plant would be located on about 11 acres of the 36-acre site (see figure 2). The plant would have a net station output of about 461 MW at 230 kV when operating on natural gas under base load conditions. The plant would consist of two gas combustion turbines operating principally on natural gas and one steam turbine. The turbines could also be operated on LPG as a secondary fuel supply and high grade fuel oil as an emergency source. The LPG would be stored at a nearby location and transported to the facility by a proposed 10-inch diameter pipeline. Fuel oil would be stored on the site in a storage tank.

The power plant facility would consist of a building to house the steam turbine generator, condenser, control room, electrical room, battery room, maintenance area, offices, and other activities. Administrative and storage buildings would also be constructed on the site. These buildings would serve both the LNG import terminal and power plant facilities. A perimeter security system and fire protection/detection system would be monitored both from the administrative building and the power plant control room.

The power plant facility would also include a substation for the transfer of electricity generated by the plant to the PREPA system. The substation would be designed to inter-tie the EcoEléctrica power plant facility to the PREPA circuits. The substation system would also be used to supply power to the LNG facility's electrical equipment.

A cooling water system would be constructed at the facility to provide for power plant cooling and desalinated water production. EcoEléctrica has proposed to use a closed cycle seawater cooling tower (SWCT) system. Other methods of cooling would be analyzed as possible alternatives.

The SWCT system would consist of 10 cells. Each cell would be 50 feet in length and 50 feet in width. The overall site area would encompass 100 feet by 250 feet, with a tower 55 feet high from grade to the top of the fan stack. Water would be obtained from Guayanilla Bay from an intake pipeline placed under the LNG pier. About 13,000 gallons per minute of the SWCT blowdown would be mixed with other treated site water discharge for return to Guayanilla Bay through an offshore diffuser or discharged into Tallaboa Bay via a near-shore outfall structure. Water temperatures of the outfall would not exceed 91.4°F under any operating scenario.

EcoEléctrica has also proposed construction of a desalination plant to provide freshwater for power plant operation and to supply potable water for sale to other users. Freshwater uses at the power plant would include potable water for internal consumption, utility water, and after further treatment, high quality boiler feedwater totaling up to 1,000,000 gallons per day. The maximum freshwater production rate proposed for the desalination plant is expected to be up to 4,000,000 gallons per day. The surplus capacity would be sold for public use.

A Multi-Stage Flash (MSF) distillation technology is proposed to be used for desalination. MSF distillation plants use thermal energy, generally supplied in the form of low pressure steam to desalinate seawater. The combined cycle power plant facility would supply sufficient amounts of steam at suitable temperatures and pressures to drive the desalination process.

Offsite Facilities

Several offsite facilities are associated with the project. These include an electric transmission line, a natural gas accumulator pipeline, an LPG pipeline, a potable water supply line and new access roads (see figure 2 for locations of these facilities).

Electric output from the power plant would be supplied to the PREPA power grid. A 2.3-mile long, 230-kV transmission line would be constructed between the power plant substation and the existing PREPA substation. The line would be constructed on steel structures in a 100-foot wide right-of-way. Existing easements for the transmission corridor would be used whenever possible.

LPG would be used as the primary fuel during the construction of the LNG import facility, and as a backup fuel after the LNG facility is operational. LPG would be supplied to the power plant through a 10-inch diameter pipeline extending about 3.5 miles from the existing ProCaribe LPG terminal to the power plant (see figure 2). The LPG supply line would follow previously permitted pipeline routes and would use existing pipe racks wherever possible.

Normally, a natural gas accumulator vessel would be incorporated into the power plant facility infrastructure. It is used to ensure that natural gas volumes are available to prevent an instantaneous ''emptying'' or ''voiding'' of the supply line during startup of the plant and to prevent over-pressurization of the line after a shutdown. Instead, EcoEléctrica has proposed to use a pipeline ''stub'' rather than a vessel that would be built to the northern edge of the facility along the LPG pipeline right-of-way. This line would serve both as the accumulator line for the power plant and potentially as a feed for future natural gas refueling efforts should these markets develop. EcoEléctrica is not seeking approval for additional sales to sources outside this proposed action.

A water pipeline is also proposed for construction. Surplus freshwater would be marketed to the Puerto Rico Aqueduct and Sewer Authority (PRASA) or to other municipal, commercial, or retain customers. An exact alignment for connection to offsite water supplies or delivery systems outside the easements acquired from the present owner (Union Carbide) has not been obtained. Those easements and environmental documentation would be the responsibility of the PRASA or other users.

Access roads on the Union Carbide property and the proposed site would be developed or upgraded to bring workers and construction materials from route PR–127 and the existing Union Carbide dock (see figure 2). Roads constructed or upgraded would remain active during operation of the facility for materials' deliveries and worker access.

Construction

The LNG import facility and cogeneration facilities at Guayanilla Bay would be constructed by EcoEléctrica using conventional construction procedures and techniques. Two design and construction schedules have been developed: one for the cogeneration facilities and another for the LNG import facilities.

The power plant and desalination facilities would be designed and constructed over a 18 to 24-month period. Site preparation and levee construction would begin six months after the start of basic engineering design. Preparation of the site would require raising the base elevation of the existing site interior (about 5 feet above mean sea level [msl]) to about 10 feet above msl. Increasing the existing perimeter height of the levee from 10 feet to between 12 and 16 feet above msl would also be done. The interior of the site would be filled with imported soils and caliche. The combined levee construction and filling of the site interior would require about 175,000 cubic yards of materials that would be obtained locally from existing sources and transported to the site.

The southeast quadrant of the proposed site would be used for a construction material laydown area and the location of temporary offices. A permanent access road and temporary construction worker parking area would be located north of the laydown area. An existing construction off-loading

dock would be used during construction (see figure 2).

Foundation construction would begin about six months after site preparation activities are begun. Construction of the power plant and desalination facilities would be complete in about one year from the start of foundation construction. Startup of the facility is anticipated two years after the start of basic engineering. Commercial operation would begin after a one-month startup and commissioning period.

The power plant structure would be about 75 feet high and constructed of a steel frame with insulated metal siding and roofing. The structures will be designed following all Federal, Commonwealth, and local building codes.

Construction of the proposed LNG facilities would follow a similar schedule. From basic engineering design to commercial operation would take about 24 to 30 months. Foundation installation on the LNG facility would begin about six months after the start of power plant foundations.

Marine terminal construction would begin four months after the start of foundation construction. The pier would connect the shore facilities with the unloading platform.

LNG tank construction would begin one month after the start of the marine terminal construction. The tanks would be constructed on insulated concrete pads. The tanks would be designed and constructed following all requirements of American Petroleum Institute (API) 620 and 49 CFR Part 193. Completion of all LNG facilities is anticipated about 18 months after initial foundation work. Commercial operation of the LNG facility is expected to start about one year after the start of commercial operation of the cogeneration facilities.

The EIS Process

The NEPA requires the Commission to take into account the environmental impacts that could result from a major Federal action whenever it considers the approval of a place of import for natural gas. The PRPB, as a Commonwealth Agency with authority over location approval and land use control, is required to consider the same potential impacts within the Commonwealth of Puerto Rico under PREQB regulations under Article 4(c) of Law No. 9. The joint EIS we are preparing will give both the PRPB and the Commission the information we need to do that.

NEPA also requires us to discover and address public concerns about proposals. We call this ''scoping.'' The main goal of the scoping process is to focus the analysis in the joint EIS on the important environmental issues, and to separate those issues that are insignificant and do not require detailed study. By the Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the joint EIS. All comments received are considered during the preparation of the EIS. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The joint EIS will discuss impacts that could occur from the construction and operation of the proposed project. These impacts may include, but are not limited to:

- Geology and Soils

—Seismology and soil liquefaction
—Erosion control
—Right-of-way restoration
—Hazardous waste sites
—Seismic criteria

- Water Resources

—Site-specific impacts on surface and groundwater
—Potential introduction of non-indigenous species and diseases from tanker ballast water
—Effect on potable water supplies
—Effect in wetland hydrology
—Effect on construction in areas with shallow, contaminated groundwater
—Effects of water discharge on marine water quality and ambient temperature

- Biological Resources

—Effect of plant construction and operation on threatened and endangered species
—Effect of increased tanker traffic and marine construction traffic on manatees along the route
—Effects of construction of terminal on marine life in Guayanilla and Tallaboa Bays

- Cultural Resources

—Effect on historic and prehistoric sites
—Effect on underwater cultural resources
—Native American and tribal concerns

- Socioeconomics

—Impact of a peak work force of 400 on surrounding area
—Long-term effects of increased employment and taxes on local economy

- Air Quality and Noise

—Air quality and noise impacts associated with LNG and congeneration facilities during operations
—Air quality and noise impacts associated with construction

- Marine Transportation

—Effects of increased marine traffic on existing commercial and recreational marine traffic
—Probability of increased accident risk and potential for release of LNG or other hazardous materials

- Public Safety

—Compliance with 49 CFR 193 for exclusion zones (thermal and vapor gas dispersion) siting criteria, and seismic criteria
—Consequences of a major spill, both on land and marine
—Cryogenic design and technical review

- Land Use

—Impact on industrial areas
—Effect of rights-of-way and aboveground facilities on visual aesthetics in the region
—Consistency with local land use plans
—Impact on homes

- Cumulative Impacts

—Identification of related projects
—Analysis of cumulative impacts and mitigation measures

We will also evaluate possible site and technology alternatives to the project and recommend specific mitigation measures to lessen or avoid impacts on the various resource areas.

Federal and Commonwealth agencies are being asked to indicate whether they wish to cooperate with us in the preparation of the joint EIS. These agencies are listed in appendix A and may choose to participate once they have evaluated the proposed project and their agencies' responsibilities.[2]

Our independent analysis of the issues will result in the publication of a Draft/Preliminary EIS (the term Preliminary EIS is a specific milestone in the Puerto Rico environmental documentation procedures). This document will be mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for these proceedings. A 45-day comment period will be allotted for the review of the Draft/Preliminary EIS. We will consider all comments on the Draft/Preliminary EIS and revise the document, as necessary, before issuing a Final EIS. The final EIS will include our response to each comment received.

[2] The appendices and figures referenced in this notice are not being printed in the **Federal Register**. Copies are available from FERC's Public Reference Branch, Room 3104, 941 North Capitol Street, NE., Washington, DC 20426 or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

Public Participation and Scoping Meetings

You can make a difference by sending a letter with your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative sites), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letters to:

Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426

Luis Frías, Secretary, Puerto Rico Planning Board, P.O. Box 41119, Santurce, PR 00940–1119

- Reference Docket No. CP95–35–000 (FERC)
- Reference Docket No. 94–62–1219–JPU (PRPB)
- Send a *copy* of your letter to the following individuals:

Mr. Chris Zerby, FERC EIS Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St., NE, Room 7312, Washington, DC 20426

Mrs. María Gordillo, PRPB EIS Project Manager, Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940–1119

- Mail your comments so that they are received in Washington, D.C. or Santurce, PR on or before April 17, 1995.

Beside seeking your written comments, we invite you to attend any of the joint public scoping meetings the FERC and the PRPB will conduct. The locations and times for these meetings are listed below. Requests to hold additional public scoping meetings will be considered.

The public meetings will be designed to give you more detailed information and another opportunity to offer your comments on the proposed project. Those wanting to speak at the meetings can call the EIS Project Manager to pre-register their names on the speaker list. Those people on the speaker list before the date of the meeting will be allowed to speak first. A second speaker list will be developed at each meeting. Priority will be given to people representing groups. A transcript of each meeting will be made so that your comments will be accurately recorded. This transcript will be available in both Spanish and English.

Schedule for Joint EIS Public Scoping Meetings

April 18, 1995 (5:00–7:00 pm)

Puerto Rico Planning Board, Minillas Governmental Center, De Diego Avenue, Stop 22, San Juan, Puerto Rico 00940

April 19, 1995 (5:00–7:00 pm)

City Hall, Peñuelas, Puerto Rico

Becoming an Intervenor

In addition to involvement in the EIS process, you may want to become an official party to the proceedings or an ''intervenor.'' Among other things, intervenors have the right to receive copies of case-related FERC documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor, you must file a Motion To Intervene according to Rule 214 of FERC's Rules of Practice and Procedure (18 CFR 385.214) which is attached as appendix B.

The date for filing of timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Environmental Mailing List

This notice is being sent to all potential interested parties to solicit focused comments regarding environmental considerations related to the proposed project. As details of the project become established, representatives of EcoElectrica will directly contact communities, and public agencies concerning any other matters, including acquisition of permits and rights-of-way.

If you do not want to send comments at this time but still want to keep informed and receive copies of the Draft/Preliminary and Final EIS, please return the Information Request (appendix C). If you do not return the Information Request, you will be taken off the mailing list.

Additional information about the proposed project is available from Mr. Chris Zerby, FERC Project Manager, at (202) 208–0111. Information concerning the involvement of the Puerto Rico Planning Board can be obtained from Mrs. Maria Gordillo, PRPB Project Manager, at (809) 727–4444.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–6702 Filed 3–17–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 8835–019 California]

Dewey B. Smith; Notice of Availability of Environmental Assessment

March 14, 1995.

An environmental assessment (EA) is available for public review. The EA is for the termination of the license of the Dewey Smith Hydroelectric Project. The EA finds that termination of the license would not constitute a major federal action significantly affecting the quality of the human environment. The Dewey Smith Project is located on the Shasta River in Siskiyou County, California.

The EA was prepared by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA can be viewed at the Commission's Reference and Information Center, Room 3308, 941 North Capitol Street, NE., Washington, DC 20426. Copies can also be obtained by calling the project manager listed below.

Please submit any comments within 45 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please denote ''Comments: Project No. 8835–019'' on all comments. For more information, please contact the project manager, John Mudre, at (202) 219–1208.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–6700 Filed 3–17–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–217–000, et al.]

Columbia Gas Transmission Corporation, et al.; Natural Gas Certificate Filings

March 10, 1995.

Take notice that the following filings have been made with the Commission:

1. Columbia Gas Transmission Corporation

[Docket No. CP95–217–000]

Take notice that on February 22, 1995, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP95–217–000 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for permission and approval to abandon a portion of a pipeline located in Gilmer, Lewis and Doddridge Counties, West Virginia, and to construct and operate replacement facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Columbia proposes to replace a deteriorating portion of Line 1740, totaling approximately 17.2 miles of 16-, and 20-inch pipeline, with five sections of 20-inch pipeline totaling approximately 17.5 miles. Columbia states that the involved portion of Line 1740 (6.45 miles of 16-inch and 10.75 miles of 20-inch pipeline) was constructed in 1947,[1] and should be replaced to enable Columbia to continue to maintain safe and reliable service to its existing customers at current levels. Columbia describes the pipe to be abandoned as beginning in Gilmer County at the Barbarow Valve Setting, just south of County Route 2/2, and proceeding northeast and terminating in Doddridge County near Long Run just south of County Route 38/4.

Columbia explains that, to the extent that 16-inch pipe is being replaced by 20-inch pipe, the 20-inch pipe is being utilized to provide a continuous pipe size for efficient maintenance. Columbia further explains that a singularly sized line would minimize the number of pig launchers and receivers necessary to pig the line. Columbia estimates that its proposal would permit it to avoid incurring an expense of approximately $250,000 to install pig launchers and receivers to accommodate the pigging of different diameter pipelines as opposed to a continuous 20-inch pipeline. The estimated cost of the proposed construction is $16,700,000.

Columbia states that the proposal would result in an increase in pipeline capacity of approximately 28,200 Dekatherms per day at the suction side of the Smithfield Compressor Station which would diminish to zero with distance from that point due to other system constraints. Columbia does not request authorization for any new or additional service and states that any additional capacity made available by the replacement pipe would be posted in accordance with applicable tariffs.

Comment date: March 31, 1995, in accordance with Standard Paragraph F at the end of this notice.

[1] See 6 FPC 627 (1947).

2. Williston Basin Interstate Pipeline Company

[Docket No. CP95–235–000]

Take notice that on March 2, 1995, Williston Basin Interstate Pipeline Company (Williston), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501 filed an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations requesting permission and approval to abandon certain facilities (and related services) located on its pipeline system in Custer, Powder River, Stillwater and Carbon Counties, Montana; Burke and Divide Counties, North Dakota; Harding County, South Dakota; and Park, Hot Springs and Big Horn Counties, Wyoming, all as a result of the sale of property to Interenergy Corporation (Interenergy), all as more fully set forth in the application on file with the Commission and open to public inspection.

Williston seeks authorization to abandon by sale to Interenergy gathering facilities, certain facilities functionalized as transmission, and related land rights and services, associated with its existing operations. Williston states that Interenergy is currently conducting negotiations for replacement service agreements with Williston's existing gathering customers. Williston states that the total allocated net book value of the gathering facilities to be sold is $5,100,924; and, the total net book value of the transmission facilities to be sold is $626,550, as of January 1, 1995. Williston has indicated that Interenergy has filed concurrently a petition that the Commission declare the subject facilities exempt from jurisdiction pursuant to Section 1(b) of the Natural Gas Act.

Comment date: March 31, 1995, in accordance with Standard Paragraph F at the end of this notice.

3. Williston Basin Interstate Pipeline Company

[Docket No. CP95–236–000]

Take notice that on March 2, 1995, Williston Basin Interstate Pipeline Company (Williston), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501 filed an application for a certificate of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act. The application requests authority to transfer from the gathering function to the transmission function the Frannie-Deaver meter station; a portion of the Elk Basin to South Elk Basin gathering line; the Hiland Plant meter station; and, the Perry Gas meter station, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Williston states that the above-referenced facilities were either purchased or constructed by Montana-Dakota Utilities Co., now MDU Resources Group, Inc., the parent of Centennial Energy Holdings, Inc., Williston's parent. Williston states that as a result of an extensive review and examination of its plant accounting records for gathering facilities and/or to rationalize the facilities which are to remain with Williston after receipt of the necessary abandonment authority sought for certain facilities and services in a companion application,[2] Williston has determined that certain facilities classified as gathering should be classified as transmission.

Comment date: March 31, 1995, in accordance with Standard Paragraph F at the end of this notice.

4. Interenergy Corporation

[Docket No. CP95–239–000]

Take notice that on March 2, 1995, Interenergy Corporation (Interenergy) 1700 Broadway, Suite 1150, Denver, Colorado 80202 filed a petition for declaratory order requesting that the Commission declare that facilities to be acquired from Williston Basin Interstate Pipeline Company (Williston) are gathering facilities exempt from Commission jurisdiction under Section 1(b) of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Interenergy states it is engaged in the gathering and marketing of natural gas. Interenergy states that it has agreed to purchase[3] from Williston certain facilities located on Williston's pipeline system in Custer, Powder River, Stillwater and Carbon Counties, Montana; Burke and Divide Counties, North Dakota; Harding County, South Dakota; and Park, Hot Springs and Big Horn Counties, Wyoming. Subject to the Commission's grant of Interenergy's Petition, Interenergy intends to operate the facilities to points of interconnection with Williston for transportation to markets. It is also indicated that Williston has sought

[2] Filed March 2, 1995, in Docket No. CP95–235–000.

[3] Purchase and sales agreement dated January 3, 1995, as amended.

authorization to abandon these facilities.[4]

Interenergy states that the facilities, which consist of pipeline totalling approximately 211 miles, separation and dehydration equipment, field compressors and associated facilities (including wellhead metering stations), display the characteristics the Commission has historically held to be indicative of gathering. Interenergy states that facilities will be used to perform services in the production area prior to transportation in interstate commerce. It states that through the facilities it will offer gathering, treating, dehydrating and compression services to producers and shippers seeking such services and will provide such services on an open-access, non-discriminatory basis.

Comment date: March 31, 1995, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

5. Parker & Parsley Gas Processing Company

[Docket No. CP95–244–000]

Take notice that on March 6, 1995, Parker & Parsley Gas Processing Co. (Parker & Parsley) 303 West Wall Avenue, Suite 101, Midland, Texas 79701, filed a petition for a declaratory order in Docket No. CP95–244–000 requesting that the Commission declare that certain facilities Parker & Parsley proposes to acquire from CNG Transmission Corporation (CNGT) are gathering facilities exempt from Commission jurisdiction under Section 1(b) of the Natural Gas Act (NGA), and that Parker & Parsley's ownership and operation of those facilities will not subject Parker & Parsley to Commission jurisdiction under the NGA, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Parker & Parsley states that it has agreed to purchase approximately 352 miles of various sized pipelines, ranging in length from approximately 12 feet to approximately 17 miles, with approximately 95 percent of the lines no more than 5 miles in length. Parker & Parsley explains that while CNGT is seeking abandonment of 322 miles of pipeline, Parker & Parsley seeks an order from the Commission declaring to be non-jurisdictional gathering facilities: (1) The 322 miles of pipeline CNGT is seeking to abandon, plus (2) an additional 30 miles of pipeline to be conveyed to Parker & Parsley by CNGT. Parker & Parsley states that the Commission authorized the abandonment of the 30 miles of pipeline in Docket No. CP91–554–000.

CNGT has, concurrently herewith, filed a related abandonment application in Docket No. CP95–245–000.

Comment date: March 31, 1995, in accordance with Standard Paragraph F at the end of this notice.

6. CNG Transmission Corporation

[Docket No. CP95–245–000]

Take notice that on March 6, 1995, CNG Transmission Corporation (CNGT), 445 Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP95–245–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon 322 miles of various diameter pipeline by sale to Parker & Parsley Development, LP, (Parker & Parsley) or an affiliate, and to abandon an exchange service between CNGT and Equitrans Inc. (Equitrans), all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, CNGT proposes to abandon by sale, 322 miles of pipeline ranging in diameter from 2 to 18 inches, and minor amounts of 20 and 30 inch line located in Harrison, Marion, Marshall, Monongalia, Doddridge, Wetzel, and Tyler Counties, West Virginia. All of CNGT's interest in the facilities were transferred to Consolidated Gas Transmission Corporation (now CNGT) from its predecessor, Consolidated Gas Supply Corporation (now Hope Gas, Inc.)) effective January 1, 1984. The transfer and classification of assets was approved by the Commission in Docket No. CP80–346–000 on December 20, 1983 (25 FERC ¶ 61,397). All of the lines make up a discrete gathering system feeding the Hastings extraction plant. The system is characterized by a web-like configuration of gathering lines and approximately 106 third party transport meters and 160 CNGT wells are located on this system. The CNGT wells are also being sold to Parker & Parsley.

Parker & Parsley Gas Processing Co. has, concurrently herewith, filed a Petition for Declaratory Order Disclaiming Jurisdiction in Docket No. CP95–244–000.

The exchange service CNGT seek to abandon with Equitrans is under a February 9, 1972 exchange agreement on file as CNGT's Rate Schedule X–9.

Comment date: March 31, 1995, in accordance with Standard Paragraph F at the end of this notice.

7. Koch Gateway Pipeline Company

[Docket No. CP95–246–000]

Take notice that on March 7, 1995, Koch Gateway Pipeline Company (KGPC), 600 Travis Street, Houston, Texas 77002, filed in Docket No. CP95–246–000, an abbreviated application pursuant to Section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon certain natural gas facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In its application, KGPC proposes to abandon by sale to Western Gas Resources Storage, Inc. (Western) an offsystem gathering line, designated as Katy Field FPL No. 1 (Katy Line), located in Waller County, Texas. The Katy Line, consisting of 1.23 miles of 10-inch pipeline including all valves and appurtenances, connects an Exxon Corp. gasoline plant with a 30-inch Tennessee Gas Pipeline Company transmission line. KGPC states that it sold the Katy Line to Excel Resources, Inc. (Excel) for $110,000 on April 1, 1994 but that Excel assigned all of its contractual rights and obligations under the sales agreement with KGPC to Western.

Comment date: March 31, 1995, in accordance with Standard Paragraph F at the end of this notice.

8. Williston Basin Interstate Pipeline Company

[Docket No. CP95–247–000]

Take notice that on March 7, 1995, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 300, 200 North Third Street, Bismarck, North Dakota 58501, filed in Docket No. CP95–247–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a new metering station and associated appurtenant facilities under Williston Basin's blanket certificate issued in Docket No. CP83–1–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Williston Basin proposes to construct and operate a new metering station and associated appurtenant facilities to provide deliveries of up to 6,500 Mcf per day of gas to Conoco, Inc. The facilities will be located in Burke County, North Dakota.

Comment date: April 24, 1995, in accordance with Standard Paragraph G at the end of this notice.

[4] Filed March 2, 1995, in Docket No. CP95–235–000.

9. NorAm Gas Transmission Company

[Docket No. CP95–249–000]

Take notice that on March 8, 1995, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP95–249–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a new delivery tap on NGT's Line BT–14 in Yell County, Arkansas, under NGT's blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

NGT proposes to construct and operate a new 2-inch rural domestic tap for delivery of natural gas to ARKLA, a division of NorAm Energy Corp. for redelivery to its customer, Bessie Jo Meers. The tap will be located in Section 35, Township 7 North, Range 21 West, Yell County, Arkansas and approximately 85 MMBtu annually and 1 MMBtu per day are estimated to be delivered through the tap. NGT states that the estimated cost of construction is $2,700 and ARKLA will reimburse NGT for all construction costs. NGT further states that the volumes to be delivered are within ARKLA's certificated entitlement and NGT's tariff does not prohibit the addition of new delivery points.

Comment date: April 24, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell

Secretary

[FR Doc. 95–6745 Filed 3–17–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP95–253–000, et al.]

NorAm Gas Transmission Company, et al.; Natural Gas Certificate Filings

March 14, 1995

Take notice that the following filings have been made with the Commission:

1. NorAm Gas Transmission Company

[Docket No. CP95–253–000]

Take notice that on March 9, 1995, NorAm Gas Transmission Company (NGT), P.O. Box 21734, Shreveport, Louisiana 71151, filed a request with the Commission in Docket No. CP95–253–000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to replace certain metering and regulating facilities in Union Parish, Louisiana, with upgraded facilities in order to increase natural gas deliveries to Arkla, a division of NorAm Energy Corp. (Arkla), under NGT's blanket certificate issued in Docket No. CP82–384–000, *et al.* pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

NGT proposes to abandon an above ground 2-inch meter station and a 1-inch regulator and replace them with a 4-inch meter station and a 2-inch regulator at Arkla's request. NGT states that it would increase its natural gas deliveries to Arkla's Rural Extension No. 292 in Farmerville, Union Parish, Louisiana. NGT would deliver to Arkla approximately 440,500 MMBtu equivalent annually and 2,400 MMBtu equivalent per peak day, all within Arkla's certificated entitlements. NGT states that it would cost approximately $58,700 to remove the old facilities and to construct the new facilities. NGT also states that Arkla has agreed to reimburse NGT for the cost of this project.

Comment date: April 28, 1995, in accordance with Standard Paragraph G at the end of this notice.

2. Natural Gas Pipeline Company of America

[Docket No. CP95–254–000]

Take notice that on March 9, 1995, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP95–254–000 an abbreviated application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon an offshore metering facility which was authorized in Docket No. CP76–80, all as more fully set forth in the application on file with the Commission and open to public inspection.

Natural proposes to abandon a dual 4-inch meter that is located on Mesa Petroleum Company's platform in East Cameron Block 322, offshore Louisiana. Natural states that the metering facilities are no longer needed and will be abandoned in place.

Comment date: April 4, 1995, in accordance with Standard Paragraph F at the end of this notice.

3. Stingray Pipeline Company

[Docket No. CP95–255–000]

Take notice that on March 9, 1995, Stingray Pipeline Company (Stingray), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP95–255–000 an application pursuant to Section 7(b) of the Natural Gas Act for

permission and approval to abandon an offshore lateral which was authorized in Docket No. CP75–329, all as more fully set forth in the application on file with the Commission and open to public inspection.

Stingray proposes to abandon 7 miles of 6-inch lateral located in East Cameron Block 322, offshore Louisiana. Stingray states that there are leaks in a small segment of the lateral and Stingray has determined that it would be uneconomical to make the necessary repairs. The lateral will be abandoned in place with the exception of approximately 500 feet of lateral which Stingray intends to cut and remove in order for the producer to position a rig near its platform.

Comment date: April 4, 1995, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–6748 Filed 3–17–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ER95–265–000]

Southern Company Services, Inc.; Notice of Filing

March 14, 1995.

Take notice that on January 31, 1995, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as ''Operating Companies''), tendered for filing supplemental information concerning the adoption of certain accounting methods for post-retirement benefits other than pensions, as set forth in the Statement of Financial Accounting Standard No. 106 by the Financial Accounting Standards Board, in agreements and tariffs of the Operating Companies (jointly and individually).

In addition, the Operating Companies provided notice to the Commission that they have established irrevocable external trusts as defined under the Internal Revenue Code Section 501(c)(8), that they will maximize use of income tax deductions for amounts deposited to such trusts, and that they have made appropriate deposits to such accounts. The Operating Companies state that this material was filed in compliance with the Commission's policy statement on ratemaking treatment for post-retirement benefits other than pensions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before March 24, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 95–6701 Filed 3–17–95; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Notice of Cases Filed During the Week of February 20 Through February 24, 1995

During the Week of February 20 through February 24, 1995, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: March 13, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of February 20 through February 24, 1995]

Date	Name and location of Applicant	Case No.	Type of submission
2/21/95	Richard J. Levernier, Germantown, Maryland.	VFA–0025	Appeal of an Information Request Denial. If granted: The January 31, 1995 Freedom of Information Request Denial issued by the DOE Rocky Flats Field Office would be rescinded, and Richard J. Levernier would receive access to any records of telephone conversations between Wackenhut Services and Richard J. Levernier.
2/22/95	Oak Ridge Operations Office, Oak Ridge, Tennessee.	VSX–0002	Supplemental Order. If granted: Portions of a personnel security interview transcript submitted by the Oak Ridge Operations Office would be stricken from the record of Case Number VSO–0014.
2/22/95	Robert L. Hale, Madisonville, Tennessee	VFA–0026	Appeal of an Information Request Denial. If granted: The January 4, 1995 Freedom of Information Request Denial issued by the Oak Ridge Operations Office would be rescinded, and Robert L. Hale would receive access to any Department of Energy medical records concerning his father, William C. Hale.
2/23/95	Casey O. Ruud, San Rafael, California	VFA–0027	Appeal of an Information Request Denial. If granted: The January 26, 1995 Freedom of Information Request Denial issued by the Office of Communications, Richland Operations Office would be rescinded, and Casey O. Ruud would receive access to the name and address of the author of certain information requested.
2/23/95	Mapco International, Inc., Tulsa, Oklahoma	VEF–0004	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 C.F.R., Part 205, Subpart V, in connection with the April 21, 1986 Remedial Order issued to Mapco International, Inc.
2/23/95	Venable, Baetjer and Howard, McLean, Virginia.	VFA–0028	Appeal of an Information Request Denial. If granted: The February 21, 1995 Freedom of Information Request Denial issued by the DOE FOIA Office would be rescinded, and Venable, Baetjer and Howard would receive access to documents and correspondence regarding the DOE Energy Sciences Network's contract award to Sprint Communications Company.

Date received	Name of refund proceeding/name of refund application	Case No.
2/21/95	Rio Farmers Union Coop	RG272–27
2/21/95	Farmers Coop Mill & Elevator	RG272–28
2/21/95	Afton Cooperative Assn	RG272–29
2/22/95	G & S Freight, Inc	RA272–66
2/22/95	Hudson River Inn	RA272–67
2/22/95	Baltimore Storage Co	RA272–68

[FR Doc. 95–6800 Filed 3–17–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Hearing and Appeals Week of February 6 Through February 10, 1995

Notice of Cases Filed

During the Week of February 6 through February 10, 1995, the applications for relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: March 13, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of February 6 through February 10, 1995]

Date	Name and location of applicant	Case No.	Type of submission
2/10/95	Albuquerque Operations Office, Albuquerque, New Mexico.	VSO–0020	Personnel Security/Request for Hearing under 10 C.F.R. Part 710. If granted: An individual employed at the Albuquerque Operations Office would receive a hearing under 10 CFR Part 710.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case No.
2/7/95	Air Comfort, Inc	RF321–21058
2/10/95	Nash Equity Exchange	RG272–25

[FR Doc. 95–6801 Filed 3–17–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Hearings and Appeals

Notice of Cases Filed; Week of February 13 Through February 17, 1995

During the week of February 13 through February 17, 1995, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: March 13, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of February 13 through February 17, 1995]

Date	Name and location of applicant	Case No.	Type of Submission
1/5/95	Loiza Valley Shell Service, Hato Rey, Puerto Rico.	RR315–12	Request for Modification/Rescission in the Shell Refund Proceeding. If granted: The January 5, 1994 Dismissal Letter (Case Number RF315–9332) issued to Loiza Valley Shell Service would be modified regarding the firm's application for refund submitted in the Shell refund proceeding.
2/13/95	Shell/Briggs Transportation Company, Texaco/Briggs Transportation Company, Earlington, Kentucky.	RR315–13 thru RR321–175	Request for Modification/Recission in the Shell and Texaco Refund Proceedings. If granted: The January 11, 1995 Decision and Order Case Numbers RF315–10286 and RF321–21054 issued to Briggs Transportation Company would be modified regarding the firm's application for refund submitted in the Shell and Texaco Refund Proceedings.
2/15/95	Big/Little Stores, Inc., Enterprise, Alabama	VEE–0005	Exception to the Reporting Requirements. If granted: Big/Little Stores, Inc. would not be required to file form EIA–728B Reseller's/Retailer's Monthly Petroleum Product Sales Report.
2/15/95	Robert S. Foote, Knoxville, TN	VFA–0024	Appeal of an Information Request Denial. If granted: The January 23, 1995 Freedom of Information Request Denial issued by the Health and Environmental Research in the Office of Energy Research would be rescinded, and Robert S. Foote would receive access to certain Department of Energy information.
2/16/95	Nevada Operations Office, Las Vegas, Nevada.	VSO–0022	Request for Hearing under 10 CFR Part 710. If granted: An individual employed at Nevada Operations Office would receive a hearing under 10 CFR Part 710.
2/16/95	Oak Ridge Operations Office, Oak Ridge, TN.	VSO–0021	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.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case No.
2/13/95	Cairo Elevator	RF272–26.
2/16/95	Centex, Inc	RF345–35.

[FR Doc. 95–6802 Filed 3–17–95; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Proposed Decision and Order; Week of January 16 Through January 20, 1995

During the week of January 16 through January 20, 1995, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who

will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: March 13, 1995.

George B. Breznay,

Director, Office of Hearings and Appeals.

Sound Oil Company, Seattle, WA, Reportinfg Requirements—Lee–0153

Sound Oil Company (Sound) filed an Application for Exception from the provision of filing Form EIA–782B, entitled ''Resellers'/Retailers' Monthly Petroleum Product Sales Report.'' The Exception request, if granted, would permit Sound to be exempted from filing Form EIA–782B. On January 19, 1995, the Department of Energy issued a Proposed Decision and Order which determined that the Exception request be denied.

[FR Doc. 95–6803 Filed 3–17–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Hearings and Appeals

Notice of Issuance of Proposed Decisions and Orders; Week of January 9 Through January 13, 1995

During the week of January 9 through January 13, 1995, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: March 13, 1995,

George B. Breznay,

Director, Office of Hearings and Appeals.

Central American Petroleum Company Cameron, MI, Reporting Requirements VEE—0001

Central American Petroleum Company (Central) filed an Application for Exception from the provision of filing Form EIA–782B, entitled ''Resellers'/Retailers' Monthly Petroleum Product Sales Report.'' The Exception request, if granted, would permit Central to be exempted from filing Form EIA–782B. On January 12, 1995, the Department of Energy issued a Proposed Decision and order which determined that the Exception request be denied.

Lane's Service, Inc., Lavina, MT, Reporting Requirements—LEE–0158

Lane's Service, Inc. (Lane) filed an Application for Exception from the provision of filing Form EIA–782B, entitled ''Resellers'/Retailers' Monthly Petroleum Product Sales Report.'' The Exception request, if granted, would permit Lane to be exempted from filing Form EIA–782B. On January 12, 1995, the Department of Energy issued a Proposed Decision and Order which determined that the Exception request be denied.

[FR Doc. 95–6804 Filed 3–17–95; 8:45 am]

BILLING CODE 6450–01–P

Western Area Power Administration

Central Valley Project, Proposed Non-Federal Funding to Perform Rewindings With Uprates on Three Generators at the Shasta Dam Powerplant

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of intent to enter into a contract, along with the Department of the Interior, Bureau of Reclamation (Reclamation), to obtain non-Federal funding from Central Valley Project power contractors for maintenance and replacement work, to be performed by Reclamation, on the generators at Shasta Dam Powerplant.

SUMMARY: The Western Area Power Administration (Western) provides notice that non-Federal funding will be obtained for Reclamation to perform rewindings with uprates on three generators at the Shasta Dam Powerplant in order to ensure system reliability. Several Central Valley Project (CVP) power contractors have voluntarily agreed to jointly provide financing to complete the proposed work. All CVP power contractors will be considered if they meet the conditions specified under ''Selection Criteria'' herein. A list of the CVP power contractors providing funding (Funding Entities) may be requested from Western at the address or telephone provided under ''For Further Information Contact'' herein.

This notice presents background project information and outlines the terms of the proposed financing agreement and the projected work.

EFFECTIVE DATE: April 19, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Zola M. Jackson, Assistant Area Manager for Power Marketing, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Suite 105, Sacramento, CA 95825, (916) 649–4421.

SUPPLEMENTARY INFORMATION:

Background

The Shasta Dam Powerplant is located on the Sacramento River near the city of Redding, California. The powerplant is a feature of the Shasta Division, CVP, and was authorized to be built by the Emergency Relief Appropriations Act of 1935 (49 Stat. 115). Reclamation operates the 578-megawatt (MW) powerplant at Shasta Dam, and Western markets that power pursuant to section 302 of the Department of Energy Organization Act (42 U.S.C. 7152).

Reclamation is responsible for planning, designing, constructing, operating, and maintaining electrical power generation facilities as authorized by Congress. Reclamation also is responsible for allocating all costs to water and power users for Reclamation project purposes and determining the reimbursable costs to be recovered by revenues. Western is responsible for marketing the power, constructing transmission facilities, making transmission arrangements, assuring recovery of all costs assigned to power for repayment, and for setting power and transmission rates. Reclamation and Western will work together in the negotiation and execution of contracts for the financing arrangements for the proposed project. Reclamation will be responsible for the negotiation and execution of the construction contracts.

The Shasta Dam Powerplant has a total of seven generator units. There are five main generators and two station service generators. Main generator units 1 and 2 were uprated to 125 MW in 1978–80. Main generator units 3, 4, and 5 were rewound between 1969 and 1974 and modified in 1981. Due to age and deterioration, the core temperatures of main generator units 3, 4, and 5 have been steadily increasing for the last decade, threatening the reliability of these units. Should one or more of the units fail, the loss of power generation could increase power costs and decrease power revenues.

Financing Proposal

Funds for constructing the rewinds with uprates at the Shasta Dam Powerplant will be made available to Reclamation under provision of the Act of March 4, 1921 (41 Stat. 1404). Western, the Funding Entities, and Reclamation will enter into a contract to assist in obtaining the funding necessary for Reclamation to perform the maintenance work at Shasta Dam Powerplant. The Funding Entities will advance approximately $20 million, the estimated total cost of the work to be performed, into an escrow account. Reclamation will withdraw the funds for the material and related expenses of the rewinds with uprates. The facilities will continue to be owned and operated by the United States as a feature of the CVP.

A repayment agreement is proposed between the United States and the Funding Entities. The Funding Entities will be reimbursed for funds provided, with interest, through credits on their CVP power bills. All costs will be recovered through sales of power and water.

Description of Proposed Work to be Performed by Reclamation

To ensure CVP system reliability, increase operational flexibility, and increase the nameplate rating of Shasta main generator units 3, 4, and 5, Reclamation will install new cores, windings, and excitation systems in addition to reinsulating or replacing the field windings. Reclamation will also install new thrust bearings to enable a faster unit start-up response time after emergency shutdowns.

Energy and Capacity Gains

As a result of uprating main generator units 3, 4, and 5, there will be an estimated total gain of approximately 47 MW of capacity available when Shasta Lake storage level is above 3.6 million acre-feet (MAF). Below 3.6 MAF, the total peaking capability decreases and is reduced to 0 MW when the level falls below 2.3 MAF. Under high water conditions and maximum operational capability, some additional energy may be produced. This could amount to an estimated average annual increase of 12 gigawatthours. All additional energy and capacity resulting from the uprates will be incorporated into the CVP system to support project use and CVP power sales. CVP capacity may be sold as excess, when available.

Treatment of Excess Capacity

If and when Western determines excess capacity is available for sale, the Funding Entities will be given first right of refusal for the purchase of excess capacity from the CVP system. Such right shall terminate on December 31, 2004. Such right of first refusal shall be limited to excess capacity purchases for a period of months in the year and to an amount of excess capacity equivalent to the amount resulting from the uprates of main generator units 3, 4, and 5, and only if Shasta Lake storage level is above 3.0 MAF at the time of the offer for sale. The determination of the amount of excess capacity available, period of availability, and terms of an offer will be at Western's discretion. Funding Entities must meet the marketing criteria for the excess capacity sale at the time of the offer.

Selection Criteria for Funding Entities

Western determined that the following criteria must be met by entities financing the rewinds with uprates at Shasta Dam Powerplant.

1. Funding must be advanced on behalf of an existing CVP firm power contractor who is a ''preference entity'' under Reclamation law and pertinent statutes, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)).

2. Entities must voluntarily agree to fund the proposal under the terms and conditions offered by Western and be able to receive reimbursement of funds advanced on their CVP power bills.

3. Entities must demonstrate their ability to provide funds for the proposed work.

4. Entities must be willing to advance the funding in a manner acceptable to Reclamation.

Environmental Compliance: The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C 4321 *et seq.*) and implementing regulations issued by the Council on Environmental Quality (40 CFR 1500–1508) require that the environmental effects of agency decisions be studied and considered by decision makers. For the construction work to be performed by Reclamation, Reclamation completed a Categorical Exclusion on August 5, 1994. This work will not change the operating parameters at Shasta Dam Powerplant.

In addition, the environmental effects associated with the marketing of power generated at various facilities, including the Shasta Dam Powerplant, were examined under Western's 1994 Power Marketing Plan Environmental Assessment, as revised in August 1992 and for which a FONSI was issued on September 21, 1992; therefore, no further environmental review under NEPA will be required.

Issued in Golden, Colorado, March 6, 1995.

J. M. Shafer,

Administrator.

[FR Doc. 95–6799 Filed 3–17–95; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–80016C; FRL–4937–6]

TSCA Section 8(e); Notice of Availability of Draft Policy and Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and reopening of comment period.

SUMMARY: This Notice solicits additional public comment on certain refinements to EPA's policy concerning the mandatory reporting of information under section 8(e), the ''substantial risk'' information reporting provision of the Toxic Substances Control Act (TSCA) proposed in the **Federal Register** of July 13, 1993. EPA received numerous comments on the proposed changes during the comment period, which was extended to October 28, 1993. In the interim, EPA has, based on the public comments, modified the proposed changes to reflect many of the comments. However, to enhance the effectiveness of the guidance and to identify additional burden-reducing measures, EPA is offering the public an opportunity to review the draft policy text and submit additional comments. The draft policy text will be in the public docket.

DATES: Written comments on the reporting guidance must be submitted in triplicate and received by EPA no later than May 4, 1995.

ADDRESSES: All comments must be transmitted in triplicate to: TSCA Docket Receipts (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Attention: Docket No. OPPTS–80016.

FOR FURTHER INFORMATION CONTACT: James B. Willis, Acting Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551. A copy of the draft policy may be obtained by contacting the TSCA Hotline at the telephone number listed above.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 20, 1991 (56 FR 28458), EPA announced that the Agency was suspending the applicability of Parts V(b)(1) and V(c) of EPA's 1978 Policy Statement which outlined the reportability of data on ''widespread and previously unsuspected distribution in environmental media'' and ''emergency incidents of environmental contamination,'' respectively, and would propose changes in the **Federal Register** at a later time. Revisions to the guidance presented in Part V(b)(1) of the 1978 Policy Statement were proposed in the **Federal Register** of July 13, 1993 (58 FR 37735).

EPA has used the comments received in response to the proposal to draft revised policy text that EPA believes responds to the main comments. EPA believes that the process to develop revised guidance would be greatly enhanced by allowing the public an opportunity to review the draft guidance and provide additional comments.

Consequently, EPA is making available for public comment the draft guidance text in the public docket. EPA is not including the draft preamble language or response to comments because they are subject to change due to this action. Copies of the guidance text can be obtained from the Agency contact listed under FOR FURTHER INFORMATION CONTACT above.

List of Subjects

Environmental protection.

Dated: March 9, 1995.

Joseph A. Carra,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 95–6767 Filed 3–17–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

March 13, 1995.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW, Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Dorothy Conway, Federal Communications Commission, (202) 418–0217 or via internet at DConway@FCC.GOV. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10214 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0362.

Title: Section 80.401 Station documents requirements.

Form No.: N/A

Action: Extension of a currently approved collection.

Respondents: Individuals or households; Businesses or other for-profit; Not-for-profit institutions; and State, Local or Tribal Governments.

Frequency of Response: On occasion.

Estimated Annual Burden: 10,208 annual responses; 4.33 hours burden per response; 44,200 hours total annual burden.

Needs and Uses: A portion of this documentation is used by the FCC Compliance and Information Bureau personnel during inspection and investigation to insure compliance with applicable rules and treaties. This information may be used for similar purposes by appropriate representatives of foreign governments when the vessel is operating in foreign waters. The remainder of the documents are used by the radio operator and are necessary to support communications capability at sea.

OMB Number: 3060–0502.

Title: Section 73.1942 Candidate Rates.

Form No.: N/A

Action: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Frequency of Response: On occasion.

Estimated Annual Burden: 285,875 annual responses; 2.1 hours burden per response; 600,338 hours total annual burden.

Needs and Uses: Section 73.1942 requires broadcast licensees to disclose station practices offered to commercial advertisers that enhance the value of advertising spots and different classes of time. It also requires licensees to calculate the lowest unit charge. The disclosures allow candidates to determine that they are receiving the same charge as the most favored advertisers.

OMB Number: 3060–0211.

Title: Section 73.1943 Political File.

Form No.: N/A

Action: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Frequency of Response: Recordkeeping requirement.

Estimated Annual Burden: 406,125 annual recordkeepers; .25 hours burden per response; 101,531 hours total annual recordkeeping burden.

Needs and Uses: Section 73.1943 requires licensees of broadcast stations to keep complete records of all requests

for broadcast time made on behalf of political candidates, together with notations showing disposition of requests, and allow public inspection of these records. Data is used to by public to assess money expended and time allotted to political candidates and to ensure that equal access was afforded to other qualified candidates.

OMB Number: 3060–0501.

Title: Section 76.206 Candidate Rates.

Form No.: N/A

Action: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Frequency of Response: 10 disclosures annually, rates calculated semi-annually.

Estimated Annual Burden: 52480 annual responses; 2.5 hours burden per response; 131,200 hours total annual burden.

Needs and Uses: Section 76.205 requires cable television systems to disclose any station practice offered to commercial advertisers that enhance the value of advertising spots and different classes of time. It also requires cable systems to calculate the lowest unit charge. This allows candidates to determine that they are receiving the same rate as the most favored advertisers.

OMB Number: 3060–0313.

Title: Section 76.207 Political File.

Form No.: N/A

Action: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Frequency of Response: On occasion.

Estimated Annual Burden: 26,240 annual responses; .25 hours burden per response; 6,560 hours total annual burden.

Needs and Uses: Section 76.207 requires cable television systems to keep complete records of all request for cablecast time made on behalf of political candidates, together with notation showing disposition of requests, and allow public inspection of records. Data is used by the public to assess money expended, time allotted to political candidates and to ensure that equal access was afforded to other qualified candidates.

OMB Number: 3060–0419.

Title: Sections 76.94, 76.155, 76.157, and 76.159 Syndicated Exclusivity/ Network Non-duplication Rights.

Form No.: N/A

Action: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Frequency of Response: On occasion.

Estimated Annual Burden: 170,368 annual responses; 1 hour burden per response; 170,368 hours total annual burden.

Needs and Uses: Notifications by TV stations and program suppliers will provide cable systems with information on programs for which they have syndicated exclusivity/network non-duplication rights. The data provided to cable systems by TV stations will be used to determine when programs subject to deletion will be aired, so that the cable system can delete carriage of signals at appropriate time.

OMB Number: 3060–0500.

Title: Section 76.607 Resolution of Complaints.

Form No.: N/A

Action: Extension of currently approved collection.

Respondents: Business or other for-profit.

Frequency of Response: On occasion.

Estimated Annual Burden: 11,300 annual responses: 27 hours burden per response; 305,100 hours total annual burden.

Needs and Uses: Section 76.607 requires cable systems to advise subscribers once each calendar year of proceedings for resolution of complaints. It also requires that records be maintained on all subscriber complaints. The data is used by local franchising authorities to assess cable systems' performance and to ensure that the quality service is being provided to subscribers.

OMB Number: 3060–0316.

Title: Section 76.305 Records to be maintained locally by cable system operators for public inspection.

Form No.: N/A

Action: Extension of currently approved collection.

Respondents: Business or other for-profit; State, Local and Tribal Government.

Frequency of Response: Recordkeeping Requirement.

Estimated Annual Burden: 11,300 recordkeepers; 18.2 hours burden per recordkeeper; 205,386 hours total annual burden.

Needs and Uses: Section 76.305 requires cable television systems to maintain a public inspection file of certain records. This data is used by FCC investigation staff and the public to assess a cable systems performance and to ensure compliance with FCC rules and regulations.

OMB Number: N/A

Title: Section 76.934(f)(1) Alternative rate regulation agreements.

Form No.: N/A

Action: New collection.

Respondents: Business or other for-profit.

Frequency of Response: On occasion.

Estimated Annual Burden: 3,157 annual responses; .5 hours burden per response; 1,579 hours total annual burden.

Needs and Uses: This section permits local franchising authorities and qualified small systems to enter in alternative rate regulation agreements. Small systems must file with Commission a copy of the operative alternative rate regulation agreement within 30 days after its effective date. This information will be used by the Commission in conjunction with reviews of rate complaints filed by cable subscribers.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–6730 Filed 3–17–95; 8:45 am]

BILLING CODE 6712–0l–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1044–DR]

California; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA–1044–DR), dated January 10, 1995, and related determinations.

EFFECTIVE DATE: March 10, 1995.

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, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Nicholas B. Nikas of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of David A. Skarosi as Federal Coordinating Officer for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 95–6763 Filed 3–17–95; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–011375–016.

Title: Trans-Atlantic Conference Agreement.

Parties:

Atlantic Container Line AB
Cho Yang Shipping Co. Ltd.
Sea-Land Service, Inc.
A.P. Moller-Maersk Line
Nedlloyd Lijnen BV
Hapag Lloyd AG
Mediterranean Shipping Company, S.A.
DSR-Senator Lines
Polish Ocean Lines
Orient Overseas Container Line (UK) Ltd.
Transportacion Maritima Mexicana, S.A. de C.V.
Neptune Orient Lines Ltd.
P&O Containers Limited
Nippon Yusen Kaisha
Tecomar S.A. de C.V.
Hanjin Shipping Co., Ltd.

Synopsis: The proposed amendment adds a new Article 14.4—Independent Action, which provides for individual service contracts to commence no sooner than January 1, 1996, and terminate on or before December 31, 1996, except under specified circumstances. This provision complies with the Commission's Order Conditionally Approving Settlement (dated March 2, 1995) in Fact Finding Investigation No. 21 and Dockets 94–29 and 94–30.

Agreement No.: 232–011491.

Title: Lykes/Evergreen Reciprocal Space Charter, Sailing and Cooperative Working Agreement.

Parties:

Lykes Bros. Steamship Co., Inc.
Evergreen Marine Corp. (Taiwan) Ltd.

Synopsis: The proposed Agreement authorizes the parties to charter space on each others vessels and rationalize sailings in the trade between U.S. Atlantic, Gulf and Pacific Coast ports and points on the one hand, and on the other hand, all ports in the United Kingdom and the Republic of Ireland, all ports in Denmark, Finland, Norway, Sweden and Poland, and all Baltic ports in the former Soviet Union and all ports in Continental Europe from Germany to and including Portugal, Atlantic Coast of Spain, and all inland and coastal points via such ports.

By Order of the Federal Maritime Commission.

Dated: March 15, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 95–6814 Filed 3–17–95; 8:45 am]

BILLING CODE 6730–01–M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 10573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.602 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–200852–001.

Title: Port of New Orleans/International Shipholding Corporation.

Filing Agent: Mr. Joseph W. Fritz, Jr., Staff Attorney, Port of New Orleans, P.O. Box 60046, New Orleans, Louisiana 70160.

Parties: Port of New Orleans/International Shipholding Corporation.

Synopsis: The proposed amendment extends the terms of the Agreement for another year.

Agreement No.: 224–200924.

Title: Port of Houston Authority/James J. Flanagan Stevedores Terminal Agreement.

Parties: Port of Houston Authority (''Port'')/James J. Flanagan Stevedores (''JJFS'').

Filing Agent: Martha T. Williams, Esquire, Port of Houston Authority, P.O. Box 2562, Houston, TX 77252–2562.

Synopsis: The proposed Agreement authorizes JJFS to perform stevedoring services at the Port's Transit Sheds Numbers 21–23. The term of the Agreement expires June 30, 1995.

Dated: March 15, 1995.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–6815 Filed 3–17–95; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Apollo Stevendoring Company, Inc., dba Jason Shipping Company, 13251 Eastern Ave., Palmetto, FL 34221, Officers: Edward E. Sheffield, President; Joan E. Sheffield, Secretary

Alfa Cargo Forwarders Corp., 500 Bayview Drive, #1027, North Miami, FL 33160, Officers: Carlos A. Cavanzo, President; Santiago Hermida, Vice President

Red Hot Transportation, 581 Maple Avenue, San Bruno, CA 94066, Officers: Greg Lowery, Partner; Gina Fregosi, Partner

Amerasa Rapid Transit USA Inc., 1440 Broadway, Suite 606, Oakland, CA 94612, Officers: Richard J. Eber, President; Li Bin, Stockholder.

Dated: March 14, 1995.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95–6704 Filed 3–17–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Barnett Banks, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 3, 1995.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Barnett Banks, Inc., Jacksonville, Florida; to engage *de novo* through its subsidiary Barnett Dealer Financial Services, Inc., Jacksonville, Florida, in consumer finance activities and credit card activities, pursuant to § 225.25(b)(1)(i) and (ii) of the Board's Regulation Y, and in leasing personal or real property, pursuant to § 225.25(b)(5)(i) and (ii) of the Board's Regulation Y. The proposed activity will be conducted throughout the United States.

Board of Governors of the Federal Reserve System, March 14, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–6787 Filed 3–17–95; 8:45 am]

BILLING CODE 6210–01–F

Capital Bancorporation, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 3, 1995.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Capital Bancorporation, Inc., Cape Girardeau, Missouri; to acquire Home Federal Savings and Loan Association, Jonesboro, Arkansas, and thereby engage in operating a savings association, whose activities include taking deposits and lending funds for residential, commercial, and consumer purposes, pursuant to § 225.23(b)(9) of the Board's Regulation Y, and in the sale of credit-related insurance products, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 14, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–6788 Filed 3–17–95; 8:45 am]

BILLING CODE 6210–01–F

Louis G. Titus Revocable Trust, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 3, 1995.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Louis G. Titus Revocable Trust and Paula E. Titus and Liscomb J. Titus voting trust, all of Lincoln, Nebraska; all to retain a total of 51.17 percent of the voting shares of LJT, Inc., Holdredge, Nebraska, and thereby indirectly acquire The First National Bank of Holdredge, Holdredge, Nebraska.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Glenn Fred Bergau, Usk, Washington; to acquire an additional

.996 percent, for a total of 10.49 percent, of the voting shares of Pend Oreille Bancorp, Newport, Washington, and thereby indirectly acquire Pend Oreille Bank, Newport, Washington.

Board of Governors of the Federal Reserve System, March 14, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–6790 Filed 3–17–95; 8:45 am]

BILLING CODE 6210–01–F

North Fork Bancorporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 13, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. North Fork Bancorporation, Mattituck, New York; to acquire 100 percent of the voting shares of Great Neck Bancorp, Great Neck, New York, and thereby indirectly acquire Bank of Great Neck, Great Neck, New York.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. 1st Jackson Bancshares, Inc., Stevenson, Alabama; to become a bank holding company by acquiring 80 percent of the voting shares of The North Jackson Bank, Inc., Stevenson, Alabama.

2. SouthTrust Corporation, Birmingham, Alabama, and SouthTrust of Florida, Jacksonville, Florida; to merge with FBC Holding Company, Inc., Crestview, Florida, and thereby indirectly acquire First Bank of Crestview, Crestview, Florida.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Watford City Bancshares, Inc., Watford City, North Dakota; to acquire 100 percent of the voting shares of First International Bank & Trust, Scottsdale, Arizona, a *de novo* bank.

2. Windsor Bancshares, Inc., Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Bank Windsor II, Chisholm, Minnesota, a *de novo* bank.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Ameribank, Corporation, Inc.; Shawnee, Oklahoma; to acquire 100 percent of the voting shares of United Oklahoma Bankshares, Inc., Del City, Oklahoma, and thereby indirectly acquire United Bank, Del City, Oklahoma.

2. First Mountain Company, Montrose, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of First Mountain State Bank, Montrose, Colorado.

E. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. First Bancorp, Inc., Denton, Texas; to acquire 100 percent of the voting shares of First Colony Bank, The Colony, Texas.

2. First Delaware Bancorp, Inc., Wilmington, Delaware; to acquire 100 percent of the voting shares of First Colony Bank, The Colony, Texas.

3. Texas Financial Bancorporation, Inc., Minneapolis, Minnesota; to acquire 100 percent of the voting shares of First Bank, Houston, Texas

4. Texas Financial Bancorporation, Inc., Minneapolis, Minnesota; to acquire 100 percent of the voting shares of First Colony Bank, The Colony, Texas.

Board of Governors of the Federal Reserve System, March 14, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–6789 Filed 3–17–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 02/27/95 AND 03/10/95

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Glenayre Technologies, Inc., Western Multiplex Corporation, Western Multiplex Corporation	95–0972	02/27/95
Jerry Zucker, Johnson & Johnson, Johnson & Johnson	95–0992	02/27/95
Telephone and Data Systems, Inc. Voting Trust, Barbara Magin, P.C. Cellular of Kentucky, L.P.	95–0999	02/27/95
David and Sonia Salzman, Keith Rupert Murdoch, FTS Atlanta, Inc	95–1030	02/27/95
Quincy D. Jones, Keith Rupert Murdoch, FTS Atlanta, Inc	95–1031	02/27/95
General American Life Insurance Company, Xerox Corporation, Xerox Financial Services Life Insurance Company	95–1034	02/27/95

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 02/27/95 AND 03/10/95—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
York International Corporation, Donald H. Gales, Evcon Holdings, Inc	95–1043	02/27/95
Roadmaster Industries, Inc., Morris Z. Hocherman, MZH, Incorporated & MZH Contracting Corp	95–1058	02/27/95
General Electric Company, ITT Corporation, ITT Commercial Finance Corporation	95–1062	02/27/95
Exor Group S.A., Xerox Corporation, Constitution Re Corporation	95–1065	02/27/95
K–III Communications Corporation, Bacon's Information Inc., Bacon's Information Inc	95–1068	02/27/95
Tyco International Ltd., Tectron Holding Corporation, Tectron Holding Corporation	95–1074	02/27/95
Winn-Dixie Stores, Inc., Richard E. Linder, Thriftway, Inc	95–1081	02/27/95
Von Roll AG, Gary C. Bivona, Insulating Materials, Inc. & IMI Real Estate Corp	95–1084	02/27/95
Sonoco Products Company, Hargro Enterprises, Inc., Hargro Flexible Packaging Corp	95–0877	02/28/95
Robert H. Chapman, Figgie International Inc., Figgie International Inc	95–0959	02/28/95
Laidlaw Inc., William I. Goodhew Family Trust, Goodhew Ambulance Service, Inc	95–0971	02/28/95
Superior Gen. & Councilors/Franciscan Sisters of Mary, Daughters of Charity National Health System, Inc., DePaul Health Center	95–0981	02/28/95
Columbia/HCA Healthcare Corporation, University Healthcare System, L.C., University Healthcare System, L.C	95–1002	02/28/95
The Administrators of the Tulane Educational Fund, University Healthcare System, L.C., University Healthcare System, L.C.	95–1006	02/28/95
TheraTx, Incorporated, Southern Management of Pompano Beach, Inc., Southern Management of Pompano Beach, Inc	95–1041	02/28/95
TheraTx, Incorporated, David M. Veltman, Highland Pines Nursing Manor, Inc., and Abbey Land	95–1042	02/28/95
Interamericas Investments, Ltd., Medallion Mortgage Company, Medallion Mortgage Company	95–1047	02/28/95
Adwest Group PLC, E. Christopher Benzing, Triple A Tube, Inc	95–1079	02/28/95
Health Management Associates, Inc., The Cape Coral Medical Center, The Cape Coral Medical Center, Inc	95–1111	02/28/95
Dr. Michael Otto, Sears, Roebuck and Co., Sears Logistics Services, Inc	95–1088	03/01/95
Warrick Industries, Inc., Harsco Corporation, BMY-Wayne Wheeled Vehicles Division	95–0998	03/02/95
PacifiCare Health Systems, Inc., Central Valley Health Plan, Inc., Central Valley Health Plan, Inc., dba ValueCare	95–1051	03/02/95
J.G. Boswell Company, Fred Salyer, Salyer Land Company	95–1069	03/02/95
Honeywell, Inc., DMC Services, Inc., DMC Service, Inc	95–1070	03/02/95
Alfonso Romo Garza, Geo. J. Ball, Inc., Geo. J. Ball, Inc.	95–1087	03/02/95
Schein Holdings, Inc., Ethical Holdings plc, Ethical Holdings plc	95–1013	03/03/95
Beverly Enterprises, Inc., Health Care Property Investors, Inc., Health Care Property Investors, Inc	95–1036	03/03/95
Deloitte & Touche LLP, International Consulting Solutions, Inc., International Consulting Solutions, Inc	95–1039	03/03/95
Maysayoshi Son, Sheldon G. Adelson, Interface Group-Nevada, Inc. and Interface Group	95–1046	03/03/95
Pennzoil Company, California Lubricants Limited Partnership, California Lubricants Limited Partnership	95–1061	03/03/95
Optical Coating Laboratory, Inc., Imperial Chemical Industries PLC, Flex Products, Inc.	95–1090	03/03/95
James R. Shaw, Sr., International Cablecasting Technologies Inc., International Cablecasting Technologies Inc.	95–1096	03/03/95
Loews Corporation, AmeriChoice Corporation, AmeriChoice Corporation	95–1099	03/03/95
The SK Equity Fund, L.P., Raymond Barshick, Souper Salad, Inc	95–1103	03/03/95
U.S. Foodservice, Inc., Harvey Frank, City Provisioners, Inc.	95–1105	03/03/95
Siebe plc, Thomas J. Manning, Fabex, Inc	95–1108	03/03/95
Lincoln National Corporation, Riverplace Investments (Curacao), C.V., Riverplace Investments, Ltd	95–1109	03/03/95
Berwind Group Partners, Elastochem, Inc., Elastochem, Inc	95–1110	03/03/95
Howard M. Meyers, Morgan Stanley Leveraged Equity Fund II, L.P., Tennessee Valley Steel Corporation, Debtor-in-Possession	95–1112	03/03/95
NEXTEL Communications, Inc., Tele-Communications, Inc., American Mobil Systems Incorporated	95–1118	03/03/95
James C. Henry, Atlantic Richfield Company, Atlantic Richfield Company	95–1123	03/03/95
NEXTEL Communications, Inc., Dial Page, Inc., Dial Page, Inc	95–1134	03/03/95
Maxus Energy Corporation, Pennzoil Company, Pennzoil Exploration and Production Company	95–1054	03/07/95
Group Financial Partners, Inc., Smartflex Systems, Inc., Smartflex Systems, Inc	95–1072	03/07/95
KeyCorp, Spears, Benzak, Salomon & Farrell, Inc., Spears, Benzak, Salomon & Farrell, Inc	95–1093	03/07/95
Jairo A. Estrada, StairMaster Sports/Medical Products, Inc., StairMaster Sports/Medical Products, Inc	95–1098	03/07/95
SCI Systems, Inc., Digital Equipment Corporation, Digital Equipment Corporation	95–1106	03/07/95
Internationale Nederlanden Groep N.V. (a Dutch company), Barings PLC (a British company), Baring Securities (International) Holdings Limited	95–1200	03/07/95
Internationale Nederlanden Groep N.V. (a Dutch company), Dillon, Read Holding Inc., Dillon, Read Holding Inc.	95–1203	03/07/95
New Valley Corporation, Empresa Brasileira de Aeronautica S.A., Scorpio Acquisition Company, Ltd	95–1059	03/08/95
Bedford Capital Financial Corp., Elf Acquitaine (a French company), Sanofi Beaute, Inc	95–1073	03/08/95
BanPonce Corporation, CGC Holding Company, Home Mortgage Company	95–1050	03/09/95
GSS Acquisition Limited Partnership, Brenlin Corporation, Gulf States Steel, Inc. of Alabama	95–1077	03/09/95
GSS Acquisition Limited Partnership, DSC Equipment Associates, Ltd., DSC Equipment Associates, Inc	95–1078	03/09/95
Berkshire Hathaway Inc., American Express Company, American Express Company	95–1101	03/09/95
Kenetech Corporation, Midwest Resources, Inc., Century Contractors West Inc	95–1102	03/09/95
NationsBank Corporation, KeyCorp, KeyCorp Mortgage Inc.	95–1115	03/09/95
Citicasters Inc., Jeffrey E. Trumper, Trumper Communications of Portland L.P	95–1129	03/09/95
Steven C. Stomel, H. Ross Arnold, III, NCC, L.P.	95–1157	03/10/95

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–6752 Filed 3–17–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95N–0069]

Drug Export; Pepcid AC (Famotidine 10 Milligram (mg)) Compressed Chewable Tablets (CCT)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Merck & Co. has filed an application requesting conditional approval for the export of the human drug Pepcid AC (Famotidine 10 mg) Compressed Chewable Tablets (CCT) to Canada.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton (HFD–310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2073.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Merck & Co., BLA–30, West Point, PA 19486, has filed an application requesting conditional approval for the export of the human drug Pepcid AC (Famotidine 10 mg) Compressed Chewable Tablets (CCT) to Canada. This product is indicated for the treatment and prevention of heartburn. The firm does have new drug application approval for various other dosage forms and strengths of Pepcid. The application was received and filed in the Center for Drug Evaluation and Research on February 17, 1995, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by March 30, 1995, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: March 8, 1995.

Betty L. Jones,

Acting Deputy Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 95–6727 Filed 3-17–95; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Maternal and Child Health Services; Federal Set-Aside Program; Genetic Services and Maternal and Child Improvement Projects for Fiscal Year (FY) 1995: Cancellation of Cycle for Certain Grants and Cooperative Agreements; Extension of Certain Application Deadline Dates

Notice of Availability of Funds for Special Project Grants and Cooperative Agreements; Maternal and Child Health Services; Federal Set-Aside Program; Genetic Services and Maternal and Child Improvement Projects for fiscal year (FY) 1995, section 502(a), title V of the Social Security Act, was published on February 13, 1995, at 60 FR 8244. Section 4.1.2.1. of this notice announced the availability of funds for 2 grants in the Maternal, Infant, Child and Adolescent Health category priority identified as ''Content and Organization of Care for Women of Childbearing Age, Infants, Children, Adolescents, and their Families.'' Section 4.2.3. of the notice announced the availability of funds for up to four cooperative agreements in the Childhood Injury Prevention category.

Since publication of this notice, it has been determined that amounts allocated for grants under Section 4.1.2.1. are insufficient to permit a competitive grant cycle in the ''Content and Organization of Care'' priority for FY 1995. As a result, this competition is herewith canceled. Additionally, the Department has decided that it prefers to implement contracts rather than award cooperative agreements in order to acquire the work it wishes to have accomplished by the centers described in the Section 4.2.3. Childhood Injury Prevention category. This competition is also herewith canceled. It is anticipated that contracts for this purpose will be awarded during the second quarter of FY 1996; a request for proposals will be advertised at the appropriate time. To ensure continuity in this activity until then, the cooperative agreements with existing Childhood Injury Prevention centers will be extended for six months, through February 1996.

Two of the deadline dates announced in the February 13, Notice of Availability of Funds for Special Project Grants and Cooperative Agreements; Maternal and Child Health Services; Federal Set-Aside Program; Genetic Services and Maternal and Child Improvement Projects for fiscal year (FY) 1995, are being extended. The deadline date for the remaining grants announced under Section 1.2.1. is hereby extended to May 10, 1995. In

addition, the deadline date for cooperative agreements for Out-of-Home Child Care Health and Safety announced under Section 2.2.4. is hereby extended to June 9, 1995.

The rest of the notice remains as published.

Dated: March 14, 1995.

Ciro V. Sumaya,

Administrator.

[FR Doc. 95–6729 Filed 3–17–95; 8:45 am]

BILLING CODE 4160–15–P

Office of Inspector General

Program Exclusions: February 1995

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of February 1995, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all other Federal non-procurement programs.

Subject, city, state	Effective date
Program-Related Convictions:	
Ahmad, Malak I, Old Brookville, NY	02/22/95
Battle, Arnita Shawn, Dillard, GA	02/22/95
Bowers, Kenneth, Oxnard, CA	03/16/95
Bronfman, Jerard, Pleasantville, NY	03/16/95
Bronstein, Robert, Williamsville, NY	03/16/95
Cabuntala, Amado, West Covina, CA	02/23/95
Castillo, Daniel Love, Palm Springs, CA	03/16/95
Deane, Gardner, Valdosta, GA	02/22/95
Deuink, Brent L, Clymer, NY	03/16/95
Diamond, David L, Johnstown, PA	03/16/95
Hartley, Wanda, Ripley, WV	03/16/95
Levan, Mike, Spring Valley, IL	02/22/95
Liberman, Alberto J, Portland, TX	03/16/95
Lowe, Thomas F, Long Beach, CA	03/16/95
Mathis, Ina A, Freeport, NY	03/16/95
Mestre, Carolina M, Hercules, CA	02/23/95
Mumia, Fred, Long Beach, CA	03/16/95
Neff, Reana Lynn, Platteville, CO	03/16/95
Nelson, Ronald Gene, Phoenix, AZ	03/16/95
Nurture Home Care Services, Roosevelt, NY	03/16/95
Olive, Jesus, Miami, FL	02/22/95
Oliver, Beverly, Moreno Valley, CA	02/23/95
Sobotka, Joseph J, Phoenix, AZ	03/16/95
Tan, Consuelo G, Vallejo, CA	02/23/95
Zhitlovsky, Gherman, Kansas City, MO	03/16/95
Patient abuse/neglect convictions:	
Corpening, Sandra F, Buffalo, NY	03/16/95
Maurice, Marie C, Brockton, MA	03/16/95
McDonald, Sharon A, Clarksdale, MS	02/22/95
Palmer, Linda Lea, Goodyear, AZ	03/16/95
Perry, Tequinnie Z, Memphis, TN	02/22/95
Trombley, Stephen P, Hancock, VT	02/22/95
Conviction for health care fraud:	
Bowlan, Timothy Mark, Oklahoma City, OK	02/22/95
Franks, Darrell D, Louisville, KY	02/22/95
Controlled substance convictions:	
Larson, Mark A, Yankton, SD	02/22/95
Mathews, Louis D, Rialto, CA	02/23/95
Molotkiewicz, Andrzej J, Charleroi, PA	03/16/95
Wright, William Jr, Chesapeake, VA	02/22/95
License revocation/suspension/surrender:	
Blazys, Lorie A, Brockton, MA	02/22/95
Bogart, Janet A, Norman, OK	03/16/95
Demetrios, Abbas Halim, Cumming, GA	02/22/95
Duncan, Peter David, Fayetteville, AR	03/16/95
Dunkin, Donald E, Brighton, CO	02/22/95
Harkness, Donna B, Hingham, MA	02/22/95
Harvey, Richard L, Aurora, CO	03/16/95
Hunter, Mary C, Sasakwa, OK	03/16/95
Jayme, Linda, Wethersfield, CT	02/22/95
Lauchu, Carlos, Saginaw, MI	03/16/95
Majors, Irving R, Troup, TX	03/16/95
Molstad, Brian, Minneapolis, MN	03/16/95
Neeld, Elise, Nevis, MN	03/16/95
Ochsner, Edward William, Metairie, LA	03/16/95
Polk, Kathey A, Nacogdoches, TX	03/16/95

Subject, city, state	Effective date
Quinton, Betty Jo, Sand Springs, OK	03/16/95
Settli, Peter, Milbank, SD	03/16/95
Sullivan, Joelle L, Canton, MI	03/16/95
Thrash, Susan L, Wyoming, IN	02/22/95
Turner, Craig S, New Orleans, LA	03/16/95
Webster-Fee, Pamela, San Francisco, CA	03/16/95
Wood, Theodore H, Fort Stanton, NM	02/22/95
Federal/state exclusion/suspension:	
Feinstein, David S, White Plains, NY	03/16/95
Paul, Fitzpatrick, Brooklyn, NY	03/16/95
Scotti, Louis, Nesconset, NY	03/16/95
St Louis, Parnell, Bronx, NY	03/16/95
Owned/controlled by convicted/excluded:	
Southern Psychotheraphy Assoc, Valdosta, GA	02/22/95
Default on heal loan:	
Arnett, Shannon L, Kendallsville, IN	02/22/95
Benjamin, James Jr, Presque Isle, ME	02/22/95
Cappa, Claude Lorenzo, Modesto, CA	03/16/95
Cunningham, Marvin Dan, Colorado Springs, CO	03/16/95
Cyrus, Pamela A, Arlington, MA	02/22/95
Dejesus, Iris M, Miami, FL	03/16/95
Erickson, Brock Tyrone, Delray Beach, FL	03/16/95
Espinosa, Sylvia Leos, Colorado Springs, CO	03/16/95
Faison, Willi R, Louisville, KY	03/16/95
Frier, James W, Jackson, CA	03/16/95
Gelwan, Eliot M, Brookline, MA	03/16/95
Gilroy, Anne F, Ardmore, PA	03/16/95
Hansen, Timothy J, Pewaukee, WI	02/22/95
Hill, David L, San Jose, CA	03/16/95
Hinds, Thomas E, Springfield, IL	03/16/95
Hopstock, Richard M, La Puente, CA	02/23/95
Kowalski, Brian A, Newport Beach, CA	03/16/95
Kullrich, Regan T, Oakhurst, CA	03/16/95
Lawson, Mary Elene, Grand Marais, MN	02/22/95
Lindley, Frank A, Philadelphia, PA	03/16/95
Lloyd, Antoinette L, Orange Park, FL	03/16/95
Mayernik, Curtis V, Belle Vernon, PA	03/16/95
McClure, Brian C, Jupiter, FL	03/16/95
McLaughlin, Harry L, San Diego, CA	02/23/95
Memmott, Dana B, Signal Hill, CA	02/23/95
Miller, Jay P, Arlington, VA	03/16/95
Petersen, Kirk J, Long Beach, CA	03/16/95
Pierce, Douglas E, Grand Rapids, MI	03/16/95
Pittman, Kenneth M, Fort Lauderdale, FL	03/16/95
Refkin, Joseph P, Indianapolis, IN	02/22/95
Reynolds, Howard P, New York, NY	03/16/95
Richland, Warren A, Brooklyn, NY	03/16/95
Rieck, Paul G, Olathe, KS	03/16/95
Rogers, James J, Poplar Bluff, MO	03/16/95
Schamel, Lisa E, San Jose, CA	03/16/95
Slack, Craig A, Columbus, OH	02/22/95
Smith, Daniel J, Washington, DC	03/16/95
Stalker, James W, Dublin, CA	03/16/95
Stanford, Jeanne A, Santa Monica, CA	02/23/95
Thompson, Jerrold Allen, Lakewood, CO	03/16/95
Towers, Timothy J, St Louis, MO	03/16/95
Wagner, John P, Newton, KS	03/16/95
Wedemeyer, Ronald A, Bakersfield, CA	03/16/95
Wheeler, Randy R, Haysville, KS	03/16/95
Wright, Victor J, Sun City, FL	03/16/95
Zawada, Stanley John, Whitestone, NY	02/22/95
Section 1128Aa:	
Mohr, Carolyn S, Inglewood, CA	02/23/95
Payne, Brownell H, Culver City, CA	02/23/95
Peer review organization cases:	
Hanham, William J, Troy, NC	02/23/95
Holt, Dean, Logan, UT	03/16/95

Dated: March 7, 1995.

William M. Libercci,

Director, Health Care Administrative Sanctions, Office of Civil Fraud and Administrative Adjudication.

[FR Doc. 95–6741 Filed 3–17–95; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the General Counsel

[Docket No. N–95–3347; FR–3064–N–02]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for expedited review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within five (5) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Department is requesting that OMB complete its review within five working days from the date of this Notice.

This Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 13, 1995.

Nelson A. Diaz,

General Counsel.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Applicant/Recipient Disclosure/Update Form (HUD–2880) Reinstatement

Office: Office of the General Counsel

Description of the Need for the Information and Its Proposed Use: Section 102 of the HUD Reform Act of 1989 requires that persons or entities applying for or updating an application for certain HUD assistance disclose information regarding interested parties and other financial assistance received and the sources and uses of that assistance. The information is made available for public scrutiny, and it is used by the Department to determine if subsidy layering is occurring.

Form Number: HUD–2880

Respondents: Applicants or recipients of certain competitive HUD assistance.

Reporting burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden Hours
HUD–2880	13,520		1.25		2.2		37,100

Total Estimated Burden Hours: 37,100

Status: Expired December 31, 1995.

Contact: Aaron Santa Anna, HUD (202) 708–3815; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: March 13, 1995.

Supporting Statement—1989 HUD Reform Act, Section 102—Accountability

A. Justification

1. Explain the Circumstances That Make the Collection of Information Necessary

Section 102 of the HUD Reform Act of 1989 requires the Department to ensure greater accountability and integrity in the provision of certain types of assistance administered by the Department. One feature of the statute requires certain disclosures by applicants seeking assistance from HUD, and from States and units of local government, of other assistance to be used with respect to the activities to be carried out with the assistance. The disclosure includes the financial interests of persons in the activities, and the sources of funds to be made available for the activities and the use to which the funds are to be put.

Each applicant who submits an application for assistance within the jurisdiction of the Department to HUD, or to a State or to a unit of general local government, for a specific project or activity must disclose this information whenever the dollar threshold is met. This information must be kept updated during the application review process and while the assistance is being provided.

2. Indicate How, by Whom, and for What Purpose the Information Is To Be Used and the Consequence to Federal Program or Policy Activities If the Collection of Information Was not Conducted

This legislation was developed to ensure greater accountability and integrity in the provision of certain types of assistance administered by the Department. The Department is required to publish in the **Federal Register** the availability of assistance, application requirements and procedures, the selection criteria to be used, and the resulting funding decisions. HUD must also provide for public inspection of all documentation and other information which indicate the basis for either providing or denying the assistance being requested.

Applicants for assistance are required to disclose information concerning other

governmental assistance they have obtained or is pending for the same project, as well as information about the key individuals involved with the proposed project/activity. This information will assist the Department in having an accurate assessment of the extent of government funding for a project as well as information regarding the key personnel involved. The disclosure requirement would be the only way in which this information could be obtained.

3. Describe Any Consideration of the Use of Improved Information Technology to Reduce Burden and Any Technical or Legal Obstacles to Reducing Burden

It would be difficult to determine the extent to which applicants for HUD assistance have advanced information technology equipment on hand. Therefore, it would not be appropriate for the Department to mandate the use of a particular software. The form which has been designed to capture the required data however could easily be computer generated.

4. Describe Efforts to Identify Duplication

This reporting requirement is new to the Department. It is explicitly mandated by Section 102 of the Housing Reform Act of 1989, approved December 15, 1989. There is no duplication.

5. Show Specifically Why Any Similar Information Already Available Cannot Be Used or Modified for the Purpose Described in 2.

The information that is being required for disclosure has not been previously requested.

6. If the Collection of Information Involves Small Businesses or Other Small Entities, Describe the Methods Used to Minimize Burden

An applicant for assistance within the jurisdiction of the Department will not be required to make the disclosures if they will not receive an aggregate amount of all forms of such assistance in excess of $200,000 during the fiscal year in which the application is submitted. Setting the threshold at this level should exclude most small entities from the reporting requirement.

7. Describe the Consequences to Federal Program or Policy Activities If the Collection Were Conducted Less Frequently

This requirement is part of the assistance application process. As such, it is not a periodic report, but instead should be viewed as a one-time requirement. It is intended to provide information necessary to the review process.

8. Explain Any Special Circumstances That Require the Collection To Be Conducted in a Manner Inconsistent With the Guidelines in 5 CFR 1320.6

None.

9. Describe Efforts to Consult With Persons Outside the Agency to Obtain Their Views on the Availability of Data

The Department published a proposed rule to implement Section 102 on June 19, 1995 (55 FR 25036). Comments on the proposed rule were received and considered.

10. Describe Any Assurance of Confidentiality Provided to Respondents and the Basis for the Assurance in Statute, Regulation, or Agency Policy

None. There is no purpose for confidentiality since the legislation includes specific requirements for the government to make all information regarding applications for HUD assistance available for public inspection.

11. Provide Additional Justification for Any Questions of a Sensitive Nature

Questions involving financial interest are statutorily mandated.

12. Provide Estimates of Annualized Cost to the Federal Government and to the Respondents

Federal Government

The cost to the government can be broken down as follows:

No. of reviews of disclosed information 16,900
No. hours to complete a review ..... .45
Cost for total no. reviews:
(@$30.hr.).....$228,000

Respondent

The cost to respondents to disclose the data HUD is requiring is estimated at $557,700. This number is for the total number of applicants meeting the $200,00 threshold and is based on the following assumptions:

Current hourly wage is estimated at $15 per hour. Each applicant must disclose three ypes of information: a listing of other government assistance that is expected to be made available for the project, a listing of all interested parties including any developers, contractors, and consultants, and a report of all sources and uses of funds. The time required to prepare this information is estimated at 2.2 hours per initial submission.

No. of disclosures (including updates)	Hours	Rate	Total
16,900	2.2	$15	$557,700

13. Provide estimates of the Burden of Collection of Information

This is a new requirement. The following matrix provides an estimate of the burden on respondents meeting the threshold necessitated by the disclosure report.

	Number of responses	Frequency	Hours	Burden
Initial Applications	13,500	1	2.5	33,700
Updates	3,400	1	1	3,400
Total Estimated Burden Hours: 37,100				

14. Explain reasons for changes in burden, including the need for any increases.

Not Applicable.

15. Collection of information to be used for statistical use.

Not applicable.

BILLING CODE: 4210–01–M

Applicant/Recipient Disclosure/Update Report

U.S. Department of Housing and Urban Development
Office of Ethics

OMB Approval No. 2535-0101 (exp. 12/31/94)

Instructions. (See Public Reporting Statement and Privacy Act Statement and detailed instructions on page 4.)

Part I Applicant/Recipient Information

Indicate whether this is an Initial Report ☐ **or an Update Report** ☐

1. Applicant/Recipient Name, Address, and Phone (include area code)	Social Security Number or Employer ID Number

2. Project Assisted/ to be Assisted (Project/Activity name and/or number and its location by Street address, City, and State)

3. Assistance Requested/Received	4. HUD Program	5. Amount Requested/Received $

Part II. Threshold Determinations – Applicants Only

1. Are you requesting HUD assistance for a specific project or activity, as provided by 24 CFR Part 12, Subpart C, and have you received, or can you reasonably expect to receive, an aggregate amount of all forms of covered assistance from HUD, States, and units of general local government, in excess of $200,000 during the Federal fiscal year (October 1 through September 30) in which the application is submitted? ☐ Yes ☐ No

   If Yes, you must complete the remainder of this report.

   If No, you must sign the certification below and answer the next question.

   I hereby certify that this information is true. (Signature) _____ Date _____

2. Is this application for a specific housing project that involves other government assistance? ☐ Yes ☐ No

   If Yes, you must complete the remainder of this report.

   If No, you must sigh this certification.

   I hereby certify that this information is true. (Signature) _____ Date _____

If your answers to both questions are No, you do not need to complete Parts III, IV, or V, but you must sign the certification at the end of the report.

Part III. Other Government Assistance Provided/Requested

Department/State/Local Agency Name and Address	Program	Type of Assistance	Amount Requested/Provided

Is there other government assistance that is reportable in this Part and in Part V, but that is reported only in Part V? ☐ Yes ☐ No

If there is no other government assistance, you must certify that this information is true.

I hereby certify that this information is true. (Signature) _____ Date _____

Part IV. Interested Parties

Alphabetical list of all persons with a reportable financial interest in the project or activity (for individuals, give the last name first)	Social Security Number or Employee ID Number	Type of Participation in Project/Activity	Financial Interest in Project/Activity ($ and %)

If there are no persons with a reportable financial interest, you must certify that this information is true.

I hereby certify that this information is true. (Signature) _____ Date _____

Part V. Report on Expected Sources and Uses of Funds

Source

If there are no sources of funds, you must certify that this information is true.

I hereby certify that this information is true. (Signature) _____ Date _____

Use

If there are no uses of funds, you must certify that this information is true.

I hereby certify that this information is true. (Signature) _____ Date _____

Certification

Warning: If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosure of information, including intentional non-disclosure, is subject to civil money penalty not to exceed $10,000 for each violation.

I certify that this information is true and complete.

Signature	Date

BILLING CODE: 4210–01–C

Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410–3600 and to the Office of Management and Budget, Paperwork Reduction Project (2535–0101), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

Privacy Act Statement. Except for Social Security Numbers (SSNs) and Employer Identification Numbers (EINs), the Department of Housing and Urban Development (HUD) is authorized to collect all the information required by this form under section 102 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3531. Disclosure of SSNs and EINs is optional. The SSN or EIN is used as a unique identifier. The information you provide will enable HUD to carry out its responsibilities under Sections 102(b), (c), and (d) of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101–235, approved December 15, 1989. These provisions will help ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. They will also help ensure that HUD assistance for a specific housing project under Section 102(d) is not more than is necessary to make the project feasible after taking account of other government assistance. HUD will make available to the public all applicant disclosure reports for five years in the case of applications for competitive assistance, and for generally three years in the case of other applications. Update reports will be made available along with the disclosure reports, but in no case for a period generally less than three years. All reports, both initial reports and update reports, will be made available in accordance with the Freedom of Information Act (5 U.S.C. § 552) and HUD's implementing regulations at 24 CFR Part 15. HUD will use the information in evaluating individual assistance applications and in performing internal administrative analyses to assist in the management of specific HUD programs. The information will also be used in making the determination under Section 102(d) whether HUD assistance for a specific housing project is more than is necessary to make the project feasible after taking account of other government assistance. You must provide all the required information. Failure to provide any required information may delay the processing of your application, and may result in sanctions and penalties, including imposition of the administrative and civil money penalties specified under 24 CFR § 12.34.

Note: This form only covers assistance made available by the Department. States and units of general local government that carry out responsibilities under Sections 102(b) and (c) of the Reform Act must develop their own procedures for complying with the Act.

Instructions (See Note 1 on last page.)

I. Overview. Subpart C of 24 CFR Part 12 provides for (1) initial reports from applicants for HUD assistance and (2) update reports from recipients to HUD assistance. An overview of these requirements follows.

A. Applicant disclosure (initial) reports: General. All applicants for assistance from HUD for a specific project or activity must make a number of disclosures, if the applicant meets a dollar threshold for the receipt of covered assistance during the fiscal year in which the application is submitted. The applicant must also make the disclosures if it requests assistance from HUD for a specific housing project that involves assistance from other governmental sources.

Applicants subject to Subpart C must make the following disclosures:

Assistance from other government sources in connection with the project,

The financial interests of persons in the project,

The sources of funds to be made available for the project, and

The uses to which the funds are to be put.

B. Update reports: General. All recipients covered assistance must submit update reports to the Department to reflect substantial changes to the initial applicant disclosure reports.

C. Applicant disclosure reports: Specific guidance. The applicant must complete all parts of this disclosure form if either of the following two circumstances in paragraph 1. or 2., below, applies:

1.a. Nature of Assistance. The applicant submits an application for assistance for a specific project or activity (See Note 2) in which:

HUD makes assistance available to a recipient for a specific project or activity; or

HUD makes assistance available to an entity (other than a State or a unit of general local government), such as a public housing agency (PHA), for a specific project or activity, where the application is required by statute or regulation to be submitted to HUD for any purpose; and

b. Dollar Threshold. The applicant has received, or can reasonably expect to receive, an aggregate amount of all forms of assistance (See Note 3) from HUD, States, and units of general local government, in excess of $200,000 during the Federal fiscal year (October 1 through September 30) in which the application is submitted. (See Note 4)

2. The applicant submits an application for assistance for a specific housing project that involves other government assistance. (See Note 5) Note: There is no dollar threshold for this criterion: any other government assistance triggers the requirement. (See Note 6)

If the Application meets neither of these two criteria, the applicant need only complete Parts I and II of this report, as well as the certification at the end of the report. If the Application meets either of these criteria, the applicant must complete the entire report.

The applicant disclosure report must be submitted with the application for the assistance involved.

D. Update reports: Specific guidance. During the period in which an application for covered assistance is pending, or in which the assistance is being provided (as indicated in the relevant grant or other agreement), the applicant must make the following additional disclosures:

1. Any information that should have been disclosed in connection with the application, but that was omitted.

2. Any information that would have been subject to disclosure in connection with the application, but that arose at a later time, including information concerning an interested party that now meets the applicable disclosure threshold referred to in Part IV, below.

3. For changes in previously disclosed other government assistance:

For programs administered by the Assistant Secretary for Community Planning and Development, any change in other government assistance that exceeds the amount of such assistance that was previously disclosed by $250,000 or by 10 percent of the assistance (whichever is lower).

For all other programs, any change in other government assistance that exceeds the amount of such assistance that was previously disclosed.

4. For changes in previously disclosed financial interests, any change in the amount of the financial interest of a person that exceeds the amount of the previously disclosed interests by $50,000 or by 10 percent of such interests (whichever is lower).

5. For changes in previously disclosed sources or uses of funds:

a. For programs administered by the Assistant Secretary for Community Planning and Development:

Any change in a source of funds that exceeds the amount of all previously disclosed sources of funds by $250,000 or by 10 percent of those sources (whichever is lower); and

Any change in a use of funds under paragraph (b)(1)(iii) that exceeds the amount of all previously disclosed uses of funds by $250,000 or by 10 percent of those uses (whichever is lower).

b. For all programs, other than those administered by the Assistant Secretary for Community Planning and Development:

For projects receiving a tax credit under Federal, State, or local law, any change in a source of funds that was previously disclosed.

For all other projects, any change in a source of funds that exceeds the lower of:

The amount previously disclosed for that source of funds by $250,000, or by 10 percent of the amount previously disclosed for that source, whichever is lower; of

The amount previously disclosed for all sources of funds by $250,000, or by 10 percent of the amount previously disclosed for all sources of funds, whichever is lower.

c. For all programs, other than those administered by the Assistant Secretary for Community Planning and Development:

For projects receiving a tax credit under Federal, State, or local law, any change in a use of funds that was previously disclosed.

For all other projects, any change in a use of funds that exceeds the lower of:

The amount previously disclosed for that use of funds by $250,000, or by 10 percent of the amount previously disclosed for that use whichever is lower; or

The amount previously disclosed for all uses of funds by $250,000, or by 10 percent of the amount previously disclosed for all uses of funds, whichever is lower.

Note: Update reports must be submitted within 30 days of the change requiring the update. The requirement to provide update reports only applies if the application for the underlying assistance was submitted on or after the effective date of Subpart C.

II. Line-by-Line Instructions

A. Part I. Applicant/Recipient Information

All applicants for HUD assistance specified in Section I.C.1.a., above, as well as all recipients required to submit an update report under Section I.D., above, must complete the information required by Part I. The applicant/recipient must indicate whether the disclosure is an initial or an update report. Line-by-line guidance for Part I follows:

1. Enter the full name, address, city, State, zip code, and telephone number (including area code) of the applicant/recipient. Where the applicant/recipient is an individual, the last name, first name, and middle initial must be entered. Entry of the applicant/recipient's SSN or EIN, as appropriate, is optional.

2. Applicants enter the name and full address of the project or activity for which the HUD assistance is sought. Recipients enter the name and full address of the HUD-assisted project or activity to which the update report relates. The most appropriate government identifying number must be used (e.g., RFP No.; IFB No.; grant announcement No.; or contract, grant, or loan No.) Include prefixes.

3. Applicants describe the HUD assistance referred to in Section I.C.1.a. that is being requested. Recipients describe the HUD assistance to which the update report relates.

4. Applicants enter the HUD program name under which the assistance is being requested. Recipients enter the HUD program name under which the assistance, that relates to the update report, was provided.

5. Applicants enter the amount of HUD assistance that is being requested. Recipients enter the amount of HUD assistance that has been provided and to which the update report relates. The amounts are those stated in the application or award documentation. NOTE: In the case of assistance that is provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the amount of assistance to be reported includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.

Note: In the case of Mortgage Insurance under 24 CFR Subtitle B, Chapter II, the mortgagor is responsible for making the applicant disclosures, and the mortgagee is responsible for furnishing the mortgagor's disclosures to the Department. Update reports must be submitted directly to HUD by the mortgagor.

Note: In the case of the Project-Based Certificate program under 24 CFR Part 882, Subpart G, the owner is responsible for making the applicant disclosures, and the PHA is responsible for furnishing the owner's disclosures to HUD. Update reports must be submitted through the PHA by the owner.

B. Part II. Threshold Determinations—Applicants Only

Part II contains information to help the applicant determine whether the remainder of the form must be completed. Recipients filing Update Reports should not complete this Part.

1. The first question asks whether the applicant meets the Nature of Assistance and Dollar Threshold requirements set forth in Section I.C.1. above.

If the answer is Yes, the applicant must complete the remainder of the form. If the answer is No, the form asks the applicant to certify that its response is correct, and to complete the next question.

2. The second question asks whether the application is for a specific housing project that involves other government assistance, as described in Section I.C.2. above.

If the answer is Yes, the applicant must complete the remainder of the form. If the answer is No, the form asks the applicant to certify that its response is correct.

If the answer to both questions 1 and 2 is No, the applicant need not complete Parts III, IV, or V of the report, but must sign the certification at the end of the form.

C. Part III. Other Government Assistance

This Part is to be completed by both applicants filing applicant disclosure reports and recipients filing update reports. Applicants must report any other government assistance involved in the project or activity for which assistance is sought. Recipients must report any other government assistance involved in the project or activity, to the extent required under Section I.D.1.,2., or 3., above.

Other government assistance is defined in note 5 on the last page. For purposes of this definition, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there is reasonable grounds to anticipate that the assistance will be forthcoming.

Both applicant and recipient disclosures must include all other government assistance involved with the HUD assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

The following information must be provided:

1. Enter the name and address, city, State, and zip code of the government agency making the assistance available. Include at least one organizational level below the agency name. For example, U.S. Department of Transportation, U.S. Coast Guard; Department of Safety, Highway Patrol.

2. Enter the program name and any relevant identifying numbers, or other means of identification, for the other government assistance.

3. State the type of other government assistance (e.g., loan, grant, loan insurance).

4. Enter the dollar amount of the other government assistance that is, or is expected to be, made available with respect to the project or activities for which the HUD assistance is ought (applicants) or has been provided (recipients).

If the applicant has no other government assistance to disclose, it must certify that this assertion is correct.

To avoid duplication, if there is other government assistance under this Part and Part V, the applicant/recipient should check the appropriate box in this Part and list the information in Part V, clearly designating which sources are other government assistance.

D. Part IV. Interested Parties

This Part is to be completed by both applicants filling applicant disclosure reports and recipients filling update reports.

Applicants must provide information on:

(1) All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity; or

(2) Any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

Recipients must make the additional disclosures referred to in Section i.D.1., 2., or 4., above.

Note: A financial interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual entity has an equity interest in the project or activity, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activity, or receives compensation for any goods or services provided in connection with the project or activity. Residency of an individual in housing for which assistance is being sought is not, by itself, considered a covered financial interest.

The information required below must be provided.

1. Enter the full names and addresses of all persons referred to in paragraph (1) or (2) of this Part. If the person is an entity, the listing must include the full name of each officer, director, and principal stockholder of the entity. All names must be listed alphabetically, and the names of individuals must be shown with the last names first.

2. Entry of the Social Security Number (SSN) or Employee identification Number (EIN), as appropriate, for each person listed is optional.

3. Enter the type of participation in the project or activity for each person listed; i.e., the person's specific role in the project (e.g., contractor, consultant, planner, investor).

4. Enter the financial interest in the project or activity for each person listed. The interest

must be expressed both as a dollar amount and as a percentage of the amount of the HUD assistance involved.

If the applicant has no persons with financial interests to disclose, it must certify that this assertion is correct.

5. Part V. Report on Sources and Uses of Funds. This Part is to be completed by both applicants filling applicant disclosure reports and recipients filing update reports.

The applicant disclosure report must specify all expected sources of funds—both from HUD and from any other source—that have been, or are to be, made available for the project or activity. Non-HUD sources of funds typically include (but are not limited to) other government assistance referred to in Part III, equity, and amounts from foundations and private contributions. The report must also specify all expected uses to which funds are to be put. All sources and uses of funds must be listed, if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the source or use will be forthcoming.

Note that if any of the source/use information required by this report has been provided elsewhere in this application package, the applicant need not repeat the information, but need only refer to the form and location to incorporate it into this report. (It is likely that some of the information required by this report has been provided on SF 424A, and on various budget forms accompanying the application.) If this report requires information beyond that provided elsewhere in the application package, the applicant must include in this report all the additional information required.

Recipients must submit an update report for any change in previously disclosed sources and uses of funds as provided in Section I.D.5., above.

General Instructions—sources of funds.

Each reportable source of funds must indicate:

A. The name and address, city, State, and zip code of the individual or entity making the assistance available. At least one organizational level below the agency name should be included. For example, U.S. Department of Transportation, U.S. Coast Guard; Department of Safety, Highway Patrol.

b. The program name and any relevant identifying numbers, or other means of identification, for the assistance.

C. The type of assistance (e.g., loan, grant, loan insurance).

Specific instructions—sources of funds.

(1) For programs administered by the Assistant Secretaries for Fair Housing and Equal Opportunity and Policy Development and Research, each source of funds must indicate the total amount approved and received; and must be listed in descending order according to the amount indicated.

(2) For programs administered by the Assistant Secretaries for Housing—Federal Housing Commissioner, Community Planning and Development, and Public and Indian Housing, each source of funds must indicate the total amount of funds involved, and must be listed in descending order according to the amount indicated.

(3) If Tax Credits are involved, the report must indicate all syndication proceeds and equity involved.

General instructions—uses of funds.

Each reportable use of funds must clearly identify the purpose to which they are to be put. Reasonable aggregations may be used, such as ''total structure'' to include a number of structural costs, such as roof, elevators, exterior masonry, etc.

Specific instructions—uses of funds.

(1) For programs administered by the Assistant Secretaries for Fair Housing and Equal Opportunity and Policy Development and Research, each use of funds must indicate the total amount of funds involved; must be broken down by amount committed, budgeted, and planned; and must be listed in descending order according to the amount indicated.

(ii) For programs administered by the Assistant Secretaries for Housing-Federal Housing Commissioner, Community Planning and Development, and Public and Indian Housing, each use of funds must indicate the total amount of funds involved and must be listed in descending order according to the amount involved.

(iii) If any program administered by the Assistant Secretary for Housing-Federal Housing Commissioner is involved, the report must indicate all uses paid from HUD sources and other sources, including syndication proceeds. Uses paid should include the following amounts.

AMPO
Architect's fee—design
Architect's fee—supervision
Bond premium
Buildre's general overhead
Builder's profit
Construction interest
Consultant fee
Contingency Reserve
Cost certification audit fee
FHA examination fee
FHA inspection fee
FHA MIP
Financing fee
FNMA/GNMA fee
General requirements
Insurance
Legal—construction
Legal—organization
Other fees
Purchase price
Supplemental management fund
Taxes
Title and recording Operating deficit reserve
Resident initiative fund
Syndication expenses
Working capital reserve
Total land improvement
Total structures

Uses paid from syndication must include the following amounts:

Additional acquisition price and expenses
Bridge loan interest
Development fee
Operating deficit reserve
Resident initiative fund
Syndication expenses
Working capital reserve

Footnotes:

1. All citations are to 24 CFR Part 12, which was published in the Federal Register on March 14, 1991 at 56 Fed. Reg. 11032.

2. A list of the covered assistance programs can be found at 24 CFR § 12.30, or in the rules or administrative instructions governing the program involved.

Note: The list of covered programs will be updated periodically.

3. Assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. The term does not include contracts, such as procurements contracts, that are subject to the Federal Acquisition Regulation (FAR)(48 CFR Chapter 1).

4. See 24 CFR §§ 12.32(a) (2) and (3) for detailed guidance on how the threshold is calculated.

5. ''Other government assistance'' is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government (other than that requested from HUD in the application), a State, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.

6. For further guidance on the criterion, and for a list of covered programs, see 24 CFR § 12.50.

7. For purposes of Part 12, a person means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other government entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.

[FR Doc. 6717 Filed 3–17–95; 8:45 am]
BILLING CODE 4210–01–M

Office of Administration

[Docket No. N–95–3905]

Notice of Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESSES: Interested persons are invited to submit comments regarding these proposals. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 7, 1995.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Lead-Based Paint Hazard Elimination Program and Annual Reporting

Office: Public and Indian Housing

Description of the Need For the Information and its Proposed Use: Public and Indian Housing Agencies are required to maintain records on tenant notification, testing by location and abatement, and testing by location and method. These agencies are also required to provide tenants and purchasers a copy of all positive lead-based paint test results.

Form Number: HUD–52850

Respondents: State, Local, and Tribal Government and Federal Government

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–52850	3,100		1		2		6,200
Notice	3,100		3		1		9,300

Total Estimated Burden Hours: 15,500

Status: Reinstatement with changes

Contact: Carolyn Newton, HUD, (202) 708–1640; Joseph F. Lackey, Jr., OMB, (202) 395–7316

Dated: March 7, 1995.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Victimization Survey of Public Housing Residents

Office: Policy Development and Research

Description of the Need For the Information and its Proposed Use: Reliable and valid information on crime rates in public housing does not exist. This survey involves: (1) The development of data collection methods for measuring criminal victimization among public housing residents, and (2) the collection of baseline data so that crime prevention measured in public housing can be assessed.

Form Number: None

Respondents: Individuals or Households

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey	875		1		.36		319

Total Estimated Burden Hours: 319

Status: New

Contact: Harold R. Holzman, HUD, (202) 708–2031; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: March 7, 1995.

[FR Doc. 95–6726 Filed 3–17–95; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Housing; Federal Housing Commissioner

[Docket No. N–95–3904; FR–3891–N–01]

Sale of HUD-Held Multifamily Mortgages; Notice of Loan Sale Policy

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of Loan Sale Policy for HUD-Held Multifamily Mortgages.

SUMMARY: This notice sets forth the sale procedures and other information relevant to the sale of HUD-held non-performing, unsubsidized mortgage loans.

DATES: March 20, 1995.

FOR FURTHER INFORMATION CONTACT: William Richbourg, Office of the Housing-FHA Comptroller, Room 5144, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; Telephone (202) 401–0577. Hearing- or speech-impaired individuals may call (202) 708–4594 (TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On September 22, 1994, the Department of Housing and Urban Development (''Department'') published a final rule in the **Federal Register** (59 FR 48726)

containing provisions set forth in 24 CFR 290.202 for selling nonperforming, unsubsidized mortgage loans. The first auction of these mortgage loans is scheduled for March 28, 1995 and involves the sale of mortgage loans secured by properties located in the Southeastern United States (''Southeast Auction''). The sale was announced by a notice published in the **Federal Register** on January 13, 1995 (60 FR 3255).

This notice sets forth the sale procedures and other information relevant to the sale scheduled for March 28, 1995. The following are changes, modifications and/or amplifications to those sale procedures previously published. Except as expressly set forth below, the procedures set forth in the **Federal Register** on January 13, 1995 remain effective.

Ineligible Bidders. The following individuals and entities (either alone or in combination with others) are ineligible to bid on any one or combination of the mortgage loans included in the Southeast Auction:

(1) Any employee of the Department;

(2) Any individual or entity that is debarred from doing business with the Department pursuant to 24 CFR part 24;

(3) Any contractor, subcontractor and/or consultant (including any agent of the foregoing) who performed services for, or on behalf of, the Department in connection with the Southeast Auction;

(4) Any individual that was a principal and/or employee of any entity or individual described in paragraph (3) above at any time during which the entity or individual performed services for, or on behalf of, the Department in connection with the Southeast Auction;

(5) Any entity or individual that served as a loan servicer or performed other services for, or on behalf of the Department, with respect to any of the mortgage loans included in the Southeast Auction at any time during the two-year period prior to March 28, 1995; and

(6) Any individual that was a principal and/or employee of any entity or individual described in paragraph (5) above at any time during the two year period prior to March 28, 1995, except, however, any entity or individual described in paragraphs (5) and (6) shall be permitted (subject to the terms and conditions of any agreement the entity or individual has previously entered into in connection with the Southeast Auction and/or other agreements entered into with, or on behalf of, the Department), to:

(i) Perform services as a consultant and/or advisor to any bidder who is eligible to bid at the Southeast Auction, provided that such services do not involve the use of any materials or information not otherwise available to the general public that were produced or developed for, or on behalf of, the Department; and

(ii) Bid on any of the mortgage loans included in the Southeast Auction that were not serviced by such entity or individual described in paragraphs (5) or (6) at any time during the two year period prior to March 28, 1995.

Number of Bids. A bidder may bid on as many individual mortgage loans as the bidder chooses. However, no bidder may bid on more than ten (10) pools of mortgage loans (i.e., combinations of two or more mortgage loans).

Timely Bids and Deposits. Each bidder assumes all risks of loss relating to its failure to deliver, or cause to be delivered, on a timely basis and in the manner specified by the Department, each bid form, earnest money deposit and loan sale agreement required to be submitted by the bidder.

Ties for High Bidder. In the event there is a tie for a high bid, the Department, through its financial advisor, will contact the parties with the tie bid and afford each of them an opportunity to offer a best and final bid. The successful bidder will be the one with the highest bid. If a tie continues after the best and final offers are submitted or the bidders do not respond, or do not respond within the time period established by the Department, the successful bidder will be determined by lottery. Notwithstanding the above, the Department reserves the right to withdraw any mortgage loan(s) subject to a tie bid.

Nonperforming Status of Mortgage Loans. Almost all of the mortgage loans included in the Southeast Auction are nonperforming. However, some of the mortgage loans may become performing on or before the date that title to the mortgage loan(s) is transferred to the successful bidder.

Dated: March 13, 1995.

Jeanne K. Engel,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 95–6714 Filed 3–17–95; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1220–00; GP5–082]

Notice of Public Lands Closure/Restrictions, Grant County, Washington

AGENCY: Bureau of Land Management, Wenatchee Resource Area, Spokane District.

ACTION: Emergency closure of public lands; Washington.

SUMMARY: Closure and restriction order. Under the authority identified in 43 CFR 8364.1 (a.) Fifty acres of public lands located on Saddle Mountains, (S½NE¼NW¼, N½NW¼NE¼, SW¼NW¼NE¼, Section 12, T. 15 N., R. 23 E. Willamette Meridian), are closed to surface disturbing activities including OHV riding and digging of petrified wood. The existing road and jeep trail are not affected by this closure. This closure/restriction is effective immediately upon publication of this notice and will remain in effect year round or until rescinded. This order is necessary to provide protection for sensitive plant species habitat. Authorized BLM personnel conducting habitat restoration activities, and personnel operating fire fighting and/or emergency vehicles or operations including search and rescue activities, are exempt from this order.

Any person who fails to comply with a closure or restriction order issued under this subpart may be subject to the penalties provided in 43 CFR 8360.0–7. These penalties are as follows. Violations are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: James Fisher, Area Manager, BLM, Wenatchee Resource Area Office, 915 N. Walla Walla Street, Wenatchee, Washington, 98801–1521; 509–665–2100.

Dated February 28, 1995.

James F. Fisher,

Wenatchee Resource Area Manager.

[FR Doc. 95–6740 Filed 3–17–95; 8:45 am]

BILLING CODE 4310–33–M

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for a Project Called Windsor Estates Subdivision, a Single Family Residence Subdivision, in Brevard County, Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Forte Macaulay Development Co., Incorporated, (Applicant), is seeking an incidental take permit from the Fish and Wildlife Service (Service), pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The permit would authorize the take of two families of the threatened Florida scrub jay, *Aphelocoma coerulescens coerulescens* in Brevard County, Florida, for a period of 3 years. The proposed taking is incidental to construction of 205 single family homes, including the necessary infrastructure, on approximately 98 acres (Project). Within the Project, 25 acres are occupied by Florida scrub jays and will be permanently altered. The Project is called Windsor Estates, and it is located on the mainland of Brevard County, north of the city of Melbourne due west of the intersection of Pineda Causeway and Wickham Road, Brevard County, Florida.

The Service also announces the availability of an environmental assessment (EA) and habitat conservation plan (HCP) for the incidental take application. Copies of the EA or HCP may be obtained by making a request to the Regional Office address below. This notice also advises the public that the Service has made a preliminary determination that issuing the incidental take permit is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended. The Finding of No Significant Impact is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA and HCP should be received on or before April 19, 1995.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, or the Jacksonville, Florida, Field Office. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Please reference permit under PRT–799977 in such comments.

Regional Permit Coordinator, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345, (telephone 404/679–7110, fax 404/679–7280).

Field Supervisor, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216–0912, (telephone 904/232–2580, fax 904/232–2404).

FOR FURTHER INFORMATION CONTACT: Dawn Zattau at the Jacksonville, Florida, Field Office, or Rick G. Gooch at the Atlanta, Georgia, Regional Office.

SUPPLEMENTARY INFORMATION: *Aphelocoma coerulescens coerulescens* is geographically isolated from other subspecies of scrub jays found in Mexico and the Western United States. The Florida scrub jay is found almost exclusively in peninsular Florida and is restricted to scrub habitat. The total estimated population is between 7,000 and 11,000 individuals. Due to habitat loss and degradation throughout the State of Florida, it has been estimated that the Florida scrub jay population has been reduced by at least half in the last 100 years. Surveys have indicated that two families of Florida scrub jays inhabit the Project site. Construction of the Project's infrastructure and subsequent construction of the individual homesites will likely result in death of, or injury to, *Aphelocoma coerulescens coerulescens* incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with property development will reduce the availability of feeding, shelter, and nesting habitat.

The EA considers the environmental consequences of three alternatives. The no action alternative may result in loss of habitat for *Aphelocoma coerulescens coerulescens* and exposure of the Applicant under Section 9 of the Act. A third alternative is the proposed Project that is designed with a different mitigation strategy focusing on management of existing lands surrounding the project area. The proposed action alternative is issuance of the incidental take permit. This provides for restrictions of construction activity, purchase of offsite habitat for the Florida scrub jay, the establishment of an endowment fund for the offsite acquired habitat, and donation of additional offsite habitat. The HCP provides a funding mechanism for these mitigation measures.

Dated: March 13, 1995.

Noreen K. Clough,

Acting Regional Director.

[FR Doc. 95–6771 Filed 3–17–95; 8:45 am]

BILLING CODE 4310–55–P

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Re-opening of Comment Period for Availability of a Draft Environmental Assessment and Notice of an Application for an Incidental Take Permit for La Costa Villages, Carlsbad, California, by the City of Carlsbad and Fieldstone/La Costa Associates; Notice.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) has re-opened the comment period for a draft environmental assessment (EA) and application for an incidental take permit, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The permit application includes a Habitat Conservation Plan (HCP), two HCP addendums, and an Implementing Agreement (IA). The EA package includes an EA, EA addendum, and a draft Finding of No Significant Impact for La Costa Villages, a housing and road project proposed by the applicants: Fieldstone/La Costa Associates and the City of Carlsbad, California (Applicants).

The Applicants have applied to the Service for an incidental take permit and have included a proposed pre-listing Implementation Agreement and HCP for a proposed 1,940 acre project (HCP area) in the southeastern corner of Carlsbad, California. Completion of the grading and construction activities associated with the proposed project would result in direct impacts to the federally threatened coastal California gnatcatcher (*Polioptilla californica californica*).

This notice supplements an earlier notice published on October 28, 1994 (59 FR 54207). That initial comment period closed November 28, 1994. The Service re-opened the comment period from January 31, 1995 to March 2, 1995 (60 FR 5945) to allow for public comment on the National Environmental Policy Act (NEPA) documents and the complete application package, as revised. The applicants request that 66 species be covered by the HCP and that 1 or more

section 10(a) permits be issued for those species pursuant to the HCP and IA. In response to previous comments, additional conservation, comprised of the acquisition of approximately 240 acres under the City of Carlsbad's Habitat Management Plan, has been suggested and is being considered. The 240 acres would be purchased within the habitat corridor between the City of Carlsbad and the San Dieguito River Valley to the southeast and will be of value to the gnatcatcher as habitat or as connectivity between areas of occupied habitat. In order to provide for further consideration of the above, the Service has re-opened the comment period for the Fieldstone HCP and associated documents.

DATES: Written comments on the permit application and draft EA should be received on or before April 3, 1995.

ADDRESSES: Comments regarding the application or adequacy of the EA should be addressed to Mr. Gail Kobetich, Field Supervisor, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. Please refer to permit No. PRT–795759 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Gail Kobetich or Ken Corey at the above address, or telephone (619) 431–9440. Individuals wishing copies of the application or EA should immediately contact Ken Corey. Documents also will be available for public inspection, by appointment, during normal business hours at the above address.

SUPPLEMENTARY INFORMATION: A concern has been raised regarding the consistency of the HCP with specific subarea and subregional plans under the statewide Natural Community Conservation Program (NCCP) (see page 54208 in 59 FR No. 208). All agencies and individuals are urged to provide comments on the proposal, draft EA, and the NCCP consistency issue. All comments received by the closing date will be considered in finalizing NEPA compliance and permit issuance or denial.

Dated: March 14, 1995.

Don Weathers,

Regional Director.

[FR Doc. 95–6772 Filed 3–17–95; 8:45 am]

BILLING CODE 4310–55–P

Minerals Management Service

Notice on Outer Continental Shelf Gas and Oil Lease Sales

AGENCY: Minerals Management Service, Interior.

ACTION: List of restricted joint bidders.

SUMMARY: Pursuant to the authority vested in the Director of the Minerals Management Service by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at Outer Continental Shelf oil and gas lease sales to be held during the bidding period from May 1, 1995, through October 31, 1995. The List of Restricted Joint Bidders published October 5, 1994, in the **Federal Register** at 59 FR 50767 covered the period of November 1, 1994, through April 30, 1995.

Group I. Exxon Corporation; Exxon San Joaquin Production Co.

Group II. Shell Oil Co.; Shell Offshore Inc.; Shell Western E&P Inc.; Shell Frontier Oil & Gas Inc.; Shell Onshore Ventures Inc.

Group III. Mobil Oil Corp.; Mobil Oil Exploration and Producing Southeast Inc.; Mobil Producing Texas and New Mexico Inc.; Mobil Exploration and Producing North America Inc.

Group IV. BP America Inc.; The Standard Oil Co.; BP Exploration & Oil Inc.; BP Exploration (Alaska) Inc.

Dated: March 13, 1995.

Cynthia Quarterman,

Acting Director, Minerals Management Service.

[FR Doc. 95–6755 Filed 3–17–95; 8:45 am]

BILLING CODE 4310–MR–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32611]

Dallas Area Rapid Transit—Acquisition and Operation Exemption—Certain Lines of The Atchison, Topeka and Santa Fe Railway Company

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, pursuant to 49 U.S.C. 10505, exempts from the prior approval requirements of 49 U.S.C. 11343–11345 the acquisition and operation by Dallas Area Rapid Transit of 11.5 miles of railroad line of The Atchison, Topeka and Santa Fe Railway Company, subject to the standard labor protective conditions. The line extends from approximately milepost 45.5 in Hale, to the Southern Pacific Transportation Company's overhead crossing at approximately milepost 57.0 in Dallas, Dallas County, TX.

DATES: This exemption will be effective on April 9, 1995. Petitions to stay must be filed by March 30, 1995. Petitions to reopen must be filed by April 4, 1995.

ADDRESSES: Send pleadings referring to Finance Docket No. 32611 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, NW., Washington, DC 20423; and (2) Petitioners' representative: Kevin M. Sheys, Oppenheimer Wolff & Donnelly, 1020 Nineteenth Street, NW., suite 400, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue, NW., room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: March 7, 1995.

By the Commission, Chairman McDonald, Vice Chairman Morgan, and Commissioners Simmons and Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 95–6742 Filed 3–17–95; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–12 (Sub-No. 183X)]

Southern Pacific Transportation Company—Abandonment Exemption—in Marion County, OR

Southern Pacific Transportation Company (SPT) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon the 4.71-mile portion of its Geer Branch (the Line), extending from milepost 721.10, at or near the Geer rail station, to milepost 725.81, at or near the Salem rail station, in Marion County, OR.[1] SPT has certified that: (1) no local traffic has moved over the Line for at least 2 years; (2) any overhead traffic on the Line can

[1] Contemporaneous with this filing, the Williamette Valley Railway Company (WVR) filed a notice of exemption in Williamette Valley Railway Company—Discontinuance of Service Exemption—In Marion County, OR, Docket No. AB–435 (Sub-No. 1X), to discontinue operating on the 4.71-mile portion of the Geer Branch between milepost 721.10 at or near the Geer rail station to milepost 725.81 at or near the Salem rail station.

WVR leased and operated the entire Geer Branch pursuant to the notice of exemption in *Williamette Valley Railway Company—Acquisition, Lease and Operation Exemption—Southern Pacific Transportation Company, Finance* Docket No. 32249 (ICC served Mar. 5, 1993).

be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 19, 1995, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by March 30, 1995. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 10, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Gary A. Laakso, Southern Pacific Building, One Market Plaza, Room 846, San Francisco, CA 94105.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

SPT has filed an environmental report which addresses the effects of the abandonment, if any, on the environment and historic resources. The Commission's Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 24, 1995. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: March 14, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–6886 Filed 3–17–95; 8:45 am]

BILLING CODE 7035–01–P

[2] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made before the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[Docket No. AB–435 (Sub-No. 1X)]

Willamette Valley Railway Company—Discontinuance of Service Exemption—in Marion County, OR

Willamette Valley Railway Company (WVR) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to discontinue service over approximately 4.71 miles of rail line owned by Southern Pacific Transportation Company (SP) extending between milepost 721.10 at or near Geer rail station and milepost 725.81 at or near Salem rail station, in Marion County, OR.[1]

WVR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) all overhead traffic has been rerouted; (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (service of verified notice on governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the discontinuance of service shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on April 19, 1995 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[2] and formal expressions of intent to file offers of financial assistance under 49 CFR 1152.27(c)(2),[3] must be filed by March 30, 1995. Petitions to reopen must be filed by April 10, 1995, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.[4]

A copy of any petition filed with the Commission should be sent to applicant's representative: Fritz R. Kahn, Suite 750 West, 1100 New York Avenue, NW., Washington, DC 20005–3934.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

SP has filed an environmental report in Docket No. AB–12 (Sub-No. 183X) which addresses the abandonment's effects, if any, on the environment or historic resources. WVR has adopted SP's environmental report here. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 24, 1995.

[1] WVR was authorized to lease from SP and operate approximate 72.37 miles of rail line, including this line segment, in *Willamette Valley Railway Company—Acquisition, Lease and Operation Exemption—Southern Pacific Transportation Company,* Finance Docket No. 32249 (ICC served Mar. 5, 1993). The lease transaction was consummated on February 22, 1993, as noted in SP's simultaneously filed notice of exemption to abandon this same line segment. *See Southern Pacific Transportation Company—Abandonment Exemption—In Marion County, OR,* Docket No. AB–12 (Sub-No. 183X).

[2] A stay will be issued routinely where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental grounds is encouraged to file promptly so that the Commission may act on the request before the effective date.

[3] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[4] Requests for trail use/rail banking or public use conditions will be considered in SP's related abandonment notice of exemption in Docket No. AB–12 (Sub-No. 183X).

Interested persons may obtain a copy of the EA from SEA by writing to it at (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEA at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental and historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision in Docket No. AB–12 (Sub-No. 183X).

Decided: March 14, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–6887 Filed 3–17–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cable Television Laboratories, Inc.

Notice is hereby given that, on September 26, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Cable Television Laboratories, Inc. (''CableLabs'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) The identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are CableLabs, Louisville, CO and: Adelphia Communications Corporation, Coudersport, PA; ALLTEL Service Corporation, Little Rock, AR; Apollo Cablevision, Inc., Cerritos, CA; Armstrong Utilities, Inc., Butler, PA; Avenue TV Cable Service, Inc., Ventura, CA; Barden Communications, Inc., Detroit, MI; Benchmark Communications, Sterling, VA; Bend Cable Communications, Inc., Eugene, OR; Bresnan Communications Company, White Plains, NY; Buckeye Cablevision, Inc., Toledo, OH; Buford Television, Inc., Dallas, TX; Bluffton Cablevision, Ltd., Bluffton, SC; Cable America Corp., Phoenix, AZ; Cable de Tula, S.A. de C.V., Col Juarez, DF, Mexico; Cable TV, Inc., Hazleton, PA; Cablevision Industries Corp., Liberty, NY; Cablevision Systems Corporation, Woodbury, NY; CF Cable TV Inc., Montreal, PQ, Canada; Chambers Communications Corp., Eugene, OR; Classic Communications Ltd., Richmond Hill, ON, Canada; Coaxial Communications, Columbus, Ohio; Cogeco Inc., Montreal, PQ Canada; Colony Communications, Inc., Providence, RI; Comcast Corporation, Philadelphia, PA; Continental Cablevision, Inc., Boston, MA; Cox Cable Communications, Inc., Atlanta, GA; Cross Country Cable, Inc., Warren, NJ; Crown Media, Inc., Dallas, TX; C–TEC Cable Systems, Dallas, PA; CUC Broadcasting Limited, Scarborough, ON, Canada; Douglas Communications Corporation II, Ridgewood, NJ; Duhanel Cable, Rapid City, SD; Fairmont Cable TV, Rochester, MN; Fundy Cable Ltd./Ltee, St. John, NB, Canada; Greater Media, Inc., East Brunswick, NJ; Guam Cable TV, Agana, Guam; Helicon Corp., Englewood Cliffs, NJ; Higgins Lake Cable, Inc., Iron Mountain, MI; Hornell Television Service, Inc., Hornell, NY; Insight Communications Company, New York, NY; InterMedia Partners, San Francisco, CA; ITC, Bala Cynwyd, PA; Jones Intercable, Inc., Englewood, CO; Lenfest Group (The), Pottstown, PA; Maclean Hunter Cable TV, Etobicoke, ON, Canada; Monmouth Cablevision Associate, Falls Church, VA; Multimedia Cablevision, Inc., Wichita, KS; New Heritage Associates, Des Moines, IA; Newhouse Broadcasting Corporation, Syracuse, NY; News, Press & Gazette Co. (The), St. Joseph, MO; North Star Cable, Inc., Kingston, WA; Northern Cablevision Ltd., Edmonton, AB, Canada; Paradigm Communications, Inc., Greenwich, CT; Post-Newsweek Cable, Inc., Phoenix, AZ; Prestige Cable TV of Maryland, Inc., Cartersville, GA; Prime Cable, Alutin, TX; Princetown Cable Company, Schenectady, NY: Regina Cablevision Cooperative, Regina, SK, Canada; Rock Associates, Kirkland, WA; Rogers Cable TV Limited, Toronto, ON, Canada; Sammons Communications, Inc., Dallas, TX; Scripps Howard Cable Company, Cincinnati, OH; Shaw Communications Inc., Edmonton, AB, Canada; Susquehanna Cable Co., York, PA; Tele-Communications, Inc., Englewood, CO; Tele-Media Corporation, Pleasant Gap, PA; TeleCable Corporation, Norfolk, VA; Time Warner Cable, Stamford, CT; Times Mirror Cable Television, Irvine, CA; TKR Cable Company, Warren, NJ; Valley Cable TV Inc., Fort Valley, GA; Viacom International, Inc. (Cable Division), Pleasanton, CA; Videotron Ltee, Montreal, PQ, Canada; Western Co-Axial Ltd., Hamilton, ON, Canada; WinDBreak Cable, Gering, NE; World Company (The), Fort Collins, CO.

The area of planned activity is researching and developing specifications for equipment that will enable cable television systems to deliver telecommunications services to customers via a hybrid fiber/coax network architecture.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–6737 Filed 3–17–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Financial Services Technology Consortium, Inc.

Notice is hereby given that, on November 22, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Financial Services Technology Consortium, Inc. (the ''Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the new Principal Member of the Consortium is: Banc One Services Corporation, Columbus, OH. The following parties were admitted as Associate Members of the Consortium: Motorola, Schaumburg, IL; American Express TRS Co., Inc., Salt Lake City, UT; Visa International, San Francisco, CA; Proprietary and Financial Products, Inc., Charleston, SC; Bank of Montreal, Toronto, Ontario, CANADA; OKI Advanced Products Division, Marlborough, MA; and IBM Corporation, New York, NY.

No other changes have been made in either the membership or planned activity of the Consortium. Membership remains open, and the Consortium intends to file additional written notifications disclosing all changes in membership.

On October 21, 1993, the Consortium filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 14, 1993 (58 Fed. Reg. 65399).

The last notification was filed with the Department on August 15, 1994. A

notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 12, 1994 (60 F.R. 2986).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–6736 Filed 3–17–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Microelectronics and Computer Technology Corporation

Notice is hereby given that, on November 17, 1994, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 14 U.S.C. 4301 *et seq.* (''the Act''), Microelectronics and Computer Technology Corporation (''MCC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the changes are as follows: Abelstik Laboratories; Amoco Production Company; EDEN International Corporation; Itasca Systems, Inc.; and Occidental Chemical Corporation have not renewed their Associate memberships with MCC.

No other changes have been made in either membership or planned activity of the group research project. Membership remains open and MCC intends to file additional written notification disclosing all changes in membership.

On December 21, 1984, MCC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 17, 1985 (50 FR 2633).

The last notification was filed with the Department on July 15, 1994. A **Federal Register** notice pursuant to Section 6(b) of the Act has not yet been published.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–6739 Filed 3–17–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Smart Valley Commercenet Consortium, Inc.

Notice is hereby given that, on January 18, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The Smart Valley CommerceNet Consortium, Inc. (the ''Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the additional members at the sponsor level are: Ameritech, Chicago, IL; Delphi Internet Services Corporation, Cambridge, MA; InterNex Information Services, Menlo Park, CA; Lawrence Livermore Laboratory, Livermore, CA; MasterCard International, New York, NY; Social Security Administration, Baltimore, MD; Solectron, Milpitas, CA; The General Electric Company, Rockville, MD; and Trusted Information Systems, Mountain View, CA. The following organizations have joined the Consortium as associate members: Arroyo Seco/Fore Play Golf, South Pasadena, CA; Boomerang Information Services, Palo Alto, CA; CONNECT, Inc., Cupertino, CA; CyberCash, Inc., Vienna, VA; CyberMark, Inc., Washington, D.C.; Equifax, Inc., Atlanta, GA; National Association of Purchasing Management Silicon Valley, Inc., San Jose, CA; National Housewares Manufacturers Association, Rosemont, IL; O'Reilly & Associates, Sebastopol, CA; Process Software Corporation, Framingham, MA; Sybase, Emeryville, CA; Telequip, Hollis, NH; UC Berkeley Center for Information Technology and Management (CITM), Berkeley, CA; and Wave Systems Corporation, New York, NY. In error, in the October 18, 1994, notice, Financial Services Technology Consortium, New York, NY was listed as a sponsor. It is actually a member at the associate level.

No other changes have been made in either the membership or planned activities of the Consortium. Membership remains open, and the Consortium intends to file additional written notifications disclosing all changes in membership.

On June 13, 1994 the Consortium filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 31, 1994 (59 Fed. Reg. 45012).

The last notification was filed with the Department on October 19, 1994. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on January 12, 1995 (60 F. R. 2986).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–6738 Filed 3–17–95; 8:45]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–09358, et al.]

Proposed Exemptions; NCNB Real Estate Fund, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits

Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

NCNB Real Estate Fund (the Fund), NationsBank Pension Plan, NationsBank Retirement Savings Plan

Located in Charlotte, North Carolina
[Exemption App. Nos. D–09358, D–09359 and D–09360, respectively]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department and the Service are considering granting the following requested exemptions under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990) and Revenue Procedure 75–26, 1975–1 C.B. 722.

Section I: Covered Transactions

1. If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale (the Sale) of units in the Fund (Units) by plans participating in the Fund (the Plans) pursuant to an Option election made available by NationsBank of North Carolina, N.A. (the Bank), to a standby trust (the Standby Trust) established and maintained by NationsBank, Corporation (the Holding Company), a party in interest with respect to the Plans. This proposed exemption is subject to the conditions set forth in Section II.

2. If the exemption is granted, the restrictions of sections 406(a)(1)(D), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (D) and (E) of the Code shall not apply to any decision by the Bank to sell a property held by the Fund to a third party, and jointly owned by the Plans and the Holding Company, provided that: each Plan receives no less than fair market value for its interest in the property; and the Independent Fiduciary approves the reasonableness and propriety of the sale of the property.

Section II: Conditions

(a) The properties held by the Fund (the Properties) shall be appraised by an independent and qualified appraiser within twelve months and updated within fifteen days before the Settlement Valuation Date.

(b) The Plans selling Units pursuant to the Options will receive a price equal to the value of each Unit sold based on the value of the Fund as of the Settlement Valuation Date (the Unit Purchase Price) plus the Interest Amount which will be calculated by the Bank and reviewed and approved by the Independent Fiduciary who has been retained to represent the interests of the Plans with respect to the Sale and the subsequent activities of the Fund related to the Fund's liquidation.

(c) Plans selling Units pursuant to Options 1 or 2 will receive the Unit Purchase Price plus the Interest Amount for each Unit sold on the settlement date (Settlement Date) which will be no more than 120 days after the Settlement Valuation Date.

(d) If Options 2 or 4 are elected, the Plans involved will receive the final payment, if any, within sixty days after, the two year anniversary of the Settlement Valuation date for Option 2, or the date of complete liquidation of the Fund for Option 4.

(e) Prior to the Settlement Valuation Date, the Bank will provide each Plan with written information regarding the terms of the Sale. Such information includes, but is not limited to:

(i) notice that each Plan will be entitled to elect one or more Options which will permit the Plan to sell all or part of its Units to the Stand-by Trust, or to continue to hold all or part of its Units in the Fund until the Fund's liquidation is complete, provided that if multiple Options are elected they must be uniform with respect to the grant, or failure to grant, a Release to the Bank,

(ii) a description of each Option,

(iii) the date by which a Plan must elect an Option (Option Election Date), and

(iv) forms for electing the Options.

(f) Except for Plans with respect to which the Bank or any of its Affiliates is an employer, the decision whether to authorize the Independent Fiduciary to make an Option election on behalf of the Plan will be made by a fiduciary independent of the Bank and its Affiliates and the Independent Fiduciary.

(g) The Bank and any Affiliate which is an employer with respect to a Plan will authorize the Independent Fiduciary to choose among all of the Options.

(h) A Plan's Option election will be made by a Plan fiduciary who is independent of the Bank and its Affiliates or by the Independent Fiduciary.

(i) The Independent Fiduciary's duties and responsibilities include, but are not limited to:

(1) Reviewing and determining whether to approve the appraisals of the Properties;

(2) Ordering a new appraisal in cases in which it has determined not to approve an existing appraisal;

(3) Reviewing and approving all of the disclosures, written explanations, and forms furnished to the Plans by the Bank;

(4) Furnishing information to an independent Plan fiduciary, in advance of any date by which the independent Plan fiduciary is required to respond in order to authorize the Independent Fiduciary to make a decision on behalf of the Plan. Such information includes, but is not limited to:

(i) the Unit Purchase Price;

(ii) a description and explanation of the Options;

(iii) dates by which the Plans must act in order to make Option elections and authorize the Independent Fiduciary to make Option elections on behalf of the Plan;

(iv) information summarizing: the effect of failing to authorize the Independent Fiduciary to make Option elections on behalf of the Plan, the effect

of failing to make an Option election after informing the Independent Fiduciary that the independent Plan fiduciary would make the decision to select an Option election, and the availability and effect of the different Option election authorizations which the Plan may provide to the Independent Fiduciary, in language calculated to be reasonably understood by the average independent Plan fiduciary responsible for making decisions on behalf of a Plan with regard to Units of the Fund held by the Plan;

(4) making Option elections on behalf of any Plan if: (a) The Bank or any of its Affiliates is an employer with respect to the Plan; (b) the independent Plan fiduciary authorizes the Independent Fiduciary to make an Option elections on behalf of that Plan; or (c) the independent Plan fiduciary does not reserve the right to make an Option election and fails to make an Option election prior to the Option Election Date;

(5) providing guidance regarding the four Options, to those independent Plan fiduciaries who wish to make their own Option elections;

(6) reviewing and determining whether to approve the Unit Purchase Price as of the Settlement Valuation Date, and the value of a Unit in the Fund as of two years from the Sale of the Units by the Plans to the Standby Trust (for purposes of determining the amount which is due to those Plans electing Option 2);

(7) reviewing and determining whether to approve the Interest Amount payable to any Plan which elected either Option 1 or 2;

(8) exercising its veto authority with regard to the proposed Unit Purchase Price, Interest Amount, or value of Fund Units pursuant to Option 2, which it has determined not to approve;

(9) monitoring the Bank's efforts to dispose of the Properties during the liquidation of the Fund;

(10) approving the reasonableness and propriety of sales of the Properties during the period in which the Standby Trust owns units in the Fund.

(j) The Independent Fiduciary may be removed by a majority vote of the Plans ''for cause.''

(i) The term ''for cause'' shall mean that there must be sufficient and reasonable grounds for removal and the grounds must be related to the ability and fitness of the Independent Fiduciary to perform his required duties.

(ii) Each Plan's vote for or against removal will be proportionate to it's ownership interest in the Fund exclusive of Units owned by the Standby Trust.

(k) The Bank and the Holding Company will be bound by the decisions and determinations made by the Independent Fiduciary.

(l) The Bank will continue its efforts, with due diligence to liquidate the Fund.

(m) Any distributions made by the Fund will be made pro rata, in cash.

(n) Any payment made pursuant to any of the Options will be made in cash.

(o) The Independent Fiduciary is responsible for monitoring compliance with the terms and conditions of the exemption at all times.

Section II. Definitions

For purposes of this exemption:

(a) Affiliate of the Bank includes:

(1) Any person directly or indirectly through one or more intermediaries controlling, controlled by, or under common control with the Bank;

(2) Any officer, director or employee of the Bank, or of a person described in paragraph (a)(1) of Section II; and

(3) Any partnership in which the Bank is a partner;

(b) Control means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) Affiliate of the Independent Fiduciary includes:

(1) Any person directly or indirectly through one or more intermediaries controlling, controlled by, or under common control with the Independent Fiduciary;

(2) Any officer or director of the Independent Fiduciary;

(3) Any partner in the Independent Fiduciary, or any other related individual, with the authority to make, or who actually makes, fiduciary decisions which are within the scope of the Independent Fiduciary's duties and responsibilities under this exemption, or who holds a five percent (5%) or greater interest in the Independent Fiduciary;

(d) Independent Fiduciary means a person who:

(1) Is not an Affiliate of the Bank as defined in section II(a);

(2) does not have an ownership interest in the Bank or its Affiliates;

(3) is not a corporation or partnership in which the Bank or any of its Affiliates has an ownership interest;

(4) is not a fiduciary with respect to any of the Plans other than in connection with the transactions described in this exemption;

(5) has acknowledged in writing acceptance of fiduciary responsibility;

(6) is either:

(i) A business organization which has at least (5) years of experience with respect to commercial real estate investments or other relevant experience;

(ii) a committee comprised of three to five individuals who each have at least five (5) years of experience with respect to commercial real estate investments or other relevant experience; or

(iii) a committee comprised both of a business organization or organizations and individuals having the qualifications described in paragraphs (d)(1) through (6)(ii) above.

(7) An individual acting in a fiduciary capacity with respect to the Fund on behalf of, and at the direction of, an Independent Fiduciary meeting the conditions of paragraphs (d)(1) through (6)(iii) above shall be considered an Independent Fiduciary.

For purposes of this definition, no organization or individual may serve as an Independent Fiduciary for the Fund for any fiscal year, if the gross income received by such organization or individual (or by any partnership or corporation of which such organization or individual is an officer, director, or ten percent (10%) or more partner or shareholder) from the Bank, or any Affiliate, for that fiscal year exceeds five percent (5%) of its or his annual gross income from all sources for the prior fiscal year. If such organization or individual has no income for the prior fiscal year, the 5% limitation shall be applied with reference to the fiscal year in which such organization or individual serves as an independent fiduciary. The income limitation will include income received for services rendered to the Plans and the Fund as Independent Fiduciary, as described in this exemption.

In addition, no organization or individual who is an Independent Fiduciary or an Affiliate of such Independent Fiduciary, and no partnership or corporation of which such Independent Fiduciary is an officer, director, or ten percent (10%) or more partner or shareholder with the authority to cause such corporation or partnership to engage in the following transactions, or who exercises such authority in conjunction with others, may:

(1) Acquire any property from, sell any property to, or borrow any funds from, the Bank, its Affiliates, or any collective investment vehicle or separate trust maintained or advised by the Bank or its Affiliates, during the period that such organization or individual serves as an Independent fiduciary and continuing for a period of six (6) months after such organization or

individual ceases to be an Independent Fiduciary; or

(2) Negotiate any such transaction, described above in paragraph (1) above during the period that such organization or individual serves as Independent Fiduciary.

No Plan fiduciary or sponsor of a Plan or a designee of such Plan fiduciary, sponsor or Plan may serve as the Independent Fiduciary with respect to the Fund.

(e) Option(s) means the following:

Option 1: A Plan will accelerate the liquidation of its investment in the Fund by selling each of its Units subject to this Option to the Standby Trust for an amount equal to the Unit Purchase Price plus the Interest Amount. A Plan electing this Option will reserve all rights it may have with respect to the Fund, the Bank and other appropriate persons. However, with respect to a participant directed account Plan, the Plan sponsor and an authorized independent Plan fiduciary will provide a Release to the Fund, the Bank and other appropriate persons without any affect on the rights of the participants or beneficiaries regarding the matters covered by the Release.

Option 2: A Plan will accelerate the liquidation of its investment in the Fund by selling each of its Units subject to this Option to the Standby Trust for an amount equal to the Unit Purchase Price plus the Interest Amount. In addition, the Bank will pay promptly following the second anniversary of the Settlement Valuation Date, an amount equal to the excess, if any, of (A) the sum of (1) the value that the Unit would have had at the Valuation Date two years after the Settlement Valuation Date if such Unit had not been sold, plus (2) the amount of any distributions made with respect to such Unit during such two year period, over (B) the Unit Purchase Price plus the Interest Amount. The Bank will pay Litigation Expenses to the Plan, if any. Under this Option, a Plan will release the Fund, the Bank and other appropriate persons with respect to all matters relating to the investment in the Fund occurring prior to the Sale.

Option 3: A Plan will continue its investment in the Fund through the end of the liquidation process. Under this Option, a Plan reserves all rights with respect to the Fund, the Bank and all other appropriate persons. However, with respect to a participant directed account Plan, the Plan sponsor and an authorized independent Plan fiduciary will provide a Release to the Fund, the Bank and other appropriate persons without any affect on the rights of the participants or beneficiaries regarding the matters covered by the Release.

Option 4: A Plan will continue its investment in the Fund through the end of the liquidation process. For a Plan electing this Option, the Bank will agree to pay promptly following the completion of the liquidation of the Fund, with respect to each Unit subject to this Option, an amount equal to the excess, if any, of the (i) the value of a Unit on September 28, 1990 over (ii) the value of all distributions made to the Plan with respect to such Unit since September 29, 1990 and during the liquidation of the Fund. The Bank will also pay Litigation Expenses to the Plan, if any. Plans electing this Option will release the Fund, the Bank and other appropriate persons with respect to all matters related to the investment in the Fund occurring prior to the Sale.

(f) Unit Purchase Price means the amount which is calculated by dividing the value of all of the assets of the Fund, as reviewed and approved by the Independent Fiduciary, by the total number of units in the Fund.

(g) Interest Amount means the amount approved by the Independent Fiduciary, equal to the net income earned on a Fund unit during the period commencing on the Settlement Valuation Date and ending on the day immediately preceding the Settlement Date, exclusive of realized or unrealized appreciation or depreciation.

(h) Settlement Valuation Date means the date on which the value of the Fund will be determined by the Bank in order to establish the Unit Purchase Price in connection with the Sale. The Settlement Valuation Date will be the last business day of the calendar month following the calendar month in which final prospective approval will be granted by the Office of the Comptroller of the Currency subsequent to a final grant of this proposed exemption and approval of the transaction which is the subject of this proposed exemption by the Federal Reserve Board.

(i) Litigation Expenses means the out-of-pocket expenses of litigation instituted before November 24, 1992 by or on behalf of a Plan against the Bank or the Fund with respect to the Plan's investment in the Fund exclusive of any expense of litigation with respect to a case which has proceeded to trial, or with respect to which there is a judgment against the Bank or the Fund, prior to the Option Election Date, plus interest. The total amount of Litigation Expenses, the rate of interest and the period for which interest is paid must be agreed to in writing between the Bank and the Plan prior to the Plan's election of Options 2 or 4. However, in the event there has never been a written settlement agreement specifying the amount of Litigation Expenses, prior to the date on which the Plan elects Option 2 or 4, Litigation Expenses will be the amounts requested by the Plan, unless such expenses are unreasonable.

(j) Option Election Date means the date as communicated to the Plans, at least Ninety (90) days subsequent to the Settlement Valuation Date and at least sixty (60) days subsequent to the completion of the mailing of the general post Settlement Valuation Date disclosure to all of the Plans by the Independent Fiduciary, on or prior to which a Plan must submit its Option election forms to the Bank.

(k) Settlement Date means the date, no more than 120 days after the Settlement Valuation Date, on which the transfer of the Units to the Standby Trust and delivery of Releases to the Bank will be effected pursuant to the Options.

(l) Release means a release covering activities and transactions in connection with the Fund prior to, and during, the Fund's liquidation, but in no case shall be effective on or after the Settlement Date. In this regard, the Release does not cover activities and transactions necessary to comply with the exemption, the conditions of the exemption, and the material representations made in connection therewith, which form the basis for the Department's decision to propose an exemption for the Sale and subsequent dispositions of properties owned by the Fund.

Summary of Facts and Representatives

1. The applicants are the Bank and The Holding Company. The Holding Company is a North Carolina corporation registered under the Bank Holding Company Act of 1956, as amended. The Holding Company maintains its principal office in Charlotte, North Carolina. The Holding Company represents that it is the largest banking company in the south and southwest and the fourth largest in the United States with banking subsidiaries providing full-service banking centers in nine states: Florida, Georgia, Kentucky, Maryland, North Carolina, South Carolina, Tennessee, Texas, Virginia and the District of Columbia. As of December 31, 1992, total assets of the Holding Company and its subsidiaries were approximately $118 billion.

2. The Bank is a wholly-owned subsidiary of the Holding Company with its principal offices in Charlotte, North Carolina. As of September 30, 1993 the Bank had total assets of approximately $20 billion. On February 28, 1974, the Bank established the Fund

as a common trust fund exempt from federal income taxation under section 584 of the Internal Revenue Code, and serves as trustee of the Fund. The Fund is a vehicle for the collective investment of tax-qualified retirement plans with respect to which the Bank or its affiliates are trustees. The Fund is divided into units of equal value (Units). The proportionate interest of each Plan is represented by the number of Units owned by that Plan.

3. As of March 1992, approximately 589 defined benefit plans and defined contribution plans held Units in the Fund. Some of these Plans include participant directed accounts and may elect to meet the requirements of section 404(c) of the Act (Section 404(c) Plans). In relevant part, section 404(c) of the Act and the regulations promulgated thereunder at 57 FR 46906 (October 13, 1992) provide that where a participant or beneficiary of a Section 404(c) Plan in fact exercises control over the assets in his or her account, then (1) the participant or beneficiary shall not be deemed to be a fiduciary by reason of his or her exercise of control; and (2) no person who is otherwise a fiduciary shall be liable under the fiduciary responsibility provisions of the Act for any loss, or by reason of any breach which results from such participant's or beneficiary's exercise of control.

Because section 404(c) of the Act applies only to the provisions of Part 4 of Title I, there is no provision in the Code corresponding to section 404(c). Thus, there is no statutory exemption from the excise taxes imposed under section 4975 of the Code with respect to prohibited transactions involving a Section 404(c) Plan. In this regard, the Department notes that the authority to grant administrative exemptions for section 404(c) transactions remains with the Treasury Department pursuant to Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978). Accordingly, the Department has no authority to provide exemptive relief with respect to a transaction that results from a participant's or beneficiary's exercise of control within the meaning of section 404(c) and applicable regulations. In this regard, the Department has solicited the views of the Service with respect to the transactions described herein as they relate to Section 404(c) Plans. The Service has reviewed this notice of proposed exemption and concurs with the exemptive relief provided. Accordingly, the Service has determined that it will join the Department in publishing this pendency notice in the **Federal Register**.[1]

4. The assets of the Fund have been primarily invested in real estate and real estate related securities. According to the Bank, the Fund experienced excellent returns through the second quarter of 1990. However, due to market conditions and investor uncertainty, the Fund experienced increased withdrawal requests and decreased new investment commitments during the third quarter of 1990. As a result, the Bank suspended admissions to and withdrawals from the Fund, and no Unit transactions have been effected since June 30, 1990.

After considering several alternative courses of action, the Bank determined in July of 1991 that it was in the best interests of the Plans to terminate the Fund. Accordingly, the Fund is in the process of liquidating pursuant to a Plan of liquidation which provides for the orderly disposition of the assets of the Fund and periodic partial liquidating distributions to Plans on a pro rata basis until the Fund has been completely liquidated. As of December 31, 1993, the value of the Fund was $172,907,000. As part of its plan of liquidation, during the year ending on December 31, 1992, the Fund distributed assets worth $222,000,000. The Bank anticipates that the liquidation will take several more years.

6. Due to the inability to liquidate their investments in the Fund, many Plans have experienced administrative difficulties. Certain Plans have made claims and filed lawsuits against the Bank alleging breach of fiduciary duty by the Bank in its management of the Fund.[2] Consequently, some Plans have expressed a desire to accelerate the liquidation of their investment in the Fund by selling all or part of their Units for cash equal to the current value of the Plan's Units, and in lieu of receiving proceeds during the liquidation process.

7. In order to accommodate the Plans and to respond to those claims against the Bank and the Holding Company, the Bank proposes the Sale whereby the Holding Company would establish the Stand-by Trust and contribute funds in a sufficient amount to enable the Stand-by Trust to acquire the Units held by the Plans desiring to accelerate liquidation of their Fund investment.[3] The trustee of the Stand-by Trust will be NationsBank of Tennessee, N.A., a national banking association organized under the laws of the United States with its principal office located in Nashville, Tennessee. NationsBank of Tennessee, N.A., as trustee of the Standby Trust, is to execute Sale transactions pursuant to the Option election forms timely filed. The Grantor of the trust is the Holding Company which has agreed to provide assets sufficient for the Stand-by Trust to meet its obligations.

8. Following the establishment of the Stand-by Trust, each Plan will be offered the opportunity to select from four Options which will permit each Plan to elect to sell all or part of its Units in the Fund to the Stand-by Trust, or to continue to hold all or part of its Units in the Fund. Options 1 and 2 involve selling the Fund units to the Standby Trust. Options 3 and 4 involve continuation of a Plan's investment in the Fund.

Options 2 and 4 always involve the provision of a Release[4] whereby the Plan sponsor, an authorized independent Plan fiduciary and the

[1] Neither the Department nor the Service is expressing an opinion as to whether the investment decision made by a participant of a Plan which holds an interest in the Fund would be subject to relief provided by section 404(c) of the Act or applicable regulations.

[2] On December 14, 1992, the Bank entered into an agreement settling claims relating to the Fund with Teamsters Joint Council No. 83 of Virginia Pension Fund. In addition, NationsBank of Florida, N.A., an affiliate of the Bank and wholly owned subsidiary of the Holding Company, entered into a settlement agreement with Kenny Nachwalter Seymour & Crichlow, P.A. Employees' Trust and its trustees. The terms of the settlement agreements contain the same terms and conditions provided in this notice of proposed exemption, and are contingent upon the granting of the exemption.

[3] The Department notes that the exemptive relief being granted herein extends only to those transactions described above. Also, the Applicants represent that the Bank is a national bank which is subject to the authority of the Office of the Comptroller of the Currency (the OCC). The OCC has informed the Department that a transaction that may be prohibited under the Act may also be a violation of the National Bank Act or constitute an unsafe or unsound banking practice. The proposed exemption does not address the safety and soundness or the legality of the transaction under the National Bank Act. Accordingly, the Bank should satisfy itself that the transaction does not violate the National Bank Act or constitute an unsafe or unsound banking practice.

In this regard, the applicants represent that they are currently obtaining any and all regulatory approvals from applicable governmental agencies, in order to effect the Sale, including approval from the Office of the Comptroller of the Currency, the Internal Revenue Service and the Federal Reserve Board.

[4] The Bank represents that there are only four litigants which potentially will be eligible to receive Litigation Expenses. In this regard, only four lawsuits were filed (on a consolidated basis) before November 24, 1992. Three of the four lawsuits have been settled conditioned on the opportunity to sell units to the Standby Trust. Each settlement agreement provides that payment of Litigation Expenses will be made with respect to the election of Option 2 or Option 4 by, or on behalf of, the Plan within ten days after the Bank and the Independent Fiduciary determine that all payments under the relevant Option have been paid. In this regard, the Department expects that a settlement of the fourth law suit would provide terms at least as favorable to the Plan as the arrangement described in this proposed exemption.

participants and beneficiaries release the Fund, the Bank and other appropriate persons with respect to matters relating to the Fund which occurred prior to the Settlement Date in exchange for certain consideration provided by the Bank.[5]

No release is involved in Options 1 or 3 except with respect to participant directed account Plans. In this regard, in connection with Options 1 and 3, the Plan sponsor and an authorized independent Plan fiduciary will provide a Release to the Fund, the Bank and other appropriate persons, without any affect on the rights of participants or beneficiaries with respect to the matters covered by the Release.

A Plan may elect one Option with respect to its entire investment in the Fund. Alternatively, a Plan may elect one Option with respect to a portion of that Plan's investment in the Fund and another Option with respect to the remainder. However, if a Plan elects multiple Options, it must be a combination of either Options 1 and 3 or Options 2 and 4.

The Independent Fiduciary will provide each Plan with the information necessary to evaluate the four Options. Plans which desire to liquidate all or part of their investment in the Fund by selling their Units to the Stand-by Trust may elect a combination of the four Options by submitting an Option election form prior to the Option Election Date. For those Plan sponsors of participant directed Plans who wish to allow the participants and beneficiaries of their Plans to make their own Option elections, the Plan sponsor will establish four sub trusts each of which will accommodate the participants' and beneficiaries' election of the different Options.[6] Each participant's election of an Option will then be represented by an interest in the sub trust designated for that Option. If a Plan sponsor does not elect to have participants and beneficiaries make Option elections, then the Plan will be treated as any other Plan, and Option elections will be made by the independent Plan fiduciary or the Independent Fiduciary.

The Bank will be directed with respect to each Plan's election of one or more Options by an independent Plan fiduciary or by the Independent Fiduciary who will represent the Plans interest for purposes of the Sale.

9. In order to determine the value of the Units which will be sold pursuant to the Option elections, the Unit Purchase Price, the assets of the Fund will be appraised by independent and qualified appraisers selected by the Bank. Such appraisals will be completed within twelve months of and updated within fifteen days of the Sale. The Independent Fiduciary will review and approve the professional qualifications of the appraisers and their technical analyses and methodologies employed. As part of this approval process, the Independent Fiduciary will determine whether such appraisals are reasonable and adequate to establish the fair market value of the Properties. Additionally, the Independent Fiduciary will review and consider any capital improvement programs, environmental issues, preemptive liens, debt obligations and accrued expenses which may impact the value of the Properties. In the event that the Independent Fiduciary finds that any appraisal is deficient or unsuitable, the Independent Fiduciary has the authority to request the revision of such appraisal or the commission of a new appraisal. These appraisals will then be used by the Bank to calculate the overall value of the Fund.

The Bank will calculate the Unit Purchase Price based on the value of the Fund on the Settlement Valuation Date. The Unit Purchase Price will be approved by the Independent Fiduciary. Such approval will be accomplished by reviewing the appraisals of the assets of the Fund and the procedures and methodologies to be employed by the Bank in determining the Unit Purchase Price. Further, if the Independent Fiduciary believes that the Unit Purchase Price proposed by the Bank is not accurate, the Independent Fiduciary has the authority to order the Bank to recalculate the Unit Purchase Price. In addition, the Independent Fiduciary will review and approve the Bank's calculation of the Interest Amount payable to those Plans which elected Options 1 or 2. The Independent Fiduciary will also participate in the quarterly meetings held by the Bank in order to remain current on issues and developments relating to the Fund.

10. Arthur Andersen, LLP (Arthur Andersen) has been retained to serve as the Independent Fiduciary on behalf of the Plans with respect to the Sale. Arthur Andersen represents that it has extensive experience in the business of commercial real estate consulting, appraisal and related activities. Arthur Andersen is an experienced counselor to institutional owners of real estate and has negotiated terms and conditions of various real estate transactions. Specifically, Arthur Andersen has served as independent fiduciary on behalf of numerous clients. In addition, Arthur Andersen acknowledges that in acting as the Independent Fiduciary, it is a fiduciary within the meaning of section 3(21) of the Act.

11. In its capacity as the Independent Fiduciary, Arthur Andersen will review all disclosures made by the Bank to the Plans in connection with the Sale. In addition, Arthur Andersen will distribute to all Plans written disclosures providing general information regarding the proposed transaction, the circumstances under which the Independent Fiduciary will make an Option election for the Plan, and among which Options the Independent Fiduciary may elect for the Plan under various circumstances. Arthur Andersen will also provide general information to all Plans regarding the various factors that each Plan may wish to consider in deciding whether to authorize Arthur Andersen to select from the four Options. This information will include the cost/benefit considerations relating to pursuing an action against the Bank if the independent Plan fiduciary does not release the Bank, and the relative attractiveness of the additional features of Options 2 and 4. In addition, Arthur Andersen will send a survey/profile to all Plans to determine the type of Plan, degree of participant involvement in investment elections, Plan liquidity needs and the preferences of the independent Plan fiduciary. However, an independent Plan fiduciary that decides to make its own decision and

[5] The Department notes that the selection of the Options made by the independent Plan fiduciaries or the Independent Fiduciary is governed by the fiduciary responsibility provisions of Part 4, Subtitle B, Title I of the Act. Section 404 of the Act requires, in part, that a fiduciary of a plan act prudently, solely in the interest of and for the exclusive purpose of providing benefits to participants and beneficiaries. In this regard, the Department notes that in order to act prudently, a fiduciary must consider, among other factors, the risk and potential return of the alternative Options for its Plan.

Further, the Department is expressing no opinion, herein, on the decision by a fiduciary in electing an Option involving the Release. In this regard, the Department notes that the election by a plan fiduciary of an Option involving the Release does not preclude the Department from taking any action with respect to past transactions involving the Fund.

Finally, the Department notes that a determination by a Plan fiduciary to settle litigation and enter into an agreement which provides for the release of the Bank and the Fund is subject to the fiduciary responsiblity requirements of section 404 of the Act.

[6] The Department expects that each participant or beneficiary of a participant directed account Plan will be treated similarly with respect to the availability of the opportunity to elect Options, and those participants and beneficiaries who are responsible for making Option elections will receive information that is adequate to make an informed decision with regard to the Options.

declines to receive the survey/profile will not receive it.

12. Arthur Andersen will make Option elections for (1) Any Plan with respect to which the Bank or its Affiliates is an employer; (2) Plans that have authorized Arthur Andersen to make an Option election on their behalf; or (3) Any Plan which does not reserve the right to make an Option election and fails to make an Option election prior to the Option Election Date.

If the Plan reserves the right to make its own Option election and subsequently fails to make an Option election by the Option Election Date, the Plan will be deemed to have elected Option 3. If the Plan does not reserve the right to make its own Option election and the Plan fails to make: a sufficiently broad authorization; any authorization at all; or fails to complete the profile survey, Arthur Andersen will elect only between Options 1 and 3 for the Plan. However, Arthur Andersen will choose among all four Options if the independent Plan fiduciary completes and returns timely all required parts of the profile/survey and the related authorization form expressly authorizing Arthur Andersen to choose among all four Options. The Bank represents that it will authorize Arthur Andersen to choose among all four Options for Plans with respect to which the Bank or any of its Affiliates is an employer.

Arthur Andersen will review all surveys returned by the Plans for completeness and contact Plan fiduciaries regarding any unclear or incomplete information. In the event that the Plan fiduciaries do not respond to the surveys, Arthur Andersen will make the Option election based on the information available, and will notify each Plan of the Option election which it has selected for the Plan and the basis for such election in writing.

With respect to those independent Plan fiduciaries who notify Arthur Andersen that they will be making their own Option elections, Arthur Andersen is prepared to counsel any Plan fiduciary regarding the election process.

Finally, as the Independent Fiduciary, Arthur Andersen's duties will also include monitoring property sales and disposition activities during the liquidation of the Fund.

13. The Bank represents that it will provide securities disclosure forms and option elections forms, reviewed and approved by Arthur Andersen, to the Plan within ten days after the date on which final approval for the Sale will be granted by the Office of the Comptroller of the Currency which will be subsequent to a final grant of this proposed exemption and approval of the transactions covered by this proposed exemption by the Federal Reserve Board (the Initiation Date).

The Bank represents that the Settlement Valuation Date will be the last business day of the calendar month following the calendar month in which the Initiation Date occurs.

The Bank states that the Independent Fiduciary will mail a notice of right to make election, forms, supplemental disclosures and profile/surveys within thirty (30) days subsequent to the Settlement Valuation Date. The Plans will have at least thirty (30) days subsequent to the mailing of the Option Election Information to return the profile/survey to the Independent Fiduciary. The Plans will have at least sixty (60) days after the date on which the Option Election Information is mailed by the Independent Fiduciary in order to make their own Option elections.

The Bank states that the date on which the Plans will receive in cash the Unit Purchase Price plus the Interest Amount for their units in the Fund will be no more than 120 days after the Settlement Valuation Date.

14. The Standby Trustee will be obligated to acquire the Units in accordance with the Option Election Forms, and sales will be effected only pursuant to the Option Election Forms filed with the Bank on or prior to the Option Election Date. A Plan may rescind an Option election at any time prior to the Option Election Date.

15. The Bank agrees to be bound by the decisions and determinations made by Arthur Andersen, as the Independent Fiduciary. In the event that any action or inaction by the Bank or by the Holding Company with respect to the liquidation of the Fund or the Stand-by Trust is determined by the Independent Fiduciary to impede or conflict with any action or inaction required of the Independent Fiduciary in order to carry out and comply with the terms and provisions of this proposed transaction, the Independent Fiduciary shall so notify the Bank and demand that the Bank cease and desist from such action or take such action as is requested by the Independent Fiduciary.

16. In summary, it is represented that the proposed transaction will meet the statutory criteria for an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code because: (a) The Properties will be appraised by an independent and qualified appraiser; (b) The Plans selling Units pursuant to the Options will receive a price at least equal to the Unit Purchase Price plus the Interest Amount; (c) Prior to the Sale, the Plans will receive written information regarding the terms of the Sale; (d) An Independent Fiduciary has been retained to represent the Plans' interests with respect to the Sale and ongoing disposition of the Properties in the Fund; (e) The duties of the Independent Fiduciary shall include: reviewing and approving the appraisals of the Properties; monitoring the sales of, and disposition activities with respect to, the Properties during the Fund's liquidation; making Option elections on behalf of any Plan if the Bank or its affiliates have sole investment discretion with respect to that Plan, the independent plan Fiduciary authorizes the Independent Fiduciary to make an Option election on behalf of that Plan, the independent Plan fiduciary does not indicate whether the Independent Fiduciary is authorized to make an Option election on behalf of the Plan, or the Bank or any Affiliate is an employer with respect to the Plan; (f) The Bank and the Holding Company will be bound by the decisions and determinations made by the Independent Fiduciary; and (g) The Bank will continue its efforts to liquidate the Fund.

FURTHER INFORMATION CONTACT: Eric Berger of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

The First National Bank of Boston and Its Affiliates (Collectively, the Bank)

Located in Boston, Massachusetts
[App. No. D–09682]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Exemption for Receipt of Fees

If the exemption is granted, the restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply as of April 1, 1994 to: (1) the receipt by the Bank of fees from the 1784 Funds (the Funds), investment companies registered under the Investment Company Act of 1940 (the 1940 Act), for acting as an investment adviser to the Funds in connection with the investment by plans for which the Bank serves as a fiduciary (the Client Plans) in shares of the Funds; and (2) the receipt and retention of fees by the

Bank from the Funds for acting as custodian and accountant to the Funds as well as for any other services to the Funds which are not investment advisory services (i.e. ''secondary services'' as defined in Section III(h) below) in connection with the investment by the Client Plans in shares of the Funds, provided that the following conditions and the General Conditions of Section II below are met:

(a) No sales commissions are paid by the Client Plans in connection with the purchase or sale of shares of the Funds and no redemption fees are paid in connection with the sale of shares by the Client Plans to the Funds.

(b) The price paid or received by a Client Plan for shares in a Fund is the net asset value per share at the time of the transaction, as defined in Section III(e), and is the same price which would have been paid or received for the shares by any other investor at that time.

(c) Neither the Bank nor an affiliate, including any officer or director of the Bank, purchases or sells shares of the Funds to any Client Plan.

(d) Each Client Plan receives a credit, through a cash rebate, of such Plan's proportionate share of all fees charged to the Funds by the Bank for investment advisory services, including any investment advisory fees paid by the Bank to third party sub-advisors, no later than one business day after the receipt of such fees by the Bank. The crediting of all investment advisory fees to the Client Plans by the Bank is audited by an independent accounting firm on at least an annual basis to verify the proper crediting of the fees to each Client Plan.

(e) The combined total of all fees received by the Bank for the provision of services to a Client Plan, and in connection with the provision of services to the Funds in which the Client Plan may invest, are not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.[7]

(f) The Bank does not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the transactions.

(g) The Client Plans are not employee benefit plans sponsored or maintained by the Bank.

(h) A second fiduciary acting for the Client Plan which is independent of and unrelated to the Bank (the Second Fiduciary) receives, in advance of any investment by the Client Plan in a Fund, full and detailed written disclosure of information concerning the Funds, including but not limited to:

(1) A current prospectus for each Fund in which a Client Plan is considering investing;

(2) A statement describing the fees for investment advisory or similar services, any secondary services as defined in Section III(h), and all other fees to be charged to or paid by the Client Plan and by the Funds, including the nature and extent of any differential between the rates of such fees;

(3) The reasons why the Bank may consider such investment to be appropriate for the Client Plan;

(4) A statement describing whether there are any limitations applicable to the Bank with respect to which assets of a Client Plan may be invested in the Funds, and if so, the nature of such limitations; and

(5) Upon request of the Second Fiduciary, a copy of the proposed exemption and/or a copy of the final exemption, if granted, once such documents are published in the **Federal Register**.

(i) On the basis of the information described above in paragraph (h) of Section I, the Second Fiduciary authorizes in writing the investment of assets of the Client Plan in each particular Fund, the fees to be paid by such Fund to the Bank, and the cash rebate to the Client Plan of fees received by the Bank from the Funds for investment advisory services.

(j) All authorizations made by a Second Fiduciary regarding investments in a Fund and the fees paid to the Bank are subject to an annual reauthorization wherein any such prior authorization referred to in paragraph (i) of Section I shall be terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice of termination. A form expressly providing an election to terminate the authorization described in paragraph (i) above (the Termination Form) with instructions on the use of the form must be supplied to the Second Fiduciary no less than annually. The instructions for the Termination Form must include the following information:

(1) The authorization is terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice from the Second Fiduciary; and

(2) Failure to return the Termination Form will result in continued authorization of the Bank to engage in the transactions described in paragraph (i) of Section I on behalf of the Client Plan.

(k) The Second Fiduciary of each Client Plan invested in a particular Fund receives full written disclosure, in a statement separate from the Fund prospectus, of any proposed increases in the rates of fees charged by the Bank to the Funds for secondary services at least 30 days prior to the effective date of such increase, accompanied by a copy of the Termination Form, and receives full written disclosure in a Fund prospectus or otherwise of any increases in the rates of fees charged by the Bank to the Funds for investment advisory services even though such fees will be rebated as required by paragraph (d) of Section I above.

(l) In the event that the Bank provides an additional secondary service to a Fund for which a fee is charged or there is an increase in the amount of fees paid by the Funds to the Bank for any secondary services resulting from a decrease in the number or kind of services performed by the Bank for such fees in connection with a previously authorized secondary service, the Bank will, at least thirty days in advance of the implementation of such additional service or fee increase, provide written notice to the Second Fiduciary explaining the nature and the amount of the additional service for which a fee will be charged or the nature and amount of the increase in fees of the affected Fund. Such notice shall be accompanied by the Termination Form, as defined in Section III(i) below. However, if the Termination Form has been provided to the Second Fiduciary pursuant to this paragraph or paragraph (k) above, then the Termination Form need not be provided again for an annual reauthorization pursuant to paragraph (j) above unless at least six months has elapsed since the form was provided in connection with the fee increase.

(m) On an annual basis, the Bank provides the Second Fiduciary of a Client Plan investing in the Funds with:

(1) A copy of the current prospectus for the Funds and, upon such fiduciary's request, a copy of the Statement of Additional Information for such Funds which contains a description of all fees paid by the Funds to the Bank;

[7] In addition, the Department notes that Section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. Thus, the Department believes that the Bank should ensure, prior to any investments made by a Client Plan for which it acts as a trustee or investment manager, that all fees paid by the Funds, including fees paid to parties unrelated to the Bank and its affiliates, are reasonable. In this regard, the Department is providing no opinion as to whether the total fees to be paid by a Client Plan to the Bank, its affiliates, and third parties under the arrangements described herein would be either reasonable or in the best interests of the participants and beneficiaries of the Client Plans.

(2) A copy of the annual financial disclosure report prepared by the Bank which includes information about the Fund portfolios as well as audit findings of an independent auditor within 60 days of the preparation of the report; and

(3) Oral or written responses to inquiries of the Second Fiduciary as they arise.

(n) All dealings between the Client Plans and the Funds are on a basis no less favorable to the Client Plans than dealings with other shareholders of the Funds.

Section II—General Conditions

(a) The Bank maintains for a period of six years the records necessary to enable the persons described below in paragraph (b) of Section II to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control the Bank, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than the Bank shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) of Section II are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(ii) Any fiduciary of the Client Plans who has authority to acquire or dispose of shares of the Funds owned by the Client Plans, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of the Client Plans or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (b)(1) (ii) and (iii) shall be authorized to examine trade secrets of the Bank, or commercial or financial information which is privileged or confidential.

Section III—Definitions

For purposes of this proposed exemption:

(a) The term ''Bank'' means the First National Bank of Boston and any affiliate thereof as defined below in paragraph (b) of Section III.

(b) An ''affiliate'' of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term ''Fund'' or ''Funds'' shall include the 1784 Funds, Inc., or any other diversified open-end investment company registered under the 1940 Act for which the Bank serves as an investment adviser and may also serve as a custodian, Fund accountant, transfer agent or provide some other ''secondary service'' (as defined below in paragraph (h) of this Section) which has been approved by such Funds.

(e) The term ''net asset value'' means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in the Fund's prospectus and statement of additional information, and other assets belonging to the Fund or portfolio of the Fund, less the liabilities charged to each such portfolio or Fund, by the number of outstanding shares.

(f) The term ''relative'' means a ''relative'' as that term is defined in section 3(15) of the Act (or a ''member of the family'' as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(g) The term ''Second Fiduciary'' means a fiduciary of a Client Plan who is independent of and unrelated to the Bank. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to the Bank if:

(1) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Bank;

(2) Such fiduciary, or any officer, director, partner, employee, or relative of the fiduciary is an officer, director, partner, employee or affiliate of the Bank (or is a relative of such persons);

(3) Such fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this exemption.

If an officer, director, partner, affiliate or employee of the Bank (or relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in (i) the choice of the Client Plan's investment adviser, (ii) the approval of any such purchase or sale between the Client Plan and the Funds, and (iii) the approval of any change in fees charged to or paid by the Client Plan in connection with any of the transactions described in Sections I and II above, then paragraph (g)(2) of Section III shall not apply.

(h) The term ''secondary service'' means a service other than an investment management, investment advisory, or similar service, which is provided by the Bank to the Funds. However, for purposes of this exemption, the term ''secondary service'' will not include any brokerage services provided to the Funds by the Bank for the execution of securities transactions engaged in by the Funds.

(i) The term ''Termination Form'' means the form supplied to the Second Fiduciary which expressly provides an election to the Second Fiduciary to terminate on behalf of a Client Plan the authorization described in paragraph (j) of Section II. The Termination Form shall be used at will by the Second Fiduciary to terminate an authorization without penalty to the Client Plan and to notify the Bank in writing to effect a termination by selling the shares of the Funds held by the Client Plan requesting such termination within one business day following receipt by the Bank of the form; provided that if, due to circumstances beyond the control of the Bank, the sale cannot be executed within one business day, the Bank shall have one additional business day to complete such sale.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective April 1, 1994.

Summary of Facts and Representations

1. The Bank is a national banking association with its principal offices located at 100 Federal Street, Boston, Massachusetts, and is a subsidiary of Bank of Boston Corporation, a registered bank holding company. The Bank and various affiliates (referred to herein as ''the Bank''),[8] serve as trustee, directed trustee, investment manager, or custodian for approximately 800

[8] The Bank's current affiliates include: Rhode Island Hospital Trust National Bank; Bank of Boston, Connecticut; Casco Northern Bank, N.A.; Bank of Boston, Florida, N.A.; South Shore Bank; Multibank West; and Mechanics Bank.

employee benefit plans. As of April 1, 1994, the Bank had total assets under management of approximately $1.3 billion.

The Bank represents that its status as a fiduciary with investment discretion for a Client Plan arises out of its relationship as a trustee or investment manager for such Plan, but does not result from the rendering of any investment advice to a Plan fiduciary that has investment discretion for the Client Plan. As a custodian or directed trustee of a Client Plan, the Bank has custody of Plan assets, collects all income, performs bookkeeping and accounting services, generates periodic statements of account activity and other reports, and makes payments or distributions from the account as directed. However, the Bank has no duty as custodian or directed trustee to review investments or make recommendations, acting only as directed by an authorized Second Fiduciary.

The Client Plans include various pension, profit sharing, and stock bonus plans as well as retirement plans for self-employed individuals (i.e., Keogh plans), and individual retirement accounts (IRAs). The Bank, in its capacity as a fiduciary of the Client Plans, may exercise investment discretion for all or a portion of the assets of such Client Plans.

2. The Bank invests assets of Client Plans for which it acts as a fiduciary in shares of the Funds in instances where the Bank provides investment advisory and other services to the Funds. The Client Plans' pro rata share of fees paid by the Funds to the Bank for investment advisory services are rebated to all Client Plans, subject to the conditions of the proposed exemption, with respect to the assets of the Client Plans involved in such Fund investments. All investments in the Funds on behalf of the Client Plans are made by the Bank pursuant to an initial written authorization, and an annual reauthorization (as discussed below), of the investment by an independent Plan fiduciary (i.e., the Second Fiduciary). The Bank invests assets of a Client Plan in any of the Funds for which it has received prior written authorization for such investment from the Second Fiduciary during the period that such authorization is effective.

3. The Funds are a Massachusetts business trust organized on February 5, 1993, as an open-end, diversified management investment company registered under the 1940 Act. The Funds consist of twelve separate series of funds or investment portfolios with combined assets of approximately $897 million. Each share of each Fund represents an undivided, proportionate interest in the assets of that Fund. The current Funds are: (i) The 1784 Growth and Income Fund; (ii) The 1784 Asset Allocation Fund; (iii) The 1784 U.S. Government Medium-Term Income Fund; (iv) The 1784 Tax-Exempt Medium-Term Income Fund; (v) The 1784 Massachusetts Tax-Exempt Income Fund; (vi) The 1784 U.S. Treasury Money Market Fund; (vii) The 1784 Institutional U.S. Treasury Money Market Fund; (viii) The 1784 Tax-Free Money Market Fund; (ix) The 1784 Short-Term Income Fund; (x) The 1784 Income Fund; (xi) The Connecticut Tax-Exempt Income Fund; and (xii) The 1784 Rhode Island Tax-Exempt Income Fund.[9] The Bank states that shares of the Funds are offered to the Bank's trust customers, including the Client Plans, under terms and conditions which are at least as favorable to such customers as the terms and conditions offered to other customers of the Bank.

Additional Funds are in the process of registration and other series of Funds may be established in the future. The Bank intends to offer such Funds to the Client Plans, if deemed appropriate by the Second Fiduciary, as a means of obtaining an interest in a diversified portfolio of debt or equity investments consistent with the investment policies and objectives of the Client Plans.

The Bank believes that there are material advantages to the Client Plans from the use of the Funds. The Funds are valued on a daily basis, in contrast to certain collective investment funds maintained by the Bank which are valued monthly. The daily valuation permits (i) immediate investment of Client Plan contributions in various types of investments; (ii) greater flexibility in transferring assets from one type of investment to another; and (iii) daily redemption of investments for purposes of making distributions under the Client Plan. In addition, information concerning the investment performance of the Funds is available in newspapers of general circulation which allows Client Plan fiduciaries to monitor the investment performance of such assets on a daily basis rather than monthly.

All investments of Client Plan assets in the Funds will occur either through the direct purchase of shares of the Funds for a Client Plan by the Bank, the transfer by the Bank of Client Plan assets from one Fund to another Fund, or a daily automated sweep of uninvested cash of a Client Plan by the Bank into one or more Funds previously designated by the Client Plan for sweeping such cash. Any such investments for the Client Plans will be made pursuant to the Second Fiduciary's prior written authorization and annual reauthorization to the Bank.

4. No sales commissions or redemption fees are charged in connection with the purchase or sale of shares of the Funds. However, the Bank states that the Funds may pay a distribution fee to the Funds' distributor, provided that such distributor is unrelated to the Bank and the Client Plans. Thus, the Bank does not and will not receive fees payable pursuant to Rule 12b–1 in connection with transactions involving any shares of the Funds. The current distributor for the Funds is SEI Financial Services Company (the Distributor), a wholly-owned subsidiary of SEI Corporation (SEI). According to the distribution plan adopted by the Funds pursuant to Rule 12b–1 under the 1940 Act, the Distributor receives a distribution fee equal to an annual rate of 0.25% of each of the Funds' average daily net assets. The distribution fee is calculated daily and paid monthly. For all of the current Funds, the distribution fees have been waived by the Distributor since the formation of the Funds.

SEI Financial Management Corporation, a wholly-owned subsidiary of SEI, also serves as the administrator, dividend disbursing agent, shareholder servicing agent, and transfer agent for the current Funds. The Bank states that SEI and its subsidiaries are unrelated to the Bank and its affiliates.[10]

5. The Bank serves as the investment advisor for the Funds and charges the Funds for this service in accordance with investment advisory agreements (the Agreements) between the Bank and each Fund. The Bank is currently the sole investment adviser to the Funds' existing portfolios and presently contemplates no change for such portfolios. However, the Bank states that it may utilize third party sub-advisers in the future to enhance the investment

[9] Since the Client Plans generally are not subject to federal or state income taxes and do not need to seek tax-free income, the Bank does not anticipate that the Client Plans will invest in The 1784 Tax-Exempt Medium-Term Income Fund, The 1784 Massachusetts Tax-Exempt Income Fund, The 1784 Tax-Free Money Market Fund, The Connecticut Tax-Exempt Income Fund, The 1784 Rhode Island Tax- Exempt Income Fund or any other tax-exempt Fund.

[10] With respect to any fees paid by the Funds to parties unrelated to the Bank and its affiliates, the Department notes that the Bank, as a trustee or investment manager for a Client Plan's assets that are invested in the Funds, has a fiduciary duty to ensure that the fees indirectly paid by a plan to third parties are reasonable. The Department notes further that the Bank should ensure that services performed by the Bank or an affiliate for a Fund are not duplicative of any similar services performed by third parties.

alternatives and the investment advisory services available to the Funds for certain new portfolios. The Agreements allow the Bank to receive monthly investment advisory fees based on a percentage of the average daily net assets of each of the Funds. The Agreements and the fees received by the Bank are approved by the Board of Directors of the Funds (the Funds' Directors), in accordance with the applicable provisions of the 1940 Act. The Bank also serves as the custodian and accountant for the Funds for which it is entitled to receive additional fees. Any changes in the fees received by the Bank from the Funds are approved by the Funds' Directors. All of the Funds' Directors are independent of the Bank.

The Bank states that while it may be engaged by the Funds in the future to perform additional secondary services, it will not provide brokerage services to the Funds. Therefore, all securities transactions for a Fund's portfolio will be executed by broker-dealers unrelated to the Bank and will not generate commissions or other fees to the Bank.

6. The Bank represents that it has designed a fee structure (the Fee Structure) which is at least as advantageous to the Client Plans as an offset or credit arrangement, similar to that described in Prohibited Transaction Exemption 77–4 (PTE 77–4, 42 FR 18732, April 8, 1977), whereby investment advisory fees paid by the Funds to the Bank would be offset against fees paid directly to the Bank by the Client Plans.[11]

Under the Fee Structure, the Bank charges its standard fees to the Client Plans for serving as either a trustee, directed trustee, investment manager, or custodian.[12] All fees are billed on a quarterly basis. The annual charges for a Client Plan account are individually negotiated with the Bank based on the Bank's standard fee schedules. The Bank provides services to the Client Plans for which it acts as a trustee with investment discretion, including sweep services for uninvested cash balances in such Plans, under a bundled or single fee arrangement which is calculated as a percentage of the market value of the Plan assets under management. Thus, in such instances, there are no separate charges for the provision of particular services to the Client Plans. However, for Client Plans where investment decisions are directed by a Second Fiduciary, a separate charge is assessed for particular services where the Second Fiduciary specifically agrees to have the Bank provide such services to the Client Plan. With respect to sweep services, the Bank represents that such services are generally provided at no additional charge and, in any event, are provided only if approved by a Second Fiduciary for the Client Plan after disclosure of the services to be provided.[13] The Bank states that in some cases fees charged by the Bank to a Client Plan are paid by the Client Plan sponsor rather than by the Client Plan.

The Bank charges the Funds for its services to the Funds as investment adviser, in accordance with the Agreements between the Bank and the Funds. Under the Agreements, the Bank charges fees at a different rate for each Fund, computed based on the average daily net assets for the respective Fund. The fee differentials among the Funds result from the particular level of services rendered by the Bank to the Funds.

The investment advisory and other fees paid by each of the existing Funds are accrued on a daily basis and billed by the Bank to the Funds at the beginning of the month following the month in which the fees accrued. The applicant states that any additional Funds will follow the same monthly billing arrangement.

At the beginning of each month (pursuant to the terms of the applicable Agreements) and in no event more than one business day following the receipt of such fees by the Bank, the Bank rebates to each Client Plan directly with cash such Plan's pro rata share of all investment advisory fees charged by the Bank to the Funds (the Rebate Program). The Bank represents that each Client Plan's rebate of such investment advisory fees will include any investment advisory fees paid by the Bank to third party sub-advisers.

The Bank retains fees received from the Funds for custody and shareholder services and will retain additional fees received in the future for other secondary services. The Bank states that such secondary services are distinct from the services provided by the Bank as trustee to a Client Plan. Trustee services rendered at the Plan-level include maintaining custody of the assets of the Client Plan (including the Fund shares, but not the assets underlying the Fund shares), processing benefit payments, maintaining participant accounts, valuing plan assets, conducting non-discrimination testing, preparing Forms 5500 and other required filings, and producing statements and reports regarding overall plan and individual participant holdings. These trustee services are necessary regardless of whether the Client Plan's assets are invested in the Funds. Thus, the Bank represents that its proposed receipt of fees for both secondary services at the Fund-level and trustee services at the Plan-level would not involve the receipt of ''double fees'' for duplicative services to the Client Plans because a Fund is charged for custody and other services relative to the individual securities owned by the Fund, while a Client Plan is charged for the maintenance of Plan accounts reflecting ownership of the Fund shares and other assets.[14]

[11] PTE 77–4, in pertinent part, permits the purchase and sale by an employee benefit plan of shares of a registered, open-end investment company when a fiduciary with respect to the plan is also the investment adviser for the investment company, provided that, among other things, the plan does not pay an investment management, investment advisory or similar fee with respect to the plan assets invested in such shares for the entire period of such investment. Section II(c) of PTE 77–4 states that this condition does not preclude the payment of investment advisory fees by the investment company under the terms of an investment advisory agreement adopted in accordance with section 15 of the 1940 Act. Section II(c) states further that this condition does not preclude payment of an investment advisory fee by the plan based on total plan assets from which a credit has been subtracted representing the plan's pro rata share of investment advisory fees paid by the investment company.

[12] The applicant represents that all fees paid by Client Plans directly to the Bank for services performed by the Bank are exempt from the prohibited transaction provisions of the Act by reason of section 408(b)(2) of the Act and the regulations thereunder (see 29 CFR 2550.408b–2). The Department notes that to the extent there are prohibited transactions under the Act as a result of services provided by the Bank directly to the Client Plans which are not covered by section 408(b)(2), no relief is being proposed herein for such transactions.

[13] See DOL Letter dated August 1, 1986 to Robert S. Plotkin, Assistant Director, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, stating the Department's views regarding the application of the prohibited transaction provisions of the Act to sweep services provided to plans by fiduciary banks and the potential applicability of certain statutory exemptions as described therein.

[14] In this regard, the Department notes that the combined total of all fees received by the Bank directly and indirectly from the Client Plans for the provision of services to the Plans and/or to the Funds should not be in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

In addition, the fact that certain transactions and fee arrangements are the subject of an administrative exemption does not relieve a Client Plan fiduciary from the general fiduciary responsibility provisions of section 404 of the Act. Thus, the Department cautions the fiduciaries of the Client Plans investing in the Funds that they have an ongoing duty under section 404 of the Act to monitor the services provided to the Client Plans to assure that the fees paid by the Client Plans for such services are reasonable in relation to the value of the services provided. Such responsibilities would include determinations that the services provided are not duplicative and that the fees are reasonable in light of the level of services provided.

Finally, the Department notes that the Bank, as a trustee and investment manager for a Client Plan in connection with the decision to invest Client

The Bank states that the Rebate Program ensures that the Bank does not receive any investment advisory fees from the Funds as a result of the investment in the Funds by the Client Plans. Thus, the Fee Structure with the Rebate Program essentially has the same effect in offsetting the Bank's investment advisory fees received from the Funds as an arrangement allowing for a credit of such fees against investment management fees charged directly to the Client Plans. The Bank prefers the Fee Structure with the Rebate Program because it allows fees for fiduciary services charged at the Plan-level to remain fixed without any adjustments to such fees based on the investment advisory fees paid by the Funds to the Bank. The Bank notes that the Fee Structure also allows a Client Plan sponsor to pay the Client Plan's fees to the Bank for fiduciary services and still allows the Client Plan to receive a rebate of such Plan's pro rata share of the investment advisory fees paid by the Funds to the Bank.[15]

7. The Bank has established a system of internal accounting controls for the Rebate Program. In addition, the Bank has retained the services of Coopers & Lybrand of Boston, Massachusetts (the Auditor), an independent accounting firm, to audit annually the rebating of fees to the Client Plans under the Rebate Program. The Bank states that such audits provide independent verification of the proper rebating to the Client Plans of the investment advisory fees charged by the Bank to the Funds. The Bank states further that information obtained from the audits is used in the preparation of required financial disclosure reports to the Client Plans' fiduciaries.

By letter dated March 29, 1994, the Auditor describes the procedures that will be used in any annual audit of the Rebate Program. The Auditor obtains: (i) A calculation of the daily actual balances for all the Funds and for the total Client Plan shareholders of such Funds; (ii) a detailed list of the expenses charged to the Funds' shareholders by type of expense; and (iii) calculations of the total expenses charged by the Bank to each Fund which are reimbursable to the Client Plans. The Auditor states that every audit will include, but not necessarily be limited to, an examination of: (i) The daily rebate factors; (ii) the proper identification of Client Plan customers; (iii) the calculation of the ratio used to determine the amount of expenses to be rebated to each Client Plan; (iv) the total rebates paid and a comparison of this amount to the sum of all rebates paid to each Client Plan;[16] and (v) the amount of rebated fees determined for selected Client Plan customers of the Funds to ensure that the rebated amounts were made to the proper Client Plan account.

In the event either the internal audit by the Bank or the independent audit by the Auditor identifies that an error has been made in the rebating of fees to the Client Plans, the Bank will correct the error. With respect to any shortfall in rebated fees to a Client Plan, the Bank will make a cash payment to the Plan equal to the amount of the error with interest computed on the same yield as that paid by The 1784 Institutional U.S. Treasury Money Market Fund for the period involved. Any excess rebates made to a Client Plan will be corrected, to the extent possible, by an appropriate reduction of cash to the Client Plan during the next payment period to accurately reflect the proper amount of total rebates due to the Client Plan for the period involved.

8. With respect to the receipt of fees by the Bank from a Fund in connection with any Client Plan's investment in the Fund, the Bank states that a Second Fiduciary receives full and detailed written disclosure of information concerning the Fund in advance of any investment by the Client Plan in the Fund. On the basis of such information, the Second Fiduciary authorizes in writing the investment of assets of the Client Plan in the Fund and the fees to be paid by the Fund to the Bank. In addition, the Bank represents that the Second Fiduciary of each Client Plan invested in a particular Fund will receive full written disclosure, in a statement separate from the Fund prospectus, of any proposed increases in the rates of fees charged by the Bank to the Funds for secondary services, which are above the rate reflected in the prospectus for the Fund, at least 30 days prior to the effective date of such increase. In the event that the Bank provides an additional secondary service to a Fund for which a fee is charged or there is an increase in the amount of fees paid by the Funds to the Bank for any secondary services, resulting from a decrease in the number or kind of services performed by the Bank for such fees in connection with a previously authorized secondary service, the Bank will, at least thirty days in advance of the implementation of such additional service or fee increase, provide written notice to the Second Fiduciary explaining the nature and the amount of the additional service for which a fee will be charged or the nature and amount of the increase in fees of the affected Fund.[17] Such notice will be made separate from the Fund prospectus and will be accompanied by a Termination Form. The Second Fiduciary will also receive full written disclosure in a Fund prospectus or otherwise of any increases in the rate of fees charged by the Bank to the Funds for investment advisory services even though such fees will be credited, as required by Section I(d) above.

Any authorizations by a Second Fiduciary regarding the investment of a Client Plan's assets in a Fund and the fees to be paid to the Bank, including any future increases in rates of fees for secondary services, are or will be terminable at will by the Second Fiduciary, without penalty to the Client Plan, upon receipt by the Bank of written notice of termination. The Bank states that a Termination Form expressly providing an election to terminate the authorization with instructions on the use of the form is supplied to the Second Fiduciary no less than annually. The instructions for the Termination Form include the following information:

(a) The authorization is terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice from the Second Fiduciary; and

(b) Failure to return the form will result in continued authorization of the

Plan assets in the Funds, has a fiduciary duty to monitor all fees paid by a Fund to the Bank, its affiliates, and third parties for services provided to the Fund to ensure that the totality of such fees is reasonable and would not involve the payment of any ''double'' fees for duplicative services to the Fund by such parties.

[15] To the extent that the Department of the Treasury determines that this arrangement should be deemed a contribution by an employer to a Client Plan of the rebated fees, the transaction must be examined under the applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

[16] In this regard, the Auditor recomputes cash received in connection with the rebate of each Client Plan's fees to ensure the proper amount of cash was issued to the Client Plan under the Rebate Program.

[17] With respect to increases in fees, the Department notes that an increase in the amount of a fee for an existing secondary service (other than through an increase in the value of the underlying assets in the Funds) or the imposition of a fee for a newly-established secondary service shall be considered an increase in the rate of such fees. However, in the event a secondary service fee has already been described in writing to the Second Fiduciary and the Second Fiduciary has provided authorization for the fee, and such fee was temporarily waived, no further action by the Bank would be required in order for the Bank to receive such fee at a later time. Thus, for example, no further disclosure would be necessary if the Bank had received authorization for a fee for custodial services from Plan investors and subsequently determined to waive the fee for a period of time in order to attract new investors but later charged the fee.

Bank to engage in the subject transactions on behalf of the Client Plan.

The Termination Form may be used to notify the Bank in writing to effect a termination by selling the shares of the Funds held by the Client Plan requesting such termination within one business day following receipt by the Bank of the form. The Bank states that if, due to circumstances beyond the control of the Bank, the sale cannot be executed within one business day, the Bank will complete the sale within the next business day.

Any disclosure of information regarding a proposed increase in the rate of any fees for secondary services will be accompanied by an additional Termination Form with instructions on the use of the form as described above. Therefore, the Second Fiduciary will have prior notice of the proposed increase and an opportunity to withdraw from the Funds in advance of the date the increase becomes effective. Although the Second Fiduciary will also have notice of any increase in the rates of fees charged by the Bank to the Funds for investment advisory services, through an updated prospectus or otherwise, such notice will not be accompanied by a Termination Form since all increases in investment advisory fees will be rebated by the Bank to the Client Plans and will be subject to an annual reauthorization as described above. However, if the Termination Form has been provided to the Second Fiduciary for the authorization of a fee increase, then a Termination Form for an annual reauthorization will not be provided by the Bank for that year unless at least six months has elapsed since the Termination Form was provided for the fee increase.

The Bank states that the Second Fiduciary always receives a current prospectus for each Fund and a written statement giving full disclosure of the Fee Structure prior to any investment in the Funds. The disclosure statement explains why the Bank believes that the investment of assets of the Client Plan in the Funds is appropriate. The disclosure statement also describes whether there are any limitations on the Bank with respect to which Client Plan assets may be invested in shares of the Funds and, if so, the nature of such limitations.[18]

The Bank states further that the Second Fiduciary receives an updated prospectus for each Fund at least annually and either annual or semi-annual financial reports for each Fund, which include information on the Auditor's findings as to the proper rebating of the investment advisory fees by the Bank to the Client Plan. The Bank also provides monthly reports to the Second Fiduciary of all transactions engaged in by the Client Plan, including purchases and sales of Fund shares.

9. No sales commissions are paid by the Client Plans in connection with the purchase or sale of shares of the Funds. In addition, no redemption fees are paid in connection with the sale of shares by the Client Plans to the Funds. As noted above in Paragraph 4, the Bank does not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the transactions. The applicant states further that all other dealings between the Client Plans and the Funds, the Bank or any affiliate, are on a basis no less favorable to the Client Plans than such dealings are with the other shareholders of the Funds.

10. In summary, the applicant represents that the transactions described herein satisfy the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because: (a) The Funds provide the Client Plans with a more effective investment vehicle than collective investment funds maintained by the Bank without any increase in investment management, advisory or similar fees paid to the Bank; (b) the Bank requires annual audits by an independent accounting firm to verify the proper rebating to the Client Plans of investment advisory fees charged by the Bank to the Funds; (c) with respect to any investments in a Fund by the Client Plans and the payment of any fees by the Fund to the Bank, a Second Fiduciary receives full written disclosure of information concerning the Fund, including a current prospectus and a statement describing the Fee Structure, and authorizes in writing the investment of the Client Plan's assets in the Fund and the fees paid by the Fund to the Bank; (d) any authorizations made by a Client Plan regarding investments in a Fund and fees paid to the Bank, or any increases in the rates of fees for secondary services which are retained by the Bank, are or will be terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice of termination from the Second Fiduciary; (e) no commissions or redemption fees are paid by the Client Plan in connection with either the acquisition of Fund shares or the sale of Fund shares; (f) the Bank does not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act in connection with the transactions; and (g) all dealings between the Client Plans, the Funds and the Bank, are on a basis which is at least as favorable to the Client Plans as such dealings are with other shareholders of the Funds.

Notice to Interested Persons

Notice of the proposed exemption shall be given to all Second Fiduciaries of Client Plans that are currently invested in the Funds, as of the date the notice of the proposed exemption is published in the **Federal Register**, where the Bank provides services to the Funds and receives fees which would be covered by the exemption, if granted. Notice to interested persons shall be provided by first class mail within fifteen (15) days following the publication of the proposed exemption in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and a supplemental statement (see 29 CFR 2570.43(b)(2)) which informs all interested persons of their right to comment on and/or request a hearing with respect to the proposed exemption. Comments and requests for a public hearing are due within forty-five (45) days following the publication of the proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. E. F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

Amended Profit Sharing Plan and Trust of Walker Products Co., Inc. (the P/S Plan)

Located in Lincoln, Kansas
[App. No. D–09798]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale of certain farm land (the Land) by the

[18] See section II(d) of PTE 77–4 which requires, in pertinent part, that an independent plan fiduciary receive a current prospectus issued by the investment company and a full and detailed written disclosure of the investment advisory and other fees charged to or paid by the plan and the investment company, including a discussion of whether there are any limitations on the fiduciary/investment adviser with respect to which plan assets may be invested in shares of the investment company and, if so, the nature of such limitations.

P/S Plan to Mr. Lloyd Walker, a 33⅓% shareholder of the P/S Plan sponsor and a party in interest with respect to the P/S Plan, provided that the following conditions are satisfied:

(1) The proposed sale will be a one-time cash transaction;

(2) The P/S Plan will receive the fair market value of the Land as determined at the time of the sale by an independent, qualified appraiser; and

(3) The P/S Plan will pay no expenses associated with the sale.

Summary of Facts and Representations

1. The Plan, established in May, 1974, is a profit sharing plan, which currently has two participants. As of September 1, 1994, the P/S Plan had $101,468 in total assets. The P/S Plan's trustees are Albert Walker, Craig Walker and Joyce Walker (the P/S Plan Trustees). Craig Walker is the president of Walker Products Company Inc. (the Employer). Lloyd Walker is a 33⅓% shareholder of the Employer. However, Lloyd Walker has retired from the Employer on December 31, 1982, and received distributions from the P/S Plan on February 28, 1983. The Employer is a Subchapter ''C'' Kansas corporation which is in the farming business. The applicant represents that until approximately August, 1985, the Employer maintained two plans (collectively; the Plans), the P/S Plan and the Money Purchase Plan (M/P Plan). The M/P Plan was terminated in August, 1985, and its assets were rolled over into the P/S Plan approximately May, 1986.

2. On May 5, 1975, the M/P Plan purchased the 79.6 acre tract of Land for $57,000 in cash from Edward Hamilton, the executor of the Estate of Marie Jensen, neither of which had any relationship to the Plans, Lloyd Walker, or the Employer. At the time that the Land was purchased it represented 78.95% of the M/P Plan's assets. It is represented that the original decision to purchase the Land was made by the M/P Plan Trustees who deemed it a safe investment which could produce income from farming operations and a reasonable rate of return. The Land was held by the M/P Plan from the date of original acquisition until approximately May, 1986, when the M/P Plan's assets, including the Land, were transferred into the P/S Plan.

3. The Land is currently encumbered with a first mortgage which was entered into on August 31, 1994, in the principal amount of $30,000. The applicant represents that the P/S Plan Trustees borrowed the money (the Loan) in order to pay out distributions. The Loan was made by Farmers National Bank, which is unrelated to the P/S Plan and the Employer. The P/S Plan Trustees intend to pay off the Loan with the proceeds from the proposed sale.

4. It is represented that since its original acquisition, the Land has been rented or operated.[19] Since April, 1985 and currently, the Land has been rented on a crop share basis to Lowell Vonada (Mr. Vonada), an unrelated third party. Under this arrangement, Mr. Vonada as the tenant receives 60% of the crops and the P/S Plan receives 40% of the crops. It is also represented that currently there are no crops growing on the Land.

5. Lloyd Walker now desires to purchase the Land from the P/S Plan in a one-time cash purchase. The Land was appraised (the Appraisal) on October 18, 1994, by Frank L. Princ (Mr. Princ), an independent Kansas State Certified General R.E. appraiser. Mr. Princ stated that the purpose of the Appraisal is to estimate the market value of the Land on an ''as is'' basis. The Land, located in Lincoln County, Kansas, contains approximately 82 acres,[20] of which 76.2 acres are in cultivation, and the remaining acres are primarily woodland and waste. In determining the fair market value of the Land, Mr. Princ utilized the sales comparison approach and the income approach, but relied mainly on the sales approach as the primary basis for the value estimate of the Land. Accordingly, as of October 18, 1994, Mr. Princ determined the fair market value of the Land to be $64,000.

6. The applicant maintains that the Land has yielded revenue for the Plans. The applicant submitted a ''return on investment'' analysis (the Analysis) on the Land, covering the period 1976 through 1994. Return on investment value ratios were derived by the applicant by dividing the estimated net income by the original acquisition price of the Land for each year of ownership.[21] An average of the ''return on investment'' figures was determined to be 6.98%. Therefore, according to the Analysis, the Plans received an average yield of 6.98% for their investment in the Land.

7. The applicant represents that the transaction is administratively feasible, in the interest and protective of the P/S Plan. Lloyd Walker will purchase the Land at its fair market value in a one-time cash transaction. The transaction is protective and in the best interest of the P/S Plan because as a result of this transaction the P/S Plan will receive the fair market value of the Land as determined at the time of the sale by an independent, qualified appraiser. The transaction would also be in the interest of the P/S Plan because it will enable the P/S Plan to sell an illiquid asset which currently represents in excess of 50% of the P/S Plan's total assets and which had little appreciation in value over time.[22] The sale will enable the P/S Plan Trustees to pay off the Loan and to acquire investments with a higher yield. The applicant also represents that the P/S Plan will incur no expenses as a result of the transaction described herein.

8. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(1) The proposed sale will be a one-time cash transaction;

(2) The P/S Plan will receive the fair market value of the Land as determined at the time of the sale by an independent, qualified appraiser; and

(3) The P/S Plan will pay no expenses associated with the sale.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Delaware Trust Capital Management, Inc. (DTCM)

Located in Wilmington, Delaware
[App. No. D–09853]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by certain rollover individual retirement accounts (the

[19] With regard to the Land being operated, the applicant represents that for a short period of time the employees of the Employer (the Employees) were paid to provide farming services. However, the applicant represents that the Employees were not compensated for these farming services by either of the Plans. It is further represented that no renter, at any time, has been a party in interest with respect to the Plans.

[20] The applicant represents that 82 acres shown by Mr. Princ probably come from the Lincoln County Appraiser's office. The applicant also maintains that their reference to the Land as containing 79.6 acres is based on the number of tillable acres on the Land.

[21] With respect to the Analysis, the applicant represents that with respect to the period 1986 through 1994, the data was estimated to reflect pro rata income and expenses for the Land, excluding any unrealized gain due to the change in fair market value of the Land.

[22] The Department expresses no opinion as to whether the Plan's acquisition and holding of the Land, as well as the operation of the Land by the Employees, violated any provision of part 4 of Title I of the Act, and no relief is provided herein.

IRAs) of their interests in certain securities (the Securities) to DTCM, a disqualified person with respect to the IRAs, provided the following conditions are satisfied: (1) The sale is a one-time transaction for cash; (2) no commissions or other expenses are paid by the IRAs in connection with the sale; (3) the IRAs receive the greater of: (a) the fair market value of the Securities as of June 30, 1994, plus accrued interest, less principal repayments received, or (b) the fair market value of the Securities as of the time of the sale as determined by a qualified, independent expert.[23]

Summary of Facts and Representations

1. DTCM is a Delaware corporation which is engaged in the business of providing trust and other fiduciary services to individuals, businesses and non-profit entities, including employee pension plans and individual retirement accounts.

2. DTCM was the trustee of the USA Training Academy, Inc. Profit Sharing Plan (the Plan), and is the trustee of the IRAs, which are rollover individual retirement accounts for five former participants (the Affected Participants) in the Plan. DTCM (and its parent company, Delaware Trust Company) have served as trustee of the Plan and the IRAs from November 1, 1984 until the present. The applicant is a wholly owned subsidiary of Delaware Trust Company, which in turn is a wholly owned subsidiary of Meridian Bancorp, Inc.

3. In 1994, the Plan's Administrator advised the applicant, DTCM, that the Plan's sponsor intended to terminate the Plan and, in that connection, would be instructing DTCM to liquidate the Plan assets and make distributions to the remaining Plan participants. In response, DTCM informed the Plan Administrator that there was no readily discernible market for the Securities. The Securities included the following two obligations:

(a) SEARS ROEBUCK & CO MTG SEC PAR CTF (the Sears Securities), which are mortgage-backed obligations issued by the Sears Mortgage Securities Corp. These Securities pay 10.36% in interest and mature July 25, 2018. The Plan acquired a participating certificate for 198,992 units of these obligations in July, 1988 for $196,200 (unit cost=$0.99). The Plan has received all scheduled payments of principal and interest.

(b) AMERICAN SVNGS & LOAN ASSN BRAZOR CNTY PART CTF (the American Securities), which are mortgage-backed obligations issued by American Savings and Loan Association of Brazoria County, Texas. Each loan is a guaranteed FHA Title I loan. These Securities pay 9.5% in interest and mature January 9, 2002. The Plan acquired 198,161.88 units in April, 1987 at a unit cost of $1 per unit. The Plan has received all scheduled payments of principal and interest.

4. DTCM determined that as of June 30, 1994, the Sears Securities had a fair market value of $24,163.78. This fair market value was established by Sears' mortgage subsidiary, a brokerage house providing master servicing for Sears' mortgage pass-through certificates which is a sister subsidiary to Sears Mortgage Securities Corp., the issuer of the Sears Securities. DTCM also determined that as of June 30, 1994, the American Securities had a fair market value of $49,416.80. The applicant represents that this fair market value was established by A.W. Dougherty, an unrelated brokerage house specializing in fixed- income securities.

5. DTCM, the Plan sponsor, the Plan and the Affected Participants entered into an agreement (the Agreement) in 1994 that provided for the orderly liquidation of the Plan without the delay that would have been caused by attempting to convert the Securities to cash. Following the execution of the Agreement on August 30, 1994, the applicant liquidated the Plan assets (excluding the Securities). The Plan Administrator then determined the value of each participant's account based upon the cash proceeds of liquidation and the fair market value of the Securities as of June 30, 1994 (see rep. 4, above).[24] The Affected Participants received pro rata shares of (i) the cash proceeds of the liquidation of the Plan's assets and (ii) the Securities. The value of each Affected Participant's account was distributed to the IRAs, individual retirement rollover accounts established by DTCM on behalf of the Affected Participants and for which DTCM serves as trustee. The IRAs currently hold a total of 14,628.32 units of the Sears Securities and 41,501.40 units of the American Securities.

6. The applicant has requested an exemption to permit DTCM to purchase the Securities from the IRAs. DTCM will pay the greater of (i) the fair market value as of June 30, 1994, increased by any interest payments in arrears as of the date of purchase by the applicant, and reduced proportionately for any principal repayments received, or (ii) the fair market value of the Securities as of the date of the sale as determined by a qualified, independent expert. The IRAs will pay no fees, commissions or other expenses in connection with the transaction. The applicant represents that the Securities have been determined by Ms. Janet Milanese, Vice President of Starboard Capital Markets, Inc., an independent expert in Philadelphia, Pa., as having a fair market value as of January 31, 1995 which is less per unit than the June 30, 1994 figure determined as described in rep. 4, above. Accordingly, DTCM proposes to pay to the IRAs the June 30, 1994 fair market value of the Securities, plus any interest payments in arrears as of the date of the transaction, less any principal repayments received.

7. The applicant represents that the Plan entered into the Agreement because it allowed for the orderly liquidation of its assets and distribution of benefits while at the same time protecting the Affected Participants because they would receive at least as much as they would have if the Plan had been able to sell the Securities in an arm's-length transaction on the date of the Plan's liquidation. The proposed transaction also benefits the IRAs since it allows the Securities to be converted to cash prior to maturity at a price at least as great as could be obtained in an arm's-length transaction.

8. In summary, the applicant represents that the proposed transaction satisfies the criteria contained in section 4975 (c)(2) of the Code because: (a) The sale is a one-time transaction for cash; (b) no commissions or other expenses will be paid by the IRAs in connection with the sale; (c) the IRAs will be receiving not less than the fair market value of the Securities as determined by a qualified, independent expert; and (d) each of the Affected Participants is the only participant in his/her own IRA, and each has determined that the proposed transaction is appropriate for and in the best interest of his/her IRA and desires that the transaction be consummated.

NOTICE TO INTERESTED PERSONS: Because each of the Affected Participants is the only participant in his/her own IRA, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due 30 days after publication of this notice in the **Ferderal Register**.

[23] Pursuant to 29 CFR 2510.3–2(d), the IRAs are not within the jurisdiction of Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[24] The applicant represents that, based on the valuation methods described in rep. 4, the fair market value of the Securities on June 30, 1994, was at least as great as the fair market value of the Securities on August 31, 1994, the date liquidation of the Plan commenced.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 15th day of March, 1995.

Ivan Strasfeld,

Director of Exemption Determinations Pension and Welfare BenefitsAdministration, U.S. Department of Labor.

[FR Doc. 95–6728 Filed 3–17–95; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL CREDIT UNION ADMINISTRATION

Guidelines for the Supervisory Review Committee

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final Interpretive Ruling and Policy Statement 95–1—Supervisory Review Committee (IRPS 95–1).

SUMMARY: The Riegle Community Development and Regulatory Improvement of Act (Act) of 1994 was signed into law on September 23, 1994. Section 309 of the Act requires that NCUA establish an independent appellate process to review material supervisory determinations. This process must be established within 180 days of the Act's passage or by March 22, 1995. The Act also requires that the public be entitled to comment on the proposed process. The NCUA Board issued proposed IRPS 94–2 on November 10, 1994. The proposed IRPS would have established a Supervisory Review Committee (Committee) consisting of five senior staff members to hear appeals of material supervisory determinations. Material supervisory determinations were defined in the proposal to include composite CAMEL ratings of 4 and 5, significant loan classifications and adequacy of loan loss reserves. The Board has expanded the determinations subject to review in the final IRPS to include composite CAMEL ratings of 3, 4 and 5 and all component ratings of those composite ratings. The final IRPS reduces Committee membership from five to three and shortens the time-frames for Committee action. Additional procedural and technical changes are made in the final IRPS as described in the Supplementary Information.

EFFECTIVE DATE: March 22, 1995.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

FOR FURTHER INFORMATION CONTACT: Hattie M. Ulan, Special Counsel to the General Counsel, at the above address or telephone 703–518–6540.

SUPPLEMENTARY INFORMATION:

Background

The Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325 (the Act) was signed into law on September 23, 1994. Section 309 of the Act requires, among other things, that NCUA and the federal banking agencies each establish an independent appellate process to review material supervisory determinations. The Act requires that the agencies provide the public with notice and opportunity to comment on the proposed guidelines for the appellate process within 90 days of the Act's passage. The NCUA Board issued proposed guidelines establishing a Supervisory Review Committee (Committee) (Interpretive Ruling and Policy Statement (IRPS) 94–2) on November 10, 1994 (59 FR 59437, 11/17/94.) The guidelines were issued with a 30-day comment period ending on December 19, 1994. The NCUA Board then extended the comment period until January 18, 1995. (See 59 FR 61003, 11/29/94.) The Act requires that each agency's appellate process be established not later than 180 days after the Act's passage (by March 22, 1995).

Forty-nine commenters responded to the proposed guidelines. The public commenters consisted of 26 federally chartered credit unions, 7 state chartered, federally-insured credit unions and 1 unidentified credit union, 8 state credit union leagues, 1 state credit union regulator, 3 national trade associations, 2 individual auditors and one credit union manager. The commenters generally approved of the proposed Supervisory Review Committee, however, there were several areas where many of the commenters suggested changes. The Board has considered the public comments and suggestions of NCUA staff as well as the proposed guidelines of the federal banking agencies (Federal Deposit Insurance Corporation, Office of Thrift Supervision, Office of Comptroller of the Currency, and Federal Reserve Board) in devising its final guidelines. An explanation of the comments received and the resolution of the issues in the final IRPS follows.

Format—IRPS or Regulation

The Board specifically requested comment on whether an IRPS was the appropriate method to establish the appeals process or whether the process should be established through a regulation. Sixteen commenters addressed this issue and the response was split 50/50. Several of the commenters supporting use of a regulation believe it would have greater force of law. The Board believes that the IRPS format is more appropriate since it provides the Board with some flexibility. The Board does not believe enforceability of the IRPS will be a problem since notice and comment requirements of the Administrative Procedure Act have been followed in its promulgation.

Committee Composition

According to the proposed IRPS, the Committee was to be composed of five senior staff members: the Executive Director, the Director of the Office of Examination and Insurance, the General Counsel, one Regional Director, and one additional senior staff or Board staff member. The Executive Director was to serve as Committee chairperson. The proposed composition generated response from 32 commenters. Twenty-two of these commenters suggested adding (or completely substituting) non-NCUA staff to the Committee to ensure that the Committee would exercise independent judgment. The Board does not have the authority to place non-NCUA staff on the Committee. The Act requires that NCUA establish an ''independent *intra-agency* appellate process.'' (Emphasis added.) Non-NCUA staff presence on the Committee would not fulfill the statutory requirement of ''intra-agency.'' Several commenters (including ten who agreed that no non-NCUA staff should be on the Committee) suggested eliminating the Regional Director and alternate Regional Director from the Committee. Commenters believed that the Regional Director members would find it difficult not to support one another, even though they would not hear appeals occurring in their own Regions. The Board does not wish to place the Regional Directors in this position and has eliminated the Regional Director and alternate Regional Director from the Committee. In addition, the Board believes that neither the Executive Director nor the Executive Assistants to the Board Members should serve on the Committee. The persons serving in these positions report to and represent the interests of Board members. In order to ensure a separate and meaningful final right of appeal to the Board, as discussed below, these individuals should not serve on the Committee.

A few commenters noted that a Committee composed of fewer individuals may be better able to handle the appellate process. These commenters noted that it may be difficult to accommodate all members' schedules given their senior status and multiple job demands. The Board agrees and has reduced the Committee from five to three. The Committee will be composed of three senior staff members, none of whom are currently serving as a Regional Director or Associate Regional Director, the Executive Director or Executive Assistant to a Board Member. One Committee member will be designated as chairperson. All three members will serve for one year terms and can be reappointed for additional terms. The NCUA Chairman will appoint the Committee members and designate one member as Committee chairperson.

The proposed IRPS required that three of the five Committee members be present at each Committee meeting and that a majority vote be required for action on an appeal. The number of Committee members has been reduced from five to three and a quorum of two must be present for each meeting. A majority vote of the entire Committee (at least two) is required for action on an appeal.

The proposed IRPS stated that regular Committee meetings would be held quarterly with flexibility given to the Committee chairperson to cancel meetings and call additional meetings, as needed. Many commenters believed that more regular meetings should be scheduled. The final IRPS retains the requirement for regular quarterly meetings, again with flexibility given to the Committee chairperson to change this schedule. It is the Board's intention that adequate meetings be scheduled and held to complete action on all appeals within the time frames set forth below. Time frames for Committee action have been shortened as requested by many commenters. See discussion below.

Appealable Issues

The Act requires that material supervisory determinations, including determinations relating to examination ratings, adequacy of loan loss reserve provisions and loan classifications on loans that are significant to the credit union, be subject to the appellate process. The Board noted in the proposed IRPS that it understood the reference to ''examination'' rating to mean a credit union's CAMEL rating. The Board proposed that only a credit union's composite CAMEL rating of 4 or 5 be appealable; component ratings were not appealable to the Committee. In addition, the Board noted adequacy of loan loss reserve provisions and loan classifications on loans that are significant to the credit union as appealable issues. The Board requested comment on how it should define ''significant'' for purposes of identifying classified loans subject to the appeals process.

A total of 30 commenters addressed the appealability of certain CAMEL ratings. Most commenters thought the ratings subject to the appeals process should be expanded. Thirteen commenters believed all CAMEL ratings (or CAMELs 2–5) should be appealable. They stated that credit unions with CAMEL ratings other than 4 and 5 have significant objections to ratings and that their appealability would give credit unions the ability to discuss ratings with their examiners. Ten commenters thought that CAMEL 3s should be appealable. They noted that a rating of 3 affects field of membership expansions and some CAMEL 3 credit unions get increased examinations and supervisory contacts and are placed under letters of understanding and agreement. One commenter stated that a CAMEL rating of 3 is perceived as unsatisfactory in the credit union community. Fifteen commenters requested that at least some component ratings should be appealable. It was stated that composite ratings are made up of components, and if a component rating could not be appealed, a composite rating could never be changed. The Board has decided to expand the appealability of CAMEL ratings. Credit unions may appeal composite ratings of 3, 4, and 5 as well of as all component ratings of those composite ratings.

Eleven commenters addressed the issue of how to define ''significant'' for purposes of appealing the classification of a significant loan. Seven of these commenters believe that each credit union should determine which loans are significant. Two commenters suggested significant be defined as a percentage of reserves, one suggested a percentage of reserve plus dollar amount of the loan and one suggested that significant loans be linked to reserve adequacy. The Board has determined that each credit union may determine whether a classified loan is ''significant'' for purposes of its appealability to the Committee.

Several commenters believed additional disputes should also be subject to the Supervisory Review Committee. Included are disputes relating to fixed assets, credit union service organizations, field of membership, mergers and letters of understanding and agreement. It was also suggested that the Act requires that material supervisory decisions ''relating to examinations'' are appealable and the Board's interpretation of the Act as set forth in the proposed IRPS was too narrow. The Board has determined not to further expand the types of disputes covered by the review process initially. The Board may expand the disputes covered after some experience is gained with the process. In addition, disputes over field of membership, mergers, and other material issues are already appealable to the NCUA Board by credit unions not satisfied with the decisions of the Regional Director.

Resolution by Region and Timing Issues

The proposed IRPS stated that a dispute is ripe for review by the Committee only when the credit union establishes that it has been unsuccessful in attempting to resolve the matter with the Regional Office. No time frames were set for resolving issues at the regional level. Fourteen commenters believed that some time limit should be imposed on the Region to make a decision. Suggestions ranged from 30 - 120 days, with most commenters favoring 30 days. The Board agrees and believes that the Regions should respond to these disputes within 30 days. The proposed IRPS stated that appeals should be submitted within 30 days of the Regional Office's decision. Seven commenters suggested that 30 days would not always provide adequate time for a credit union to prepare an appeal. Some of these commenters suggested the 30 days be expanded to 45 - 60 days. The Board believes that 30 days is adequate time for a credit union to make a decision on whether to submit an appeal and in an effort to complete the appeal process expeditiously, will not increase the 30 days. In the event the Region does not respond, the dispute becomes appealable to the Committee after the first 30 days and within another 30 days (30 days for Region to respond, 30 days for credit union to submit appeal to Committee). The Board also believes that credit unions should be timely in their attempt to resolve the dispute with the Region. Therefore the final IRPS states that the credit union must contact the Regional Office within 30 days of the examiner's final determination. Sixteen commenters addressed the proposed time frames for the Committee to act on an appeal. Most agreed that the time frames set forth would not result in an expeditious appeal as required by the Act. It was proposed that an appeal be submitted by a credit union within 30 days of regional action and that the Committee would make a decision on the appeal within 90 days. If additional information was needed, the Committee would request it within 30 days of receipt of the appeal and the information would be submitted by the credit union and/or Regional Office within 15 days. Seven commenters specifically suggested shorter time frames for the Committee to decide an appeal, several others just noted that the time frame was too long. One commenter suggested reducing the 90 days to 30 days, three others suggested reducing it to 60 days. Three additional commenters stated the whole process should be limited to 90 days. The Board agrees that the time for Committee deliberation should be reduced. The final IRPS reduces the time the Committee has to request additional information from 30 to 15 days and the time for Committee action on the appeal from 90 to 30 days.

Appeals by Federally-Insured, State Chartered Credit Unions

The Act requires that the appellate process be available at insured institutions that NCUA supervises. It was noted in the preamble of the proposed IRPS that in cases of material supervisory determinations made by NCUA, the Committee would consider appeals from all federally insured institutions and that NCUA would consult with the state supervisory authority in appropriate cases. Six commenters addressed the issue of appeals made by federally-insured, state chartered credit unions (FISCUs). One commenter agreed with the proposal, one stated that NCUA does not supervise FISCUs and believed the review process should not be available to them and several commenters asked how the FISCU review process would be implemented.

NCUA has clear responsibilities with respect to the safety and soundness of all federally insured credit unions. NCUA works closely with the various state supervisory authorities in both joint and independent examination of FISCUs. There are two basic types of FISCU examinations in which NCUA examiners are involved: a joint examination with the state examiner; and an NCUA insurance review. Normally in a joint examination, the state examiner is the examiner-in-charge and there will be concurrence between the state and NCUA examiner on all substantive exceptions noted in the examination report. Results of joint examinations will normally be within the purview of the state since the state examiner is the examiner-in-charge. Disputes arising from these examinations would not normally be subject to NCUA's review process. An insurance review, on the other hand, is done by NCUA examiners; it does not involve state examiners. Disputes concerning material supervisory determinations arising from insurance reviews would normally be subject to the review process. The final IRPS states that FISCU appeals of material supervisory determinations made by NCUA examiners should first be pursued with the appropriate NCUA Regional Office and then, if not safisfactorily resolved, submitted to the Committee. The Committee chairperson will reverify that an NCUA examiner rather than a state examiner made the disputed determination, and the appeal will then be subject to review by the Committee. Regional staff and the Committee will consult with the state supervisor's office in appropriate cases.

Corporate Credit Union Appeals

The proposed IRPS did not specifically address appeals of corporate credit unions. The corporate credit union program is managed by the Office of Corporate Credit Unions located in NCUA's central office. NCUA examiners (rather than state credit union examiners) normally serve as the examiner-in-charge for examinations of corporate FISCUs. All federally insured corporate credit unions (both FCUs and FISCUs) should contact the Office of Corporate Credit Unions rather than the regional office concerning material supervisory determinations made by NCUA examiners. The same time frames and procedures apply. Staff from the Office of Corporate Credit Unions and the Committee will consult with the state supervisor's office in appropriate cases.

Written Appeal and Authorization by Board of Directors

Most commenters did not address whether the appeal should be submitted in writing. Of the few that did address the issue, only one commenter was opposed. The final IRPS reflects the requirement that the appeal be submitted in writing. A related issue that the Board did not specifically request comment on is whether the board of directors of the appealing credit union be required to authorize the appeal. The NCUA believes this to be a fair requirement. The board of directors should be made aware of and authorize any appeal made to the Committee. This requirement will eliminate the decision to appeal being made by one credit union official.

Personal Appearance

The preamble to the proposed IRPS noted that personal appearances would not be a regular part of the appellate process; that personal appearances may be requested, but the final decision would be made by the Committee. Twenty-nine commenters addressed personal appearance of the appealing party and all agreed that the credit union should be given the opportunity to make a personal appearance before the Committee. The NCUA Board has reconsidered this issue and determined that the decision on whether to make a personal appearance should be up to the appealing credit union. Appealing credit unions will be responsible for all

of their costs associated with a personal appearance. In an attempt to save resources of both appealing credit unions and the NCUA, the Committee chairperson reserves the right to first attempt to work out the dispute via teleconference.

Stay of Decision Pending Review

Three commenters requested that any material supervisory determination appealed be stayed pending the outcome of the appellate process. This issue was not specifically addressed in the proposed IRPS. The NCUA Board does not believe it appropriate to stay examination findings pending appeal. Safety and soundness concerns require that examination findings remain in place and that any action that the NCUA deems appropriate based on these findings be taken.

Role of NCUA Board

The proposed IRPS required that all Committee decisions be submitted to the NCUA Board. The Board would then have 7 days to review the decision. If a majority of the Board members agreed, the decision would become final. If a majority did not agree, the decision would be considered by the Board on final appeal. Six commenters addressed this issue. One agreed with the proposal and four stated that the decision should not go to the Board, but that the appealing credit union should have a right to appeal the Committee decision to the Board. One commenter suggested that only Committee decisions opposed to the appealing credit union should go to the Board. The Board has reconsidered this issue and determined that all appealing credit unions as well as the NCUA offices involved should have a right to appeal to the Board. The Committee decision is appealable to the NCUA Board within 30 days of receipt by the parties.

Other Appeals

One commenter requested that the Board include in the IRPS other types of appealable issues that are available to credit unions and credit union members. A section has been added to the final IRPS setting forth provisions of the NCUA Rules and Regulations which address various formal and informal appeals processes. Also noted in this section are other types of disputes (chartering, insurance applications, field of membership expansions, merger, etc.) which are appealable to the NCUA Board.

Retaliation

The Act requires that NCUA ensure that safeguards exist for protecting the appellant from retaliation by agency examiners. The proposed IRPS stated that credit unions could seek redress from alleged retaliation through NCUA's Office of Inspector General. Seven commenters addressed this issue, with five suggesting rotation of examiners if retaliation is found to exist. The final IRPS sets forth the types of actions that may be taken against an NCUA employee, including rotation of examiners, when retaliation is found to exist.

Exhaustion of Administrative Remedies

Two commenters asked whether a credit union would have to use the appellate process before proceeding to court on a dispute subject to the Committee's jurisdiction. Since the appellate procedure is part of NCUA's administrative process, it appears that if a credit union did not pursue the process and filed directly in court, it would not have exhausted its administrative remedies. Unless otherwise noted, this would be true for any of NCUA's appeal procedures. The Board has determined not to address this issue in the IRPS, as it is a principle of general administrative law.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board certifies that the final rule will not have a significant economic impact on small credit unions (those under $1 million in assets). The appeal procedures set forth apply equally to all credit unions. The procedures are not mandatory. Only those credit unions wishing to appeal are subject to its provisions. It is not anticipated that small credit unions will use the appeal procedures any more or less than large credit unions. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The IRPS applies to all federally insured credit unions (both federally chartered credit unions and federally-insured, state chartered credit unions (FISCUs)), as required by the Act. It may have a direct effect 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. However, the Act requires that the process apply to FISCUs.

Paperwork Reduction Act

Although it was noted in the proposal that the IRPS would impose paperwork requirements subject to the Paperwork Reduction Act, upon further consideration, including consultation with the Office of Management and Budget, the Board has concluded that the IRPS is exempt from the Paperwork Reduction Act pursuant to 44 U.S.C. 3518(c)(1)(B)(ii). According to this section, the Paperwork Reduction Act does not apply to an administrative action or investigation involving an agency against specific individuals or entities.

By the National Credit Union Administration Board on March 13, 1995.

Becky Baker,

Secretary of the Board.

Accordingly, for the reasons set forth in the preamble, IRPS 95–1 is established as follows:

[**Note:** The following ruling will not appear in the Code of Federal Regulations.]

1. **Authority:** Section 309 of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325.

2. IRPS 95–1 is established as follows:

Interpretive Ruling and Policy Statement 95–1—Supervisory Review Committee

Section 309 of the Riegle Community Development and Regulatory Improvement Act of 1994 requires that NCUA establish an independent intra-agency appellate process to review material supervisory determinations. The NCUA Board hereby establishes a Supervisory Review Committee (Committee) to implement Section 309.

It is NCUA policy to maintain good communication with all credit unions it supervises. Credit unions, examiners and regional and central office staff are encouraged to resolve disagreements informally and expeditiously. The NCUA Board expects that most disputes will be handled in that manner. The Supervisory Review Committee and other appeals processes are available for certain disputes that cannot be resolved informally.

A—Committee Structure, Scope and Procedures

The Supervisory Review Committee shall consist of three regular members of the NCUA's senior staff as appointed by the NCUA Chairman. None of the members shall be currently serving as a Regional Director, Associate Regional Director, Executive Director or Executive Assistant to a Board Member. One member shall be designated by the

NCUA Chairman as chairperson. All three Committee members shall serve for one year terms and may be reappointed for additional terms. Each member of the Committee shall have one vote and a quorum (two members) shall be present at each Committee meeting. Meetings may be held in person or via teleconference. A majority vote of the full Committee (two votes) is required for action on an appeal. Regular Committee meetings shall generally be held quarterly. Additional meetings will be scheduled or regular meetings canceled, as appropriate, by the chairperson on an as needed basis.

Appeals of material supervisory determinations made by NCUA may be made by all federally insured credit unions (federal credit unions (FCUs) and federally-insured, state chartered credit unions (FISCUs)).

Material supervisory determinations are limited to: (1) Composite CAMEL ratings of 3, 4, and 5 and all component ratings of those composite ratings; (2) adequacy of loan loss reserve provisions; and (3) loan classifications on loans that are significant as determined by the appealing credit union.

An FCU, other than a corporate FCU, must contact the regional office regarding the examiner's decision within 30 days of the examiner's final determination. The decision must be appealed to (postmarked or received by) the Committee either 30 days after a regional determination or 60 days after the regional office has been contacted if it has not made a determination.

A FISCU, other than a corporate FISCU, must contact the Regional Office within 30 days of the NCUA examiner's final decision. The Region will verify that the determination being appealed was made by an NCUA examiner. If the decision was made by the state, the appeal will be turned over to the state for appropriate action. If the decision was made by the NCUA examiner, the dispute will be handed by the Region and become appealable to the Committee either 30 days after a regional determination or 60 days after the regional office has been contacted if it has not made a determination. The Committee chairperson will reverify that the determination was made by NCUA. Regional staff and the Committee will notify and consult with the state supervisory authority in appropriate cases.

All federally insured corporate credit unions (FCUs and FISCUs) must contact the Office of Corporate Credit Unions concerning its examiner's final determination and then the Committee within the same time frames. Staff from the Office of Corporate Credit Unions and the Committee will consult with the state supervisory authority in appropriate cases involving corporate FISCUs.

The board of directors of the appealing credit union must authorize that the appeal be filed. Appeals shall be submitted in writing and shall be mailed or delivered to Chairman, Supervisory Review Committee, NCUA, 1775 Duke Street, Alexandria, VA 22314–3428.

Appeals may be made by letter, and shall include the name of the appellant credit union, the material supervisory determination being appealed and the reasons for the appeal. Appellants are encouraged to submit all information and supporting documentation relevant to the matter in dispute.

Appellants are entitled to a personal appearance before the Committee. The Committee chairperson reserves the right, however, to attempt to work out the dispute through teleconference.

The material supervisory determination remains in affect pending appeal. The appeal does not prevent the NCUA from taking any action, either formal or informal, that it deems appropriate during the pendency of the appeal.

The Committee may request additional information from the appellant and/or the Regional Office within 15 days of its receipt of the appeal. The information must be submitted to the Committee within 15 days of receipt of the Committee request. The Committee shall make a determination on the appeal within 30 days from the date of the receipt of an appeal by the Committee or of its receipt of any requested additional information. These time requirements are subject to adjustment by the Committee, whether on its own or upon request of the appellant or the Region involved.

The Committee decision is appealable to the NCUA Board within 30 days of receipt by the parties.

B—Other Appeals

Procedures for various formal and informal adjudicative and non-adjudicative actions and proceedings not covered by the Supervisory Review Committee are found in Parts 709 (creditor claim appeals), 745 (share insurance appeals), 792 (Freedom of Information Act appeals) and 747 (appeals of various administrative and enforcement actions) of the NCUA Rules and Regulations (12 CFR 709, 745, 792, and 747). These parts should be reviewed to determine the procedures which apply for a particular appeal. In addition, the NCUA Board serves as the final administrative decision maker for major disputes that are not otherwise covered by this IRPS or Parts 709, 745, 792 or 747. These include disputes over chartering, insurance applications, field of membership expansion, merger, certain corporate credit union matters, charter changes and letters of understanding and agreement. These issues should first be pursued through the appropriate Regional Office or the Office of Corporate Credit Unions. Appeals concerning these matters should be addressed to the NCUA Board and submitted through the appropriate Regional Office or the Office of Corporate Credit Unions.

C—Retaliation

Alleged acts of retaliation should be reported to NCUA's Inspector General, who is authorized by Congress, under the Inspector General Act, to receive and investigate complaints and other information regarding abuse in agency programs and operations.

Any retaliation by NCUA staff against a credit union making any type of appeal will subject the employee to appropriate disciplinary or remedial action by the appropriate supervisor. Such disciplinary or remedial action may include oral or written warning or admonishment, reprimand, suspension or separation from employment, change in assigned duties, or disqualification from a particular assignment, including prohibition from participating in any examination of the credit union that was the subject of the retaliation.

[FR Doc. 95–6705 Filed 3–17–95; 8:45 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: New.

2. The title of the information collections: FOIA Customer Satisfaction Survey.

3. The form number if applicable: Not Applicable.

4. How often the collection is required: One-time.

5. Who will be required or asked to report: Voluntary submittal by requesters who receive a final response from the NRC to a Freedom of Information Act (FOIA) request during a three-month survey period.

6. An estimate of the number of responses: Approximately 200 surveys will be dispatched and an estimated 150 responses will be received.

7. An estimate of the total number of hours needed annually to complete the requirement or request: Total hours for the one-time survey is 37.5 (15 minutes per response).

8. Section 3504(h), Pub. L. 96–511 does not apply.

9. Abstract: The NRC is surveying all requesters who receive a final response from the NRC to a Freedom of Information Act (FOIA) request during a three-month survey period. The survey will assess customer perceptions of the NRC FOIA process, and will identify areas for improvement.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC 20555.

Comments and questions should be directed by mail to the OMB reviewer: Troy Hillier, Office of Information & Regulatory Affairs (3150–0000), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 14th day of March, 1995.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 95–6732 Filed 3–17–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–01786; License No. 19–00296–10]

The National Institutes of Health Issuance of Director's Decision Under 10 C.F.R. 2.206 (DD–95–05)

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards, United States Nuclear Regulatory Commission (NRC or Commission) has issued a decision concerning a Petition dated December 2, 1993, submitted by the North Bethesda Congress of Citizen's Associations regarding the National Institutes of Health (NIH), Bethesda, Maryland.

The Petition requested that the Commission suspend License Condition 24, which authorizes NIH to incinerate radioactive waste on the Bethesda campus, pending resolution of several regulatory issues. The Petition also requested copies of the environmental assessments and/or safety evaluations that form the base for the NRC's authorization of License Condition 21, which raised the sewer disposal limit for radioactive materials to 8 Ci per year, and License Condition 28, which authorizes storage of radioactive waste at the NIH Poolesville facility. Finally, the Petition requested a copy of future correspondence between NRC and NIH regarding these matters.

After review of the Petition, the Director has determined that Petitioner's request to suspend License Condition 24 (License Condition 27 in the current License) was mooted by the removal of that Condition from the License. Petitioner's request for a copy of environmental assessments and/or safety evaluations that form the bases for authorization of license Conditions 21 and 28 cannot be granted. However, certain documents submitted by the Licensee in support of license amendment applications in connection with License Conditions 21, 24, and 28 have been supplied to Petitioner. Petitioner's request for a copy of future correspondence between NRC and NIH regarding these matters was granted. The reasons for this Decision are explained in a ''Director's Decision Under 10 C.F.R. 2.206'' (DD–95–05), which is available for public inspection in the Commission's Public Document Room located at 2120 L Street, N.W., Washington, D.C. 20555.

A copy of this Decision will be filed with the Secretary for the Commission's review in accordance with 10 C.F.R. 2.206(c). As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision, unless the Commission on its own motion institutes a review of the Decision within that time.

Dated at Rockville, Maryland this 5th day of March, 1995.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

BILLING CODE 7590–01–M

DIRECTOR'S DECISION UNDER 10 C.F.R. 2.206

I. Introduction

By letter addressed to the Executive Director for Operations, dated December 2, 1993, Arlene S. Allen, on behalf of the North Bethesda Congress of Citizen's Associations, Inc. (North Bethesda Congress, or Petitioner), requested that NRC take action with respect to the National Institutes of Health (NIH, or the Licensee) in Bethesda, Maryland.

Petitioner requests that the NRC: (1) suspend License Condition 24 of the NIH Materials License No. 19–00296–10 (License), which authorizes NIH to dispose of licensed materials by incineration, pending resolution of two regulatory issues: (a) no environmental report or environmental assessment has been completed regarding the incineration of radioactive waste on NIH's Bethesda campus; and (b) there may be less than adequate monitoring to ensure that radioactive effluents are within regulatory limits; (2) provide copies of the NRC environmental assessments and/or safety evaluations that provide the bases for (a) an exception from 10 CFR § 20.303(d) limits regarding radioactive materials discharges into sanitary sewer systems (License Condition 21); and (b) approval of the construction and operation of a low level waste storage facility at NIH's Poolesville campus (License Condition 28); and (3) forward a copy of future correspondence between NRC and NIH regarding these matters to the North Bethesda Congress.

The Petitioner asserts the following as bases for these requests: (1) NIH has not completed or submitted to the NRC an environmental report regarding radiological releases from incinerators at the Bethesda campus, and the NRC has not issued an environmental assessment or impact statement regarding NIH radiological emissions, as required by the National Environmental Policy Act and 10 CFR 51.21, 51.45 and 51.60(b); (2) licensing the disposal of radioactive waste by incineration is a federal action subject to the NEPA process; (3) because releases from the NIH incinerators are capable of exceeding regulatory limits and will increase over the next few years, and because total radiological emissions from NIH are sufficient to warrant environmental analysis, the continued burning of radioactive waste by NIH without an environmental report and environmental assessment are in noncompliance with NRC environmental regulations; (4) although NRC cited NIH for its failure to adequately monitor radioactive effluents and NIH committed to install instrumentation for continuous monitoring as a corrective action for

having exceeded its yearly radioactive effluent release limit to unrestricted areas for 1987, no continuous monitoring for radioactive airborne effluents exists for the NIH incinerator stacks; (5) it is not clear that the box monitoring system installed by NIH adequately detects radioactive waste, and small amounts of iodine continue to be identified in the incinerator ash, indicating that medical waste still gets into the incinerators; and (6) it is unclear that NIH methods to assess radioactive effluent releases at the incinerators satisfy regulatory requirements and provide assurance that Part 20 limits are being met.

The NRC staff provided a partial response to North Bethesda Congress by letter dated February 24, 1994. The staff acknowledged receipt of the Petition, and denied Petitioner's request to suspend License Condition 24 pending resolution of the Petition. The denial of the request to suspend License Condition 24 was based on findings of the then most recent NRC Inspection Report, Inspection Report No. 030–01786/92–001, which concluded that emissions from the incinerators at the NIH Bethesda campus were within regulatory limits and that, despite some deficiencies, the incineration operation was under adequate control. The NRC staff, therefore, determined that there was no immediate risk to public health and safety from continued operation of the incinerators. The February 24, 1994, letter granted Petitioner's request for copies of environmental assessments and/or safety evaluations insofar as such documents exist and could be retrieved. A later search of the active and archived NRC files disclosed no such documents. The February 24, 1994, letter also granted Petitioner's request for copies of all correspondence with the Licensee concerning the matters raised by Petitioner.

As of May 1994, all three incinerators were taken out of service by NIH. In a letter dated August 10, 1994, NIH committed to permanently stop all incineration of low level radioactive waste at its Bethesda campus, and requested a license amendment to delete License Condition 27 (formerly License Condition 24) from License No. 19–00296–10. This application was granted by NRC on November 3, 1994.

I have completed my evaluation of the matters raised by Petitioner, and have determined that, for the reasons stated below, Petitioner's request to suspend authority to incinerate pursuant to License Condition 24, pending performance of an environmental assessment and an environmental report with regard to incineration operations, and pending review of incinerator operating procedures, is moot. Petitioner's request for environmental assessments and/or safety evaluations in connection with License Conditions 21 and 28 cannot be granted because the NRC was not required to perform environmental assessments or formal safety evaluations in connection with the low level radioactivity associated with NIH discharges to the sanitary sewer system and with the low level waste storage facility at NIH's Poolesville campus, as explained below. Documents constituting the informal equivalent of an environmental review or safety evaluation in connection with License Conditions 21, 24, and 28, will be supplied to Petitioner. Petitioner's request for a copy of all correspondence between NRC and NIH regarding these matters was granted by the NRC staff letter dated February 24, 1994.

II. Background

The NIH specific license of broad scope, No. 19–00296–10, was issued in December 1956 by the Atomic Energy Commission (AEC). The license is due to expire in May 1995. The License replaced a set of nine licenses that had been issued to different institutes or laboratories of NIH. At the time of issuance of this broad scope license, short-lived radioactive waste (half-life under 100 days) was allowed to decay in storage and was then disposed of as ordinary waste. Long-lived solid and liquid wastes were incorporated into concrete and shipped for disposal. There was no license condition permitting incineration of licensed material, and sewer disposal of licensed material was limited to 1 Ci/yr, provided other conditions, such as average concentration limits, were met.

Soon after the License was issued, NIH requested authorization to incinerate dead animals used in experiments, and other combustible waste containing tritium (H–3), carbon-14 (C–14), and sulphur-35 (S–35) in the two general purpose incinerators then in use on campus. This request was granted as License Condition 12 in February 1959. In April 1968, License Condition 21 was approved to extend the incineration authorization to include incineration of any byproduct material, provided the effluent concentration limits specified in the regulations were met for the air effluents from the incinerators, as well as for disposal of the ash resulting from incineration. Byproduct material is defined in NRC regulations as ''any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to radiation incident to the process of producing or utilizing special nuclear material''. 10 CFR 20.1003. This, in effect, means any radioactive material produced in a nuclear reactor, other than plutonium, which is considered special nuclear material. H–3, C–14, and S–35 are all byproduct materials. Special nuclear material is any material that has the potential for use as fuel in a nuclear reactor, including plutonium, uranium-233, and uranium enriched in the isotope 233 or in the isotope 235.

In 1961, NIH requested raising the sewer disposal limit from 1 to 20 Ci/yr. In response to this request, NRC authorized an increase in the sewer disposal limit from 1 Ci/yr to 3 Ci/yr in October 1961, as reflected in License Condition 21. In April 1968, following another request, the sewer disposal limit was raised to 5 Ci/yr, and in April 1969, the License Condition was amended to raise the sewer disposal limit from 5 Ci/yr to its current level of 8 Ci/yr.

License Condition 24, authorizing incineration of byproduct material, and the License Condition 21, authorizing disposal of up to 8 Ci/yr of radioactive material to the sewer, have not changed materially since they were first issued.

The NRC regulations pertaining to incineration and sewage disposal appear in 10 CFR Part 20, ''Standards for Protection Against Radiation'', first implemented in 1957. The initial 1957 version of 10 CFR Part 20 limited the quantity of licensed and other radioactive material released into the sewerage system to 1 Ci/yr. Limits were also imposed on the average concentrations of radioactive materials in the sewer releases. The regulations in 10 CFR Part 20 were revised in 1982 to raise the disposal limit for discharges to sanitary sewerage systems from 1 Ci/yr to a total of 7 Ci/yr, of which up to 5 Ci/yr may be H–3, up to 1 Ci/yr C–14, and up to 1 Ci/yr all other isotopes combined. Permission to incinerate radioactive waste in the form disposed of at NIH was sought through the mechanism then applicable to permit licensees to apply for approval of a waste disposal method provided in 10 CFR 20.302, ''Method of obtaining approval of proposed disposal procedures.''

An application for a license amendment to permit interim storage of low-level radioactive waste at the NIH Animal Center in Poolesville, Maryland, was submitted to the NRC in October 1992. In the same submittal, NIH also requested an increase in its possession limits for carbon-14 from 2 to 3 curies, and for phosphorus-32 from 2 to 4 curies. The increases in possession limits were requested to provide

flexibility in waste storage. The stated reason for the request to store waste was partly to allow decay of short-lived activity before disposal, and partly in anticipation of a reduction or elimination of options for permanent disposal of low-level radioactive waste, such as the anticipated closure of the Barnwell, South Carolina waste disposal facility. In January 1993, the NRC authorized use of the Poolesville facility for interim storage of low-level radioactive waste, as reflected in License Condition 28.

III. Discussion

A. Petitioner's Request for Suspension of Incineration Operations Was Mooted by Amendment of the NIH License

As explained above, NIH's authority to incinerate radioactive waste was terminated by the NRC Staff's November 3, 1994, grant of NIH's application for a license amendment to remove License Condition 27. Consequently, Petitioner's request for suspension of NIH incineration operations is moot. Similarly, any past deficienices in NIH's incineration monitoring program [1] need not be addressed, other than to emphasize that if, in the future, NIH were to request authorization to resume incineration operations, the NRC staff, as part of its evaluation of such a request, would review the incineration program and operating procedures and require correction of any deficiencies in the monitoring program [2] before granting such a request.

B. Request for Environmental Assessments and Environmental Reports

1. Incineration of Radioactive Waste

Petitioner contends that incineration of radioactive wastes and potentially contaminated medical wastes by NIH, without complete environmental reports and environmental assessments, is in violation of NRC regulations and the National Environmental Policy Act (NEPA). Petitioner further states that, in the Statement of Consideration accompanying the newly revised 10 CFR Part 20, NRC retained the requirement for prior approval of incineration on a site specific basis and that NRC rejected the notion that disposal of radioactive waste by incineration is simply just another form of general effluent release, and thus approval of incineration is subject to the NEPA process. Petitioner also claims that because radiological releases from the NIH incinerators are capable of exceeding regulatory limits, as discussed in the 1988 NRC Inspection Report No. 030–01786/88–001, NIH total radiological emissions warrant environmental analyses.

The initial authorization to incinerate H–3, C–14, and S–35, as well as the 1968 license amendment extending this authorization to all byproduct materials, predated both the National Environmental Policy Act (NEPA) of 1969, and NRC regulations implementing NEPA (10 CFR Part 51), which became effective in 1974. There was, therefore, no requirement at the time of these amendments to conduct an environmental assessment. A review of NRC records pertaining to the NIH licenses failed to identify any formal environmental assessments or safety evaluations in connection with these license amendments. However, related correspondence between NRC and NIH indicate that authorization to incinerate radioactive wastes was granted on the condition operations be conducted within the effluent limits imposed by 10 CFR Part 20. The total activity incinerated in any given period was limited indirectly by limiting the maximum allowable concentrations of radioactive materials in the effluents from the incinerator stacks to the levels specified by 10 CFR Part 20, Appendix B, Table II.

The original authorization to incinerate licensed material was reevaluated in connection with NIH's 1988 license amendment application to add a third incinerator of larger capacity to the two existing smaller incinerators previously authorized for operation. The license amendment application was accompanied by detailed descriptions of the incineration facility and proposed modes of operation and control. The record also shows correspondence from NRC requesting clarifications and additional information, as well as responses from NIH providing the requested information. These documents were incorporated into the License as tie-down conditions, which means that the Licensee must conduct operations as described in its application documents. However, a formal environmental assessment was not prepared. The amendment request was granted on the same condition as the original 1959 amendment authorizing incineration of wastes, which was that effluents from the incinerators must remain within the concentration limits specified by 10 CFR Part 20, Appendix B, Tables II. Incineration at NIH was authorized only after performance of NRC staff reviews of the incinerator design and proposed methods of operation and control of effluents, including disposal of the ash resulting from incineration, and consideration of the public doses expected from the operation.

The NRC practice in 1988 was, and still is, to determine on a case-by-case basis whether to perform an environmental assessment in connection with applications for incineration of waste containing radioactive material, provided that the concentration of radioactive materials in the incinerator effluents at the point of release, and in the ash residues, do not exceed the limits specified by 10 CFR Part 20, Appendix B, Table II, and also provided that the dose to the highest exposed member of the public that results from the authorized activity is no more than a small fraction of the dose limit for individual members of the public (100 millirem per year) specified by 10 CFR § 20.1301(a)(1). The radiation dose to a member of the public resulting from air effluents depends on the concentration of radioactive materials in the air at the location of that person. Limiting the concentrations of radioactive materials emitted from the stack at the release point to those

[1] NIH incinerator effluents were within the 10 CFR Part 20 regulatory limits specified by the license, and the incineration operation was under adequate control. See NIH Inspection Report No. 030–01786/92–001 (September 14, 1992) and NRC Inpsection Report No. 030–01786/94–001 (July 8, 1994). Nonetheless, there were some weak areas in the program, as indicated by the the possibility that the amount of iodine that was released in effluents may have exceeded ALARA goals. See NRC Inspection Report No. 030–01786/94–01. The Licensee's As Low As Reasonably Achievable (ALARA) commitment, incorporated into License Condition 27 by the July 1986 application for authority to incinerate radioactive materials, obligates the Licensee to have a program with the objective of limiting the average annual concentration of radioactive material in the incinerator stack effluents to ten per cent of the 10 CFR Part 20, Appendix B, Table II, values. The indications that the incineration effluents may have exceeded this ten percent limit in 1993 were inferential, and could not be verified on the basis of available data. The NRC staff determined that the ash residue data collected by the Licensee was not specific enough to permit a determination whether Iodine-125 releases did in fact violate the License Condition 27 requirement to have an ALARA program with the objective of limiting the average annual concentration of radioactive material in the incinerator stack effluent to 10 per cent of the 10 CFR Part 20, Appendix B, Table II, values. The available data, however, indicates that the annual average concentrations of radioactive materials in the incinerator effluents were probably substantially below the 10 CFR Part 20, Appendix B, Table II, limits for the 1990 through 1993 time period reviewed in the May 1994 NRC inspection.

[2] Petitioner also contends that releases from sources other than the incinerators, such as Building 21, did not appear to be routinely considered in conjunction with incinerator radionuclide releases when computing overall facility release totals to unrestricted areas. License Condition 27 imposed limits only upon incinerator radionuclide releases. Effluents from Building 21, and from other buildings on the NIH campus, are limited separately by other license conditions and by the limits imposed by 10 CFR Part 20 on effluents to unrestricted areas.

specified in 10 CFR Part 20, Appendix B, Table II, ensures that any dose to members of the public will be a small fraction of the applicable public dose limit. This is due to the fact that dispersion of the effluent air from the stack will reduce the average concentration of radioactive materials in the air at the location of an exposed individual to a small fraction of the limits for emissions at the release point, causing the delivered dose to that individual in turn to be a small fraction of the public dose limit. Review of an application to incinerate licensed materials involves, in part, verification that dispersion of the released material during transit, from the stack to the closest exposed individual, will reduce the concentrations sufficiently to ensure a very small dose to members of the public, even under the most conservative assumptions. Since the NIH application proposed limiting airborne incinerator effluents at the release point to 10 CFR Part 20, Appendix B, Table II, limits, the dose to the highest exposed member of the public would be limited to a small fraction of the dose limit for individual members of the public specified by 10 CFR § 20.1301(a)(1).

The NEPA and the Commission's implementing regulations in 10 CFR Part 51 do not require the performance of an environmental assessment in connection with authorization of incineration of radiological wastes at NIH. Under NEPA § 102(2)(c), 42 U.S.C. 4332(2)(c), and 10 CFR 51.21, an environmental assessment must be undertaken by the NRC for all licensing and regulatory actions except where the Commission's regulations, See 10 CFR 51.20(b), require the preparation of an environmental impact statement, or the licensing actions are eligible for categorical exclusion from these requirements because the actions do not individually or cumulatively have a significant effect on the human environment. 10 CFR 51.21 and 51.22(a). Any use of source, byproduct, or special nuclear material which involves quantities and forms of these materials similar to those involved in activities eligible for categorical exclusion in 10 CFR 51.22(c)(14)(i)–(xv), is also eligible for categorical exclusion. 10 CFR 51.22(c)(14)(xvi). The Commission anticipated that the quantities of radioactive material associated with the fifteen types of activities eligible for categorical exclusion under 10 CFR 51.22(c)(14)(i)–(xv) would involve effluent releases of between zero and 12% of the limits of 10 CFR Part 20. Statement of Consideration, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions and Related Conforming Amendments'', 49 FR 9352, 9376–9379 (March 12, 1984). Applicants who propose to limit the concentration of radioactive material in the incinerator stack effluents to less than 12 per cent of the applicable 10 CFR Part 20 limits, therefore, would be eligible for the categorical exclusion pursuant to 10 CFR 51.22(c)(14)(xvi). Since NIH committed, in its application for authority to incinerate radioactive waste, to have a program with the objective of limiting average annual concentrations of radioactive material in the incinerator stack effluents to 10 percent of the 10 CFR Part 20, Appendix B, Table II, limits, the NIH application for authority to incinerate was eligible for categorical exclusion pursuant to 10 CFR 51.22(c)(14)(xvi).

NIH's authority to dispose of contaminated ash residue from incinerator operations was also granted without performance of an environmental assessment, pursuant to the categorical exclusion of 10 CFR 51.22(c)(14)(xvi), for the same reasons as discussed above. The concentrations of radioactive materials in the ash residue were required by License Condition 24, in the case of NIH, to be below those specified by 10 CFR Part 20, Appendix B, Table II. Since 10 CFR Part 20 does not specify concentrations limits for ash, the limits specified for water were applied to the incinerator ash.

When the categorical exclusion provisions of 10 CFR Part 51 exempt a license application to incinerate licensed materials from the requirements to prepare an environmental assessment or an environmental impact statement, such as the NIH incineration operations, the licensee is not required to submit an environmental report for such proposed activity. Although NIH was not required to submit a formal environmental report in connection with its application for authorization of its incineration facility, NIH was required to submit, and did submit, detailed descriptions of the facility and the proposed mode of operation and control to ensure safe operation and compliance with NRC requirements.

In view of the above, the NRC was not required to and did not perform environmental assessments, and the Licensee was not required to and did not submit environmental reports, in connection with authorization of NIH incineration operations or disposal of incinerator ash residue. Petitioner has been provided, however, with copies of documents submitted by the Licensee in support of License Condition 27 and documents associated with the grant of License Condition 27.

2. Radioactive Material Discharges Into the Sanitary Sewer Systems (License Condition 21)

Petitioner requests copies of the NRC environmental assessments and/or safety evaluations that provide the basis for the NRC's grant of an exception from 10 CFR § 20.303(d) limits regarding radioactive material discharges into sanitary sewer systems. License Condition 21 exempts NIH from 10 CFR § 20.303(d), now superseded by 10 CFR § 20.2003(a)(4), which limits the quantity of licensed and other radioactive material released into the sewerage system to 5 Ci/yr H–3, 1 Ci/yr C–14, and 1 Ci/yr all other isotopes combined. License Condition 21, however, authorizes disposal of up to 8 Ci/yr of all licensed and other radioactive material, with no separate limits on the activities of individual isotopes, provided the provisions in 10 CFR §§ 20.303 (a), (b), and (c), superseded by 10 CFR §§ 20.2003 (a)(1), (a)(2) and (a)(3), are met. These regulations place limits on the monthly average concentrations of radioactive materials in sewer releases.

The license amendment which initially authorized a sewer release limit of 8 Ci/yr was granted in 1969, and predates NRC's 10 CFR Part 51, which implements the National Environmental Policy Act (NEPA) of 1969. There was, therefore, no requirement at the time the license amendment was granted to conduct an environmental assessment in connection with this License Condition 21. No environmental assessments or safety evaluations to support the grant of this amendment were found in a search of NRC records, nor were any references to such documents found.

A review of NRC records pertaining to the NIH license indicates that the grant to NIH of the exemption from 10 CFR 20.303(d), by raising the annual release limit from the 10 CFR Part 20 limit of 1 Ci/yr to 8 Ci/yr in 1969, and from the 10 CFR Part 20 total activity limit of 7 Ci/yr to 8 Ci/yr after 1982, without separate limits on H–3 and C–14, was based on concentrations of radioactive material in the sewer releases from the facility. The dose to a member of the public, obtaining drinking water from the sewer discharge point for the facility, depends on the concentration of activity in the sewer water, and not on the total amount released during the year.

10 CFR 51.22(c)(14)(xvi) provides that any use of source, byproduct, or special nuclear material which involves quantities and forms of these materials similar to those involved in actions eligible for categorical exclusion from environmental assessments is also eligible for exclusion, pursuant to 10 CFR 51.22(c)(14)(i)–(xv). NIH releases daily to the sewers a very large amount of water from its various buildings and the Clinical Center. This volume of water, which substantially exceeds one million gallons per day, provides very large dilution factors for radioactive wastes released to the sewers. At the level of 8 Ci/year, the resulting average concentrations of radioactivity in water leaving the NIH campus are a small fraction of the allowable concentrations specified in the 10 CFR Part 20, Appendix B, Table 3, and thus NIH sewer disposal activity is eligible for categorical exclusion pursuant to 10 CFR 51.22(c)(xvi). *See* Section III.B.1, *supra.* The corresponding doses are, therefore, also small fractions of the public dose limits, and are of the same order of magnitude, or smaller, than those involved in activities that are eligible for categorical exclusion. It was, therefore, concluded that grant of the NIH application for an 8 Ci/yr sewer disposal limit was eligible for the categorical exclusion. NRC's review of the NIH amendment application for License Condition 21 also considered the fact that radioactive material in the sewer water released from NIH is further diluted at the Blue Plains Sewage Treatment Plant, to which NIH discharges its sewer water. Further dilution is provided by the Potomac River, to which the effluent from Blue Plains is discharged.

The 10 CFR Part 20 limit on total activity released to the sewers per year from a licensee's facility was imposed to guard against the possibility that more than one licensee may discharge radioactive material to the same sewer lines, thus raising the overall concentrations of radioactive materials in the sewer lines. This was not an important consideration in the case of NIH in view of the high water discharge volume from the facility, which ensures very low concentrations of radioactive materials, even in the presence of possible sewer discharges from other licensees discharging to the same sewer system. A review of the NIH records for sewer discharges in recent years showed that the annual quantities discharged have been less than the 7 Ci/yr limit in 10 CFR Part 20. License condition 21 did not impose separate limits on H–3 and C–14 discharges.

In view of the above, Petitioner's request for environmental assessments and/or safety evaluations providing the basis for authorization of License Condition 21 cannot be granted. Petitioner, however, has been provided with documents submitted by NIH to the NRC in support of the amendment requests to raise the sewer discharge limits.

3. Construction and Operation of the Low Level Waste Storage Facility at NIH's Poolesville Campus (License Condition 28)

Petitioner requests copies of the NRC environmental assessments and/or safety evaluations that provide the bases for the NRC grant of the Licensee's license amendment application for construction and operation of a low level waste storage facility at NIH's Poolesville campus. License Condition 28 of the License currently states that ''Radioactive waste generated under this License shall be stored in accordance with the statements, representations, and procedures included with the Licensee's waste storage plan described in the Licensee's application dated October 13, 1992''. The conditions under which radioactive waste is stored at the Poolesville facility are described in the Licensee's 1992 application for an amendment to permit such storage, and were incorporated into License Condition 28 as tie-down conditions. They were evaluated by the NRC staff and found to be adequate to ensure public health and safety and to minimize adverse environmental effects. The Poolesville facility is inspected routinely by NRC's Region I to ensure that the conditions described in the bases for the license amendment are being observed, in addition to observance of good radiological safety practices.

The application documents for the License Condition 28 provide detailed descriptions of the Licensee's Poolesville facility and surrounding environment and demography, storage building construction details, methods of waste storage, waste form and inventory control, and other relevant details. This information was provided in accordance with the instructions in NRC Information Notice IN 90–09, ''Extended Interim Storage of Low-Level Waste by Fuel Cycle and Materials Licensees'', which describes the information required by the NRC for its review of license amendment requests to authorize extended interim storage of low-level radioactive waste. This review is functionally equivalent to an environmental assessment for such facilities.

In view of the above, Petitioner's request for environmental assessments and/or safety evaluations in connection with authorization of License Condition 28 cannot be granted. Petitioner, however, has been provided with a copy of IN 90–09 and the information submitted by the Licensee in support of its application for authority to construct and operate the Poolesville low level waste storage facility, which is the functional equivalent of a an environmental report and safety evaluation.

C. Request to Forward a Copy of Future Correspondence Between NRC and NIH to Petitioner

As requested by Petitioner, North Bethesda Congress of Citizen's Associations will be placed on the distribution list for all correspondence regarding operation of the NIH incinerators, sewer disposal limits, and interim radioactive waste storage license amendments at the Poolesville facility.

IV. Conclusion

For the reasons discussed above, Petitioner's request to suspend authority for incineration operations by NIH pursuant to Condition 24 of the NIH License, pending a review and improvement of operating procedures for the incinerators, and pending preparation of an environmental assessment and an environmental report, was mooted by removal of that authority from NIH License No. 19–00296–10 in November 1994. Petitioner's request for copies of any NRC environmental assessments and/or safety evaluations that provide the bases for authorization of License Conditions 21 and 28 cannot be granted, as explained in Section III, supra. Certain information submitted by the Licensee in connection with its request for authorization of License Conditions 21, 24, and 28, and NRC correspondence in response, however, was provided to Petitioner. Petitioner's request for a copy of all future correspondence between NRC and NIH regarding these matters is granted.

A copy of this Decision will be filed with the Secretary of the Commission for the Commission to review in accordance with 10 C.F.R. 2.206(c). As provided by this regulation, this Decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 5th day of March, 1995.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Materials Safety and Safeguards.

[FR Doc. 95–6733 Filed 3–17–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–317 and 50–318]

Baltimore Gas and Electric Co., Calvert Cliffs Nuclear Power Plant Unit Nos. 1 and 2; Notice of Partial Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request by the Baltimore Gas and Electric Company (BG&E) to withdraw a portion of its December 8, 1993, application for proposed amendments to Facility Operating License Nos. DPR–53 and DPR–69 for the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, located in Calvert County, Maryland.

The proposed amendments would revise Technical Specifications (TSs) Section 5.0, Design Features. The requested changes, for the most part, adopt the improved Standard Technical Specifications format and content for Combustion Engineering plants provided in NUREG–1432. Included in the initial December 8, 1993, application was a request to delete two subsections of the existing TSs. These subsections were Subsection 5.3.3, ''Control Element Assemblies,'' and 5.6.3, ''Drainage.'' Subsection 5.6.3 relates to inadvertent drainage of the spent fuel pool. By letter dated March 2, 1995, BG&E withdrew the request to delete these two subsections. The existing information in Subsection 5.3.3 will be retained in a new Subsection 5.2.2 and the information in Subsection 5.6.3 will be retained in a new Subsection 5.3.2. The new subsection designations are necessary to be consistent with the reformatting of the Design Features Section of the TSs.

The Commission has previously issued a Notice of Consideration of Issuance of Amendments to Facility Operating License Nos. DPR–53 and DPR–69, Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing, which was published in the **Federal Register** on January 19, 1994 (59 FR 2861).

For further details with respect to this action, see the application for amendments dated December 8, 1993, as supplemented on March 2, 1995. The March 2, 1995, letter provided clarification of the initial application and withdrew the request to delete the two subsections as detailed above. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Calvert County Library, Prince Frederick, Maryland 20678.

Dated at Rockville, Maryland, this 14th day of March 1995.

For the Nuclear Regulatory Commission.

Daniel G. McDonald,

Senior Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–6731 Filed 3–17–95; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–213]

Connecticut Yankee Atomic Power Company; Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 185 to Facility Operating License No. DPR–61 issued to the Connecticut Yankee Atomic Power Company (the licensee), which revised the Technical Specifications for operation of the Haddam Neck Plant located in Middlesex County, Connecticut. The amendment is effective as of the date of issuance to be implemented within 30 days of issuance.

The amendment revises the Haddam Neck Plant Technical Specifications (TS) to allow an increased limit for fuel enrichment. The change allows the storage of fuel with an enrichment not to exceed a nominal 5.0 weight percent (w/o) U–235 in the Haddam Neck Plant new and spent fuel storage racks. The current new and spent fuel storage rack maximum nominal enrichment is 3.9 w/o U–235 for Zircaloy clad fuel and 4.0 w/o U–235 for stainless steel clad fuel.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on June 14, 1994 (59 FR 30620). No request for a hearing or petition for leave to intervene was filed following the notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment (60 FR 7798).

For further details with respect to the action see (1) the application for amendment dated May 17, 1994, as supplemented September 9, 1994, and January 31, 1995, (2) Amendment No. 185 to License No. DPR–61, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Rockville, Maryland, this 10th day of March 1995.

For the Nuclear Regulatory Commission.

Alan B. Wang,

Project Management, Project Directorate I–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–6734 Filed 3–17–95; 8:45 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

[Docket No. RM95–2]

Procedural Streamlining Inquiry; Notice of Request for Comments on Information Contained in Postal Service Requests

March 15, 1995.

Before Commissioners: Edward J. Gleiman, Chairman; W.H. ''Trey'' LeBlanc III, Vice-Chairman; George W. Haley; H. Edward Quick, Jr.; Wayne A. Schley

On December 14, 1994, the Commission issued an Advance Notice of Proposed Rulemaking (Advance Notice) seeking suggestions concerning how the Commission's rules of practice and procedure could be amended or supplemented to improve the efficiency and expedition of consideration of requests for changes in postal rates and classifications conducted pursuant to 39 U.S.C. 3624(a). Comments were due on or before February 21, 1995, and the Commission has received several thought provoking statements from frequent participants in these cases. Several comments emphasized the importance of timely access to Postal

Service data, see for example, Comments of McGraw-Hill, Inc.

The Postal Service filed comments in response to the Advance Notice. It suggests that rate and classification requests could be improved if consideration were given to reducing the amount of information which the Postal Service is required to provide in support of its requests. It suggests that the Commission ''canvass the postal community as to which of the Postal Service's filings are actually used in the course of Commission litigation.'' Response of the United States Postal Service to Request for Comments at 5.

The rules applicable to requests for changes in rates and fees describe the scope of supporting information which the Postal Service must provide, *see* rules of practice 54(b)–(r). The rules applicable to requests for changes in the Domestic Mail Classification Schedule describe the scope of supporting information which the Postal Service must provide, *see* rules of practice 64(b)–(h). The vast preponderance of these rules relate to the rationale supporting the Postal Service request, or estimates of the effect on costs, volumes, and revenues should the proposed changes be accepted.

This request for information is being sent to participants in the last two omnibus rate cases, Docket Nos. R94–1 and R90–1. Recipients are requested to comment on whether current rules of practice 54(b)–(r) or 64(b)–(h) require the Postal Service to provide information which is either not helpful to participants or likely to be largely irrelevant to issues in rate and classification cases. Respondents are asked to indicate either specific rules or subjects which might be eliminated without reducing the Commission's ability to issue recommended decisions which comport with applicable statutory criteria.

Respondents are assured that this remains a preliminary stage in the effort to streamline Commission proceedings. No changes will be made in this proceeding without providing interested persons an opportunity to comment on specific proposals. Nonetheless, responses on the general topic of whether current filing requirements are unnecessarily burdensome to the Postal Service will assist the Commission to direct the focus of subsequent phases of this rulemaking, and submissions on this proposition by interested participants will be extremely helpful.

By direction of the Commission.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 95–6757 Filed 3–17–95; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35482; File No. 600–25]

Self-Regulatory Organizations; Participants Trust Company; Notice of Filing of Request and Order Approving Application for Extension of Temporary Registration as a Clearing Agency

March 13, 1995.

On February 28, 1995, the Participants Trust Company (''PTC'') files with the Securities and Exchange Commission (''Commission'') a request pursuant to section 19(a)[1] of the Securities Exchange Act of 1934 (''Act'') for extension of its registration as a clearing agency under Section 17A[2] of the Act for a period of one year.[3] The Commission is publishing this notice of filing of request and order to solicit comments from interested persons and to grant PTC's request for an extension of its temporary registration as a clearing agency through March 31, 1996.

On March 28, 1989, the Commission granted PTC's application for registration as a clearing agency pursuant to Sections 17A(b)(2) and 19(a)[4] of the Act on a temporary basis for a period of one year.[5] Subsequently, the Commission issued orders that extended PTC's temporary registration as a clearing agency, the last of which extended PTC's registration until March 31, 1995.[6]

As discussed in detail in the initial order granting PTC's temporary registration,[7] one of the primary reasons for PTC's registration was to develop depository facilities for mortgage-backed securities, particularly securities guaranteed by the Government National Mortgage Association (''GNMA''). PTC services include certificate safekeeping, book entry deliveries, an automated facility for the pledge or segregation of securities, and other services related to the immobilization of securities certificates.

PTC continues to make significant progress in the areas of financial performance, regulatory commitments, and operational capabilities. For example, the par value of GNMA securities on deposit at PTC has grown from $850 billion on December 31, 1993, to $967 billion on December 31, 1994, with average monthly GNMA I principal and interest distributions processed by PTC increasing from $13.5 billion in 1993 to $103.9 billion in 1994. The par value of VA REMICs on deposit at PTC has grown from $4.634 billion on December 31, 1993, to $7.256 billion on December 31, 1994. The average monthly transaction volume processed by PTC has grown from 309,000 in 1993 to 353,225 in 1994.[8] PTC also has expanded its product base with the designation of GNMA REMICs,[9] GNMA Platinum securities,[10] and certain Freddie Mac REMICs backed by GNMA securities[11] as depository eligible securities. In addition, PTC declared a dividend of $1.00 per share to stockholders of record on December 31, 1994.[12]

PTC also continued its efforts over the past year to implement operational and procedural changes in connection with PTC's temporary registration.[13] For

[1] 15 U.S.C. 78s(a)(1) (1988).

[2] 15 U.S.C. 78q–1 (1988).

[3] Letter from John J. Sceppa, President and Chief Executive Officer, PTC, to Jerry Carpenter, Assistant Director, Division of Market Regulation, Commission (February 28, 1995).

[4] 15 U.S.C. 78q–1(b)(2) and 78s(a) (1988).

[5] Securities Exchange Act Release No. 26671 (March 28, 1989), 54 FR 13266.

[6] Securities Exchange Act Release Nos. 27858 (March 28, 1990), 55 FR 12614; 29024 (March 28, 1991), 56 FR 13848; 30537 (April 9, 1992), 57 FR 12351; 32040 (March 23, 1993), 58 FR 16902; and 33734 (March 8, 1994), 59 FR 11815.

[7] *Supra* note 5.

[8] *Supra* note 3.

[9] Securities Exchange Act Release No. 34154 (June 3, 1994), 59 FR 30073.

[10] Securities Exchange Act Release No. 35044 (December 2, 1994), 59 FR 63847.

[11] Securities Exchange Act Release No. 34472 (August 1, 1994), 59 FR 40397.

[12] Securities Exchange Act Release No. 35205 (January 9, 1995), 60 FR 3444.

[13] In connection with PTC's original temporary registration, PTC committed to the Commission and to the Federal Reserve Bank of New York to make a number of operational and procedural changes which include:

(1) Eliminating trade reversals from PTC's procedures to cover a participant default;

(2) Phasing out the aggregate excess net debit limitation for extensions under the net debit monitoring level procedures;

(3) Making principal and interest advances, now mandatory, optional;

(4) Allowing participants to retrieve securities in the abeyance account and not allowing participants to reverse transfers because customers may not be able to fulfill financial obligations to the participants;

(5) Eliminating the deliverer's security interest and replacing it with a substitute;

(6) Reexamining PTC's account structure rules to make them consistent with PTC's lien procedures;

(7) Expanding and diversifying PTC's lines of credit;

(8) Assuring operational integrity by developing and constructing a back-up facility; and

(9) Reviewing PTC rules and procedures for consistency with current operations.

example, PTC eliminated the Deliverer's Security Interest from its rules in response to its commitment made to the Commission and the Federal Reserve Bank of New York.[14]

PTC has functioned effectively as a registered clearing agency for the past six years. In light of PTC's past performance, the Commission believes that PTC has the capacity to comply with the statutory obligations set forth under Section 17A(b)(3) of the Act [15] as the prerequisites for registration as a clearing agency. Comments received during PTC's temporary registration will be considered in determining whether PTC should receive permanent registration as a clearing agency under Section 17A(b) of the Act.[16]

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 request for extension of temporary registration as a clearing agency that are filed with the Commission, and all written communications relating to the requested extension between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of PTC. All submissions should refer to File No. 600–25.

Conclusion

On the basis of the foregoing, the Commission finds that PTC's request for extension of temporary registration as a clearing agency is consistent with the Act and in particular with Section 17A of the Act.

It is therefore ordered, That PTC's temporary registration as a clearing agency (File No. 600–25) be, and hereby is, extended through March 31, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6698 Filed 3–17–95; 8:45 am]

BILLING CODE 8010–01–M

[14] Securities Exchange Act Release No. 34701 (September 22, 1994), 59 FR 49730.

[15] 15 U.S.C. 78q–1(b)(3) (1988).

[16] 15 U.S.C. 78q–1(b) (1988).

[17] 17 CFR 200.30–3(a)(50)(i) (1994).

[Release No. 34–35478; Rile No. SR–MSTC–95–05]

Self-Regulatory Organizations; Midwest Securities Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Distribution of Reorganization Processing Reports and Notices

March 13, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] (''Act''), notice is hereby given that on March 3, 1995, the Midwest Securities Trust Company (''MSTC'') filed with Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by MSTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend MSTC's procedures regarding distribution reorganization notices and reports. Effective March 3, 1995, hard copy reports will only be distributed upon request to those participants who have access to MSTC's On-Line Report Availability (''ORA'') function.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MSTC 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. MSTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to reduce participant cost by distributing certain reorganization processing reports and notices electronically through MSTC's ORA function to those participants who have terminal access. In an earlier proposed rule change,[2] MSTC amended its procedures regarding the distribution of reports and notices. In that filing, MSTC stated that it would distribute certain of those reports in hard copy form. Effective March 3, 1995, hard copy reports will only be distributed upon request to those participants who have access to MSTC's ORA function.

MSTC believes the proposed rule change is consistent with the requirements of the Act, specifically with Section 17A of the Act, and the rules and regulations thereunder because the proposal will facilitate the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MSTC believes that no burden will be placed on competition as a result of the proposed rule.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments have been solicited or received. MSTC will notify the Commission of any written comments received MSTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) [3] of the Act and pursuant to Rule 19b–4(e)(4) [4] promulgated thereunder because the proposal effects a change in an existing service that does not adversely affect the safeguarding of securities of funds in MSTC's custody or control or for which it is responsible and does not significantly affect the respective rights or obligations of MSTC or persons using MSTC's services. At any time within sixty days of the filing of such rule change, the Commission

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] For a description of MSTC's changes to its reorganization processing system, refer to Securities Exchange Act Release No. 35293 (January 30, 1995), 60 FR 6741 [File No. SR–MSTC–94–19] (notice of filing and order granting accelerated approval of proposed rule change).

[3] 15 U.S.C. 78s(b)(3)(A)(iii) (1988).

[4] 17 CFR 240.19b–4(e)(4) (1994).

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 in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of MSTC. All submissions should refer to File No. SR–MSTC–95–05 and should be submitted by April 10, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6697 Filed 3–17–95; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 200.30–3(a)(12) (1994).

[Rel. No. IC–20954; No. 812–9364]

New York Life Insurance and Annuity Corporation, et al.

March 14, 1995.

AGENCY: The Securities and Exchange Commission (''Commission'').

ACTION: Notice of Application for an Order under the investment Company Act of 1940 (''1940 Act'').

APPLICANTS: New York Life Insurance and Annuity Corporation (''NYLIAC''), NYLIAC LifeStages Annuity Separate Account (''Separate Account'') and NYLIFE Distributors, Inc. (''Distributors'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF THE APPLICATION: Applicants seek an order permitting the deduction of mortality and expense risk charges from the assets of the Separate Account in connection with the issuance and sale of certain flexible premium variable annuity contracts (''Contracts''), and in connection with certain other NYLIAC variable annuity contracts which are substantially similar in all material respects to the Contracts (''Other Contracts'') which are offered in the future through the Separate Account. Applicants also seek to deduct mortality and expense risk changes from the assets of any other similar separate account(s) established by NYLIAC (''Other Accounts''), whether currently existing or hereafter created, in connection with the issuance and sale of the Other Contracts. Applicants also request that the exemptive relief include any other broker-dealer (''Other Broker-Dealers'') which may serve in the future as principal underwriter of the contracts or of the Other Contracts.

FILING DATE: The application was filed on December 14, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m., on April 4, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested Persons may requests notification of hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, The Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o New York Life Insurance and Annuity Corporation, 51 Madison Avenue, New York 10010.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Assistant Special Counsel or Wendy Friedlander, Deputy Chief at (202) 942–0670, Office of Insurance Products (Division of Investment Management)..

SUPPLEMENTARY INFORMATION: Following is a summary of the application; complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. NYLIAC, a stock life insurance company, is wholly-owned by New York Life Insurance Company (''New York Life''), a mutual life insurance company. NYLIAC is principally engaged in offering life insurance and annuities and is admitted to do business in all 50 states, the District of Columbia, Puerto Rico and Canada.

2. The Separate Account was established by NYLIAC to fund the Contracts. The Separate Account and the Other Accounts may be used to fund Other Contracts. The Separate Account has filed a notice of registration under the 1940 Act to register as a unit investment trust, and a registration statement under the 1940 Act and the Securities Act of 1933 (''1933 Act'') to register the Contracts as securities. Other Accounts each will file a notice of registration under the 1940 Act to register as unit investment trusts, and a registration statement under the 1940 Act and the 1933 Act to register any Other Contract as securities.[1]

The Separate Account currently has seven investment divisions, each investing exclusively in one of seven corresponding portfolios of New York Life MFA Series Fund, Inc. (''Fund''), a diversified, open-end management investment company registered under the 1940 Act. Additional investment divisions may be established in the future to invest in other Fund portfolios or in other investments. Portfolio shares also may be offered to Other Accounts.

3. Distributors, currently the principal underwriter of the Contracts is an indirect wholly-owned subsidiary of New York Life. Broker-Dealer and is a member of the National Association of Securities Dealers (''NASD''). Distributors may enter into agreements for the sale of the Contracts or the Other Contracts with Other Broker-Dealers which will be registered under the 1934 Act,[2] and which are or will be members of the NASD.

The Contracts are to be used either in connection with retirement plans qualities under Sections 401(a), 403(a) 403(b), 403(b), 408 OR 457 of the Internal Revenue Code or by any other purchaser for whom the Contracts may provide a suitable investment.

5. The Contracts provide for the payment of initial premium payments and allow for additional premium payments at any time prior to Annuity

[1] Applicants undertake to amend the application during the notice period to make this representation.

[2] Applicants undertake to amend the application during the notice period to make this representation.

Commencement Date for the life of the Annuitant. Contract owners may direct the allocation of premium payments, as well as Accumulation Value, among the investment divisions and to the Fixed Account, which is part of NYLIAC's General Account. Accumulation value is determined on a variable basis by the investment experience of the investment divisions selected for the allocation of premium payments, other than the amount allocated to the Fixed Account.

6. The Contracts also provide for the payment of a minimum death benefit equal to the greatest of: (a) Accumulation Value, less any outstanding loan balance under the Contract, (b) the sum of all premium payments made less any outstanding loan balance, partial withdrawals, CDSL deductions and any rider premiums, or (c) the ''reset value'' plus any additional premium payments, other than rider premiums, made since the most recent ''reset date,'' less any outstanding loan balance, withdrawals made since the most recent ''reset date,'' and any CDSL deductions applicable to such withdrawals.[3]

7. Various fees and charges are deducted under the Contracts, An annual Contract fee of the lesser of $30 or 2% of the Accumulation Value at the end of the Contract Year will be deducted on each Contract Anniversary during the Accumulation Period, or upon surrender of the Contract if on that date the Accumulation Value is less than $20,000. A daily charge equal, on an annual basis, of up to .15% of the net asset value of the appropriate separate account will be deducted to cover administration expenses of the Contract and of the Other Contracts. These fees are guaranteed for the life of such Contracts or Other Contracts and will not exceed the cost of services to be provided over the life of such Contracts, in accordance with the provisions of Rule 26a–1 under the 1940 Act.

8. A charge for premium taxes imposed by state law may be deducted under the Contracts, either when a surrender or cancellation occurs, or at the Annuity Commencement Date or the Retirement Date, as applicable. Currently, these taxes range up to 3.5%. The Separate Account and the investment divisions may bear charges for federal income taxes, should such taxes be incurred by NYLIAC in connection with the operation of the Separate Account.

9. No charge currently is deducted for the first twelve transfers during any Contract Year or for transfers prior to 30 days before the Annuity Commencement Date. NYLIAC reserves the right to charge a $30 fee for each transfer in excess of twelve per Contract Year.

10. No sales charge currently is deducted from premium payments under the Contracts, nor will be deducted under Other Contracts. Surrenders and partial withdrawals, however, are subject to a maximum contingent deferred sales load (''CDSL'') of 7% during the first three years, declining by 1% per year thereafter until reaching 0% in the sixth year. Other Contracts will be subject to a maximum 7% CDSL. The total CDSL will not exceed 8.5% of the premium payments under the Contract or Other Contracts. Applicants are relying on Rule 6c–8 under the 1940 Act to deduct the CDSL.

11. A daily charge equal to an effective annual rate of 1.25% of the net asset value of each investment division will be imposed to compensate NYLIAC for bearing certain mortality and expense risks in connection with the Contracts and Other Contracts. Of this amount, 0.75% is allocable to mortality risks and 0.50% is allocable to expense risks. This charge may be a source of profit for NYLIAC which will be added to its surplus and may be used for, among other things, the payment of distribution expenses.

12. The mortality risk borne by NYLIAC arises from its obligation to make annuity payments (determined in accordance with the Annuity Tables and other provisions contained in the Contract), where a life annuity is selected, regardless of how long an Annuitant may live. The mortality risk under the Contract is the risk that, upon selection of an annuity payment option which has a life contingency, Annuitants will live longer than NYLIAC's actuarial projections indicate, resulting in higher than expected income payments. NYLIAC also is assuming mortality risk as a result of its promise to pay a minimum death benefit under the Contracts.

13. The expense risk borne by NYLIAC under the Contract is the risk that the charges for administrative expenses, which are guaranteed for the life of the Contract, may be insufficient to cover the actual costs of issuing and administering the Contracts.

Applicants' Legal Analysis and Conditions

1. Applicants request an order under Section 6(c) granting exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to permit the deduction from the assets of the Separate Account or Other Accounts of a charge for mortality and expense risks under the Contracts or Other Contracts. Applicants also request that the exemptive relief extend to Other Broker-Dealers which may serve in the future as principal underwriters of the Contracts or Other Contracts.

2. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

4. Applicants submit that their request for an order is appropriate in the public interest because it would promote competitiveness in the variable annuity contract market by eliminating the need for NYLIAC to file redundant exemptive applications, thereby reducing its administrative expenses and maximizing the efficient use of its resources. Investors would not receive any benefit or additional protection by requiring NYLIAC repeatedly to seek exemptive relief with respect to the same issues addressed in this Application.

5. Applicants represent that the 1.25% mortality and expense risk charge under the Contracts is within the range of industry practice for comparable annuity contracts. This representation is based upon Applicants' analysis of publicly available information about similar industry products, taking into consideration such factors as current

[3] The ''reset value,'' is equal to the Accumulation Value, as recalculated on each ''reset date'' (every 3 years from the date of initial premium payments until age 85). If the new reset value calculated on the most recent reset date is higher than the previous reset value, the new reset value will be retained for purposes of determining the available death benefit. If it is lower, the old reset value will be retained. The formula guarantees that the amount paid will at least equal the sum of all premium payments (less any outstanding loan balance, partial withdrawals, CDSL deductions and rider premiums), independent of the investment experience of the Separate Account.

charge levels, the manner in which charges are imposed, the presence of charge level or annuity rate guarantees and the markets in which the Contracts will be offered. Based upon this review, Applicants represent that the mortality and expense risk charges under the Contracts are within the range of industry practice for comparable contracts. Applicants state that NYLIAC will maintain at its corporate headquarters [4] and make available to the Commission, upon request, a memorandum outlining the methodology underlying this representation.

Similarly, prior to making available any Other Contracts, Applicants will determine that the mortality and expense risk charges under any such Other Contracts will be within the range of industry practice for comparable contracts. Applicants state that NYLIAC will maintain at corporate headquarters [5] and make available to the Commission, upon request, a memorandum outlining the methodology underlying such conclusion.

6. Applicants acknowledge that, if a profit is realized from the mortality and expense risk charge under the Contracts, all or a portion of such profit may be available to pay distribution expenses not reimbursed by the CDSC. NYLIAC has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Account and the Contract Owners. NYLIAC will keep at its corporate headquarters [6] and make available to the Commission, upon request, a memorandum setting forth the basis for this representation.

7. Similarly, Applicants recognize that, if a profit is realized from the mortality and expense risk charge under the Other Contracts, all or a portion of such profit may be available to pay distribution expenses not reimbursed by the CDSL. Prior to issuing Other Contracts, NYLIAC will determine that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the relevant separate account and the Other Contract Owners. The basis for that conclusion will be set forth in a memorandum which will be maintained by NYLIAC at its corporate headquarters [7] and will be made available to the Commission, upon request.

8. Applicants represent that the Separate Account, and any Other Accounts, will invest only in underlying funds that have undertaken to have a board of directors/trustees, a majority of whom are not interested persons of any such fund, formulate and approve any plan under Rule 12b–1 under the 1940 Act to finance distribution expenses.

Applicants' Conditions

Applicants agree that if the requested order is granted such order will be expressly conditioned on Applicants' compliance with the undertakings set forth above. In addition, Applicants undertake to rely on the exemptive relief requested herein with respect to Other Contracts only if such Other Contracts are substantially similar in all material respects to the Contracts.

Conclusion

Applicants assert that, for the reasons and upon the facts set forth above, the requested exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charge under the Contracts, or under Other Contracts, offered by the Separate Account or by Other Accounts, meets the standards in Section 6(c) of the 1940 Act. Applicants assert that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–6749 Filed 3–17–95; 8:45 am]

BILLING CODE 8010–01–M

[4] Applicants undertake to amend the application during the notice period to make this representation.

[5] Applicants undertake to amend the application during the notice period to make this representation.

[6] Applicants undertake to amend the application during the notice period to make this representation.

[7] Applicants undertake to amend the application during the notice period to make this representation.

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before April 19, 1995. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629

OMB Reviewer: Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503

Title: Financing Eligibility Statement

Form No.: SBA Form 1941A, B, and C

Frequency: On Occasion

Description of Respondents: SBA businesses seeking financing from Specialized Small Business Investment Companies (SSBIC)

Annual Responses: 1,000

Annual Burden: 2,000

Dated: March 10, 1995.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 95–6712 Filed 3–17–95; 8:45 am]

BILLING CODE 8025–01–M

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the pubic that the agency has made such a submission.

DATES: Comments should be submitted on or before April 19, 1995. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit

comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629

OMB Reviewer: Donald Arbuckle, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503

Title: Application for Section 502/504 Loan

Form No.: SBA Form 1244

Frequency: On Occasion

Description of Respondents: SBA business applying for financial assistance

Annual Responses: 4,000

Annual Burden: 9,000

Dated: March 9, 1995.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 95–6713 Filed 3–17–95; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2760; Amdt. #4]

California; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, effective immediately, to establish the incident period for this disaster as beginning on January 3, 1995 and continuing through February 10, 1995.

All other information remains the same, i.e., the termination date for filing applications for economic injury is October 10, 1995. The deadline for filing applications for physical damage expired on March 13, 1995.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: March 14, 1995.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 95–6778 Filed 3–17–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended March 10, 1995

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: 50185.

Date filed: March 7, 1995.

Parties: Members of the International Air Transport Association.

Subject: COMP Telex Reso 024f, Local Currency Fare Changes—Hungary.

Proposed Effective Date: May 1, 1995.

Docket Number: 50186.

Date filed: March 7, 1995.

Parties: Members of the International Air Transport Association.

Subject: COMP Reso/C 0621 dated February 24, 1995, Expedited Cargo Resos (except to/from US/UST).

Proposed Effective Date: April 1, 1995.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–6805 Filed 3–17–95; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended March 10, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 50182.

Date filed: March 6, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 3, 1995.

Description: Application of United Parcel Service Co., pursuant to 49 U.S.C. Section 41102 of the Act and Subpart Q of the Regulations applies for issuance of a new or amended certificate of public convenience and necessity, so as to authorize UPS to provide foreign air transportation of property and mail between any point or points in the United States, on the one hand, and any point or points in Canada, on the other hand.

Docket Number: 50195.

Date filed: March 10, 1995.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 7, 1995.

Description: First Amendment to the Application of Aeroservicios Ecuatorianos, C.A., amends its pending Foreign Air Carrier Permit to encompass authority to perform scheduled foreign air transportation of property and mail between Guayaquil and Quito, Ecuador, via the intermediate points Bogota, Colombia and/or Panama City, Panama, and the U.S. co-terminal points Miami, New York, Houston and Los Angeles. AECA proposes to operate five (5) weekly frequencies to Miami; one (1) weekly frequency to New York; and one (1) weekly frequency to Los Angeles, as currently authorized by its homeland license, or such additional frequencies as may be authorized by the Ecuadorian aviation authorities from time to time.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–6806 Filed 3–17–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Research, Engineering and Development Advisory Committee, Aviation Weather Subcommittee; Meeting

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Public Law 92–362; 5 U.S.C. App. I), notice is hereby given of a meeting of the Aviation Weather Subcommittee of the Federal Aviation Administration (FAA) Research, Engineering and Development (R,E&D) Advisory Committee to be held Monday, April 3, 1995, 1 PM to 5 PM and continue on Tuesday, April 4, 1995, 8 AM to 5 PM. The meeting will take place at Forecast Systems Laboratory (FSL), 3100 Marine Street, Boulder, Colorado in room 274.

The agenda for this meeting will include presentations and demonstration by FSL and the National Center for Atmospheric Research of their work in developing aviation weather products for the Federal Aviation Administration (FAA) and National Weather Service.

Attendance is open to the interested public, but limited to space available. With the approval of the subcommittee chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements, obtain information, or access the building to attend the meeting should contact Mr. Carl McCullough, ASD–110, 800 Independence Avenue, SW., Washington, DC, at (202) 287–8595, the FAA Designated Federal Official to the subcommittee.

Members of the public may present a written statement to the subcommittee at any time.

Issued in Washington, DC, on March 15, 1995.

Andres Zellweger,

Director, Office of Aviation Research.

[FR Doc. 95–6782 Filed 3–17–95; 8:45 am]

BILLING CODE 4910–13–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects in the exhibit, ''Arshile Gorky: The Breakthrough Years'' (see list[1]) imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition of the objects at The National Gallery, Washington, DC, from on or about May 7, 1995, to on or about September 17, 1995, the Albright-Knox Art Gallery, Buffalo, NY, from on or about October 13, 1995, to on or about December 31, 1995, and at the Modern Art Museum of Fort Worth, Forth Worth, Texas, from on or about January 13, 1996, to on or about March 17, 1996, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: March 14, 1995.

Les Jin,

General Counsel.

[FR Doc. 95–6779 Filed 3–17–95; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Neila Sheahan of the Office of the General Counsel of USIA. The telephone number is 202/619–5030, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register

Vol. 60, No. 53

Monday, March 20, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, April 7, 1995.

PLACE: 2033 K St., N.W., Washington, D.C. 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–6943 Filed 3–16–95; 2:49 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, April 14, 1995.

PLACE: 2033 K St., N.W., Washington, D.C. 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–6944 Filed 3–16–95; 2:49 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, April 21, 1995.

PLACE: 2033 K St., N.W., Washington, D.C. 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314/

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–6945 Filed 3–16–95; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, April 28, 1995.

PLACE: 2033 K St., N.W., Washington, D.C. 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–6946 Filed 3–16–95; 2:49 p.m.]

BILLING CODE 6351–01–M

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: March 10, 1995, 60 FR 13209.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: March 15, 1995, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Number has been added on the Agenda scheduled for March 15, 1995:

Item No., Docket No. and Company

CAG–32—RP95–202–000, Sea Robin Pipeline Company

Lois D. Cashell,

Secretary.

[FR Doc. 95–6970 Filed 3–16–95; 8:45 am]

BILLING CODE 6717–01–M

federal register

Monday
March 20, 1995

Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 200 et al.
Restrictions on Assistance to Noncitizens; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 200, 215, 235, 236, 247, 812, 850, 880, 881, 882, 883, 884, 886, 887, 900, 904, 905, 912 and 960

[Docket No. R–95–1409; FR–2383–F–05]

RIN 2501–AA63

Restrictions on Assistance to Noncitizens

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements Section 214 of the Housing and Community Development Act of 1980, as amended. Section 214 prohibits the Secretary of HUD from making financial assistance available to persons other than United States citizens, nationals, or certain categories of eligible noncitizens in HUD's Public Housing and Indian Housing programs (including homeownership), the Section 8 housing assistance payments programs, the Housing Development Grants program, the Section 236 interest reduction and rental assistance programs, the Rent Supplement program, and the Section 235 homeownership program. This final rule follows a proposed rule published on August 25, 1994, and takes into consideration the public comment received on the August 25, 1994 proposed rule.

EFFECTIVE DATE: June 19, 1995.

FOR FURTHER INFORMATION CONTACT: For the covered programs, the following persons should be contacted:

(1) For Public Housing, Section 8 Certificate, Rental Voucher, and Moderate Rehabilitation (except Single Room Occupancy—''SRO'') programs—Edward Whipple, Rental and Occupancy Branch, Office of Public Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000, telephone (202) 708–0744;

(2) For Indian Housing programs—Dominic Nessi, Director, Office of Native American Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000, telephone (202) 708–1015;

(3) For the Section 8 Moderate Rehabilitation SRO program—Maggie H. Taylor, Director, Office of Special Needs Assistance Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–4300;

(4) For the other Section 8 programs, the Section 236 programs, Housing Development Grants and Rent Supplement—Barbara Hunter, Program Planning Division, Office of Multifamily Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3944; and

(5) For the Section 235 homeownership program—William Heyman, Office of Lender Activities and Land Sales Registration, Office of Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–1824.

For persons with hearing impairment, the TDD number is (202) 472–6725. None of the foregoing telephone numbers are toll-free.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, and when approved and assigned OMB control number(s), the control numbers will be published by separate notice in the **Federal Register**.

II. Procedural Matters

A. Implementation of Section 214

HUD reiterates the statement made in the August 25, 1994 proposed rule that the restrictions on the use of assisted housing by noncitizens with ineligible immigration status (see 59 FR 43900–43901) takes effect when this final rule takes effect, which is 90 days from the date of publication in the **Federal Register**. Accordingly, until that time, covered entities (i.e., housing authorities, managers of HUD-assisted housing, and mortgagees in the Section 235 FHA insurance program) are not authorized to take any action based on the eligible immigration status of applicants and tenants.

B. Using the ''Effective Date of the Final Rule'' as the Pivotal Date, Rather Than ''Date of Enactment''

HUD also reiterates its statement in the August 25, 1994 proposed rule concerning the use of the effective date of the final rule as the pivotal date rather than the date of enactment of the statute (see 59 FR 43901). Paragraph (c)(1) of Section 214 was added by the Housing and Community Development Act of 1987 (the 1987 Act) and confers discretion on the Secretary of HUD to continue assistance or defer termination of assistance on behalf of an individual for whom assistance would otherwise be terminated if that person was ''receiving such assistance on the date of enactment of the Housing and Community Development Act of 1987.''

The term ''date of enactment'' is also found in Section 214(d) in the description of the elderly persons who need not provide documentation of their immigration status. The statute exempts from such documentation any individual who is ''62 years of age or older, and is receiving financial assistance on the date of the enactment of the Housing and Community Development Act of 1987.''

HUD has determined that the provisions of Section 214 are to complex to be determined self-implementing as of the date of enactment of the 1987 Act (February 5, 1988). Thus, the restrictions of Section 214 will not be felt until this final rule is published and effective.

C. Nondiscrimination in Implementation of Section 214

Several commenters stated that implementation of Section 214 could promote discrimination against certain minority and ethnic groups. Section 214 is constructed in a way that allows little discretionary action in its implementation. This was discussed to some extent in the preamble to the proposed rule (59 FR 43900). As noted in the preamble to the August 25, 1994 proposed rule, Section 214 is specific concerning those noncitizens who are eligible for HUD housing assistance. Section 214 also specifies the type of documentation that must be submitted, the type of verification to be undertaken, and the type of due process procedures available to individuals and families. Therefore, a housing authority or project owner does not have the discretion to accept or deny admission to certain categories of noncitizens, but not others, because the statute specifies the eligible categories. Further, the housing authority or project owner does not have the discretion to request certain immigration documentation from certain noncitizens, but not others, because the statute specifies the acceptable documentation as does this rule. The housing authority or project owner does not have the discretion to request documentation of citizenship status because the statute, as does this rule, provides that citizens only need execute a declaration of citizenship status, signed under penalty of perjury. HUD is aware of the sensitive nature of verifying eligible immigration status for HUD public housing and assisted housing, and has included a separate section in the implementing regulations setting forth applicable nondiscrimination requirements. In

setting forth the applicable nondiscrimination requirements, however, the final rule does not (nor did the proposed rule) summarize the content of each nondiscrimination statute or regulation (e.g., such as title VI of the Civil Rights Act of 1964 or the Fair Housing Act). These nondiscrimination statutes and regulations which are longstanding and applicable to almost all HUD programs are familiar to housing authorities and project owners.

III. Statutory and Regulatory Background

The restrictions on providing housing assistance to noncitizens with ineligible immigration status have been embodied in statute since 1980. Section 214 of the Housing and Community Development Act of 1980 (94 Stat. 1637) (Section 214) was the original basis for restrictions on providing assistance to noncitizens with ineligible immigration status in the assisted housing programs. Section 214 was amended by section 329(a) of the Housing and Community Development Amendments of 1981 (94 Stat. 408), by section 121(a)(2) of the Immigration Reform and Control Act of 1986 (''IRCA'', 100 Stat. 3384), and by section 164 of the Housing and Community Development Act of 1987 (101 Stat. 1860). (Section 214, as amended by these statutory sections, is codified at 42 U.S.C. 1436a.)

There have been several previous attempts by HUD to implement Section 214 by regulation. Rules, both proposed and final, were published in 1982 (47 FR 18914, and 47 FR 43674), 1986 (51 FR 15611), and 1988 (53 FR 842, and 53 FR 41038). Despite the publication of final rules during the period between 1982 and 1988, the statutory restrictions of Section 214 have not been made effective.[1]

This final rule, which takes effect on June 19, 1995, follows publication of a proposed rule published on August 25, 1994 (59 FR 43900) and takes into consideration public comment received on this proposed rule. The discussion of public comments on the August 25, 1994 proposed rule is set forth in Section V of this preamble.

IV. Differences Between the Proposed Rule and the Final Rule

As will be discussed in more detail in Section V of this preamble, very few changes were made to the Section 214 proposed regulations at the final rule stage because of the prescriptive nature of Section 214. Section 214 specifies the HUD programs that are covered by the statute, the categories of noncitizens that are eligible to receive HUD financial assistance, the procedures to be used to verify immigration status, the type of documentation that must be submitted, and who must submit this documentation, the appeal procedures to be provided to persons initially determined to have ineligible status, and the special assistance to be provided to certain families with members who have eligible status and those who have ineligible status. Accordingly, with the exception of clarifying changes, and editorial corrections, the principal changes made at the final rule stage are as follows:

1. *Removing housing authorities (HAs) and project owners as the ''conduits'' in the INS appeals process.* In response to public comment (from both representatives of housing authorities and project owners and representatives of resident groups), the final rule has been revised to allow applicants and tenants to directly appeal to INS, and INS to directly reply to applicants and tenants (i.e., without having to go through housing authorities and project owners as intermediaries in the INS appeal process).

2. *Clarifying that proration of assistance is not discretionary on the part of project owners and housing authorities.* The proposed rule was not clear on whether proration of assistance must be provided to eligible mixed families, or whether the project owner or housing authority had the discretion to offer proration of assistance. While the majority of commenters appeared to understand that proration of assistance must be offered to eligible mixed families, the final rule clarifies that this is the case.

3. *Strengthening the confidentiality and privacy of information concerning immigration status.* The final rule clarifies that HAs, landlords and HUD officials cannot use the information in their possession for any purpose other than determining an individual's eligibility for housing assistance.

V. Discussion of Public Comments

This section presents the significant issues raised by the public commenters on the August 25, 1994 proposed rule. Several commenters offered editorial suggestions to certain of the regulatory suggestions, or revised regulatory text. Each of these suggestions is not discussed in this section. To the extent that the suggestion or revision helped clarify the meaning of the regulatory text, the suggestion was adopted. In several cases the editorial comment did not convey the appropriate meaning of the regulatory text.

Application of Rule

Comment. Several commenters requested that the final rule grandfather-in all current residents and apply the rule only to applicants.

HUD Response. The language of Section 214, which provides for preservation of assistance for those mixed families (those families who contain eligible and ineligible members) currently residing in HUD public housing and assisted housing, indicates that the Congress contemplated that the restrictions on housing assistance imposed by Section 214 would apply not only to applicants, but to tenants as well. (See Section 214(c)).

Comment. Another commenter requested that the rule not require the head of household or adult members to have legal immigration status, and thus permit children who have such status to enter into lease agreements and contracts on behalf of the adult members.

HUD Response. Section 214 restricts HUD from adopting the suggestion of the commenter. Section 214(d) provides for adult member to execute documents on behalf of children. Section 214(c) which addresses continued assistance is the statutory provision which requires the head of household or spouse to be a U.S. citizen or national, or to have the eligible immigration status listed in Section 214. In the case of a mixed family with eligible children and two ineligible adults (the adults are neither U.S. citizens or meet one of the six specified categories of eligible immigration status) may be eligible for prorated assistance, as provided in the August 25, 1994 proposed rule, and this final rule.

Comment. Another commenter requested that the rule clarify the application of Section 214 *vis a vis* local/Federal preferences.

HUD Response. Preferences and eligibility for public housing and HUD-assisted housing are two different matters. Families must first meet the eligibility requirements for public housing and HUD-assisted housing, and then local/Federal preferences are applied to eligible families.

Delay Effective Date of Final Rule

Comment. Several commenters requested that HUD delay the effective date of the final rule for six months because of the preparation and staff training that will be needed by housing authorities in connection with implementation of Section 214.

[1] A detailed history of the regulatory efforts to implement Section 214 (including why the final rules were not made effective) can be found in the rule published on January 13, 1988 (53 FR 842).

HUD Response. HUD believes that the delay of 90 days is sufficient time for housing authorities and HUD to prepare for implementation of Section 214.

Guidance to Supplement Final Rule

Comment. Another commenter urged HUD to publish comprehensive guidance in connection with the publication of the final rule.

HUD Response. HUD has every intention of issuing guidance to assist HAs and project owners with implementation of Section 214.

Liability of Ineligible Tenants for Reimbursement of Benefits

Commenter. One commenter stated that an owner cannot be held responsible for pursuit of recapture of payment of subsidies to ineligible tenants.

HUD Response. The rule does not hold owners responsible for pursuit of repayments of subsidies to ineligible tenants, but rather when it is determined that HUD assistance was paid to an ineligible tenant, ''the project owner *is encouraged* to refer to the case to the HUD Inspector General's office for further investigation.'' (Emphasis added; see, e.g., 24 CFR 200.192).

Recordkeeping

Comment. One commenter, referring to § 200.186(h) (Retention of documents), stated that the rule was not clear on which documents must be retained for a period of five years—documents for all families or just those families requesting an INS appeal.

HUD Response. Section 200.186(h) and the parallel provisions in §§ 812.9(h), 905.310(q), and 912.9(h) provide that the project owner or housing authority ''shall retain for a minimum of five years the following documents that may have been submitted to the project owner by the family or provided to the project owner *as part of the INS appeal or the informal hearing process*.'' (Emphasis added.)

Terminology

Comment. Five commenters stated that in lieu of the terms ''citizen'' and ''noncitizens,'' HUD should refer to the persons eligible to apply for HUD housing as ''authorized persons.''

HUD Response. In using the term ''noncitizen,'' HUD's intention is to convey the design of Section 214. Section 214 imposes no restrictions on HUD housing assistance for citizens, including U.S. nationals, but rather, imposes restrictions on the provision of housing assistance to those who are not citizens, by limiting housing assistance to certain categories of legally admitted noncitizens. All categories of noncitizens who are authorized to reside in the United States are not necessarily authorized to receive HUD housing assistance (for example, student noncitizens).

Eligibility for HUD Financial Assistance

Comment. One commuter stated that the rule does not address the status of ''Section 203'' preference class applicants, which, according to the commenter, are categorized by the Department of State as ''spouses and children of legalization beneficiaries.''

HUD Response. Section 214 lists those categories of noncitizens that are eligible for HUD housing assistance, and these categories are repeated in the rule with elaboration, based on information provided by INS. (See Section 214(a)). Section 200.182 and comparable sections (§§ 812.5, 905.310(a) and 912.5) provide that an eligible noncitizen includes one who is lawfully present in the United States ''as a result of being granted conditional entry under section 203(a)(7) of the INA.''

Comment. Another commenter stated that the rule does not take into account the transborder treaty agreements concerning Native Americans. The commenter noted that under these treaty agreements, many Native Americans have the right to cross freely into the United States and have the legal right to reside and work in the United States.

HUD Response. Neither Section 214 nor these regulations interfere with transborder treaty agreements concerning Native Americans.

Evidence of Eligible Status

Comment. Eight commenters stated that HUD exceeds its authority in implementing regulations that require documentation and verification from applicants. These commenters stated that the statute only imposes documentation requirements on noncitizens who were residing in assisted housing when the statute was enacted to document their ineligible status.

HUD Response. HUD disagrees with the interpretation proposed by the commenters. The statute refers to documentation requirements ''at the time of application'' (see Section 214(d)(4)), and speaks in terms of ''denying'' assistance, not just ''terminating'' assistance (see Section 214(d)(4)), which therefore indicate that the statute intended to encompass applicants, and not just those families residing in HUD public housing and assisted housing at the time of enactment of the statute.

Comment. Eight commenters requested that the final rule require U.S. citizens to provide documentation of eligibility, and that citizenship status should be verified. Other commenters stated that a declaration signed under penalty of perjury, as required by the August 25, 1994 proposed rule of U.S. citizens, is inadequate and is not a realistic deterrent against fraud. Another commenter stated that the declaration, to be signed by U.S. citizens, should require the individual signing the declaration to identify his or her place of birth, city, county and State. Another commenter requested that the final rule require U.S. citizens to submit the same type of documentation that is currently required of U.S. citizens under employer verification requirements. Another commenter requested that persons 62 years of age or older should be subject to same documentation requirements as everyone else.

HUD Response. The Immigration Reform and Control Act of 1986 (IRCA) (Pub. L. 99–603, approved November 6, 1986) amended Section 214 by providing a procedure for the submission and verification of evidence of citizenship or eligible immigration status. The amendment specifically provides that U.S. citizens and nationals only need submit a declaration in writing, signed under penalty of perjury (Section 214(d)). For individuals 62 years of age or older Section 214 requires documentation if ''such an individual is not a citizen or national of the United States, is not 62 years of age or older'' (Section 214(d)(2)). Accordingly, HUD interprets this language to provide that individuals 62 years of age or older and receiving assistance on the effective date of the final rule, like citizens or nationals, need only submit a declaration in writing, and proof of age.

Comment. Two commenters stated HUD should disseminate standard and model documents, such as a standard declaration form, and acceptable INS forms.

HUD Response. In its guidance to be issued in connection with implementation of the final rule, HUD intends to provide as much information as possible to housing authorities and project owners, including, where appropriate, model documents, and samples of standard INS forms.

Documents in Languages Other Than English

Comment. Fifteen commenters stated that there is a substantial cost involved with the requirement imposed on housing authorities and project owners to provide documents in languages

other than English to the extent ''feasible.'' Twelve commenters stated that there will be disputes over ''what is feasible.'' Six commenters stated that HUD should provide model notices in languages other than English. Another commenter stated the issue providing notification in languages other than English is not simply making documents available in other languages, but in having interpreters to interview applicants, and ask follow-up questions. Seven commenters stated that the translation of documents into other languages should be a firm requirement and not left to the owner's discretion.

HUD Response. The ''feasibility'' language in the rule is to assist housing authorities to maintain the flexibility that they currently have with respect to translating documents into languages other than English, and to exercise judgment with respect to translating documents into languages of a population group which they serve, of a substantial number, and which speaks a language other than English. Many housing authorities and project owners currently, without any requirement imposed, translate documents into languages other than English. Additionally, housing authorities and project owners may have staff in their employ which speak languages other than English, and can assist residents in understanding documents. Apart from the notices, certifications, and documentation required by this rule, applying for HUD public housing or HUD assisted housing involves reviewing and completing documents which make reference to certain rights and responsibilities; for example, the application form, the lease (which will specify the rights of the tenant, as well as sanctions that may be imposed against the tenant for violation of the lease) and other documents which support the individual or family's eligibility for assisted housing (i.e., documentation of income). It is HUD's understanding that housing authorities and project owners currently make efforts to assist residents with completion of these documents, if not by providing translated documents, by allowing individuals the opportunity and time to find a family member or friend who can assist them with understanding and completing these documents, or in some cases (as mentioned above), the housing authority may have in its employ an individual who can provide such assistance.

As noted in discussion of other aspects of applying for and residing in HUD public housing or assisted housing, HUD would like housing authorities and project owners to utilize procedures already in place with respect to implementation of this rule, to the extent possible. For example, the rule provides for housing authorities and project owners to verify immigration status at the same time other aspects of eligibility are verified. Similarly, HUD would like housing authorities and project owners to handle the documents required by this rule, which are important, in the same manner that they handle other important documents (again, the application, the lease, eviction notices, etc.) that specify the rights and responsibilities of the applicant or tenant. The ''feasibility'' language is to encourage housing authorities and project owners to continue procedures already in place to assist families whose first language is not English. Accordingly, HUD declines to make the translation of documents into a requirement, as suggested by some commenters.

When To Submit Evidence of Eligible Immigration Status

Comment. One commenter stated that submission of evidence of citizenship or eligible immigration status should occur at each annual recertification, and not simply one time during continuously assisted occupancy, as the proposed rule provided. The commenter stated that INS forms are by their very nature ''temporary'' in every case, and noted that the proposed rule calls for only an initial proffer of documents versus a yearly demonstration of eligibility.

HUD Response. The statute does not speak in terms of annual verification, but only in terms of an initial documentation and verification of tenants and applicants. Accordingly, HUD declines to revise the proposed rule to impose an annual demonstration of eligibility.

Comment. Two commenters stated that the final rule must clarify when evidence is to be submitted by applicants. The commenters noted that the August 25, 1994 proposed rule stated that evidence of eligible status is submitted not later than the date the project owner anticipates or has knowledge that verification or other aspects of eligibility for assistance will occur.

HUD Response. The responsibility of housing authorities and project owners is simply to ensure that this evidence is submitted by or within a reasonable time within which verification of eligibility will take place.

Extension of Time To Submit Evidence

Comment. Five commenters stated that the mandatory extensions of time imposed by the rule will create an administrative burden for authorities, owners, and managers.

HUD Response. The mandatory extensions of time are imposed by statute. Section 214(d)(A) *requires* the Secretary of HUD to provide a reasonable opportunity to submit evidence of eligible status if such evidence is not submitted at the time of application or recertification for financial assistance. Section 214(d) provides that ''for purposes of this subsection, the term 'Secretary' means the Secretary of Housing and Urban Development, a public housing agency, or another entity that determines the eligibility of an individual for financial assistance.''

Comment. Two commenters stated that the final rule should define what is meant by a ''reasonable period of time.'' The commenters stated that ''while we accept that the statute requires extensions of a 'reasonable period of time,' we are very concerned that without further definition in the rule, there will be countless disputes over whether the extension was sufficient.'' Two commenters stated that the rule should require more than a self-certification that documentation is temporarily unavailable. Three commenters stated that extensions of time to submit evidence must be the exception, and not the norm.

HUD Response. HUD believes that extensions of time will be the exception and not the norm, and that for those extensions requested, the extensions, generally, will not exceed 30 days in duration. However, HUD declines to establish by regulation what constitutes a reasonable period of time, and prefers to allow housing authorities and project owners the flexibility to determine what is reasonable given the circumstances of the particular case for extension before them.

Limiting Acceptable Immigration Evidence to INS Documents

Comment. Four commenters stated that HUD's list of acceptable documents is unnecessarily narrow and will cause hardship and inconvenience to eligible persons. The commenters stated that the seven categories listed in the statute can be documented through many more INS-issued and non-INS-issued documents than are listed in the rule. Four commenters stated that requiring two documents from those individuals with certain I–94s is both unfair and unjustified. Four commenters also stated that requiring that eligibility for the replacement of the document be verified before the receipt can even be submitted defeats the whole purpose of the rule's protections against delay or

denial pending INS verification. Other commenters provided suggestions of other types of evidence that HUD and INS should determine as acceptable evidence of immigration status.

HUD Response. With respect to acceptable evidence of immigration status, HUD follows the guidance and requirements issued by INS. However, the final rule provides, as did the proposed rule, that other acceptable documents as announced by INS will be announced by notice published in the **Federal Register**.

Comment. One commenter stated that the list of documents of eligible immigration status did not reflect a proper understanding of INS procedures and of the Immigration Court's authority.

HUD Response. This list was prepared in consultation with the INS. Again, as noted in the response to the preceding comment, any additional acceptable evidence or any changes to the evidence listed in this rule will be announced by notice in the **Federal Register**, and HUD will make any conforming amendments, as may be necessary, at the earliest possible opportunity.

Verification of Eligible Immigration Status

Comment. Several commenters objected to HUD's proposed use of the SAVE system. The commenters stated that the SAVE system is ineffective, inaccurate, and costly. The commenters suggested that HUD should not use SAVE until it has been further tested. Other commenters encouraged the Secretary of HUD to waive the verification requirements of IRCA. Other commenters encouraged HUD to use, in lieu of SAVE, a verification system modeled on the current employer verification system.

HUD Response. HUD declines to adopt the suggestions of the commenters, and will proceed to use the SAVE system, as provided by Section 214. HUD believes that since its implementation SAVE has significantly improved, and is more effective and accurate than at the time of its start-up.

When Verification Is To Occur

Comment. Two commenters requested that the final rule provide that verification of immigration status occur at the time of application.

HUD Response. HUD declines to adopt the suggestion of the commenters, and the final rule provides, as did the proposed rule, that verification of immigration status should occur at the time that verification of other aspects of eligibility for assistance occur.

No Delay, Denial or Termination of Assistance Pending Verification or Appeals Process

Comment. Several commenters stated that applicants should not be admitted to housing until final eligibility is determined.

HUD Response. The statute is very clear that ''pending verification or appeal, the Secretary may not delay, deny, reduce or terminate the individual's eligibility for financial assistance on the basis of the individual's immigration status.'' (See Section 214(d)(4)).

Comment. Thirteen commenters stated that the final rule should make clear that applicants who reach the top of the waiting list before INS completes its verification must be offered housing even though eligible status has not been established.

HUD Response. HUD believes that the final rule is clear on this issue, and no additional language need be added to the rule.

Appeal to INS of Adverse Determination Concerning Immigration Status

Comment. Twenty commenters, representing individuals, housing authorities and project owners, stated that the housing authority and the project owner should be removed from the INS appeal process; that this should be exclusively between the applicant/tenant and INS.

HUD Response. As noted earlier in this preamble, the final rule provides for direct applicant/tenant participation in the INS appeal process, and removes the housing authority or project owner as the intermediary. The final rule, however, provides for the housing authority and project owner to be copied on correspondence between INS and the applicant/tenant.

Comment. One commenter stated that the proposed rule misinterpreted the nature of immigration hearings and the authority of immigration judges to bind the INS. The commenter stated that any decision by the immigration court is final unless reversed on appeal by the Board of Immigration Appeals. Another commenter stated that the rule needs to clearly establish what an INS appeal is because the INS has no regulations or procedures in place regarding appeal from secondary verification.

HUD Response. In developing the proposed rule, and in developing this final rule, HUD solicited and received the assistance of the INS, and the rule reflects the input of INS. Although the INS regulations found in title 8 of the Code of Federal Regulations do not specifically reference appeal procedures applicable to the SAVE system, the INS regulations have procedures in place to provide for further determination of the accuracy of their records on noncitizens. (See 8 CFR part 103; see generally §§ 103.20–103.36.

Informal Fair Hearing Process

Comment. Several commenters requested that the final rule eliminate the hearing process to be provided by the housing authority or project owner. The commenters questioned the purpose of the hearing. The commenters stated that the project owner is not qualified to second guess the entire INS process and determine that an otherwise ineligible person or family is ineligible. Other commenters stated that HUD should not adopt a procedure which carves out special rights for a particular category of ineligible applicant.

HUD Response. The informal hearing process is mandated by statute. Section 214 provides that ''if the Secretary determines, after complying with the requirements of paragraph (4) (which addresses the INS appeal process), that such an individual is not in a satisfactory immigration status * * * the applicable fair hearing process shall be made available with respect to the individual.'' (See Section 214(d)(4).)

Comment. Three commenters stated that with respect to the fair hearing provided by the housing authority or the owner, the right to discovery should be limited to those documents in the HA's possession.

HUD Response. In the matter of discovery, the HA or project owner only would be required to produce documents in its possession.

Comment. Three commenters stated that the rule should require the housing authority or project owner to incur the costs of any interpretive services.

HUD Response. HUD declines to adopt the suggestion of the commenter. HUD prefers to maintain the flexibility provided in the proposed rule, which allows for the parties to agree on the arrangement of interpretive services. HUD believes that in many cases, the applicant or tenant will rely upon a family member, relative, or friend to serve as the interpreter.

Preservation of Family (Mixed Family) Provisions

Mixed Families

Comment. A few commenters urged HUD to drop the ''preservation of family'' provisions in the rule. The commenters stated that ineligible persons should not be allowed to reside in an assisted unit.

HUD Response. The ''preservation of family'' provisions flow directly from

the statute. Section 214(c) provides for continued assistance and temporary deferral of termination of assistance for mixed families.

Comment. Four commenters asked whether a mixed family may choose temporary deferral of termination of assistance, and then select prorated assistance at the end of the deferral period.

HUD Response. A family that receives temporary deferral of termination of assistance bears a responsibility to make a good faith effort to obtain other affordable housing, and the family's efforts are monitored by the housing authority or project owner. If the family makes such good faith efforts but is unsuccessful in obtaining other affordable housing, the family shall be provided prorated assistance.

Continued Assistance

Comment. Several commenters objected to the restrictive definition of ''family'' which determines eligibility for continued assistance. The commenters stated that this definition unfairly penalizes a wide range of families, and further stated that the requirement that the head of household or spouse be a U.S. citizen is discriminatory.

HUD Response. The definition of ''family'' which determines eligibility for continued assistance is taken directly from the statute. Section 214(c)(1)(A), which addresses continued assistance, provides that HUD may permit the continued provision of financial assistance, if necessary to avoid the division of family in which: ''the head of household or spouse is a citizen of the United States, a national of the United States, or an alien resident of the United States described in any paragraphs (1) through (6) of subsection (a). For purposes of this paragraph, the term 'family' means a head of household, any spouse, any parents of the head of household, any parents of the spouse, and any children of the head of household or spouse.''

Comment. Four commenters stated that the rule should make clear that housing authorities are not permitted to establish conditions for continued assistance that are more burdensome than permitted by statute. The commenters stated that this rule must set out in mandatory language the circumstances under which continued assistance must be granted.

HUD Response. The statute permits housing authorities the discretion to grant continued assistance. This issue was discussed in detail in the preamble to the proposed rule (see 59 FR 43913–43914). The final rule provides (as did the proposed rule) the conditions under which continued assistance may be granted by housing authorities (see §§ 812.11(c) and 912.11(c)).

Comment. One commenter requested that § 200.187 be revised to make clear that the requirements of this section, which address continued assistance, are not tied to the date on which the regulations become effective but rather continued assistance shall be determined as of the date following completion of the applicable hearing process.

HUD Response. HUD believes that the commenter misunderstands the reference to the ''effective date of the rule'' in this provision. This section provides that a family that is eligible for continued assistance must have been receiving assistance under a covered HUD program as of the effective date of the rule. In other words, continued assistance is not available to applicant families.

Deferral of Termination of Assistance

Comment. Five commenters requested that HUD remove the provision concerning temporary deferral of termination of assistance on the basis that this provision subjects owners and managers to legal liability. The commenters stated that this provision requires owners and managers to make a number of judgments (e.g., whether there is other affordable housing in the market) that would subject them to legal liability. Another commenter stated that this provision was discriminatory to other categories of residents; that no other category of resident who becomes ineligible for housing is protected from dislocation solely because the resident has not located other affordable housing. Seven commenters stated that the three year deferral period provided in the rule is too long, and that the period should be limited to six months or one year, at a maximum. The commenters stated that the three year period would adversely impact eligible families on the waiting list. Another commenter stated that the notification requirement imposed in connection with deferral of termination of assistance is burdensome.

HUD Response. In allowing for a period of up to three years to defer termination of assistance, HUD is adopting the language of Section 214, which provides for an aggregate period of three years (see Section 214(c)(1)(B)). Additionally, Section 214 requires that: ''At the beginning of each deferral period, the public housing agency or other entity involved shall inform the individual and family members of their ineligibility for financial assistance and offer them other assistance in finding other affordable housing.'' (See Section 214(c)(1)(B)). HUD believes that these ''preservation of family'' provisions reflect the concern of the Congress about displacement, or immediate displacement of families, who but for their immigration status, were eligible to reside in public housing or assisted housing, and had not otherwise presented cause for eviction or termination of assistance.

Comment. Fifteen commenters stated that the August 25, 1994 proposed rule imposes three conditions which must be met in order for a family to be eligible for temporary deferral of termination of assistance, and that families only should be required to meet one standard.

HUD Response. For project owners, § 200.187(c) of the final rule requires, as did the proposed rule, that temporary deferral of termination of assistance shall be granted to a mixed family if ''*one* of the following conditions is met.'' This language is not adopted in §§ 812.10(c)(1), 905.310(r)(3) or 912.10(c)(1). Again, as discussed in detail in the preamble to the proposed rule, the statute gives directly to housing authorities the discretion to determine the appropriateness of providing continued assistance or temporary deferral of termination of assistance. Since this discretion is given directly to housing authorities, HUD cannot preempt this discretion and impose requirements on housing authorities. Accordingly, the ''temporary deferral of termination'' provisions for housing authorities more closely mirrors the language of the statute.

Comment. Two commenters stated that the final rule should impose specific conditions on housing authorities for the granting temporary deferral of termination of assistance, as it did for project owners.

HUD Response. As discussed in the preamble to the proposed rule (59 FR 43914), Section 214 permits HUD (in the case of project owners) or the HA to defer termination of assistance in certain circumstances. For project owners, the rule requires project owners to grant this type of relief if a family meets certain qualifying conditions for HAs, the rule permits HAs to determine whether this type of relief will be provided, but requires the HA, in establishing its standards, to be guided by the standards set forth in this rule implementing Section 214.

Proration of Assistance

Comment. A number of commenters voiced their objection to proration of assistance on the basis that this process

would be an administrative nightmare. Several of these commenters advocated that in order to eliminate this burden, full assistance should be provided to a family when one or more members of the family have citizenship or eligible immigration status One commenter stated that proration of assistance was not supported by the language of Section 214. Another commenter stated that despite limiting assistance to only eligible family members, ineligible family members benefit from proration of assistance. Three other commenters suggested that only ineligible extended members of the family (and not core family members who have ineligible extended members of the family (and not core family members who have ineligible status) be counted as ineligible in determining prorated assistance. Other commenters made suggestions concerning alternative proration formulas, and one of these commenters suggested that HUD accept each housing authority's calculation of the rent level that would permit the housing authority to ''break even without the benefit of Federal subsidies.''

HUD Response. HUD carefully considered all of the suggestions and recommendations made by the commenters on the proration of assistance provisions, and declines to make changes to the August 25, 1994 proposed rule at the final rule stage. Proration of assistance is consistent with the preservation of Families provisions of Section 214, which provide for continued assistance and temporary deferral of termination of assistance. HUD believes that the proration formulas set forth in the rule are workable, and HUD will make every effort to assist housing authorities and project owners in making these formulas more easily workable.

Comment. Another commenter requested clarification whether providing proration of assistance is discretionary on the part of the housing authorities.

HUD Response. The final rule clarifies that for both housing authorities and project owners, proration of assistance must be offered to eligible mixed families.

Comment. Four commenters asked for guidance for action to be taken if the family is unable to pay prorated subsidy.

HUD Response. Housing authorities and project owners should utilize the procedures currently in place when a family is unable to pay its share of rent.

Comment. One commenter state that the prohibition against extension of assistance to noncitizen students should not be extended to the citizen children of the noncitizen student and noncitizen spouse.

HUD Response. The final rule provides, as did the proposed rule, that the prohibition on providing assistance to a noncitizen student does not extend to the citizen spouse of the noncitizen student and the children of the citizen spouse and noncitizen student. Section 214 provides that nonimmigrant student are not eligible for financial assistance under the programs covered by Section 214. If the nonimmigrant student and the noncitizen spouse of the student have children born in the U.S., the citizenship status of the children would not be sufficient in and of itself to make the family eligible for prorated assistance because the fact remains that the family is in the United States for the purpose of the education of the nonimmigrant student, and not for the purpose of immigrating to the U.S. In other words, Section 213 covered financial assistance is not available to noncitizens who have not expressed an intention of immigrating to the United States.

Protection of Individual's Privacy

Comment. Ten commenters stated that the proposed rule failed to provide effective guards against the misuse of immigration status information submitted by applicants and tenants, and that the final rule should clarify that HAs, landlords and HUD officials cannot use the information in their possession for any purpose other than determining an individual's eligibility for housing assistance.

HUD Response. HUD agrees with the commenters and the final rule clarifies that immigration status information provided to HAs, landlords and HUD officials only may be used for purposes of determining an individual's eligibility for housing assistance.

Nondiscrimination Provisions

Comment. One commenter requested that the final rule contain a blanket hold-harmless provision to owners in the implementation of Section 214.

HUD Response. HUD declines to adopt this recommendation.

Comment. Ten commenters stated that HUD must establish explicit policies which prohibit and punish foreseeable discriminatory applications of the noncitizens restrictions. The commenters stated that the proposed rule merely recites general anti-discrimination laws from related statutes. The commenters stated that housing authorities should not be able to require different evidence of citizenship or eligible immigration status based on foreign accents or non-English sounding surnames.

HUD Response. HUD believes that the anti-discrimination statutes and regulations currently in place are sufficient to address discriminatory actions that may result in connection with implementation of Section 214, and establishment of additional policies and sanctions is not necessary. There is no need for HUD to impose sanctions and penalties in addition to, or similar to those imposed by the Fair Housing Act and Title VI of the Civil Rights Act. As discussed at the beginning of this preamble, Section 214 is constructed in a way that allows little discretionary action in its implementation. For example, Section 214 is very specific with respect to documentation requirements. Accordingly, if an individual signs a declaration under penalty of perjury that he or she is a citizen, that is all the documentation that is required under the statute and these regulations.

Administrative Burden/Unfunded Mandate

Comment. Although commenters acknowledged HUD's statement in the August 25, 1994 proposed rule that the costs of automated verification of immigration status through the SAVE system would be billed directly to HUD, the majority of the commenters stated that implementation of Section 214 imposes a substantial administrative burden, and HUD fails to address reimbursement of all of the costs associated with implementation of this statute, such as the various notification requirements, document collection, hearings, record retention, and the time and expense of training new staff in the new procedure for verifying noncitizen status.

HUD Response. HUD acknowledges that there are additional administrative responsibilities imposed by Section 214, and HUD has made every effort to minimize the administrative burden through this regulation. HUD will continue to make efforts to assist housing authorities and project owners to carry out their responsibilities through the guidance to be issued in connection with this final rule.

VI. Other Matters

Executive Order 12866. This final rule was reviewed by the Office of Management and Budget under Executive Order 12866 as a significant regulatory action. Any changes made in this rule as a result of that review are clearly identified in the docket file for this proposed rule, which is available for public inspection in the Office of

HUD's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC. 20410–0500.

Environmental Review. A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of development of the August 25, 1994 proposed rule. That Finding remains applicable to this final rule, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Regulatory Flexibility Act. The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final rule before publication, and by approving it, certifies that this rule does not have a significant economic impact on a substantial number of small entities. HUD believes that the rule, when implemented, will have only a minimal impact on small housing project owners, small mortgagees and small housing agencies, since the procedures specified to implement the restrictions are to require owners and HAs to use an easily accessible (by telephone) automated system for verifying immigration status. HUD has arranged for the cost of the automated verification system, established by the Immigration and Naturalization Service, to be billed directly to HUD. The only other significant element of cost or delay in administration of HUD programs that may be encountered by small entities as a result of this rule is the requirement for a fair hearing, on request, for any applicant or tenant found to be ineligible. This procedure is specifically required by 42 U.S.C. 1436a. However, HUD does not believe that the cost or delay related to this statutory requirement will be significant because HUD anticipates that small housing agencies, project owners and mortgagees will find that the majority of applicants or tenants are eligible to receive HUD assistance, and therefore fair hearing to determine eligibility on the basis of immigration status will be minimal. Accordingly, HUD concludes that this rule will not have a significant economic impact on a substantial number of small entities, an that to the extent possible, HUD has minimized the economic impact on all entities, consistent with the Secretary's responsibilities under section 143a.

Executive Order on 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 final rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule addresses immigration, a topic exclusively the province of the Federal government, and the effect is the direct result of the status that imposes the restriction against assistance to noncitizens, rather than a result of HUD's exercise of discretion in promulgating a rule to implement the statute.

Executive Order on the Family. The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that the provisions of this final rule, while affecting the composition and well-being of families, are strictly the result of the statute that imposes the restriction. The only families upon whom the stature and the rule have an impact are those containing individuals with ineligible immigration status who are not receiving the benefit of assisted housing, or whose continued receipt of assisted housing is not necessary in order to avoid the division of the family. However, even for families that contain members with ineligible status, the rule strives to maintain the unity of the family under the regulatory provisions concerning special assistance to mixed families.

Regulatory Agenda. This final rule was listed as sequence number 1741 in the Department's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632, 57644), under Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 215

Grant Programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 235

Condominiums, Cooperatives, Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 236

Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 247

Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies.

24 CFR Part 812

Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 850

Grant programs—housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 880

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

24 CFR Part 881

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

24 CFR Part 882

Grant programs—housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 883

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

24 CFR Part 884

Grant programs-housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

24 CFR Part 886

Grant programs—housing and community development, Lead

poisoning, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 887

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

24 CFR Part 900

Grant programs—housing and community development, Rent subsidies.

24 CFR Part 904

Grant programs—housing and community development, Loan programs—housing and community development, Public housing.

24 CFR Part 905

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

24 CFR Part 912

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

24 CFR Part 960

Aged, Grant programs—housing and community development, Individuals with disabilities, Public housing.

Accordingly, title 24 of the Code of Federal Regulations, parts 200, 215, 235, 236, 247, 812, 880, 881, 882, 883, 884, 886, 887, 900, 904, 905, 912 and 960 are amended as follows.

PART 200—INTRODUCTION

1. The authority citation for part 200 is revised to read as follows:

Authority: 12 W.S.C. 1701–1715z-18; 42 U.S.C. 1436a and 3535(d).

2. A new subpart G, consisting of §§ 200.180 through 200.192, is added to read as follows:.

Subpart G—Restrictions on Assistance to Noncitizens

Sec.
200.180 Applicability.
200.180a Requirements concerning documents.
200.181 Definitions.
200.182 General provisions.
200.183 Submission of evidence of citizenship or eligible immigration status.
200.184 Documents of eligible immigration status.
200.185 Verification of eligible immigration status.
200.186 Delay, denial, reduction or termination of assistance.
200.187 Preservation of mixed families and other families.
200.188 Proration of assistance.
200.189 Prohibition of assistance to noncitizen students.
200.190 Compliance with nondiscrimination requirements.
200.191 Protection from liability for project owners, State and local government agencies and officials.
200.192 Liability of ineligible tenants for reimbursement of benefits.

Subpart G—Restrictions on Assistance to Noncitizens

§ 200.180 Applicability.

(a) *Covered programs/assistance.* This subpart implements the statutory restrictions on providing financial assistance to benefit individuals who are not in eligible status with respect to citizenship or noncitizen immigration status. This subpart is applicable to financial assistance provided under:

(1) *Section 235 Program assistance.* Section 235 of the National Housing Act (12 U.S.C. 1715z) (the Section 235 Program), and for which the implementing regulations are codified in 24 CFR part 235;

(2) *Section 236 Program assistance (below market rent only).* Section 236 of the National Housing Act (12 W.S.C. 1715z-1) (tenants paying below market rent only) (the Second 236 Program), and for which the implementing regulations are codified in 24 CFR part 236, subpart D; or

(3) *Rent Supplement Program assistance.* Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) (the Rent Supplement Program), and for which the implementing regulations are codified in 24 CFR part 215.

(b) *When financial assistance is considered paid.* Covered financial assistance is considered to be provide (or paid), and the restrictions on providing covered financial assistance to noncitizens with ineligible immigration status are applicable as follows:

(1) *Payment under Section 235 Program.* Financial assistance is considered to be paid under the Section 235 program on behalf of a mortgagor when:

(i) The dwelling unit is subject to a mortgage insured under section 235 of the National Housing Act (and part 235 of this chapter); *and*

(ii) Assistance payments are made to the mortgagee on behalf of the mortgagor under a contract between the mortgagee and the Secretary in accordance with section 235(b) of the National Housing Act, unless those assistance payments are pro-rated in accordance with § 200.188.

(2) *Payment under Section 236 Program.* Financial assistance is considered to be paid under the Section 236 program on behalf of a tenant or cooperative unit purchaser when:

(i) The project is subject to a mortgage insured or the project is assisted under section 236 of the National Housing Act (and part 236 of this chapter) for which interest reduction payments are paid under a contract between the mortgagee and the Secretary; *and*

(ii) The monthly rental charge paid to the owner for the dwelling unit is less than the HUD-approved market rent, whether or not rental assistance payments are also paid under a contract in accordance with section 236(f)(2) and part 236, subpart D, of this chapter, unless those assistance payments are prorated in accordance with § 200.188.

(3) *Payment under Rent Supplement Program.* Financial assistance is considered to be paid under the Rent Supplement program administered under section 101 of the Housing and Urban Development Act of 1965 when rent supplement payments are paid under a contract between the project owner and the Secretary in accordance with that section and part 215 of this chapter, unless those assistance payments are prorated in accordance with § 200.188.

(c) *Covered individuals and entities.*—(1) *Covered individuals/persons and families.* The provisions of this subpart apply to both applicants for assistance and persons already receiving assistance covered under this subpart (i.e., tenants, homebuyers, cooperative members; see definition of ''tenant'' in § 200.181). Unless the context clearly indicates otherwise, the terms ''individual,'' ''person'' or ''family,'' or the plural of these terms, as used in this subpart apply to both an applicant and a tenant, or an applicant family or a tenant family.

(2) *Covered entities.* The provisions of this subpart apply to both project owners (as defined in § 200.181) and mortgagees under the Section 235 homeownership program. Unless the context clearly indicates otherwise, the term ''project owner'' as used in this subpart includes mortgagee.

(d) *Administration of restrictions on providing assistance.* Project owners shall administer the restrictions on providing assistance to noncitizens with ineligible immigration status in accordance with the requirements of this subpart.

§ 200.180a Requirements concerning documents.

For any notice or document (decision, declaration, consent form, etc.) that this subpart requires the project owner to provide to an individual, or requires the project owner to obtain the signature of an individual, the project owner, where feasible, must arrange for the notice or document to be provided to the individual in a language that is understood by the individual if the individual is not proficient in English. (See 24 CFR 8.6 of HUD's regulations for requirements concerning communications with persons with disabilities.)

§ 200.181 Definitions.

Assisted dwelling unit means a dwelling unit for which financial assistance is considered to be paid, as determined in accordance with § 200.180.

Child means a member of the family, other than the family head or spouse, who is under 18 years of age.

Citizen means a citizen or national of the United States.

Evidence of citizenship or eligible immigration status means the documents which must be submitted to evidence citizenship or eligible immigration status. (See § 200.186(b).)

Family. Except as may be otherwise specified in this subpart, the term ''family'' for purposes of this subpart shall have the same meaning as provided in the definition section of the regulations for each of the following programs: the Section 235 Program, Section 236 Program, and the Rent Supplement Program). (See, respectively, 24 CFR 235.5, 24 CFR 236.2, 24 CFR 215.1).

Financial assistance or *covered financial assistance.* See § 200.180.

Head of household means the adult member of the family who is the head of the household for purposes of determining income eligibility and rent.

HUD means the Department of Housing and Urban Development.

INS means the U.S. Immigration and Naturalization Service.

Mixed family means a family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

National means a person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

Noncitizen means a person who is neither a citizen nor nation of the United States.

Project owner means the person or entity that owns the housing project containing the assisted dwelling unit. For purposes of this subpart, this term includes the mortgagee, in the case of a Section 235 mortgage.

Section 214 means Section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a). Section 214 restricts HUD from making financial assistance available for noncitizens unless they meet one of the categories of eligible immigration status specified in Section 214.

Tenant means for the Rent Supplement program and the Section 236 program, an individual or a family renting an assisted dwelling unit or occupying such a dwelling unit as a cooperative member. For purposes of simplifying the language in this subpart to include the Section 235 homeownership program, the term tenant will also be used to include a homebuyer, where appropriate.

§ 200.182 General provisions.

(a) *Restrictions on assistance.* Financial assistance under the programs covered by this subpart is restricted to:

(1) *Citizens;* or

(2) *Noncitizens* who have eligible immigration status in one of the following categories:

(i) A noncitizen lawfully admitted for permanent residence, as defined by section 101(a)(20) of the Immigration and Nationality Act (INA), as an immigrant, as defined by section 101(a)(15) of the INA (8 U.S.C. 1101(a)(20) and 1101(a)(15), respectively) (immigrants). (This category includes a noncitizen admitted under section 210 or 210A of the INA (8 U.S.C. 1160 or 1161), (special agricultural worker), who has been granted lawful temporary resident status);

(ii) A noncitizen who entered the United States before January 1, 1972, or such later date as enacted by law, and has continuously maintained residence in the United States since then, and who is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General under section 249 of the INA (8 U.S.C. 1259);

(iii) A noncitizen who is lawfully present in the United States pursuant to an admission under section 207 of the INA (8 U.S.C. 1157) (refugee status); pursuant to the grant of asylum (which has not been terminated) under section 208 of the INA (8 U.S.C. 1158) (asylum status); or as a result of being granted conditional entry under section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic national calamity;

(iv) A noncitizen who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) (parole status);

(v) A noncitizen who is lawfully present in the United States as a result of the Attorney General's withholding deportation under section 243(h) of the INA (8 U.S.C. 1253(h)) (threat to life or freedom); or

(vi) A noncitizen lawfully admitted for temporary or permanent residence under section 245A of the INA (8 U.S.C. 1255a) (amnesty granted under INA 245A).

(b) *Family eligibility for assistance.* (1) A family shall not be eligible for assistance unless every member of the family residing in the unit is determined to have eligible status, as described in paragraph (a) of this section;

(2) Despite the ineligibility of one or more family members, a mixed family may be eligible for one of three types of assistance provided in § 200.187. A family without any eligible members and receiving assistance on June 19, 1995 may be eligible for temporary deferral of termination of assistance as provided in § 200.187.

§ 200.183 Submission of evidence of citizenship or eligible immigration status.

(a) *General.* Eligibility for assistance or continued assistance under a program covered by this subpart is contingent upon a family's submission to the project owner of the documents described in paragraph (b) of this section for each family member. If one or more family members do not have citizenship or eligible immigration status, the family members may exercise the election not to content to have eligible immigration status as provided in paragraph (e) of this section, and the provisions of § 200.187 shall apply.

(b) *Evidence of citizenship or eligible immigration status.* Each family member, regardless of age, must submit the following evidence to the project owner.

(1) For citizens, the evidence consists of a signed declaration of U.S. citizenship;

(2) For noncitizens who are 62 years of age or older or who will be 62 years of age or older and receiving assistance under a covered program on June 19, 1995 the evidence consists of:

(i) A signed declaration of eligible immigration status; and

(ii) Proof of age document.

(3) For all other noncitizens, the evidence consists of:

(i) A signed declaration of eligible immigration status;

(ii) The INS documents listed in § 200.184; and

(iii) A signed verification form.

(c) *Declaration.* (1) For each family member who contends that he or she is a U.S. citizen or a noncitizen with eligible immigration status, the family must submit to the project owner a written declaration, signed under penalty of perjury, by which the family member declares whether he or she is a U.S. citizen or a noncitizen with eligible immigration status.

(i) For each adult, the declaration must be signed by the adult.

(ii) For each child, the declaration must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(2) The written declaration may be incorporated as part of the application for housing assistance or may constitute a separate document.

(d) *Verification consent form*—(1) *Who signs.* Each noncitizen who declares eligible immigration status must sign a verification consent form as follows.

(i) For each adult, the form must be signed by the adult.

(ii) For each child, the form must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(2) *Notice of release of evidence by project owner.* The verification consent form shall provide that evidence of eligible immigration status may be released by the project owner without responsibility for the further use or transmission of the evidence by the entity receiving it, to:

(i) HUD, as required by HUD; and

(ii) The INS for purposes of verification of the immigration status of the individual.

(3) *Notice of release of evidence by HUD.* The verification consent form also shall notify the individual of the possible release of evidence of eligible immigration status by HUD. Evidence of eligible immigration status shall only be released to the INS for purposes of establishing eligibility for financial assistance and not for any other purpose. HUD is not responsible for the future use or transmission of the evidence or other information by the INS.

(e) *Individuals who do not contend that they have eligible status.* If one or more members of a family elect not to contend that they have eligible immigration status, and other members of the family establish their citizenship or eligible immigration status, the family may be eligible for assistance under §§ 200.187 or 200.188, despite the fact that no declaration or documentation of eligible status is submitted for one or more members of the family. The family, however, must identify to the project owner, the family member (or members) who will elect not to contend that he or she has eligible immigration status.

(f) *Notification of requirements of Section 214*—(1) *When notice is to be issued.* Notification of the requirement to submit evidence of citizenship or eligible immigration status, as required by this section, or to elect not to contend that one has eligible status as provided by paragraph (e) of this section, shall be given by the project owner as follows:

(i) *Applicant's notice.* The notification described in paragraph (f)(1) of this section be given to each applicant at the time of application for assistance. Applicants whose applications are pending on June 19, 1995 shall be notified of the requirement to submit evidence of eligible status as soon as possible after June 19, 1995.

(ii) *Tenant's notice.* The notification described in paragraph (f)(1) of this section shall be given to each tenant at the time of, and together with, the project owner's notice of regular reexamination of tenant income, but not later than one year following June 19, 1995.

(iii) *Timing of mortgagor's notice.* A mortgagor receiving Section 235 assistance must be provided the notification described in paragraph (f)(1) of this section in accordance with § 235.13(b)(2) of this chapter.

(2) *Form and content of notice.* The notice shall:

(i) State that financial assistance is contingent upon the submission and verification, as appropriate, of evidence of citizenship or eligible immigration status as required by paragraph (a) of this section;

(ii) Describe the type of evidence that must be submitted, and state the time period in which that evidence must be submitted (see paragraph (g) of this section concerning when evidence must be submitted); and

(iii) State that assistance will be prorated, denied or terminated, as appropriate, upon a final determination of ineligibility after all appeals have been exhausted (see § 200.186 concerning INS appeal, and informal hearing process by the project owner) or, if appeals are not pursued, at a time to be specified in accordance with HUD requirements. Tenants also shall be informed of how to obtain assistance under the preservation of families provisions of § 200.187.

(g) *When evidence of eligible status is required to be submitted.* The project owner shall require evidence of eligible status to be submitted at the times specified in paragraph (g) of this section, subject to any extension granted in accordance with paragraph (h) of this section.

(1) *Applicants.* For applicants, project owners must ensure that evidence of eligible status is submitted not later than the date the project owner anticipates or has knowledge that verification of other aspects of eligibility for assistance will occur (see § 200.185(a)).

(2) *Tenants.* For tenants (i.e., persons already receiving the benefit of assistance in a covered program on June 19, 1995, evidence of eligible status is required to be submitted as follows:

(i) For financial assistance in the form of rent supplement payments or Section 236 basic rent tenancy or rental assistance payments, the tenant shall, in accordance with the provisions of §§ 215.55(a) and 236.80(a) of this chapter, submit the required evidence at the first regular reexamination after June 19, 1995.

(ii) For financial assistance in the form of Section 235 assistance payments, the mortgagor shall submit the required evidence in accordance with § 235.13(c) of this chapter.

(3) *New occupants of assisted units.* For any new occupant of an assisted unit (e.g., a new family member comes to reside in the assisted unit), the required evidence shall be submitted at the first interim or regular reexamination following the person's occupancy.

(4) *Changing participation in a HUD program.* Whenever a family applies for admission to a program covered by this subpart, evidence of eligible status is required to be submitted in accordance with the requirements of this subpart unless the family already has submitted the evidence to the project owner for a covered program.

(5) *One-time evidence requirement for continuous occupancy.* For each family member, the family is required to submit evidence of eligible status only one time during continuously assisted occupancy under any covered program.

(h) *Extensions of time to submit evidence of eligible status.*

(1) *When extension must be granted.* The project owner shall extend the time, provided in paragraph (g) of this section, to submit evidence of eligible immigration status if the family member:

(i) Submits the declaration required under § 200.183(a) certifying that any person for whom required evidence has not been submitted is a noncitizen with eligible immigration status; and

(ii) Certifies that the evidence needed to support a claim of eligible immigration status is temporarily unavailable, additional time is needed to obtain and submit the evidence; and prompt and diligent effort will be undertaken to obtain the evidence.

(2) *Prohibition on indefinite extension period.* Any extension of time, if granted, shall be for a specific period of time. The additional time provided should be sufficient to allow the individual the time to obtain the evidence needed. The project owner's determination of the length of the extension needed shall be based on the circumstances of the individual case.

(3) *Grant or denial of extension to be in writing.* The project owner's decision to grant or deny an extension as provided in paragraph (h)(1) of this section shall be issued to the family by written notice. If the extension is granted, the notice shall specify the extension period granted. If the extension is denied, the notice shall explain the reasons for denial of the extension.

(i) *Failure to submit evidence or to establish eligible status.* If the family fails to submit required evidence of eligible immigration status within the time period specified in the notice, or any extension granted in accordance with paragraph (h) of this section, or if the evidence is timely submitted but fails to establish eligible immigration status, the project owner shall proceed to deny, prorate or terminate assistance, or provide continued assistance or temporary deferral of termination of assistance, as appropriate, in accordance with the provisions of §§ 200.186 and 200.187.

§ 200.184 Documents of eligible immigration status.

(a) *General.* A project owner shall request and review original documents of eligible immigration status. The project owner shall retain photocopies of the documents for its own records and return the original documents to the family.

(b) *Acceptable evidence of eligible immigration status.* The original of one of the following documents is acceptable evidence of eligible immigration status, subject to verification in accordance with § 200.185.

(1) Form I–551, Alien Registration Receipt Card (for permanent resident aliens);

(2) Form I–94, Arrival-Departure Record, with one of the following annotations:

(i) ''Admitted as Refugee Pursuant to Section 207'';

(ii) ''Section 208'' or ''Asylum'';

(iii) ''Section 243(h)'' or ''Deportation stayed by Attorney General'';

(iv) ''Paroled Pursuant to Sec. 212(d)(5) of the INA'';

(3) If Form I–94, Arrival-Departure Record, is not annotated, then accompanied by one of the following documents:

(i) A final court decision granting asylum (but only if no appeal is taken);

(ii) A letter from an INS asylum officer granting asylum (if application is filed on or after October 1, 1990) *or* from an INS district director granting asylum (if application filed before October 1, 1990);

(iii) A court decision granting withholding or deportation; or

(iv) A letter from an INS asylum officer granting withholding of deportation (if application filed on or after October 1, 1990).

(4) Form I–688, Temporary Resident Card, which must be annotated ''Section 245A'' or ''Section 210'';

(5) Form I–688B, Employment Authorization Card, which must be annotated ''Provision of Law 274a.12(11)'' or ''Provision of Law 274a.12'';

(6) A receipt issued by the INS indicating that an application for issuance of a replacement document in one of the above-listed categories has been made and the applicant's entitlement to the document has been verified; or

(c) *Other acceptable evidence.* If other documents are determined by the INS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the **Federal Register**.

§ 200.185 Verification of eligible immigration status.

(a) *When verification is to occur.* Verification of eligible immigration status shall be conducted by the project owner simultaneously with verification of other aspects of eligibility for assistance or continued eligibility for assistance under a covered program. The project owner shall verify eligible immigration status in accordance with the INS procedures described in this section.

(b) *Primary verification.*—(1) *Automated verification system.* Primary verification of the immigration status of the person is conducted by the project owner through the INS automated system (INS Systematic Alien Verification for Entitlements (SAVE)). The INS SAVE system provides access to names, file numbers and admission numbers of noncitizens.

(2) *Failure of primary verification to confirm eligible immigration status.* If the INS SAVE system does not verify eligible immigration status, secondary verification must be performed.

(c) *Secondary verification.*—(1) *Manual search of INS records.* Secondary verification is a manual search by the INS of its records to determine an individual's immigration status. The project owner must request secondary verification, within 10 days of receiving the results of the primary verification, if the primary verification system does not confirm eligible immigration status, or if the primary verification system verifies immigration status that is ineligible for assistance covered by this subpart.

(2) *Secondary verification initiated by project owner.* Secondary verification is initiated by the project owner forwarding photocopies of the original INS documents listed in § 200.184 (front and back), attached to the INS document verification request form G–845S (Document Verification Request), or such other form specified by the INS to a designated INS office for review. (Form G–845S is available from the local INS Office.)

(3) *Failure of secondary verification to confirm eligible immigration status.* If the secondary verification does not confirm eligible immigration status, the project owner shall issue to the family the notice described in § 200.186(d), which includes notification of appeal to the INS of the INS finding on immigration status (see § 200.186(d)(4)).

(d) *Exemption from liability for INS verification.* The project owner shall not be liable for any action, delay, or failure of the INS in conducting the automated or manual verification.

§ 200.186 Delay, denial, reduction or termination of assistance.

(a) *General.* Assistance to a family may not be delayed, denied, reduced or terminated because of the immigration status of a family except as provided in this section.

(b) *Restrictions on delay, denial, reduction or termination of assistance.*—(1) *Restrictions on reduction, denial or termination of assistance.* Assistance to an applicant shall not be reduced or denied, and assistance to a tenant shall not be delayed, denied, reduced, or terminated, on the basis of ineligible immigration status of a family member if:

(i) The primary and secondary verification of any immigration

documents that were timely submitted has not been completed;

(ii) The family member for whom required evidence has not been submitted has moved from the assisted dwelling unit;

(iii) The family member who is determined not to be in an eligible immigration status following INS verification has moved from the assisted dwelling unit;

(iv) The INS appeals process under § 200.186(e) has not been concluded; or

(v) For a tenant, the informal hearing process under § 200.186(f) has not been concluded.

(2) *Restrictions on denial or termination.* Assistance to an applicant shall not be denied, and assistance to a tenant shall not be terminated, on the basis of ineligible immigration status of a family member if:

(i) Assistance is prorated in accordance with § 200.188;

(ii) Assistance for a mixed family is continued in accordance with § 200.187; or

(iii) Deferral of termination of assistance is granted in accordance with § 200.187.

(3) *When delay of assistance to an applicant is permissible.* Assistance to an applicant may be delayed after the conclusion of the INS appeal process, but not denied until the conclusion of the informal hearing process, if an informal hearing is requested by the family.

(c) *Events causing denial or termination of assistance.*—(1) *General.* Assistance to an applicant shall be denied, and a tenant's assistance shall be terminated, in accordance with the procedures of this section, upon the occurrence of any of the following events:

(i) Evidence of citizenship (i.e., the declaration) and eligible immigration status is not submitted by the date specified in § 200.183(g) or by the expiration of any extension granted in accordance with § 200.183(h); or

(ii) Evidence of citizenship and eligible immigration status is timely submitted, but INS primary and second verification does not verify eligible immigration status of a family member; and

(A) The family does not pursue INS appeal or informal hearing rights as provided in this section; or

(B) INS appeal and informal hearing rights are pursued, but the final appeal or hearing decisions are decided against the family member.

(2) *Termination of assisted occupancy.* For termination of assisted occupancy, see paragraph (i) of this section.

(d) *Notice of denial or termination of assistance.* The notice of denial or termination of assistance shall advise the family:

(1) That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance;

(2) That the family may be eligible for proration of assistance as provided under § 200.188;

(3) In the case of a tenant, the criteria and procedures for obtaining relief under the preservation of families provision in § 200.187;

(4) That the family has a right to request an appeal to the INS of the results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal in accordance with the procedures of paragraph (e) of this section;

(5) That the family has a right to request an informal hearing with the project owner either upon completion of the INS appeal or in lieu of the INS appeal as provided in paragraph (f) of this section;

(6) For applicants, the notice shall advise that assistance may not be delayed until the conclusion of the INS appeal process, but assistance may be delayed during the pendency of the informal hearing process.

(e) *Appeal by applicant to the INS.*—(1) *Submission of request for appeal.* Upon receipt of notification by the project owner that INS secondary verification failed to confirm eligible immigration status, the project owner shall notify the family of the results of the INS verification, and the family shall have 30 days from the date of the project owner's notification, to request an appeal of the INS results. The request for appeal shall be made by the family communicating that request in writing directly to the INS. The family must provide the project owner with a copy of the written request for appeal and proof of mailing. For good cause shown, the project owner shall grant the family an extension of the time within which to request an appeal.

(2) *Documentation to be submitted as part of appeal to INS.* The family shall forward to the designated INS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the INS document verification request form G–845S (used to process the secondary verification request) or such other form specified by the INS, and a cover letter indicating that the family is request an appeal of the INS immigration status verification results. (Form G–845S is available from the local INS Office.)

(3) *Decision by INS.*—(i) *When decision will be issued.* The INS will issue to the family, with a copy to the project owner, a decision within 30 days of its receipt of documentation concerning the family's appeal of the verification of immigration status. If, for any reason, the INS is unable to issue a decision within the 30 day time period, the INS will inform the family and project owner of the reasons for the delay.

(ii) *Notification of INS decision and of informal hearing procedures.* When the project owner receives a copy of the INS decision, the project owner shall notify the family of its right to request an informal hearing on the PHA's ineligibility determination in accordance with the procedures of paragraph (f) of this section.

(4) *No delay, denial, reduction, or termination of assistance until completion of INS appeal process; direct appeal to INS.* Pending the completion of the INS appeal under this section, assistance may not be delayed, denied, reduced or terminated on the basis of immigration status.

(f) *Informal hearing*—(1) *When request for hearing is to be made.* After notification of the INS decision on appeal, or in lieu of request of appeal to the INS, the family may request that the project owner provide a hearing. This request must be made either within 14 days of the date the project owner mails or delivers the notice under paragraph (d) of this section, or within 14 days of the mailing of the INS appeal decision issued in accordance with paragraph (e) of this section (established by the date of postmark).

(2) *Extension of time to request hearing.* The project owner shall extend the period of time for requesting a hearing (for a specified period) upon good cause shown.

(3) *Informal hearing procedures.* A family who submits a timely request for a hearing with the project owner shall have an opportunity for:

(i) *Hearing before an impartial individual.* The family shall be provided a hearing before any person(s) designated by the project owner (including an officer or employee of the project owner), other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision;

(ii) *Examination of evidence.* The family shall be provided the opportunity to examine and copy at the individual's expense, at a reasonable time in advance of the hearing, any

documents in the possession of the project owner pertaining to the family's eligibility status, or in the possession of the INS (as permitted by INS requirements), including any records and regulations that may be relevant to the hearing;

(iii) *Presentation of evidence and arguments in support of eligible status.* The family shall be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings;

(iv) *Controverting evidence of the project owner.* The family shall be provided the opportunity to controvert evidence relied upon by the project owner and to confront and cross-examine all witnesses on whose testimony or information the project owner relies;

(v) *Representation.* The family shall be entitled to be represented by an attorney, or other designee, at the family's expense, and to have such person make statements on the family's behalf;

(vi) *Interpretive services.* The family shall be entitled to arrange for an interpreter to attend the hearing, at the expense of the family or project owner, as may be agreed upon by both parties; and

(vii) *Hearing to be recorded.* The family shall be entitled to have the hearing recorded by audiotape (a transcript of the hearing may, but is not required to, be provided by the project owner).

(4) *Hearing decision.* The project owner shall provide the family with a written final decision, based solely on the facts presented at the hearing, within 14 days of the date of the informal hearing. The decision shall state the basis for the decision.

(g) *Judicial relief.* A decision against a family member, issued in accordance with paragraph (e) or (f) of this section, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

(h) *Retention of documents.* The project owner shall retain for a minimum of 5 years the following documents that may have been submitted to the project owner by the family, or provided to the project owner as part of the INS appeal or the informal hearing process:

(1) The application for financial assistance;

(2) The form completed by the family for income re-examination;

(3) Photocopies of any original documents (front and back), including original INS documents;

(4) The signed verification consent form;

(5) The INS verification results;

(6) The request for an INS appeal;

(7) The final INS determination;

(8) The request for an informal hearing; and

(9) The final hearing decision.

(i) *Termination of assisted occupancy.* Assisted occupancy is terminated by:

(1) If permitted under the lease, the project owner notifying the tenant that because of the termination of assisted occupancy the tenant is required to pay the HUD-approved market rent for the dwelling unit.

(2) The project owner and tenant entering into a new lease without financial assistance.

(3) The project owner evicting the tenant. An owner may continue to receive assistance payments if action to terminate the tenancy under an assisted lease is promptly initiated and diligently pursued, in accordance with the terms of the lease, and if eviction of the tenant is undertaken by judicial action pursuant to State and local law. Action by the owner to terminate the tenancy and to evict the tenant must be in accordance with 24 CFR part 247 and other HUD requirements. For any jurisdiction, HUD may prescribe a maximum period during which assistance payments may be continued during eviction proceedings and may prescribe other standards of reasonable diligence for the prosecution of eviction proceedings.

§ 200.187 Preservation of mixed families and other families.

(a) *Assistance available for mixed families.*—(1) *Assistance available for tenant mixed families.* For a mixed family assisted under a program by this subpart on June 19, 1995, and following completion of the appeals and informal hearing procedures provided in § 200.186 if utilized by the family, one of the following three types of assistance is available to the family depending upon the family's eligibility for such assistance:

(i) Continued assistance (see paragraph (b) of this section);

(ii) Temporary deferral of termination of assistance (see paragraph (c) of this section); or

(iii) Prorated assistance (see § 200.188; a mixed family must be provided prorated assistance if the family so requests).

(2) *Assistance available for applicant mixed families.* Prorated assistance is also available for mixed families applying for assistance as provided in § 200.188.

(3) *Assistance available to other families in occupancy.* For families receiving assistance under a program covered by this subpart on June 19, 1995 and who have no members with eligible immigration status, temporary deferral of termination of assistance is available to families without any eligible members in accordance with paragraph (c) of this section.

(b) *Continued assistance.* A mixed family shall receive continued housing assistance if all of the following conditions are met:

(1) The family was receiving assistance under a program covered by this subpart on June 19, 1995;

(2) The family's head of household or spouse has eligible immigration status as described in § 200.182; and

(3) The family does not include any person (who does not have eligible immigration status) other than the head of household, any spouse of the head of household, any parents of the head of household, any parents of the spouse, or any children of the head of household or spouse.

(c) *Temporary deferral of termination of assistance.*—(1) *Eligibility for this type of assistance.* If a mixed family qualifies for prorated assistance (and does not qualify for continued assistance), but decides not to accept prorated assistance, or if a family has no members with eligible immigration status, the family shall be eligible for temporary deferral of termination of assistance if necessary to permit the family additional time for the orderly transition of those family members with ineligible status, and any other family members involved, to other affordable housing. Other affordable housing is used in the context of transition of an ineligible family from a rent level that reflects HUD assistance to a rent level that is unassisted; the term refers to housing that is not substandard, that is of appropriate size for the family and that can be rented for an amount not exceeding the amount that the family pays for rent, including utilities, plus 25 percent.

(2) *Conditions for granting temporary deferral of termination of assistance.* The project owners shall grant a temporary deferral of termination of assistance to a mixed family if one of the following conditions is met:

(i) The family demonstrates that reasonable efforts to find other affordable housing of appropriate size have been unsuccessful (for purposes of this section, reasonable efforts include seeking information from, and pursuing leads obtained from the State housing

agency, the city government, local newspapers, rental agencies and the owner);

(ii) The vacancy rate for affordable housing of appropriate size is below five percent in the housing market for the area in which the project is located; or

(iii) The consolidated plan, as described in 24 CFR part 91 and if applicable to the covered program, indicates that the local jurisdiction's housing market lacks sufficient affordable housing opportunities for households having a size and income similar to the family seeking the deferral.

(3) *Time limit on deferral period.* If temporary deferral of termination of assistance is granted, the deferral period shall be for an initial period not to exceed six months. The initial period may be renewed for additional periods of six months, but the aggregate deferral period shall not exceed a period of three years.

(4) *Notification requirements for beginning of each deferral period.* At the beginning of each deferral period, the project owner must inform the family of its ineligibility for financial assistance and offer the family information concerning, and referrals to assist in finding, other affordable housing.

(5) *Determination of availability of affordable housing at end of each deferral period.* Before the end of each deferral period, the project owner must:

(i) Make a determination that one of the three conditions specified in paragraph (c)(2) of this section continues to be met (note: affordable housing will be determined to be available if the vacancy rate is five percent or greater, or if the consolidated plan (If applicable), the owner's knowledge and the tenant's evidence indicate that other affordable housing is available). *and*

(ii) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination will be deferred again (provided that the granting of another deferral will not result in aggregate deferral periods that exceed three years), and a determination was made that other affordable housing is not available; *or*

(iii) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination of financial assistance will not be deferred because either granting another deferral will result in aggregate deferral periods that exceed three years, or a determination has been made that other affordable housing is available.

(d) *Option to select proration of assistance at end of deferral period.* A family who is eligible for, and receives temporary deferral of termination of assistance, may request, and the project owner shall provide proration of assistance at the end of the deferral period if the family has made a good faith effort during the deferral period to locate other affordable housing.

(e) *Notification of decision on family preservation assistance.* A project owner shall notify the family of its decision concerning the family's qualification for assistance under this section. If the family is ineligible for assistance under this section, the notification shall state the reasons, which must be based on relevant factors. For tenant families, the notice also shall inform the family of any applicable appeal rights.

§ 200.188 Proration of assistance.

(a) *Applicability.* This section applies to a mixed family other than a family receiving continued assistance under § 200.187(b), or other than a family who is eligible for and requests and receives temporary deferral of termination of assistance under § 200.187(c).

(b) *Method for prorating assistance.* For each of the three types of assistance covered by this subpart, the project owner shall prorate the family's assistance as follows:

(1) *Proration under Rent Supplement Program.* If the household participates in the Rent Supplement Program, the rent supplement paid on the household's behalf shall be the rent supplement the household would otherwise be entitled to, multiplied by a fraction, the denominator of which is the number of people in the household and the numerator of which is the number of eligible persons in the household;

(2) *Proration under Section 235 Program.* If the household participates in the Section 235 Program, the interest reduction payments paid on the household's behalf shall be the payments the household would otherwise be entitled to, multiplied by a fraction the denominator of which is the number of people in the household and the numerator of which is the number of eligible persons in the household;

(3) *Proration under Section 236 Program without the benefit of additional assistance.* If the household participates in the Section 236 Program without the benefit of any additional assistance, the household's rent shall be increased above the rent the household would otherwise pay by an amount equal to the difference between the market rate rent for the unit and the rent the household would otherwise pay multiplied by a fraction the denominator of which is the number of people in the household and the numerator of which is the number of ineligible persons in the household;

(4) *Proration under Section 236 Program with the benefit of additional assistance.* If the household participates in the Section 236 Program with the benefit of additional assistance under the rent supplement, rental assistance payment or Section 8 programs, the household's rent shall be increased above the rent the household would otherwise pay by:

(i) An amount equal to the difference between the market rate rent for the unit and the basic rent for the unit multiplied by a fraction, the denominator of which is the number of people in the household, and the numerator of which is the number of ineligible persons in the household, plus;

(ii) An amount equal to the rent supplement, housing assistance payment or rental assistance payment the household would otherwise be entitled to multiplied by a fraction, the denominator of which is the number of people in the household and the numerator of which is the number of ineligible persons in the household.

§ 200.189 Prohibition of assistance to noncitizen students.

(a) *General.* The provisions of §§ 200.187 and 200.188, permitting continued assistance, prorated assistance or temporary deferral of termination of assistance for certain families, do not apply to any person who is determined to be a noncitizen student, as defined in paragraph (b) of this section, or the family of the noncitizen student, as described in paragraph (c) of this section.

(b) *Noncitizen student.* For purposes of this part, a noncitizen student is defined as a noncitizen who:

(1) Has a residence in a foreign country that the person has no intention of abandoning;

(2) Is a bona fide student qualified to pursue a full course of study; and

(3) Is admitted to the United States temporarily and solely for purposes of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States, particularly designated by such person and approved by the Attorney General after consultation with the Department of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant

student (and if any such institution of learning or place of study fails to make such reports promptly the approval shall be withdrawn).

(c) *Family of noncitizen student.* The prohibition on providing assistance to a noncitizen student as described in paragraph (a) of this section also extends to the noncitizen spouse of the noncitizen student and minor children of any noncitizen student if the spouse or children are accompanying the student or following to join such student. The prohibition on providing assistance to a noncitizen student does not extend to the citizen spouse of the noncitizen student and the children of the citizen spouse and noncitizen student.

§ 200.190 Compliance with nondiscrimination requirements.

The project owner shall administer the restrictions on use of assisted housing by noncitizens with ineligible immigration status imposed by this part in conformity with the nondiscrimination requirements of, including, but not limited to, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–5) and the implementing regulations in 24 CFR part 1, section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations in 24 CFR part 8, the Fair Housing Act (42 U.S.C. 3601–3619) and the implementing regulations in 24 CFR part 100, and other civil rights statutes cited in the applicable program regulations. These statutes prohibit, among other things, discriminatory practices on the basis of race, color, national origin, sex, religion, age, disability and familial status in the provision of housing.

§ 200.191 Protection from liability for project owners, State and local government agencies and officials.

(a) *Protection from liability for project owners.* HUD will not take any compliance, disallowance, penalty, or other regulatory action against a project owner with respect to any error in its determination of eligibility for financial assistance based on citizenship or immigration status:

(1) If the project owner established eligibility based upon verification of eligible immigration status through the verification system described in § 200.185.

(2) Because the project owner was required to provide an opportunity for the family to submit evidence in accordance with § 200.183;

(3) Because the project owner was required to wait for completion of INS verification of immigration status in accordance with § 200.185;

(4) Because the project owner was required to wait for completion of the INS appeal process provided in accordance with § 200.186(e); or

(5) Because the project owner was required to provide an informal hearing in accordance with § 200.186(f).

(b) *Protection from liability for State and local government agencies and officials.* State and local government agencies and officials shall not be liable for the design or implementation of the verification system described in § 200.185 and the informal hearings provided under § 200.186, as long as the implementation by the State and local government agency or official is in accordance with prescribed HUD rule and requirements.

§ 200.192 Liability of ineligible tenants for reimbursement of benefits.

Where a tenant has received the benefit of HUD financial assistance to which the tenant was not entitled because the tenant intentionally misrepresented ''eligible status'' (as defined in § 200.182), the ineligible tenant is responsible for reimbursing HUD for the assistance improperly paid. If the amount of the assistance is substantial, the project owner is encouraged to refer the case to the HUD Regional Inspector General's office for further investigation. Possible criminal prosecution may follow based on the False Statements Act (18 U.S.C. 1001 and 1010).

PART 215—RENT SUPPLEMENT PAYMENTS

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

Authority: 12 U.S.C. 1701s; 42 U.S.C. 3535(d).

4. In § 215.20, paragraph (b)(2) is amended by adding a new sentence at the end to read as follows:

§ 215.20 Qualified tenant.

* * * * *

(b) * * *

(2) * * * For restrictions on financial assistance to noncitizens with ineligible immigration status, see part 200, subpart G, of this chapter.

* * * * *

5. In § 215.25, paragraph (a)(1) is revised to read as follows:

§ 215.25 Determination of eligibility.

(a)(1) The housing owner shall determine eligibility following procedures prescribed by the Commissioner when processing applications for admission and tenant applications for assistance. The requirements of part 200, subpart G, of this chapter govern the submission and verification of citizenship information and eligible immigration status for applicants, and the procedures for denial or proration of assistance based upon a failure to establish eligible immigration status.

* * * * *

6. A new § 215.26 is added to read as follows:

§ 215.26 Determination of eligible immigration status of applicants and tenants; protection from liability.

(a) *Housing owner's obligation to make determination.* A housing owner shall obtain and verify information regarding the citizenship or immigration status of applicants and tenants in accordance with the procedures of part 200, subpart G, this chapter.

(b) *Protection from liability.* HUD will not take any compliance, disallowance, penalty or other regulatory action against a housing owner with respect to any error in its determination that an individual is eligible for financial assistance based upon citizenship or eligible immigration status, as provided in § 200.189 of this chapter.

7. Section 215.55 is amended by adding two sentences at the end of paragraph (a), by adding one sentence at the end of paragraph (b), and by adding two sentences at the end of paragraph (c), to read as follows:

§ 215.55 Reexamination of family income and composition.

(a) * * * At the first regular reexamination after June 19, 1995, the owner shall follow the requirements of part 200, subpart G, of this chapter concerning obtaining and processing information on the citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of part 200, subpart G, of this chapter, concerning obtaining and processing information on the citizenship or eligible immigration status of any new family member.

(b) * * * At any interim reexamination after June 19, 1995 when a new family member has been added, the owner shall follow the requirements of part 200, subpart G, of this chapter, concerning obtaining and processing information on the citizenship or eligible immigration status of the new family member.

(c) * * * Assistance also may be terminated in accordance with any requirements of the lease or with HUD requirements. The procedures of part 200, subpart G, of this chapter, apply when termination is based upon a determination that the tenant does not have eligible immigration status.

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

8. The authority citation for part 235 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715z; 42 U.S.C. 3535(d).

9. Section 235.2 is amended by adding a new paragraph (f) to read as follows:

§ 235.2 Basic program outline.

* * * * *

(f) Evidence of citizenship or eligible immigration status shall be submitted by the applicant or mortgagor and verified in accordance with part 200, subpart G of this chapter and § 235.13.

10. Section 235.10 is amended by adding a new paragraph (c)(2)(iii) and by adding a sentence at the end of paragraph (e), to read as follows:

§ 235.10 Eligible mortgagors.

* * * * *

(c) * * *

(2) * * *

(iii) A new member is added to the family in which case evidence of citizenship or eligible immigration status also shall be submitted, in accordance with part 200, subpart G, of this chapter.

* * * * *

(e) * * * Eligibility for assistance under this subpart also requires citizenship or eligible immigration status, as determined in accordance with part 200, subpart G, of this chapter, except that citizenship or eligible immigration status shall not be required of a mortgagor whose assistance contract was executed before June 19, 1995 and remains unchanged after that date. (See § 235.13(c).)

* * * * *

11. A new § 235.13 is added to read as follows:

§ 235.13 Special requirements concerning citizenship or eligible immigration status.

(a) *General.* Except as may be supplemented by the provisions of this section, the requirements of 24 CFR part 200, subpart G, concerning restrictions on the use of assisted housing by noncitizens with ineligible immigration status are applicable to mortgagees and mortgagors covered by the Section 235 Program with the exception of mortgagors:

(1) Whose assistance contracts were executed before June 19, 1995 and remain unchanged after that date; or

(2) Who refinance their Section 235 mortgages, which were executed before June 19, 1995 and whose assistance contracts were unchanged after that date, with mortgages insured under section 235(r) of the National Housing Act (12 U.S.C. 1715z).

(b) *Notification of requirements to submit evidence of eligible status*—(1) *Notice to applicants.* A mortgagee shall notify applicants, including applicants whose names are on a waiting list on June 19, 1995, that financial assistance is contingent upon the submission and verification, as appropriate, of evidence of eligible citizenship and immigration status as required under 24 CFR part 200, subpart G.

(2) *Notice to mortgagors.* A mortgagee also shall notify mortgagors (except Section 235(r) mortgagors) whose contracts are executed after June 19, 1995 that continued financial assistance is contingent upon the submission and verification, as appropriate, of the evidence of eligible status required in 24 CFR part 200, subpart G. This notice requirement also shall apply to mortgagors whose contracts are revised, at the request of the mortgagor, after June 19, 1995.

(c) *Submission of evidence of eligible status*—(1) *When evidence of eligible immigration status is to be submitted.* A mortgagee shall obtain evidence concerning an applicant or mortgagor's citizenship or eligible immigration status, as required by 24 CFR part 200, subpart G, at the following times:

(i) Application for assistance; and

(ii) The first recertification of family income and composition conducted after June 19, 1995, in accordance with § 235.10 or § 235.350. The requirements of this section are not applicable to mortgagors whose assistance contracts were executed before June 19, 1995 and remain unchanged after that date, or to mortgagors who refinance their section 235 mortgages, which were executed before June 19, 1995 and whose assistance contracts remain unchanged after such date, with mortgages insured under section 235(r) of the National Housing Act.

(2) *Extensions of time to submit evidence of eligible status.* The provisions of § 200.183(e) of this chapter, concerning extension of time within which to submit evidence of eligible status are applicable.

(d) *Certification by mortgagee*—(1) *General.* The mortgagee shall verify the evidence submitted in the case of an applicant or mortgagor declaring eligible immigration status, in accordance with the requirements of part 200, subpart G, of this chapter, and certify to the Secretary that the required information concerning citizenship or eligible immigration status has been submitted and verified (if applicable) for all persons for whom the evidence is required. If the applicant or mortgagor's citizenship or eligible immigration status is not established as a result of the process required under 24 CFR part 200, subpart G, the mortgagee shall notify the applicant or mortgagor in accordance with the requirements of 24 CFR part 200, subpart G concerning notification of the possibility of denial or termination of assistance, and, if applicable, of additional assistance that may be available to the applicant or mortgagor.

(2) *Invalid certification.* (i) If the mortgagee has certified to the Secretary in accordance with paragraph (d)(1) of this section that the required information concerning citizenship or eligible immigration status has been submitted and verified (if applicable), and the Secretary subsequently determines that the procedures required by this section and 24 CFR part 200, subpart G, were not followed, the following actions will be taken:

(A) The mortgagee will be required to repay to the Secretary the full amount of assistance payments made on behalf of the mortgagor under this part; and

(B) No additional assistance payments may be made on behalf of the mortgagor.

(ii) The Secretary may permit the resumption of assistance payments if all persons residing in the dwelling whose status was not determined to be eligible have moved from the dwelling unit, or their status has been determined to be eligible, in accordance with 24 CFR part 200, subpart G.

(iii) If the mortgagee has certified to the Secretary in accordance with paragraph (c)(1) of this section that the required information concerning citizenship or eligible immigration status has been submitted and verified (if applicable), and the Secretary subsequently determines that the mortgagor's eligible status determination was based on fraudulent documents, or was otherwise defective, although the determination was made in accordance with required procedures, the following actions will be taken:

(A) The mortgagor will be required to repay to the Secretary the full amount of assistance payments made on behalf of the mortgagor under this part; and

(B) No additional assistance payments may be made on behalf of the mortgagor.

(iv) The Secretary's right to repayment from the mortgagor under paragraph (d)(2)(i) of this section shall not affect or limit the Secretary's right to refund of overpaid assistance payments from the mortgagee as provided in § 235.361(b).

(e) *Mortgage insurance commitments.* Commitments to insure mortgages under this part will not be issued or extended

unless the mortgagee has made the certification required under paragraph (d) of this section.

(f) *Other related provisions.* See § 235.10 for eligibility requirements, specifically citizenship and eligible immigration status; § 235.350 for the mortgagor's required recertification, including provision of information concerning eligible immigration status; and generally part 200, subpart G, of this chapter, for the provisions on restrictions to providing assistance to noncitizens with ineligible immigration status.

12. In § 235,325, a new paragraph (c) is added to read as follows:

§ 235.325 Qualified cooperative members.

* * * * *

(c) Eligibility as a cooperative member under this subpart also requires eligible status with respect to citizenship or eligible immigration status determined in accordance with 24 CFR part 200, subpart G. (See § 235,13.)

13. Section 235.350 is amended by adding a new paragraph (a)(2)(iii) to read as follows:

§ 235.350 Mortgagor's required recertification.

(a) * * *

(2) * * *

(iii) A new member is added to the family who is not born in the United States (except for a mortgagor described in 235.13(a) (1) or (2)).

* * * * *

14. In § 235.375, a new paragraph (b)(6) is added to read as follows:

§ 235.375 Termination, suspension, or reinstatement of the assistance payments contract.

* * * * *

(b) * * *

(6) Failure to provide evidence of citizenship or eligible immigration status in accordance with 24 CFR part 200, subpart G:

(i) For a new member of the family, other than a child born in the United States, except with respect to a mortgagor described under § 235.13(a) (1) and (2);

(ii) At the first recertification of an assistance contract, except with respect to a mortgagor described in § 235.13(a)(1) and (2); or

(iii) Upon modification of an existing assistance contract

* * * * *

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENTS FOR RENTAL PROJECTS

15. The authority citation for part 236 continues to read as follows:

Authority: 12 U.S.C. 1715b and 1715z–1; 42 U.S.C. 3535(d).

16. Section 236.2 is amended by:

1. Amending the definition of ''Adjusted income'' by redesignating paragraphs (a), (b), (c), (d) introductory text, (d)(1), (d)(2), (d)(3), and (e), as paragraphs (1), (2), (3), (4) introductory text, (4)(i), (4)(ii), (4)(iii), and (5), respectively, and by removing the cross-reference in newly designated paragraph (4)(ii) that reads ''paragraph (c) of this section'' and adding in its place ''paragraph (3) of this definition'';

2. Amending the definition of ''Handicapped Person'' by redesignating paragraphs (a), (b), and (c) to read paragraphs (1), (2), and (3), respectively;

3. Amending the definition of ''Live-in aide'' by redesignating paragraphs (a), (b), and (c), to read paragraphs (1), (2), and (3), respectively; and

4. Amending the definition of ''Qualified Tenant'' by redesignating paragraphs (a) and (b) as paragraphs (1) and (2) respectively, and by adding a new paragraph (3), to read as follows:

§ 236.2 Definitions.

* * * * *

Qualified Tenant

* * * * *

(3) For restrictions on financial assistance to noncitizens with ineligible immigration status, see 24 CFR part 200, subpart G.

* * * * *

17. In § 236.70, paragraph (a)(1) is revised to read as follows:

§ 236.70 Occupancy requirements.

(a)(1) The housing owner shall determine eligibility following procedures prescribed by the Commissioner when processing applications for admission. The requirements of 24 CFR part 200, subpart G, govern the submission and verification of information related to citizenship and eligible immigration status for those applicants who seek admission at a below market rent.

* * * * *

18. Section 236.80 is amended by adding two sentences at the end of paragraph (a), by adding one sentence at the end of paragraph (b), and by adding three sentences at the end of paragraph (c), to read as follows:

§ 236.80 Reexamination of income.

(a) * * * At the first regular reexamination after June 19, 1995, the owner shall follow the requirements of 24 CFR part 200, subpart G, concerning obtaining and processing information on the citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of 24 CFR part 200, subpart G, concerning obtaining and processing information on the citizenship or eligible immigration status of any new family member.

(b) * * * At any interim reexamination after June 19, 1995 when there is a new family member, the owner shall follow the requirements of 24 CFR part 200, subpart G, concerning obtaining and processing information on the citizenship or eligible immigration status of any new family member.

(c) * * * Assistance also may be terminated in accordance with any requirements of the lease with HUD requirements. When termination is based upon a determination that the tenant does not have eligible immigration status, the procedures of 24 CFR part 200, subpart G, apply. The procedures include the provision of assistance to certain mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination.

19. Section 236.710 is amended by adding a new sentence at the end of this section to read as follows:

§ 236.710 Qualified tenant.

* * * For restrictions on financial assistance to noncitizens with ineligible immigration status, see 24 CFR part 200, subpart G.

20. In § 236.715, paragraph (a) is revised to read as follows:

§ 236.715 Determination of eligibility.

(a) The housing owner shall determine eligibility following procedures prescribed by the Commissioner when processing applications for admission and tenant applications for assistance. The requirements of 24 CFR part 200, subpart G, govern the submission and verification of information related to citizenship and eligible immigration status for applicants, and the procedures for denial of assistance based upon a failure to establish eligible immigration status.

* * * * *

21. A new § 236.765 is added to subpart D to read as follows:

§ 236.765 Determination of eligible immigration status of applicants and tenants; protection from liability.

(a) *Housing owner's obligation to make determination.* A housing owner shall obtain and verify information regarding the citizenship or immigration status of applicants and tenants in accordance with the procedures of 24 CFR part 200, subpart G.

(b) *Protection from liability.* HUD will not take any compliance, disallowance, penalty or other regulatory action against a housing owner with respect to any error in its determination to make an individual eligible for financial assistance based upon citizenship or eligible immigration status, as provided in 24 CFR part 200, subpart G.

PART 247—EVICTIONS FROM CERTAIN SUBSIDIZED AND HUD-OWNED PROJECTS

22. The authority citation for part 247 continues to read as follows:

Authority: 12 U.S.C. 1701q, 1701s, 1715b, 1715l, and 1715z–1; 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

23. In § 247.3, paragraph (c)(3) is revised to read as follows:

§ 247.3 Entitlement of tenants to occupancy.

* * * * *

(c) * * *

(3) Failure of the tenant to supply on time all required information on the income and composition, or eligibility factors, of the tenant household (including, but not limited to, failure to submit required evidence of citizenship or eligible immigration status, in accordance with 24 CFR part 200, subpart G, failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 200, subpart T, or 24 CFR part 750 (as appropriate), or failure to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 200, subpart V, or 24 CFR part 760 (as appropriate), or to knowingly provide incomplete or inaccurate information; and

* * * * *

PART 812—DEFINITION OF FAMILY AND OTHER RELATED TERMS; OCCUPANCY BY SINGLE PERSONS

24. The authority citation for part 812 is revised to read as follows:

Authority: 42 U.S.C. 1436a, 1437a, and 3535(d).

25. In § 812.1, paragraph (a) is amended by removing the word ''and'' following the semicolon in paragraph (a)(1); by removing the period at the end of paragraph (a)(2) and replacing with ''and''; and by adding a new paragraph (a)(3), to read as follows:

§ 812.1 Purpose and applicability.

(a) * * *

(3) Implements the statutory prohibition against making assistance under the United States Housing Act of 1937 (''Act'') (42 U.S.C. 1437) available for the benefit of noncitizens with ineligible immigration status.

* * * * *

26. Section 812.2 is amended by adding definitions in alphabetical order for the terms ''Child,'' ''Citizen,'' ''Evidence of citizenship or eligible immigration status,'' ''HA,'' ''Head of household,'' ''HUD,'' ''INS,'' ''Mixed family,'' ''National,'' ''Noncitizen,'' and ''Responsible entity,'' ''Section 214'' and ''Section 214 covered programs'' to read as follows:

§ 812.2 Definitions.

* * * * *

Child. A member of the family, other than the family head or spouse, who is under 18 years of age.

Citizen. A citizen or national of the United States.

* * * * *

Evidence of citizenship or eligible immigration status. The documents which must be submitted to evidence citizenship or eligible immigration status. (See § 812.6(b).)

* * * * *

HA. A housing authority—either a public housing agency or an Indian housing authority, or both.

* * * * *

Head of household. The adult member of the family who is the head of the household for purposes of determining income eligibility and rent.

HUD. The Department of Housing and Urban Development.

INS. The U.S. Immigration and Naturalization Service.

* * * * *

Mixed family. A family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

National. A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

Noncitizen. A person who is neither a citizen nor national of the United States.

Responsible entity. The person or entity responsible for administering the restrictions on providing assistance to noncitizens with ineligible immigration status:

(1) For the Section 8 Certificate, the Section 8 Housing Voucher, and the Section 8 Moderate Rehabilitation programs, the housing authority (HA) administering the program under an ACC with HUD.

(2) For all other Section 8 programs, the owner.

Section 214. Section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a). Section 214 restricts HUD from making financial assistance available for noncitizens unless they meet one of the categories of eligible immigration status specified in Section 214.

Section 214 covered programs. Programs to which the restrictions imposed by Section 214 apply are programs that make available financial assistance pursuant to the United States Housing Act of 1937 (42 U.S.C. 1437–1440), Section 235 or Section 236 of the National Housing Act (12 U.S.C. 1715z and 1715z–1) and Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s).

* * * * *

27. Part 812 is amended by redesignating §§ 812.1 through 812.4 as subpart A, and by adding the subpart heading to read, ''Subpart A—General,'' and by adding a new subpart B, consisting of §§ 812.5 through 812.15, to read as follows:

Subpart B—Restrictions on Assistance to Noncitizens

Sec.
812.5 General.
812.5a Requirements concerning documents.
812.6 Submission of evidence of citizenship or eligible immigration status.
812.7 Documents of eligible immigration status.
812.8 Verification of eligible immigration status.
812.9 Delay, denial or termination of assistance.
812.10 Preservation of mixed families and other families.
812.11 Proration of assistance.
812.12 Prohibition of assistance to noncitizen students.
812.13 Compliance with nondiscrimination requirements.
812.14 Protection from liability for responsible entities, State, local, and tribal government agencies and officials.
812.15 Liability of ineligible families for reimbursement of benefits.

Subpart B—Restrictions on Assistance to Noncitizens

§ 812.5 General.

(a) *Restrictions on assistance.* Assistance provided under a Section 214 covered program is restricted to:

(1) *Citizens;* or

(2) *Noncitizens* who have eligible immigration status in one of the following categories:

(i) A noncitizen lawfully admitted for permanent residence, as defined by section 101(a)(20) of the Immigration and Nationality Act (INA), as an immigrant, as defined by section 101(a)(15) of the INA (8 U.S.C.

1101(a)(20) and 1101(a)(15), respectively (immigrants). (This category includes a noncitizen admitted under section 210 or 210A of the INA (8 U.S.C. 1160 or 1161), (special agricultural worker), who has been granted lawful temporary resident status);

(ii) A noncitizen who entered the United States before January 1, 1972, or such later date as enacted by law, and has continuously maintained residence in the United States since then, and who is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General under section 249 of the INA (8 U.S.C. 1259);

(iii) A noncitizen who is lawfully present in the United States pursuant to an admission under section 207 of the INA (8 U.S.C. 1157) (refugee status); pursuant to the granting of asylum (which has not been terminated) under section 208 of the INA (8 U.S.C. 1158) (asylum status); or as a result of being granted conditional entry under section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic national calamity;

(iv) A noncitizen who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) (parole status);

(v) A noncitizen who is lawfully present in the United States as a result of the Attorney General's withholding deportation under section 243(h) of the INA (8 U.S.C. 1253(h)) (threat to life or freedom); or

(vi) A noncitizen lawfully admitted for temporary or permanent residence under section 245A of the INA (8 U.S.C. 1255a) (amnesty granted under INA 245A).

(b) *Family eligibility for assistance.* (1) A family shall not be eligible for assistance unless every member of the family residing in the unit is determined to have eligible status, as described in paragraph (a) of this section;

(2) Despite the ineligibility of one or more family members, a mixed family may be eligible for one of the three types of assistance provided in § 812.10. A family without any eligible members and receiving assistance on June 19, 1995 may be eligible for temporary deferral of termination of assistance as provided in § 812.10.

§ 812.5a. Requirements concerning documents.

For any notice or document (decision, declaration, consent form, etc.) that §§ 812.5 through 812.15 require a responsible entity to provide to an individual, or require that the responsible entity obtain the signature of the individual, the responsible entity, where feasible, must arrange for the notice or document to be provided to the individual in a language that is understood by the individual if the individual is not proficient in English. (See 24 CFR 8.6 of HUD's regulations for requirements concerning communications with persons with disabilities.)

§ 812.6 Submission of evidence of citizenship or eligible immigration status.

(a) *General.* Eligibility for assistance or continued assistance under a Section 214 covered program is contingent upon a family's submission to the responsible entity of the documents described in paragraph (b) of this section for each family member. If one or more family members do not have citizenship or eligible immigration status, the family members may exercise the election not to contend to have eligible immigration status as provided in paragraph (e) of this section, and the provisions of § 812.10 shall apply.

(b) *Evidence of citizenship or eligible immigration status.* Each family member, regardless of age, must submit the following evidence to the responsible entity:

(1) For citizens, the evidence consists of a signed declaration of U.S. citizenship;

(2) For noncitizens who are 62 years of age or older or who will be 62 years of age or older and receiving assistance under a Section 214 covered program on June 19, 1995, the evidence consists of:

(i) A signed declaration of eligible immigration status; and

(ii) Proof of age document.

(3) For all other noncitizens, the evidence consists of:

(i) A signed declaration of eligible immigration status;

(ii) The INS documents listed in § 812.7; and

(iii) A signed verification consent form.

(c) *Declaration.* For each family member who contends that he or she is a U.S. citizen or a noncitizen with eligible immigration status, the family must submit to the responsible entity a written declaration, signed under penalty of perjury, by which the family member declares whether he or she is a U.S. citizen or a noncitizen with eligible immigration status.

(1) For each adult, the declaration must be signed by the adult.

(2) For each child, the declaration must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(d) *Verification consent form*—(1) *Who signs.* Each noncitizen who declares eligible immigration status, must sign a verification consent form as follows:

(i) For each adult, the form must be signed by the adult.

(ii) For each child, the form must be signed by an adult member of the family residing in the assisted dwelling unit who is responsible for the child.

(2) *Notice of release of evidence by responsible entity.* The verification consent form shall provide that evidence of eligible immigration status may be released by the responsible entity, without responsibility for the further use or transmission of the evidence by the entity receiving it, to:

(i) HUD as required by HUD; and

(ii) The INS for purposes of verification of the immigration status of the individual.

(3) *Notice of release of evidence by HUD.* The verification consent form also shall notify the individual of the possible release of evidence of eligible immigration status by HUD. Evidence of eligible immigration status shall only be released to the INS for purposes of establishing eligibility for financial assistance and not for any other purpose. HUD is not responsible for the further use or transmission of the evidence or other information by the INS.

(e) *Individuals who do not contend to have eligible immigration status.*—If one or more members of a family elect not to contend that they have eligible immigration status and the other members of the family establish their citizenship or eligible immigration status, the family may be considered for assistance under §§ 812.10 or 812.11 despite the fact that no declaration or documentation of eligible status is submitted by one or more members of the family. The family, however, must identify to the responsible entity, the family member (or members) who will elect not to contend that he or she has eligible immigration status.

(f) *Notification of requirements of Section 214*—(1) *When notice is to be issued.* Notification of the requirement to submit evidence of citizenship or eligible immigration status, as required by this section, or to elect not to contend that one has eligible immigration status as provided by paragraph (e) of this section, shall be

given by the responsible entity as follows:

(i) *Applicant's notice.* The notification described in paragraph (f)(1) of this section shall be given to each applicant at the time of application for financial assistance. Families whose applications are pending on June 19, 1995, shall be notified of the requirements to submit evidence of eligible status as soon as possible after June 19, 1995.

(ii) *Notice to families already receiving assistance.* For a family in occupancy on June 19, 1995, the notification described in paragraph (f)(1) of this section shall be given to each at the time of, and together with, the responsible entity's notice of the first regular reexamination after that date, but not later than one year following June 19, 1995.

(2) *Form and content of notice.* The notice shall:

(i) State that financial assistance is contingent upon the submission and verification, as appropriate, of the evidence of citizenship or eligible immigration status, as required by this section;

(ii) Describe the type of evidence that must be submitted and state the time period in which that evidence must be submitted (see paragraph (g) of this section concerning when evidence must be submitted); and

(iii) State that assistance will be prorated, denied or terminated, as appropriate, upon a final determination of ineligibility after all appeals have been exhausted (see § 812.9 concerning INS appeal, and informal hearing process) or, if appeals are not pursued, at a time to be specified in accordance with HUD requirements. Families already receiving assistance also shall be informed of how to obtain assistance under the preservation of families provisions of § 812.10.

(g) *When evidence of eligible status is required to be submitted.*—The responsible entity shall require evidence of eligible status to be submitted at the times specified in paragraph (g) of this section, subject to any extension granted in accordance with paragraph (h) of this section.

(1) *Applicants.* For applicants, the responsible entity must ensure that evidence of eligible status is submitted not later than the date the responsible entity anticipates or has knowledge that verification of other aspects of eligibility for assistance will occur (see § 812.8(a)).

(2) *Families already receiving assistance.* For a family already receiving the benefit of assistance in a covered program on June 19, 1995, the required evidence shall be submitted at the first regular reexamination after June 19, 1995, in accordance with program requirements. (See §§ 850.151, 880.603, 881.603, 882.212, 882.515, 883.704, 884.124, 886.124, 886.324, or 887.357 of this chapter.)

(3) *New occupants of assisted units.* For any new family members, the required evidence shall be submitted at the first interim or regular reexamination following the person's occupancy.

(4) *Changing participation in a HUD program.* Whenever a family applies for admission to a Section 214 covered program, evidence of eligible status is required to be submitted in accordance with the requirements of this part unless the family already has submitted the evidence to the responsible entity for a covered program.

(5) *One-time evidence requirement for continuous occupancy.* For each family member, the family is required to submit evidence of eligible status only one time during continuously assisted occupancy under any covered program.

(h) *Extensions of time to submit evidence of eligible status*—(1) *When extension must be granted.* The responsible entity shall extend the time provided in paragraph (g) of this section, to submit evidence of eligible immigration status if the family member:

(i) Submits the declaration required under § 812.6(b) certifying that any person for whom required evidence has not been submitted is a noncitizen when eligible immigration status; and

(ii) Certifies that the evidence needed to support a claim of eligible immigration status is temporarily unavailable, additional time is needed to obtain and submit the evidence, and prompt and diligent efforts will be undertaken to obtain the evidence.

(2) *Prohibition on indefinite extension period.* Any extension of time, if granted, shall be for a specific period of time. The additional time provided should be sufficient to allow the family the time to obtain the evidence needed. The responsible entity's determination of the length of the extension needed shall be based on the circumstances of the individual case.

(3) *Grant or denial of extension to be in writing.* The responsible entity's decision to grant or deny an extension as provided in paragraph (h)(1) of this section shall be issued to the family by written notice. If the extension is granted, the notice shall specify the extension period granted. If the extension is denied, the notice shall explain the reasons for denial of the extension.

(i) *Failure to submit evidence or establish eligible immigration status.* If the family fails to submit required evidence of eligible immigration status within the time period specified in the notice, or any extension granted in accordance with paragraph (h) of this section, or if the evidence is timely submitted but fails to establish eligible immigration status, the responsible entity shall proceed to deny, prorate or terminate assistance, or provide continued assistance or temporary deferral of termination of assistance, as appropriate, in accordance with the provisions of §§ 812.9 and 812.10 respectively. For all Section 8 programs, denial or termination of assistance shall be in accordance with the procedures of § 812.9.

§ 812.7 Documents of eligible immigration status.

(a) *General.* A responsible entity shall request and review original documents of eligible immigration status. The responsible entity shall retain photocopies of the documents for its own records and return the original documents to the family.

(b) *Acceptance evidence of eligible immigration status.* The original of one of the following documents is acceptable evidence of eligible immigration status, subject to verification in accordance with § 812.8.

(1) Form I–551, Alien Registration Receipt Card (for permanent resident aliens);

(2) Form I–94, Arrival-Departure Record, with one of the following annotations:

(i) ''Admitted as Refugee Pursuant to Section 207'';

(ii) ''Section 208'' or ''Asylum'';

(iii) ''Section 243(h)'' or ''Deportation stayed by Attorney General'';

(iv) ''Paroled Pursuant to Sec. 212(d)(5) of the INA'';

(3) If Form I–94, Arrival-Departure Record, is not annotated, then accompanied by one of the following documents:

(i) A final court decision granting asylum (but only if no appeal is taken);

(ii) A letter from an INS asylum officer granting asylum (if application is filed on or after October 1, 1990) *or* from an INS district director granting asylum (if application filed before October 1, 1990);

(iii) A court decision granting withholding or deportation; or

(iv) A letter from an asylum officer granting withholding of deportation (if application filed on or after October 1, 1990).

(4) Form I–688, Temporary Resident Card, which must be annotated ''Section 245A'' or ''Section 210'';

(5) Form I–688B, Employment Authorization Card, which must be

annotated ''Provision of Law 274a.12(11)'' or ''Provision of Law 274a.12'';

(6) A receipt issued by the INS indicating that an application for issuance of a replacement document in one of the above-listed categories has been made and the applicant's entitlement to the document has been verified; or

(c) *Other acceptable evidence.* If other documents are determined by the INS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the **Federal Register**.

§ 812.8 Verification of eligible immigration status.

(a) *When verification is to occur.* Verification of eligible immigration status shall be conducted by the responsible entity simultaneously with verification of other aspects of eligibility for assistance under a 214 covered program. (See § 812.6(g).) The responsible entity shall verify eligible immigration status in accordance with the INS procedures described in this section.

(b) *Primary verification*—(1) *Automated verification system.* Primary verification of the immigration status of the person is conducted by the responsible entity through the INS automated system (INS Systematic for Alien Verification for Entitlements (SAVE)). The INS SAVE system provides access to names, file numbers and admission numbers of noncitizens.

(2) *Failure of primary verification to confirm eligible immigration status.* If the INS SAVE system does not verify eligible immigration status, secondary verification must be performed.

(c) *Secondary verification*—(1) *Manual search of INS records.* Secondary verification is a manual search by the INS of its records to determine an individual's immigration status. The responsible entity must request secondary verification, within 10 days of receiving the results of the primary verification, if the primary verification system does not confirm eligible immigration status, or if the primary verification system verifies immigration status that is ineligible for assistance under a covered Section 214 covered program.

(2) *Secondary verification initiated by responsible entity.* Secondary verification is initiated by the responsible entity forwarding photocopies of the original INS documents listed in § 812.7 (front and back), attached to the INS document verification request form G–845S (Document Verification Request), or such other form specified by the INS, to a designated INS office for review. (Form G–845S is available from the local INS Office.)

(3) *Failure of secondary verification to confirm eligible immigration status.* If the secondary verification does not confirm eligible immigration status, the responsible entity shall issue to the family the notice described in § 812.9(d), which includes notification of appeal to the INS of the INS finding on immigration status (see § 812.9(d)(4)).

(d) *Exemption from liability for INS verification.* The responsible entity shall not be liable for any action, delay, or failure of the INS in conducting the automated or manual verification.

§ 812.9 Delay, denial, or termination of assistance.

(a) *General.* Assistance to a family may not be delayed, denied, or terminated because of the immigration status of a family member except as provided in this section.

(b) *Restriction on delay, denial, or termination of assistance*—(1) *General.* Assistance to an applicant shall not be delayed or denied, and assistance to a tenant shall not be delayed, denied, or terminated, on the basis of ineligible immigration status of a family member if:

(i) The primary and secondary verification of any immigration documents that were timely submitted has not been completed;

(ii) The family member for whom required evidence has not been submitted has moved from the tenant's dwelling unit;

(iii) The family member who is determined not to be in an eligible immigration status following INS verification has moved from the tenant's dwelling unit;

(iv) The INS appeals process under § 812.9(e) has not been concluded;

(v) For a tenant, the informal hearing process under § 812.9(f) has not been concluded;

(vi) Assistance is prorated in accordance with § 812.11;

(vii) Assistance for a mixed family is continued in accordance with § 812.10; or

(viii) Deferral of termination of assistance is granted in accordance with § 812.10.

(2) *When delay in assistance to an applicant is permissible.* Assistance to an applicant may be delayed after the conclusion of the INS appeal process, but not denied until the conclusion of the responsible entity informal hearing process, if an informal hearing is requested by the family.

(c) *Events causing denial or termination of assistance*—Assistance to an applicant shall be denied, and a tenant's assistance shall be terminated, in accordance with the procedures of this section, upon the occurrence of any of the following events:

(1) Evidence of citizenship (i.e., the declaration) and eligible immigration status is not submitted by the date specified in § 812.6(g) or by the expiration of any extension granted in accordance with § 812.6(h); or

(2) Evidence of citizenship and eligible immigration status is timely submitted, but INS primary and second verification does not verify eligible immigration status of a family member; and

(i) The family does not pursue INS appeal or informal hearing rights as provided in this section; or

(ii) INS appeal and informal hearing rights are pursued, but the final appeal or hearing decisions are decided against the family member.

(d) *Notice of denial or termination of assistance*—The notice of denial or termination of assistance shall advise the family:

(1) That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance;

(2) That the family may be eligible for proration of assistance as provided under § 812.11;

(3) In the case of a tenant, the criteria and procedures for obtaining relief under the preservation of families provision in § 812.10;

(4) That the family has a right to request an appeal to the INS of the results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal in accordance with the procedures of paragraph (e) of this section;

(5) That the family has a right to request an informal hearing with the responsible entity either upon completion of the INS appeal or in lieu of the INS appeal as provided in paragraph (f) of this section;

(6) For applicants, the notice shall advise that assistance may not be delayed until the conclusion of the INS appeal process, but assistance may be delayed during the pendency of the responsible entity informal hearing process.

(e) *Appeal to the INS*—(1) *Submission of request for appeal.* Upon receipt of notification by the responsible entity that INS secondary verification failed to confirm eligible immigration status, the responsible entity shall notify the family

of the results of the INS verification, and the family shall have 30 days from the date of the responsible entity's notification to request an appeal of the INS results. The request for appeal shall be made by the family communicating that request in writing directly to the INS. The family must provide the responsible entity with a copy of the written request for appeal and proof of mailing. For good cause shown, the responsible entity shall grant the family an extension of the time within which to request an appeal.

(2) *Documentation to be submitted as part of the appeal to INS.* The family shall forward to the designated INS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the INS document verification request form G–845S (used to process the secondary verification request) or such other form specified by the INS, and a cover letter indicating that the family is requesting an appeal of the INS immigration status verification results. (Form G–845S is available from the local INS office.)

(3) *Decision by INS* (i) *When decision will be issued.* The INS will issue to the family, with a copy to the responsible entity, a decision within 30 days of its receipt of documentation concerning the family's appeal of the verification of immigration status. If, for any reason, the INS is unable to issue a decision within the 30 day time period, the INS will inform the family and the responsible entity of the reasons for the delay.

(ii) *Notification of INS decision and of informal hearing procedures.* When the responsible entity receives a copy of the INS decision, the responsible entity shall notify the family of its right to request an informal hearing on the responsible entity's ineligibility determination in accordance with the procedures of paragraph (f) of this section.

(4) *No delay, denial or termination of assistance until completion of INS appeal process; direct appeal to INS.* Pending the completion of the INS appeal under this section, assistance may not be delayed, denied or terminated on the basis of immigration status.

(f) *Informal hearing*—(1) *When request for hearing is to be made.* After notification of the INS decision on appeal, or in lieu of request of appeal to the INS, the family may request that the responsible entity provide a hearing. This request must be made either within 14 days of the date the responsible entity mails or delivers the notice under paragraph (d) of this section, or within 14 days of the mailing of the INS appeal decision issued in accordance with paragraph (e) of this section (established by the date of postmark).

(2) *Extension of time to request hearing.* The responsible entity shall extend the period of time for requesting a hearing (for a specified period) upon good cause shown.

(3) *Informal hearing procedures.* (i) For tenants, the procedures for the hearing before the responsible entity are set forth in 24 CFR part 966.

(ii) For applicants, the procedures for the informal hearing before the responsible entity are as follows:

(A) *Hearing before an impartial individual.* The applicant shall be provided a hearing before any person(s) designated by the responsible entity (including an officer or employee of the responsible entity), other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision;

(B) *Examination of evidence.* The applicant shall be provided the opportunity to examine and copy, at the applicant's expense and at a reasonable time in advance of the hearing, any documents in the possession of the responsible entity pertaining to the applicant's eligibility status, or in the possession of the INS (as permitted by INS requirements), including any records and regulations that may be relevant to the hearing;

(C) *Presentation of evidence and arguments in support of eligible status.* The applicant shall be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings;

(D) *Controverting evidence of the project owner.* The applicant shall be provided the opportunity to controvert evidence relied upon by the responsible entity and to confront and cross-examine all witnesses on whose testimony or information the responsible entity relies;

(E) *Representation.* The applicant shall be entitled to be represented by an attorney, or other designee, at the applicant's expense, and to have such person make statements on the applicant's behalf;

(F) *Interpretive services.* The applicant shall be entitled to arrange for an interpreter to attend the hearing, at the expense of the applicant or responsible entity, as may be agreed upon by both parties;

(G) *Hearing to be recorded.* The applicant shall be entitled to have the hearing recorded by audiotape (a transcript of the hearing may, but is not required, to be provided by the responsible entity); and

(H) *Hearing decision.* The responsible entity shall provide the family with a written final decision, based solely on the facts, presented at the hearing within 14 days of the date of the informal hearing. The decision shall state the basis for the decision.

(g) *Judicial relief.* A decision against a family member, issued in accordance with paragraph (e) or (f) of this section, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

(h) *Retention of documents.* The responsible entity shall retain for a minimum of 5 years the following documents that may have been submitted to the responsible entity by the family, or provided to the responsible entity as part of the INS appeal or the informal hearing process:

(1) The application for financial assistance;

(2) The form completed by the family for income re-examination;

(3) Photocopies of any original documents (front and back), including original INS documents;

(4) The signed verification consent form;

(5) The INS verification results;

(6) The request for an INS appeal;

(7) The final INS determination;

(8) The request for an informal hearing; and

(9) The final informal hearing decision.

(i) *Termination of assisted occupancy.* (1) In the Section 8 programs other than Section 8 Certificate, Housing Voucher, and Moderate Rehabilitation programs, assisted occupancy is terminated by:

(i) If permitted under the lease, the project owner notifying the family that because of the termination of assisted occupancy, the family is required to pay the HUD-approved market rent for the dwelling unit.

(ii) The project owner and family entering into a new lease with Section 8 assistance.

(iii) The project owner evicting the family. While the family continues in occupancy of the unit, the project owner may continue assistance payments in accordance with the Housing Assistance Payments contract if judicial action to terminate the tenancy and evict the family is promptly initiated and diligently pursued by the project owner in accordance with the terms of the lease. Action by the project owner to terminate the tenancy and to evict the family shall be in accordance with HUD

regulations and other HUD requirements. For any jurisdiction, HUD may prescribe a maximum period during which assistance payments may be continued during eviction proceedings and may prescribe other standards of reasonable diligence for the prosecution of eviction proceedings.

(2) In the Section 8 Certificate, Housing Voucher, and Moderate Rehabilitation programs, assisted occupancy is terminated by terminating assistance payments. (See provisions of this section concerning termination of assistance.) The HA shall not make any additional assistance payments to the project owner after the required procedures specified in this section have been completed. In addition, the HA shall not approve a lease, enter into an assistance contract, or process a portability move for the family after those procedures have been completed.

§ 812.10 Preservation of mixed families and other families.

(a) *Assistance available for mixed families*—(1) *Assistance available for tenant mixed families.* For a mixed family assisted under a Section 214 covered program on June 19, 1995, and following completion of the appeals and informal hearing procedures provided in § 812.9 if utilized by the family, one of the following three types of assistance may be available to the family:

(i) Continued assistance (see paragraph (c) of this section);

(ii) Temporary deferral of termination of assistance (see paragraph (d) of this section); or

(iii) Prorated assistance (see § 812.11; a mixed family must be provided prorated assistance if the family so requests).

(2) *Assistance available for applicant mixed families.* Prorated assistance is also available for mixed families applying for assistance as provided in § 812.11.

(3) *Assistance available to other families in occupancy.* For families receiving assistance under a Section 214 covered program on June 19, 1995 and who have no members with eligible immigration status, the responsible entity may grant the family temporary deferral of termination of assistance.

(b) *Discretion afforded to provide certain family preservation assistance*—(1) *Project owners.* With respect to assistance administered by a project owner, HUD has the discretion to determine under what circumstances families are to be provided one of the two statutory forms of assistance for preservation of the family (continued assistance or temporary deferral of termination of assistance). HUD is exercising its discretion by specifying the standards in this section under which a project owner must provide one of these two types of assistance described in paragraph (a) of this section to a family. However, project owners and housing authorities must offer prorated assistance to eligible mixed families.

(2) *HAs.* With respect to an HA acting as a contract administrator of a certificate (including project-based certificate), housing voucher, or Moderate Rehabilitation program (as opposed to an HA owner), the HA, rather than HUD, has the discretion to determine the circumstances under which a family will be offered one of the two statutory forms of assistance (continued assistance or temporary deferral of termination of assistance). The HA must establish its own policy and criteria to follow in making its decision. In establishing the criteria for granting continued assistance or temporary deferral of termination of assistance, the HA must incorporate the statutory criteria, which are set forth in paragraphs (c) and (d) of this section. However, the housing authority must offer prorated assistance to eligible mixed families.

(c) *Continued assistance.* A mixed family may receive continued housing assistance if all of the following conditions are met:

(1) The family was receiving assistance under a Section 214 covered program on June 19, 1995;

(2) The family's head of household or spouse has eligible immigration status as described in § 812.5; and

(3) The family does not include any person (who does not have eligible immigration status) other than the head of household, any spouse of the head of household, any parents of the head of household, any parents of the spouse, or any children of the head of household or spouse.

(d) *Temporary deferral of termination of assistance*—(1) *Eligibility for this type of assistance.* If a mixed family qualifies for prorated assistance (and does not qualify for continued assistance), but decides not to accept prorated assistance, or if a family has no members with eligible immigration status, the family may be eligible for temporary deferral of termination of assistance if necessary to permit the family additional time for the orderly transition of those family members with ineligible status, and any other family members involved, to other affordable housing. Other affordable housing is used in the context of transition of an ineligible family from a rent level that reflects HUD assistance to a rent level that is unassisted; the term refers to housing that is not substandard, that is of appropriate size for the family and that can be rented for an amount not exceeding the amount that the family pays for rent, including utilities, plus 25 percent.

(2) *Time limit on deferral period.* If temporary deferral of termination of assistance is granted, the deferral period shall be for an initial period not to exceed six months. The initial period may be renewed for additional periods of six months, but the aggregate deferral period shall not exceed a period of three years.

(3) *Notification requirements for beginning of each deferral period.* At the beginning of each deferral period, the responsible entity must inform the family of its ineligibility for financial assistance and offer the family information concerning, and referrals to assist in finding, other affordable housing.

(4) *Determination of availability of affordable housing at end of each deferral period.* Before the end of each deferral period, the responsible entity must:

(i) Make a determination of the availability of affordable housing of appropriate size based on evidence of conditions which when taken together will demonstrate an inadequate supply of affordable housing for the area in which the project is located, the consolidated plan (if applicable, as described in 24 CFR part 91), the responsible entity's own knowledge of the availability of affordable housing, and on evidence of the tenant family's efforts to locate such housing; *and*

(ii) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination will be deferred again (provided that the granting of another deferral will not result in aggregate deferral periods that exceed three years), and a determination was made that other affordable housing is not available; *or*

(iii) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination of financial assistance will not be deferred because either granting another deferral will result in aggregate deferral periods that exceed three years, or a determination has been made that other affordable housing is available.

(e) *Option to select proration of assistance at end of deferral period.* A family who is eligible for and who receives temporary deferral of termination of assistance, may request, and the project owner or housing

authority shall provide proration of assistance at the end of the deferral period if the family has made a good faith effort during the deferral period to locate other affordable housing.

(f) *Notification of decision on family preservation assistance.* A responsible entity shall notify the family of its decision concerning the family's qualification for assistance under this section. If the family is ineligible for assistance under this section, the notification shall state the reasons, which must be based on relevant factors. For tenant families, the notice also shall inform the family of any applicable appeal rights. (For HAs administering Certificate or Housing Voucher Programs, see §§ 882.216 or 887.405 of this chapter).

§ 812.11 Proration of assistance.

(a) *Applicability.* This section applies to a mixed family other than a family receiving continued assistance under § 812.10(c), or other than a family for which termination of assistance is temporarily deferred under § 812.10(d).

(b) *Method or prorating assistance*—(1) *Section 8 assistance other than Section 8 voucher assistance.* For Section 8 assistance other than assistance provided under the Section 8 Voucher Program, the HA shall prorate the family's assistance as follows:

(i) *Step 1.* Determine gross rent for the unit. (Gross rent is contract rent plus any allowance for tenant paid utilities).

(ii) *Step 2.* Determine total tenant payment in accordance with 24 CFR 813.107(a). (Annual income includes income of all family members, including any family member who has not established eligible immigration status).

(iii) *Step 3.* Subtract amount determined in Step 2 from amount determined in Step 1.

(iv) *Step 4.* Multiply the amount determined in Step 3 by a fraction for which:

(A) The numerator is the number of family members who have established eligible immigration status; and

(B) The denominator is the total number of family members.

(v) *Prorated housing assistance.* The amount determined in Step 4 is the prorated housing assistance payment for a mixed family.

(vi) *No effect on contract rent.* Proration of the housing assistance payment does not affect contract rent to the owner. The family must pay as rent the portion of contract rent not covered by the prorated housing assistance payment.

(2) *Section 8 Voucher assistance.* For assistance under the Section 8 Voucher Program, the HA shall prorate the family's assistance as follows:

(i) *Step 1.* Determine the amount of the pre-proration voucher housing assistance payment in accordance with 24 CFR 887.353. (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)

(ii) *Step 2.* Multiply the amount determined in step 1 by a fraction for which:

(A) The numerator is the number of family members who have established eligible immigration status; and

(B) The denominator is the total number of family members.

(iii) *Prorated housing assistance.* The amount determined in Step 2 is the prorated housing assistance payment for a mixed family.

(iv) *No effect on rent to owner.* Proration of the voucher housing assistance payment does not affect rent to the owner. The family must pay as rent the portion of rent not covered by the prorated housing assistance payment.

§ 812.12 Prohibition of assistance to noncitizen students.

(a) *General.* The provisions of §§ 812.10 and 812.11, permitting continued assistance, prorated assistance or temporary deferral of termination of assistance for certain families, do not apply to any person who is determined to be a noncitizen student, as defined in paragraph (b) of this section, or the family of the noncitizen student, as described in paragraph (c) of this section.

(b) *Noncitizen student.* For purposes of this part, a noncitizen student is defined as a noncitizen who:

(1) Has a residence in a foreign country that the person has no intention of abandoning;

(2) Is a bona fide student qualified to pursue a full course of study; and

(3) Is admitted to the United States temporarily and solely for purposes of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States, particularly designated by such person and approved by the Attorney General after consultation with the Department of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student (and if any such institution of learning or place of study fails to make such reports promptly the approval shall be withdrawn).

(c) *Family of noncitizen student.* The prohibition on providing assistance to a noncitizen student as described in paragraph (a) of this section also extends to the noncitizen spouse of the noncitizen student and minor children of any noncitizen student if the spouse or children are accompanying the student or following to join such student. The prohibition on providing assistance to a noncitizen student does not extent to the citizen spouse of the noncitizen student and the children of the citizen spouse and noncitizen student.

§ 812.13 Compliance with nondiscrimination requirements.

The responsible entity shall administer the restrictions on use of assisted housing by noncitizens with ineligible immigration status imposed by this part in conformity with the nondiscrimination requirements of, including, but not limited to, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–5) and the implementing regulations in 24 CFR part 1, section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations in 24 CFR part 8, the Fair Housing Act (42 U.S.C. 3601–3619) and the implementing regulations in 24 CFR part 100, and other civil rights statutes cited in the applicable program regulations. These statutes prohibit, among other things, discriminatory practices on the basis of race, color, national origin, sex, religion, age, disability and familial status in the provision of housing.

§ 812.14 Protection from liability for responsible entities, State, local, and tribal government agencies and officials.

(a) *Protection from liability for responsible entities.* HUD will not take any compliance, disallowance, penalty, or other regulatory action against a responsible entity with respect to any error in its determination of eligibility for financial assistance based on citizenship or immigration status:

(1) If the responsible entity established eligibility based upon verification of eligible immigration status through the verification system described in § 812.8;

(2) Because the responsible entity was required to provide an opportunity for the family to submit evidence in accordance with § 812.6;

(3) Because the responsible entity was required to wait for completion of INS verification of immigration status in accordance with § 812.8;

(4) Because the responsible entity was required to wait for completion of the INS appeal process provided in accordance with § 812.9(e); or

(5) Because the responsible entity was required to provide an informal hearing in accordance with § 812.9(f).

(b) *Protection from liability for State, local and tribal government agencies and officials.* State, local and tribal government agencies and officials shall not be liable for the design or implementation of the verification system described in § 812.8, and the informal hearings provided under § 812.9(f), as long as the implementation by the State, local or tribal government agency or official is in accordance with prescribed HUD rules and requirements.

§ 812.15 Liability of ineligible families for reimbursement of benefits.

Where a family has received the benefit of HUD financial assistance to which it was not entitled because the family intentionally misrepresented eligible status, the ineligible family is responsible for reimbursing HUD for the assistance improperly paid. If the amount of the assistance is substantial, the responsible entity is encouraged to refer the case to the HUD Regional Inspector General's office for further investigation. Possible criminal prosecution may follow based on the False Statements Act (18 U.S.C. 1001 and 1010).

PART 850—HOUSING DEVELOPMENT GRANTS

28, The authority citation for part 850 continues to read as follows:

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

29. Section 850.151 is amended by adding one sentence at the beginning of paragraph (c), by adding two sentences at the end of paragraph (f)(1), and by adding a new paragraph (f)(3), to read as follows:

§ 850.151 Project restrictions.

* * * * *

(c) *Tenant selection.* The owner shall determine the eligibility of applicants for lower income units in accordance with the requirements of 24 CFR parts 812 and 813, including the provisions of these parts concerning citizenship or eligible immigration status and income limits, and certain assistance to mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status.). * * *

* * * * *

(f) * * *

(1) * * * At the first regular reexamination after June 19, 1995 the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of 24 CFR part 812 concerning verification of the immigration status of any new family member.

* * * * *

(3) For provisions related to termination of assistance for failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions related to certain assistance to mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions related to deferral of termination of assistance.

* * * * *

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

30. The authority citation for part 880 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

31. In § 880.504, a new paragraph (e) is added, to read as follows:

§ 880.504 Leasing to eligible families.

* * * * *

(e) *Termination of assistance for failure to submit evidence of citizenship or eligible immigration status.* If an owner who is subject to paragraphs (a) and (b) of this section is required to terminate housing assistance payments for the family in accordance with 24 CFR 812.9 because the owner determines that the entire family does not have U.S. citizenship or eligible immigration status, the owner may allow continued occupancy of the family without Section 8 assistance following the termination of assistance, or if the family constitutes a mixed family, as defined in 24 CFR 812.10, the owner shall simply with the provisions of 24 CFR 812.10 concerning assistance to mixed families, and deferral of termination of assistance.

32. In § 880.601, paragraph (b) is revised to read as follows:

§ 880.601 Responsibilities of owner.

* * * * *

(b) *Management and maintenance.* The owner is responsible for all management functions, including determining eligibility of applicants in accordance with 24 CFR parts 812 and 813, provision of Federal selection preferences in accordance with § 880.613, selection of tenants, obtaining and verifying Social Security Numbers submitted by families (as provided by 24 CFR part 750), obtaining signed consent forms from families for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided by 24 CFR part 760), reexamination of family income, evictions and other terminations of tenancy, and collection of rents, and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All these functions shall be performed in compliance with applicable Equal Opportunity requirements.

* * * * *

33. Section 880.603 is amended by revising the introductory text in paragraph (b), by adding a sentence at the end of paragraph (b)(2), by adding a sentence at the end of paragraph (c)(1), and by adding one sentence at the end of paragraph (c)(2) and paragraph (c)(3), to read as follows:

§ 880.603 Selection and admission of assisted tenants.

* * * * *

(b) *Determination of eligibility and selection of tenants.* The owner is responsible for obtaining and verifying information related to income in accordance with 24 CFR part 813, and evidence related to citizenship and eligible immigration status in accordance with 24 CFR part 812, to determine whether the applicant is eligible for assistance in accordance with the requirements of 24 CFR parts 812 and 813, and to select families for admission to the program, which includes giving selection preferences in accordance with §§ 880.613 through 880.617.

* * * * *

(2) * * * For the informal hearing provisions related to denial of assistance based upon failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions related to certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of denial of assistance.

* * * * *

(c) * * *

(1) * * * At the first regular reexamination after June 19, 1995, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of 24 CFR part

812 and verify the immigration status of any new family member.

(2) * * * At any interim reexamination after June 19, 1995 when a new family member has been added, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of the citizenship or eligible immigration status of any new family member.

(3) * * * For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

* * * * *

34. Section 880.607 is amended by redesignating the first sentence following the paragraph heading in the introductory text of paragraph (b)(3) as paragraph (b)(3)(i); by redesignating the existing paragraphs (b)(3)(i) and (b)(3)(ii) as (b)(3)(i)(A) and (b)(3)(i)(B), respectively; by redesignating and revising the undesignated paragraph in (b)(3) as (b)(3)(ii) and by adding a new paragraph (c)(4) to read as follows:

§ 880.607 Termination of tenancy and modification of lease.

* * * * *

(b) * * *

(3) * * *

(ii) Failure of the family to timely submit all required information on family income and composition, including failure to submit required evidence of citizenship or eligible immigration status (as provided by 24 CFR part 812), failure to disclose and verify Social Security Numbers (as provided by 24 CFR part 750), failure to sign and submit consent forms (as provided by 24 CFR part 760), or knowingly providing incomplete or inaccurate information, shall constitute a substantial violation of the lease.

(c) * * *

(4) For provisions related to termination of assistance because of failure to establish citizenship or eligible immigration status, including informal hearing procedures, see 24 CFR part 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

* * * * *

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

35. The authority citation for part 881 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

36. In § 881.504, a new paragraph (e) is added to read as follows:

§ 881.504 Leasing to eligible families.

* * * * *

(e) *Termination of assistance for failure to submit evidence of citizenship or eligible immigration status.* If an owner who is subject to paragraphs (a) and (b) of this section is required to terminate financial assistance in accordance with 24 CFR 812.9 because the owner determines that the entire family does not have U.S. citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following the termination of assistance, or if the family constitutes a mixed family, as defined in 24 CFR 812.10, the owner shall comply with the provisions of 24 CFR 812.10 concerning certain assistance to mixed families, and deferral of termination of assistance.

37. In § 881.601, paragraph (b) is revised to read as follows:

§ 881.601 Responsibilities of owner.

* * * * *

(b) *Management and maintenance.* The owner is responsible for all management functions (including determining eligibility of applicants in accordance with 24 CFR parts 812 and 813, provision of Federal selection preferences in accordance with 24 CFR 880.613, selection of tenants, obtaining and verifying Social Security Numbers submitted by families (as provided by 24 CFR part 750), obtaining signed consent forms from families for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided by 24 CFR part 760), reexamination of family income, evictions and other terminations of tenancy, and collection of rents) and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All these functions shall be performed in compliance with applicable Equal Opportunity requirements.

* * * * *

38. Section 881.603 is amended by revising the introductory text of paragraph (b), by adding one sentence at the end of paragraph (b)(3), by adding two sentences at the end of paragraph (c)(1), and by adding one sentence at the end of paragraphs (c)(2) and (c)(3), to read as follows:

§ 881.603 Selection and admission of assisted tenants.

* * * * *

(b) *Determination of eligibility and selection of tenants.* The owner is responsible for obtaining and verifying information related to income in accordance with 24 CFR part 813, and evidence related to citizenship and eligible immigration status in accordance with 24 CFR part 812 to determine whether the applicant is eligible for assistance in accordance with the requirements of 24 CFR parts 812 and 813 and parts 750 and 760 of chapter VII, and to select families for admission to the program, which includes giving selection preferences in accordance with §§ 881.613 through 881.617.

* * * * *

(3) * * * For the informal hearing provisions related to denial of assistance based upon failure to establish citizenship or eligible immigration status, see 24 CFR part 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of denial of assistance.

* * * * *

(c) * * *

(1) * * * At the first regular reexamination after June 19, 1995, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of 24 CFR part 812 concerning verification of the immigration status of any new family member.

(2) * * * At any interim reexamination after June 19, 1995 when a new family member has been added, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

(3) * * * For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members

include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

* * * * *

39. In § 881.607, the second sentence of paragraph (b)(3)(ii) is revised, and a new paragraph (c)(4) is added, to read as follows:

§ 881.607 Termination of tenancy and modification of lease.

* * * * *

(b) * * *

(3) * * *

(ii) * * * Failure of the family to timely submit all required information on family income and composition, including failure to submit required evidence of citizenship or eligible immigration status (as provided by 24 CFR part 812), failure to disclose and verify Social Security Numbers (as provided by 24 CFR part 750), failure to sign and submit consent forms (as provided by 24 CFR part 760), or knowingly provided incomplete or inaccurate information, shall constitute a substantial violation of the lease.

* * *

(c) * * *

(4) For provisions related to termination of assistance because of failure to establish citizenship or eligible immigration status, including the informal hearing procedures, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

* * * * *

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

40. The authority citation for part 882 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d) and 11401.

41. In § 882.116, paragraph (c) is revised to read as follows:

§ 882.116 Responsibilities of the PHA.

* * * * *

(c) Receipt and review of applications for participation; selection of applicants; verification of family income and other factors relating to eligibility (including citizenship or eligible immigration status as provided by 24 CFR part 812) and amount of assistance; and maintenance of a waiting list.

* * * * *

42. In § 882.118, paragraph (a)(1) is revised to read as follows:

§ 882.118 Obligations of the Family.

(a) * * *

(1) Supply such certification, release, information or documentation as the PHA or HUD determine to be necessary, including submission of required evidence of citizenship or eligible immigration status (as provided by 24 CFR part 812), submission of Social Security Numbers and verifying documentation (as provided by 24 CFR part 750), submission of signed consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided by 24 CFR part 760), and submissions required for an annual or interim reexamination of family income and composition.

* * * * *

43. In § 882.209, paragraph (a)(2) is revised to read as follows:

§ 882.209 Selection and participation.

(a) * * *

(2)(i) The PHA shall determine whether an applicant for participation:

(A) Qualifies as a family;

(B) Is income eligible; and

(C) Is a citizen or is in eligible immigration status as determined in accordance with 24 CFR part 812.

(ii) The family shall submit any certification, release, information, or documentation as the PHA or HUD determines to be necessary (see the requirements in 24 CFR parts 750, 760, 812, and 813).

* * * * *

44. In § 882.210, a new paragraph (f) is added to read as follows:

§ 882.210 Grounds for denial or termination of assistance.

* * * * *

(f) The family's obligations as stated in § 882.118 include submission of required evidence of citizenship or eligible immigration status. For a statement of circumstances in which the PHA shall deny or terminate housing assistance payments because a family member is not a U.S. citizen or does not establish eligible immigration status, and the applicable informal hearing procedures, see § 882.216(b) and 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of denial or termination of assistance, and for provisions concerning deferral of termination of assistance.

45. Section 882.212 is amended by adding two sentences at the end of paragraph (a), and by adding one sentence at the end of paragraphs (b) and (c), to read as follows:

§ 882.212 Reexamination of Family income and composition.

(a) * * * At the first regular reexamination after June 19, 1995, the PHA shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship of eligible immigration status of all family members. Thereafter, at each regular reexamination, the PHA shall follow the requirements of 24 CFR part 812 concerning verification of the immigration status of any new family member (except a child born in the United States).

(b) * * * At any interim reexamination after June 19, 1995 when there is a new family member, the PHA shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

(c) * * * For provisions requiring termination of housing assistance payments when the PHA determines that a member is not a U.S. citizen or does not have eligible immigration status, see § 882.216 and 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

* * * * *

46. Section 882.216 is amended by adding a new paragraph (a)(5) and new paragraphs (b)(1)(v) and (b)(8), to read as follows:

§ 882.216 Informal review or hearing.

(a) * * *

(5) The informal hearing provisions for the denial of assistance on the basis of ineligible immigration status are contained in 24 CFR 812.9.

(b) * * *

(1) * * *

(v) A determination that the participant does not qualify under the PHA's policy for granting special relief under 24 CFR 812.10.

* * * * *

(8) The informal hearing provisions for the termination of assistance on the

basis of ineligible immigration status are contained in 24 CFR 812.9.

* * * * *

47. In § 882.514, paragraph (f) is amended by adding one sentence at the end of the paragraph, to read as follows:

§ 882.514 Family participation.

* * * * *

(f) * * * The informal hearing requirements for denial and termination of assistance on the basis of ineligible immigration status are contained in 24 CFR 812.9.

* * * * *

48. Section 882.515 is amended by adding two sentences at the end of paragraph (a), and by adding one sentence at the end of paragraphs (b) and (c), to read as follows:

§ 882.515 Reexamination of family income and composition.

(a) * * * At the first regular reexamination after June 19, 1995, the PHA shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the PHA shall follow the requirements of 24 CFR part 812 concerning verification of immigration status of any new family member.

(b) * * * At any interim reexamination after June 19, 1995 when there is a new family member, the PHA shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

(c) * * * For provisions requiring termination of assistance when the PHA determines that a family member is not a U.S. citizen or does not have eligible immigration status, see § 882.216 and 24 CFR 812.9 and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

48a. Section 882.808 is amended by adding two sentences at the end of paragraph (i)(1), one sentence at the end of paragraphs (i)(2), and a sentence at the end of paragraph (l), to read as follows:

§ 882.808 Management.

* * * * *

(i) * * *

(1) * * * At the first regular reexamination after June 19, 1995, the PHA shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the PHA shall follow the requirements of 24 CFR part 812 concerning verification of immigration status of any new family member.

(2) * * * At any interim reexamination after June 19, 1995 when there is a new family member, the PHA shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

* * * * *

(l) * * * For provisions requiring termination of assistance when the PHA determines that a family member is not a U.S. citizen or does not have eligible immigration status, see § 882.216 and 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, or for provisions concerning deferral of termination of assistance.

* * * * *

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

49. The authority citation for part 883 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

50. In § 883.101, the last sentence of paragraph (c) is revised to read as follows:

§ 883.101 General.

* * * * *

(c) * * * Eligible families are families, as defined in 24 CFR part 812, whose incomes qualify them for assistance in accordance with 24 CFR part 813, and who are otherwise eligible under these parts.

* * * * *

51. In § 883.605, a new paragraph (e) is added, to read as follows:

§ 883.605 Leasing to eligible families.

* * * * *

(e) *Termination of assistance for failure to submit evidence of citizenship or eligible immigration status.* If an owner who is subject to paragraphs (a) and (b) of this section is required to terminate financial assistance in accordance with 24 CFR 812.9 because the owner determines that the entire family does not have U.S. citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following the termination of assistance, or if the family constitutes a mixed family, as defined in 24 CFR 812.10, the owner shall comply with the provisions of 24 CFR 812.10 concerning assistance to mixed families, and deferral of termination of assistance.

52. In § 883.702, the section heading and paragraph (b) are revised to read as follows:

§ 883.702 Responsibilities of the owner.

* * * * *

(b) *Management and maintenance.* The owner is responsible for all management functions (including determination of the eligibility of applicants in accordance with 24 CFR parts 812 and 813, provision of Federal selection preferences in accordance with § 883.714, selection of tenants, obtaining and verifying Social Security Numbers submitted by families (as provided by 24 CFR part 750), obtaining signed consent forms from families for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided by 24 CFR part 760), reexamination of family income, evictions and other terminations of tenancy, and collection of rents) and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All these functions shall be performed in compliance with applicable Equal Opportunity requirements.

* * * * *

53. Section 883.704 is amended by adding one sentence at the end of paragraph (b)(3), two sentences at the end of paragraph (c)(1), and one sentence at the end of paragraphs (c)(2), and (c)(3), to read as follows:

§ 883.704 Selection and admission of tenants.

* * * * *

(b) * * *

(3) * * * For the informal hearing provisions related to denial of assistance based upon failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and also see 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of denial of assistance.

* * * * *

(c) * * *

(1) * * * At the first regular reexamination after June 19, 1995, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of 24 CFR part 812 concerning the verification of the immigration status of any new family member.

(2) * * * At any interim reexamination after June 19, 1995 when there is a new family member, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

(3) * * * For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

* * * * *

54. In § 883.708, the second sentence of paragraph (b)(3)(ii) beginning with ''Failure of * * *'' is revised, and a new paragraph (c)(4) is added, to read as follows:

§ 883.708 Termination of tenancy and modification of lease.

* * * * *

(b) * * *

(3) * * *

(ii) * * * Failure of the family to timely submit all required information on family income and composition, including failure to submit required evidence of citizenship or eligible immigration status (as provided by 24 CFR part 812), failure to disclose and verify Social Security Numbers (as provided by 24 CFR part 750), failure to sign and submit consent forms (as provided by 24 CFR part 760), or knowingly provide incomplete or inaccurate information, shall constitute a substantial violation of the lease.

* * *

* * * * *

(c) * * *

(4) For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, including the applicable informal hearing requirements, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

* * * * *

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

55. The authority citation for part 884 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

56. In § 884.118, paragraph (a)(3) is revised to read as follows:

§ 884.118 Responsibilities of the owner.

(a) * * *

(3) Performance of all management functions, including the taking of applications; determining eligibility of applicants in accordance with 24 CFR parts 812 and 813; selection of families, including verification of income, provision of Federal selection preference in accordance with § 884.226, obtaining and verifying Social Security Numbers submitted by applicants (as provided by 24 CFR part 750), obtaining signed consent forms from applicants for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided in 24 CFR part 760), and other pertinent requirements; and determination of the amount of tenant rent in accordance with HUD established schedules and criteria.

* * * * *

57. In § 884.214, paragraph (b)(1) is revised and a new paragraph (b)(8) is added, to read as follows:

§ 884.214 Marketing.

* * * * *

(b) *Eligibility, selection and admission of families.* (1) The owner is responsible for determination of eligibility of applicants in accordance with the procedure of 24 CFR part 812, selection of families from among those determined to be eligible (including provision of Federal selection preferences in accordance with § 884.226), and computation of the amount of housing assistance payments on behalf of each selected family, in accordance with schedules and criteria established by HUD.

* * * * *

(8) For the informal hearing provisions related to denial of assistance based upon failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of denial of assistance.

58. In § 884.216, a new sentence is added at the end of the paragraph to read as follows:

§ 884.216 Termination of tenancy.

* * * For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, including the applicable informal requirements, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

59. Section 884.218 is amended by adding two sentences at the end of paragraph (a), and one sentence at the end of paragraphs (b) and (c), to read as follows:

§ 884.218 Reexamination of family income and composition.

(a) * * * At the first regular reexamination after June 19, 1995, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of 24 CFR part 812 concerning verification of the immigration status of any new family member.

(b) * * * At any interim reexamination after June 19, 1995 when there is a new family member, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

(c) * * * For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

60. In § 884.223, a new paragraph (e) is added to read as follows:

§ 884.223 Leasing to eligible families.

* * * * *

(e) *Termination of assistance for failure to establish citizenship or eligible immigration status.* If an owner subject to paragraphs (a) and (b) of this section is required to terminate housing assistance payments for the family in accordance with § 812.9 of this chapter because the owner determines that the entire family does not have U.S. citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following the termination of assistance, or if the family constitutes a mixed family, as defined in 24 CFR 812.10, the owner shall comply with the provisions of 24 CFR 812.10 concerning assistance to mixed families, and deferral of termination of assistance.

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

61. The authority citation for part 886 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

62. In § 886.119, the section heading and paragraph (a)(3) are revised to read as follows:

§ 886.119 Responsibilities of the owner.

(a) * * *

(3) Performance of all management functions, including the taking of applications; determining eligibility of applicants in accordance with 24 CFR parts 812 and 813; selection of families, including verification of income, provision of Federal selection preferences in accordance with § 886.132, obtaining and verifying Social Security Numbers submitted by applicants (as provided by 24 CFR part 750), obtaining signed consent forms from applicants for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided in 24 CFR part 760), and other pertinent requirements; and determination of the amount of tenant rent in accordance with HUD established schedules and criteria.

* * * * *

63. In § 886.121, paragraph (b) is revised and a new paragraph (c) is added, to read as follows:

§ 886.121 Marketing.

* * * * *

(b) The Owner shall comply with the applicable provisions of the Contract, this subpart A, and the procedures of 24 CFR part 812 in taking applications, selecting families, and all related determinations.

(c) For the informal hearing provisions related to denial of assistance based upon failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of denial of assistance.

64. Section 886.124 is amended by adding two sentences at the end of paragraph (a), and one sentence at the end of paragraphs (b) and (c), to read as follows:

§ 886.124 Reexamination of family income and composition.

(a) * * * At the first regular reexamination after June 19, 1995, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of 24 CFR part 812 concerning verification of the immigration status of any new family member.

(b) * * * At any interim reexamination after June 19, 1995, when there is a new family member, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

(c) * * * For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see 24 CFR 812.9 and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance

65. Section 886.128 is revised to read as follows:

§ 886.128 Termination of tenancy.

Part 247 of this title applies to the termination of tenancy and eviction of a family assisted under this subpart. For cases involving termination of tenancy because of a failure to establish citizenship or eligible immigration status, the procedures of 24 parts 247 and 812 shall apply. The provisions of 24 CFR 812.10 concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and concerning deferral of termination of assistance also shall apply.

66. In § 886.129, a new paragraph (e) is added, to read as follows:

§ 886.129 Leasing to eligible families.

* * * * *

(e) *Termination of assistance for failure to establish citizenship or eligible immigration status.* If an owner subject to paragraphs (a) and (b) of this section is required to terminate housing assistance payments for the family in accordance with 24 CFR 812.9 because the owner determines that the entire family does not have U.S. citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following the termination of assistance, or if the family constitutes a mixed family, as defined in 24 CFR 812.10, the owner shall comply with the provisions of 24 CFR 812.10 concerning assistance to mixed families, and deferral of termination of assistance

67. In § 886.318, paragraph (a)(3) is revised to read as follows:

§ 886.318 Responsibilities of the owner.

(a) * * *

(3) Performance of all management functions, including the taking of applications; determining eligibility of applicants in accordance with 24 CFR parts 812 and 813; selection of families, including verification of income, provision of Federal selection preferences in accordance with § 886.337, obtaining and verifying Social Security Numbers submitted by applicants (as provided by 24 CFR part 750), obtaining signed consent forms from applicants for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided in 24 CFR part 760), and other pertinent requirements; and determination of the amount of tenant rent in accordance with HUD established schedules and criteria.

* * * * *

68. In § 886.321, the first two sentences of paragraph (b)(1) are revised and a new paragraph (b)(7) is added, to read as follows:

§ 886.321 Marketing.

* * * * *

(b)(1) HUD will determine the eligibility for assistance of families in occupancy before sales closing. After the sale, the owner shall be responsible for determining the eligibility of

applicants for tenancy (including compliance with the procedures of 24 CFR part 812 on evidence of citizenship or eligible immigration status), selection of families from among those determined to be eligible (including provision of Federal preferences in accordance with § 886.337), and computation of the among of housing assistance payments on behalf of each selected family, in accordance with the Gross Rent and the Total Tenant Payment computed in accordance with 24 CFR part 813. * * *

* * * * *

(7) For the informal hearing provisions related to denial of assistance based upon failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of denial of assistance.

* * * * *

69. Section 886.324 is amended by adding two sentences at the end of paragraph (a), and one sentence at the end of paragraph (b) and (c), to read as follows:

§ 886.324 Reexamination of family income and composition.

(a) * * * At the first regular reexamination after June 19, 1995, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of part 812 concerning verification of the immigration status of any new family member.

(b) * * * At any interim reexamination after June 19, 1995 when there is a new family member, the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

(c) * * * For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

70. Section 886.328 is revised to read as follows:

§ 886.328 Termination of tenancy.

Part 247 of this title applies to the termination of tenancy and eviction of a family assisted under this subpart. For cases involving termination of tenancy because of a failure to establish citizenship or eligible immigration status, the procedures of 24 CFR parts 247 and 812 shall apply. The provisions of 24 CFR 812.10 concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and concerning deferral of termination of assistance also shall apply.

71. In § 886.329, a new paragraph (e) is added to read as follows:

§ 886.329 Leasing to eligible families.

* * * * *

(e) *Termination of assistance for failure to establish citizenship or eligible immigration status.* If an owner who is subject to paragraphs (a) and (b) of this section is required to terminate housing assistance payments for the family in accordance with 24 CFR 812.9 because the owner determines that the entire family does not have U.S. citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following the termination of assistance, or if the family constitutes a mixed family, as defined in 24 CFR 812.10, the owner shall comply with the provisions of 24 CFR 812.10 concerning assistance to mixed families, and deferral of termination of assistance.

PART 887—HOUSING VOUCHERS

72. The authority citation for part 887 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

73. In § 887.105, paragraph (b)(5) is revised to read as follows:

§ 887.105 PHA responsibilities.

* * * * *

(b) * * *

(5) Determine the amount of, and make, the housing assistance payment (see § 887.353); obtain and verify evidence related to citizenship and eligible immigration status in accordance with 24 CFR part 812; reexamine the family income and family size and composition, at least annually, and redetermine the amount of the housing assistance payment (see §§ 887.355 through 887.359); adjust the amount of the housing assistance payment as a result of an adjustment by the PHA of any applicable payment standard or utility allowance (see §§ 887.353 and 887.361); and

* * * * *

74. In § 887.355, paragraph (b) is redesignated as paragraph (c), and a new paragraph (b) is added, to read as follows:

§ 887.355 Regular reexamination of family income and composition.

* * * * *

(b) At the first regular reexamination after June 19, 1995, the PHA shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the PHA shall follow the requirements of 24 CFR part 812 concerning verification of the immigration status of any new family member.

* * * * *

75. Section 887.357 is amended by adding a new sentence at the end, to read as follows:

§ 887.357 Interim reexamination of family income and composition.

* * * At any interim reexamination after June 19, 1995 that involves the addition of a new family member, the PHA shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

76. In § 887.401, paragraph (a), introductory text, and paragraph (a)(1) are revised, to read as follows:

§ 887.401 Family responsibilities.

(a) A family shall:

(1) Supply any certification, release, information, or documentation that the PHA or HUD determines to be necessary in the administration of the program, including submission of required evidence of citizenship or eligible immigration status (as provided by 24 CFR part 812), disclosure and verification of Social Security Numbers (as provided by 24 CFR part 750), signing and submission of consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided by 24 CFR part 760), and other information required for use by the PHA in a regularly scheduled reexamination or interim reexamination of family income and composition in accordance with HUD requirements;

* * * * *

77. In § 887.403, paragraphs (d) and (e) are redesignated as paragraphs (e)

and (f), and a new paragraph (d) is added, to read as follows:

§ 887.403 Grounds for PHA denial or termination of assistance.

* * * * *

(d) The family's obligations as stated in § 887.401 include submission of required evidence of citizenship or eligible immigration status. For a statement of circumstances in which the PHA shall deny or terminate assistance because of a family member's inability to establish citizenship or eligible immigration status, and the applicable informal hearing procedures, see 24 CFR 882.216 and 24 CFR 812.9, and also 24 CFR 812.10 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of denial or termination of assistance, and for provisions concerning deferral of termination of assistance.

* * * * *

78. Section 887.405 is amended by adding a new paragraph (a)(4) and new paragraphs (b)(1)(iv) and (b)(8), to read as follows:

§ 887.405 Informal review or hearing.

(a) * * *

(4) The informal hearing provisions for the denial of assistance on the basis of ineligible immigration status are contained in 24 CFR 812.9.

(b) * * *

(1) * * *

(iv) A determination that the participant does not qualify under the PHA's policy for granting special assistance under 24 CFR 812.10.

* * * * *

(8) The informal hearing provisions for the termination of assistance on the basis of ineligible immigration status are contained in 24 CFR 812.9.

* * * * *

PART 900—SECTION 23 HOUSING ASSISTANCE PAYMENTS PROGRAM—NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION

79. The authority citation for part 900 continues to read as follows:

Authority: 42 U.S.C. 1410(b) and 3535(d).

80. In § 900.102, the first sentence of paragraph (g) is revised to read as follows:

§ 900.102 Definitions.

* * * * *

(g) *Eligible families.* Those families determined by the LHA to meet the requirements for admission into housing assisted under this part in accordance with 24 CFR parts 912 and 913 and other pertinent requirements. * * *

* * * * *

81. Section 900.202 is amended by adding a new sentence to the end of paragraph (d)(3), and by redesignating existing paragraphs (g) and (h) as paragraphs (h) and (i) respectively, and by adding a new paragraph (g), to read as follows:

§ 900.202 Project operation.

* * * * *

(d) * * *

(3) * * * For provisions related to denial of assistance because of a failure to establish citizenship or eligible immigration status, the requirements of 24 CFR 960.207 and 24 CFR part 912 shall apply.

* * * * *

(g) *Termination of assistance.* For provisions related to termination of assistance for failure to establish citizenship or eligible immigration status, the requirements of 24 CFR parts 912 and 966 shall apply.

* * * * *

PART 904—LOW RENT HOUSING HOMEOWNERSHIP OPPORTUNITIES

82. The authority citation for part 904 is revised to read as follows:

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

83. In § 904.104, the first sentence of paragraph (b)(1) and paragraph (g)(2) are revised, to read as follows:

§ 904.104 Eligibility and selection of homebuyers.

* * * * *

(b) *Eligibility and standards for admission.* (1) Homebuyers shall be lower income families that are determined to be eligible for admission in accordance with the provisions of 24 CFR parts 912 and 913, which prescribe income definitions, income limits, and restrictions concerning citizenship or eligible immigration status. * * *

* * * * *

(g) * * *

(2) Applicants who are not selected for a specific Turnkey III development shall be notified in accordance with HUD-approved procedure. The notice shall state:

(i) The reason for the applicant's rejection (including a nonrecommendation by the recommending committee unless the applicant has previously been so notified by the committee);

(ii) That the applicant will be given an information hearing on such determination, regardless of the reason for the rejection, if the applicant makes a request for such a hearing within a reasonable time (to be specified in the notice) from the date of the notice; and

(iii) For denial of assistance for failure to establish citizenship or eligible immigration status, the applicant may request, in addition to the informal hearing, an appeal to the INS, in accordance with 24 CFR 912.9.

* * * * *

84. In § 904.107, paragraphs (j)(2) and (m)(1) are revised to read as follows:

§ 904.107 Responsibilities of homebuyer.

* * * * *

(j) * * *

(2) For purposes of determining eligibility of an applicant (see 24 CFR parts 912 and 913, as well as this part) and the amount of Homebuyer payments under paragraph (j)(1) of this section, the LHA shall examine the family's income and composition and follow the procedures required by 24 CFR part 912 for determining citizenship or eligible immigration status before initial occupancy. Thereafter, for the purposes stated above and to determine whether a Homebuyer is required to purchase the home under § 904.104(h)(1), the LHA shall reexamine the Homebuyer's income and composition regularly, at least once every 12 months, and shall undertake such further determination and verification of citizenship or eligible immigration status as required by 24 CFR part 912. The Homebuyer shall comply with the LHA's policy regarding required interim reporting of changes in the family's income and composition. If the LHA receives information from the family or other source concerning a change in the family income or other circumstances between regularly scheduled reexaminations, the LHA, upon consultation with the family and verification of the information (in accordance with 24 CFR parts 912 and 913 of this chapter) shall promptly make any adjustments determined to be appropriate in the Homebuyer payment amount or take appropriate action concerning the addition of a family member who is not a citizen with eligible immigration status. Any change in the family's income or other circumstances that results in an adjustment in the Total Tenant Payment and Tenant Rent must be verified.

* * * * *

(m) *Termination by LHA.* (1) In the event the homebuyer breaches the Homebuyers Ownership Opportunity Agreement by failure to make the required monthly payment within ten days after its due date, by

misrepresenting or withholding of information in applying for admission or in connection with any subsequent reexamination of income and family composition (including the failure to submit any required evidence of citizenship or eligible immigration status, as provided by 24 CFR part 912; the failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 750; or the failure to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760), or by failure to comply with any of the other homebuyer obligations under the Agreement, the LHA may terminate the Agreement. No termination under this paragraph may occur less than 30 days after the LHA gives the homebuyer notice of its intention to do so, in accordance with paragraph (m)(3) of this section. For termination of assistance for failure to establish citizenship or eligible immigration status under 24 CFR part 912, the requirements of 24 CFR parts 912 and 966 shall apply.

* * * * *

PART 905—INDIAN HOUSING PROGRAMS

85. The authority citation for part 905 continues to read as follows:

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

86. Section 905.102 is amended by adding definitions in alphabetical order for the terms ''Child,'' ''Citizen,'' ''Evidence of citizenship or eligible immigration status,'' ''Head of household,'' ''INS,'' ''Mixed family,'' ''National,'' ''Noncitizen,'' ''Section 214,'' and ''Section 214 covered program'' to read as follows:

§ 905.102 Definitions.

* * * * *

Child. A member of the family, other than the family head or a spouse, who is under 18 years of age.

* * * * *

Citizen. A citizen or national of the United States.

* * * * *

Evidence of citizenship or eligible immigration status. The documents which must be submitted to evidence citizenship or eligible immigration status (see § 905.310(e)).

* * * * *

Head of household. The adult member of the family who is the head of the household for purposes of determining income eligibility and rent.

* * * * *

INS. The U.S. Immigration and Naturalization Service.

* * * * *

Mixed family. A family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

* * * * *

National. A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

* * * * *

Noncitizen. A person who is neither a citizen nor national of the United States.

* * * * *

Section 214. Section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a). Section 214 restricts HUD from making financial assistance available for noncitizens unless they meet one of the categories of eligible immigration status specified in Section 214.

Section 214 covered programs. Programs to which the restrictions imposed by Section 214 apply are programs that make available financial assistance pursuant to the United States Housing Act of 1937 (42 U.S.C. 1437–1440), Section 235 or Section 236 of the National Housing Act (12 U.S.C. 1715z and 1715z–1) and Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s).

* * * * *

87. Section 905.310 is added to read as follows:

§ 905.310 Restrictions on assistance to noncitizens.

(a) *Requirements concerning documents.* For any notice or document (decision, declaration, consent form, etc.) that this section requires an IHA to provide to an individual, or requires that the IHA obtain the signature of the individual, the IHA, where feasible, must arrange for the notice or document to be provided to the individual in a language that is understood by the individual if the individual is not proficient in English. (See 24 CFR 8.6 of HUD's regulations for requirements concerning communications with persons with disabilities.)

(b) *Restrictions on assistance.* Assistance provided under a Section 214 covered program is restricted to:

(1) *Citizens;* or

(2) *Noncitizens* who have eligible immigration status in one of the following categories:

(i) A noncitizen lawfully admitted for permanent residence, as defined by section 101(a)(20) of the Immigration and Nationality Act (INA), as an immigrant, as defined by section 101(a)(15) of the INA (8 U.S.C. 1101(a)(20) and 1101(a)(15), respectively) (immigrants). (This category includes a noncitizen admitted under section 210 or 210A of the INA (8 U.S.C. 1160 or 1161), (special agricultural worker), who has been granted lawful temporary resident status);

(ii) A noncitizen who entered the United States before January 1, 1972, or such later date as enacted by law, and has continuously maintained residence in the United States since then, and who is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General under section 249 of the INA (8 U.S.C. 1259);

(iii) A noncitizen who is lawfully present in the United States pursuant to an admission under section 207 of the INA (8 U.S.C. 1157) (refugee status); pursuant to the granting of asylum (which has not been terminated) under section 208 of the INA (8 U.S.C. 1158) (asylum status); or as a result of being granted conditional entry under section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic national calamity;

(iv) A noncitizen who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) (parole status);

(v) A noncitizen who is lawfully present in the United States as a result of the Attorney General's withholding deportation under section 243(h) of the INA (8 U.S.C. 1253(h)) (threat to life or freedom); or

(vi) A noncitizen lawfully admitted for temporary or permanent residence under section 245A of the INA (8 U.S.C. 1255a) (amnesty granted under INA 245A).

(c) *Family eligibility for assistance.* (1) A family shall not be eligible for assistance unless every member of the family residing in the unit is determined to have eligible status, as described in paragraph (b) of this section;

(2) Despite the ineligibility of one or more family members, a mixed family

may be eligible for one of the three types of assistance provided in paragraph (r) of this section. A family without any eligible members and receiving assistance on June 19, 1995 may be eligible for temporary deferral of termination of assistance as provided in paragraph (r) of this section.

(d) *Exemption of certain homebuyers from restrictions of this section.* A homebuyer who executed a Homeownership Opportunity Agreement under the Turnkey III program or who executed a Mutual Help and Occupancy Agreement under the Mutual Help Homeownership program before June 19, 1995 is *not* subject to this citizenship or eligible immigration status requirement for continued participation in the program.

(e) *Submission of evidence of citizenship or eligible immigration status.*

(1) *General.* Eligibility for assistance or continued assistance under a Section 214 covered program is contingent upon a family's submission to the IHA of the documents described in paragraph (e)(2) of this section for each family member. If one or more family members do not have citizenship or eligible immigration status, the members may exercise the election not to contend to have eligible immigration status as provided in paragraph (f) of this section, and the provisions of paragraph (r) of this section shall apply.

(2) *Evidence of citizenship or eligible immigration status.* Each family, regardless of age, must submit the following evidence to the IHA:

(i) For citizens, the evidence consists of a signed declaration of U.S. citizenship;

(ii) For noncitizens who are 62 years of age or older or who will be 62 years of age or older and receiving assistance under a Section 214 covered program on June 19, 1995, the evidence consists of:

(A) A signed declaration of eligible immigration status; and

(B) Proof of age document.

(iii) For all other noncitizens, the evidence consists of:

(A) A signed declaration of eligible immigration status;

(B) The INS documents listed in paragraph (k)(2) of this section; and

(C) A signed verification consent form.

(3) *Declaration.* For each family member who contends that he or she is a U.S. citizen or a noncitizen with eligible immigration status, the family must submit to the IHA a written declaration, signed under penalty of perjury, by which the family member declares whether he or she is a U.S. citizen or a noncitizen with eligible immigration status.

(i) For each adult, the declaration must be signed by the adult.

(ii) For each child, the declaration must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(4) *Verification consent form.*—(i) *Who signs.* Each noncitizen who declares eligible immigration status, must sign a verification consent form as follows:

(A) For each adult, the form must be signed by the adult;

(B) For each child, the form must be signed by an adult member of the family residing in the assisted dwelling unit who is responsible for the child.

(ii) *Notice of release of evidence by IHA.* The verification consent form shall provide that evidence of eligible immigration status may be released by the IHA, without responsibility for the further use or transmission of the evidence by the entity receiving it, to:

(A) HUD as required by HUD; and

(B) The INS for purposes of verification of the immigration status of the individual.

(iii) *Notice of release of evidence by HUD.* The verification consent form also shall notify the individual of the possible release of evidence of eligible immigration status by HUD. Evidence of eligible immigration status shall only be released to the INS for purposes of establishing eligibility for financial assistance and not for any other purpose. HUD is not responsible for the further use or transmission of the evidence or other information by the INS.

(f) *Individuals who do not contend to have eligible immigration status.* If one or more members of a family elect not to contend that they have eligible immigration status and the other members of the family establish their citizenship or eligible immigration status, the family may be considered for assistance under paragraphs (r) or (s) of this section despite the fact that no declaration or documentation of eligible status is submitted by one or more members of the family. The family, however, must identify to the IHA, the family member (or members) who will elect not to contend that he or she has eligible immigration status.

(g) *Notification of requirements of Section 214*—(1) *When notice is to be issued.* Notification of the requirement to submit evidence of citizenship or eligible immigration status, as required by this section, or to elect not to contend that one has eligible immigration status as provided by paragraph (f) of this section, shall be given by the IHA as follows:

(i) *Applicant's notice.* The notification described in paragraph (g)(1) of this section shall be given to each applicant at the time of application for financial assistance. Families whose applications are pending on June 19, 1995 shall be notified of the requirements to submit evidence of eligible status as soon as possible after June 19, 1995.

(ii) *Notice to families already receiving assistance.* For a family in occupancy on June 19, 1995, the notification described in paragraph (g)(1) of this section shall be given to each at the time of, and together with, the IHA's notice of the regular reexamination after that date, but no later than one year following June 19, 1995.

(2) *Form and content of notice.* The notice shall:

(i) State that financial assistance is contingent upon the submission and verification, as appropriate, of the evidence of citizenship or eligible immigration status, as required by this section;

(ii) Describe the type of evidence that must be submitted and state the time period in which that evidence must be submitted (see paragraph (h) of this section concerning when evidence must be submitted); and

(iii) State that assistance will be prorated, denied or terminated, as appropriate, upon a final determination of ineligibility after all appeals have been exhausted (see paragraph (n) of this section concerning INS appeal, and paragraph (o) of this section concerning IHA informal hearing process) or, if appeals are not pursued, at a time to be specified in accordance with HUD requirements. Families already receiving assistance also shall be informed of how to obtain assistance under the preservation of families provisions of paragraph (r) of this section.

(h) *When evidence of eligible status is required to be submitted.* The IHA shall require evidence of eligible status to be submitted at the times specified in paragraph (h) of this section subject to any extension granted in accordance with paragraph (i) of this section.

(1) *Applicants.* For applicants, the IHA must ensure that evidence of eligible status is submitted not later than the date the IHA anticipates or has knowledge that verification of other aspects of eligibility for assistance will occur (see paragraph (l) of this section).

(2) *Families already receiving assistance.* For a family already receiving the benefit of assistance in a covered program on June 19, 1995, the

required evidence shall be submitted at the first regular reexamination after June 19, 1995, in accordance with program requirements.

(3) *New occupants of assisted units.* For any new family members, the required evidence shall be submitted at the first interim or regular reexamination following the person's occupancy.

(4) *Changing participation in a HUD program.* Whenever a family applies for admission to a Section 214 covered program, evidence of eligible status is required to be submitted in accordance with the requirements of this part unless the family already has submitted the evidence to the IHA for a covered program.

(5) *One-time evidence requirement for continuous occupancy.* For each family member, the family is required to submit evidence of eligible status only one time during continuously assisted occupancy under any covered program.

(i) *Extensions of time to submit evidence of eligible status*—(1) *When extension must be granted.* The IHA shall extend the time, provided in paragraph (h) of this section, to submit evidence of eligible immigration status if the family member:

(i) Submits the declaration required under paragraph (e)(3) of this section certifying that any person for whom required evidence has not been submitted is a noncitizen with eligible immigration status; and

(ii) Certifies that the evidence needed to support a claim of eligible immigration status is temporarily unavailable, additional time is needed to obtain and submit the evidence, and prompt and diligent efforts will be undertaken to obtain the evidence.

(2) *Prohibition on indefinite extension period.* Any extension of time, if granted, shall be for a specific period of time. The additional time provided should be sufficient to allow the family the time to obtain the evidence needed. The IHA's determination of the length of the extension needed, shall be based on the circumstances of the individual case.

(3) *Grant or denial of extension to be in writing.* The IHA's decision to grant or deny an extension as provided in paragraph (i)(1) of this section shall be issued to the family by written notice. If the extension is granted, the notice shall specify the extension period granted. If the extension is denied, the notice shall explain the reasons for denial of the extension.

(j) *Failure to submit evidence or establish eligible immigration status.* If the family fails to submit required evidence of eligible immigration status within the time period specified in the notice, or any extension granted in accordance with paragraph (i) of this section, or if the evidence is timely submitted but fails to establish eligible immigration status, the IHA shall proceed to deny, prorate or terminate assistance, or provide continued assistance or temporary deferral of termination of assistance, as appropriate, in accordance, respectively with the provisions of paragraph (m) of this section or paragraph (r) of this section.

(k) *Documents of eligible immigration status*—(1) *General.* An IHA shall request and review original documents of eligible immigration status. The IHA shall retain photocopies of the documents for its own records and return the original documents to the family.

(2) *Acceptable evidence of eligible immigration status.* The original of one of the following documents is acceptable evidence of eligible immigration status, subject to verification in accordance with paragraph (l) of this section:

(i) Form I–551, Alien Registration Receipt Card (for permanent resident aliens);

(ii) Form I–94, Arrival-Departure Record, with one of the following annotations:

(A) ''Admitted as Refugee Pursuant to Section 207'';

(B) ''Section 208'' or ''Asylum'';

(C) ''Section 243(h)'' or ''Deportation stayed by Attorney General'';

(D) ''Paroled Pursuant to Sec. 212(d)(5) of the INA'';

(iii) If Form I–94, Arrival-Departure Record, is not annotated, then accompanied by one of the following documents:

(A) A final court decision granting asylum (but only if no appeal is taken);

(B) A letter from an INS asylum officer granting asylum (if application is filed on or after October 1, 1990) *or* from an INS district director granting asylum (if application filed before October 1, 1990);

(C) A court decision granting withholding or deportation; or

(D) A letter from an INS asylum officer withholding of deportation (if application filed on or after October 1, 1990).

(iv) Form I–688, Temporary Resident Card, which must be annotated ''Section 245A'' or ''Section 210'';

(v) Form I–688B, Employment Authorization Card, which must be annotated ''Provision of Law 274a.12(11)'' or ''Provision of Law 274a.12'';

(vi) A receipt issued by the INS indicating that an application for issuance of a replacement document in one of the above-listed categories has been made and the applicant's entitlement to the document has been verified; or

(vii) If other documents are determined by the INS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the **Federal Register**.

(l) *Verification of eligible immigration status.*—(1) *When verification is to occur.* Verification of eligible immigration status shall be conducted by the IHA simultaneously with verification of other aspects of eligibility for assistance under a Section 214 covered program. (See paragraph (h) of this section.) The IHA shall verify eligible immigration status in accordance with the INS procedures described in this section.

(2) *Primary verification.*—(i) *Automated verification system.* Primary verification of the immigration status of the person is conducted by the IHA through the INS automated system (INS Systematic for Alien Verification for Entitlements (SAVE). The INS SAVE system provides access to names, file numbers and admission numbers of noncitizens.

(ii) *Failure of primary verification to confirm eligible immigration status.* If the INS SAVE system does not verify eligible immigration status, secondary verification must be performed.

(3) *Secondary verification*—(i) *Manual search of INS records.* Secondary verification is a manual search by the INS of its records to determine an individual's immigration status. The IHA must request secondary verification, within 10 days of receiving the results of the primary verification, if the primary verification system does not confirm eligible immigration status, or if the primary verification system verifies immigration status that is ineligible for assistance under a covered Section 214 covered program.

(ii) *Secondary verification initiated by IHA.* Secondary verification is initiated by the IHA forwarding photocopies of the original INS documents listed in paragraph (k)(2) of this section (front and back), attached to the INS document verification request form G–845S (Document Verification Request), or such other form specified by the INS, to a designated INS office for review. (Form G–845S is available from the local INS Office.)

(iii) *Failure of secondary verification to conform eligible immigration status.* If the secondary verification does not confirm eligible immigration status, the IHA shall issue to the family the notice

described in paragraph (m)(4) of this section, which includes notification of appeal to the INS of the INS finding on immigration status (see paragraph (m)(4)(iv) of this section).

(4) *Exemption from liability for INS verification.* The IHA shall not be liable for any action, delay, or failure of the INS in conducting the automated or manual verification.

(m) *Delay, denial, or termination of assistance.*—(1) *Restrictions on delay, denial, or termination of assistance.* Assistance to an applicant shall not be delayed or denied, and assistance to a tenant shall not be delayed, denied, or terminated, on the basis of ineligible immigration status of a family member if:

(i) The primary and secondary verification of any immigration documents that were timely submitted has not been completed;

(ii) The family member for whom required evidence has not been submitted has moved from the tenant's dwelling unit;

(iii) The family member who is determined not to be in an eligible immigration status following INS verification has moved from the tenant's dwelling unit;

(iv) The INS appeals process under paragraph (n) of this section has not been concluded;

(v) For a tenant, the IHA hearing process under paragraph (o) of this section has not been concluded;

(vi) Assistance is prorated in accordance with paragraph(s) of this section;

(vii) Assistance for a mixed family is continued in accordance with paragraph (r) of this section; or

(viii) Deferral of termination of assistance is granted in accordance with paragraph (r) of this section.

(2) *When delay of assistance to applicant is permissible.* Assistance to an applicant may be delayed after the conclusion of the INS appeal process, but not denied until the conclusion of the IHA informal hearing process, if an informal hearing is requested by the family.

(3) *Events causing denial or termination of assistance.* Assistance to an applicant shall be denied, and a tenant's assistance shall be terminated, in accordance with the procedures of this section, upon the occurrence of any of the following events:

(i) Evidence of citizenship (i.e., the declaration) and eligible immigration status is not submitted by the date specified in paragraph (h) of this section, or by the expiration of any extension granted in accordance with paragraph (i) of this section; or

(ii) The evidence of citizenship and eligible immigration status is timely submitted, but INS primary and second verification does not verify eligible immigration status of a family member; and

(A) The family does not pursue INS appeal (as provided in paragraph (n) of this section) or IHA informal hearing rights (as provided in paragraph (o) of this section); or

(B) INS appeal and informal hearing rights are pursued, but the final appeal or hearing decisions are decided against the family member.

(4) *Notice of denial or termination of assistance.* The notice of denial or termination of assistance shall advise the family:

(i) The financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance;

(ii) That the family may be eligible for proration of assistance as provided in paragraph(s) of this section;

(iii) In the case of a tenant, the criteria and procedures for obtaining relief under the preservation of families provisions in paragraph (r) of this section;

(iv) That the family has a right to request an appeal to the INS of the results of the secondary verification of immigration status, and to submit additional documentation or a written explanation in support of the appeal, in accordance with the procedures of paragraph (n) of this section;

(v) That the family has a right to request an informal hearing with the IHA either upon completion of the INS appeal or in lieu of the INS appeal, as provided in paragraph (n) of this section;

(vi) For applicants, the notice shall advise that assistance may not be delayed until the conclusion of the INS appeal process, but assistance may be delayed during the pendency of the IHA informal hearing process.

(n) *Appeal to the INS*—(1) *Submission of request for appeal.* Upon receipt of notification by the IHA that INS secondary verification failed to confirm eligible immigration status, the IHA shall notify the family of the results of the INS verification, and the family shall have 30 days from the date of the IHA's notification, to request an appeal of the INS results. The request for appeal shall be made by the family communicating that request in writing directly to the INS. The family must provide the IHA with a copy of the written request for appeal and proof of mailing. For good cause shown, the IHA shall grant the family an extension of time within which to request an appeal.

(2) *Documentation to be submitted as part of appeal to INS.* The family shall forward to the designated INS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the INS document verification request form G–845S (used to process the secondary verification request) or such other form specified by the INS, and a cover letter indicating that the family is requesting an appeal of the INS immigration status verification results. (Form G–845S is available from the local INS Office.)

(3) *Decision by INS*—(i) *When decision will be issued.* The INS will issue to the family, with a copy to the IHA, a decision within 30 days of its receipt of documentation concerning the family's appeal of the verification of immigration status. If, for any reason, the INS is unable to issue a decision within the 30 day time period, the INS will inform the family and the IHA of the reasons for the delay.

(ii) *Notification of INS decision and of informal hearing procedures.* When the IHA receives a copy of the INS decision, the IHA shall notify the family of its right to request an informal hearing on the IHA's ineligibility determination in accordance with the procedures of paragraph (o) of this section.

(4) *No delay, denial or termination of assistance until completion of INS appeal process; direct appeal to INS.* Pending the completion of the INS appeal under this section, assistance may not be delayed, denied or terminated on the basis of immigration status.

(o) *Informal hearing*—(1) *When request for hearing is to be made.* After notification of the INS decision, or in lieu of request of appeal to the INS, the family may request that the IHA provide a hearing. This request must be made either within 14 days of the date the IHA mails or delivers the notice under paragraph (m)(4) of this section, or within 14 days of the mailing of the INS appeal decision issued in accordance with paragraph (n)(4) of this section (established by the date of postmark).

(2) *Extension of time to request hearing.* The IHA shall extend the period of time for requesting a hearing (for a specified period) upon good cause shown.

(3) *Informal hearing procedures.* (i) For tenants, the procedures for the hearing before the IHA are set forth in § 905.340.

(ii) For applicants, the procedures for the informal hearing before the IHA are as follows:

(A) *Hearing before an impartial individual.* The applicant shall be provided a hearing before any person(s) designated by the IHA (including an officer or employee of the IHA), other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision;

(B) *Examination of evidence.* The applicant shall be provided the opportunity to examine and copy, at the applicant's expense and at a reasonable time in advance of the hearing, any documents in the possession of the IHA pertaining to the applicant's eligibility status, or in the possession of the INS (as permitted by INS requirements), including any records and regulations that may be relevant to the hearing;

(C) *Presentation of evidence and arguments in support of eligible status.* The applicant shall be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings;

(D) *Controverting evidence of the project owner.* The applicant shall be provided the opportunity to controvert evidence relied upon by the IHA and to confront and cross-examine all witnesses on whose testimony or information the IHA relies;

(E) *Representation.* The applicant shall be entitled to be represented by an attorney, or other designee, at the applicant's expense, and to have such person make statements on the applicant's behalf;

(F) *Interpretive services.* The applicant shall be entitled to arrange for an interpreter to attend the hearing, at the expense of the applicant or the IHA, as may be agreed upon by both parties;

(G) *Hearing to be recorded.* The applicant shall be entitled to have the hearing recorded by audiotape (a transcript of the hearing may, but is not required to, be provided by the IHA); and

(H) *Hearing decision.* The IHA shall provide the applicant with a written final decision, based solely on the facts presented at the hearing within 14 days of the date of the informal hearing. The decision shall state basis for the decision.

(p) *Judicial relief.* A decision against a family member under the INS appeal process or the IHA informal hearing process does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

(q) *Retention of documents.* The IHA shall retain for a minimum of 5 years the following documents that may have been submitted to the IHA by the family or provided to the IHA as part of the INS appeal or the IHA informal hearing process:

(1) The application for financial assistance;

(2) The form completed by the family for income re-examination;

(3) Photocopies of any original documents (front and back), including original INS documents;

(4) The signed verification consent form;

(5) The INS verification results;

(6) The request for an INS appeal;

(7) The final INS determination;

(8) The request for an IHA informal hearing; and

(9) The final hearing decision.

(r) *Preservation of mixed families and other families*—(1) *Assistance available for mixed families*—(i) *Assistance available for tenant mixed families.* For a mixed family assisted under a Section 214 covered program on June 19, 1995, and following the appeals and informal hearing procedures provided in paragraphs (n) and (o) of this section if utilized by the family, one of the following three types of assistance may be available to the family:

(A) Continued assistance (see paragraph (r)(2) of this section);

(B) Temporary deferral of termination of assistance (see paragraph (r)(3) of this section); or

(C) Prorated assistance (see paragraph (s) of this section; a mixed family must be provided prorated assistance if the family so requests).

(ii) *Assistance available for applicant mixed families.* Prorated assistance is also available for mixed families applying for assistance, as provided in paragraph (s) of this section.

(iii) *Assistance available to other families in occupancy.* For families receiving assistance under a Section 214 covered program on June 19, 1995 and who have no members with eligible immigration status, the IHA may grant the family temporary deferral of termination of assistance.

(2) *Continued assistance.* A mixed family may receive continued housing assistance if all of the following conditions are met:

(i) The family was receiving assistance under a Section 214 covered program on June 19, 1995;

(ii) The family's head of household or spouse has eligible immigration status as described in paragraph (b)(2) of this section; and

(iii) The family does not include any person (who does not have eligible immigration status) other than the head of household, any spouse of the head of household, any parents of the head of household, any parents of the spouse, or any children of the head of household or spouse.

(3) *Temporary deferral of termination of assistance*—(i) *Eligibility for this type of assistance.* If a mixed family qualifies for prorated assistance (and does not qualify for continued assistance), but decides not to accept prorated assistance, or if a family has no members with eligible immigration status, the family may be eligible for temporary deferral of termination of assistance if necessary to permit the family additional time for the orderly transition of those family members with ineligible status, and any other family members involved, to other affordable housing. Other affordable housing is used in the context of transition of an ineligible family from a rent level that reflects HUD assistance to a rent level that is unassisted; the term refers to housing that is not substandard, that is of appropriate size for the family and that can be rented for an amount not exceeding the amount that the family pays for rent, including utilities, plus 25 percent.

(ii) *Time limit on deferral period.* If temporary deferral of termination of assistance is granted, the deferral period shall be for an initial period not to exceed six months. The initial period may be renewed for additional periods of six months, but the aggregate deferral period shall not exceed a period of three years.

(iii) *Notification requirements for beginning of each deferral period.* At the beginning of each deferral period, the IHA must inform the family of its ineligibility for financial assistance and offer the family information concerning, and referrals to assist in finding, other affordable housing.

(iv) *Determination of availability of affordable housing at end of each deferral period.* Before the end of each deferral period, the IHA must:

(A) Make a determination of the availability of affordable housing of appropriate size based on evidence of conditions which when taken together will demonstrate an inadequate supply of affordable housing for the area in which the project is located, the consolidated plan (if applicable, as described in 24 CFR part 91), the IHA's own knowledge of the availability of affordable housing, and on evidence of the tenant family's efforts to locate such housing; *and*

(B) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period,

that termination will be deferred again (provided that the granting of another deferral will not result in aggregate deferral periods that exceed three years), and a determination was made that other affordable housing is not available; *or*

(C) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination of financial assistance will not be deferred because either granting another deferral will result in aggregate deferral periods that exceed three years, or a determination has been made that other affordable housing is available.

(v) *Option to select proration of assistance at end of deferral period.* A family who is eligible for, and receives temporary deferral of termination of assistance, may request, and the IHA shall provide, proration of assistance at the end of the deferral period if the family has made a good faith effort during the deferral period to locate other affordable housing.

(vi) *Notification of decision on family preservation assistance.* An IHA shall notify the family of its decision concerning the family's qualification for assistance under this section. If the family is ineligible for assistance under this section, the notification shall state the reasons, which must be based on relevant factors. For tenant families, the notice also shall inform the tenant family of any appeal rights.

(s) *Proration of assistance*—(1) *Applicability.* This section applies to a mixed family other than a family receiving continued assistance under paragraph (r)(2) of this section, or other than a family who is eligible for and requests temporary deferral of termination of assistance under paragraph (r)(3) of this section. The IHA must provide an eligible mixed family prorated assistance if the family request prorated assistance.

(2) *Method of prorating assistance.* The IHA shall prorate the family's assistance by:

(i) *Step 1.* Determining total tenant payment in accordance with § 905.325 (annual income includes income of all family members, including any family member who has not established eligible immigration status).

(ii) *Step 2.* Subtracting the total tenant payment from a HUD-supplied ''Indian housing maximum rent'' applicable to the unit or the housing authority. (''Indian housing maximum rent'' shall be determined by HUD using the 95th percentile rent for the housing authority.) The result is the maximum subsidy for which the family could qualify if all members were eligible (''family maximum subsidy'').

(iii) *Step 3.* Dividing the family maximum subsidy by the number of persons in the family (all persons) to determine the maximum subsidy per each family member who has citizenship or eligible immigration status (''eligible family member''). The subsidy per eligible family member is the ''member maximum subsidy''.

(iv) *Step 4.* Multiplying the member maximum subsidy by the number of family members who have citizenship or eligible immigration status (''eligible family members'').

(v) *Step 5.* The product of steps 1–4, as set forth in paragraph (s)(2) of this section is the amount of subsidy for which the family is eligible (''eligible subsidy''). The family's rent is the ''public housing maximum rent'' minus the amount of the eligible subsidy.

(t) *Prohibition of assistance to noncitizen students*—(1) *General.* The provisions of this section permitting continued assistance, prorated assistance or temporary deferral of termination of assistance for certain families, do not apply to any person who is determined to be a noncitizen student, as defined in paragraph (t)(2) of this section, or the family of the noncitizen student, as described in paragraph (t)(3) of this section.

(2) *Noncitizen student.* For purposes of this part, a noncitizen student is defined as a noncitizen who:

(i) Has a residence in a foreign country that the person has no intention of abandoning;

(ii) Is a bona fide student qualified to pursue a full course of study; and

(iii) Is admitted to the United States temporarily and solely for purposes of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States, particularly designated by such person and approved by the Attorney General after consultation with the Department of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student (and if any such institution of learning or place of study fails to make such reports promptly the approval shall be withdrawn).

(3) *Family of noncitizen student.* The prohibition on providing assistance to a noncitizen student as described in paragraph (t)(1) of this section also extends to the noncitizen spouse of the noncitizen student and minor children of any noncitizen student if the spouse or children are accompanying the student or following to join such student. The prohibition on providing assistance to a noncitizen student does not extend to the citizen spouse of the noncitizen student and the children of the citizen spouse and noncitizen student.

(u) *Protection from liability for IHAs, State, Tribal, and local government agencies and officials*—(1) *Protection from liability for IHAs.* HUD will not take any compliance, disallowance, penalty, or other regulatory action against an IHA with respect to any error in its determination of eligibility for assistance based on citizenship or immigration status:

(i) If the IHA established eligibility based upon verification of eligible immigration status through the verification system described in paragraph (l) of this section;

(ii) Because the IHA was required to provide an opportunity for the applicant or family to submit evidence in accordance with paragraphs (h) and (i) of this section;

(iii) Because the IHA was required to wait for completion of INS verification of immigration status in accordance with paragraph (l) of this section;

(iv) Because the IHA was required to wait for completion of the INS appeal process provided in accordance with paragraph (n) of this section; or

(v) Because the IHA was required to provide an informal hearing in accordance with paragraph (o) of this section.

(2) *Protection from liability for State, Tribal and local government agencies and officials.* State, Tribal, and local government agencies and officials shall not be liable for the design or implementation of the verification system described in paragraph (l) of this section and the IHA informal hearing provided under paragraph (o) of this section, so long as the implementation by the State, Tribal, or local government agency or official is in accordance with prescribed HUD rules and requirements.

88. Section 905.315 is amended by redesignating paragraphs (a)(i) and (a)(ii) as (a)(1) and (a)(2), respectively; by redesignating existing paragraphs (a)(2) and (a)(3) as paragraphs (b) and (c) respectively; and by adding a new paragraph (d), to read as follows;

§ 905.315 Initial determination, verification, and reexamination of family income and composition.

* * * * *

(d) *Implementation of verification of citizenship or eligible immigration status.* The IHA shall follow the procedures required by § 905.310 for determining citizenship or eligible immigration status before initial

occupancy, and, for tenants admitted before June 19, 1995, at the first reexamination of family income and composition after that date. Thereafter, at the annual reexaminations of family income and composition, the IHA shall follow the requirements of § 905.310 concerning verification of the immigration status of any new family member. The family shall comply with the IHA's policy regarding required interim reporting of changes in the family's income and composition. If the IHA is informed of a change in the family income or other circumstances between regularly scheduled reexaminations, the IHA, upon consultation with the family and verification of the information, shall promptly make any adjustments appropriate in the rent or Homebuyer payment amount or take appropriate action concerning the addition of a family member who is a noncitizen with ineligible immigration status.

PART 912—DEFINITION OF FAMILY AND OTHER RELATED TERMS; OCCUPANCY BY SINGLE PERSONS

89. The authority citation for part 912 is revised to read as follows:

Authority: 42 U.S.C. 1436a, 1437a, and 3535(d).

90. Section 912.1 is amended by changing the period at the end of paragraph (a)(2) to a semicolon and adding the word ''and'' following the semicolon; and by adding a new paragraph (a)(3), to read as follows:

§ 912.1 Purpose and applicability.

(a) * * *

(3) Implements the statutory prohibition against making assistance under the United States Housing Act of 1937 (''Act'') (42 U.S.C. 1437 *et seq.*) available for the benefit of noncitizens with ineligible immigration status.

* * * * *

91. Section 912.2 is amended by adding definitions in alphabetical order for the terms ''Child,'' ''Citizen,'' ''Evidence of citizenship or eligible immigration status,'' ''Head of household,'' ''HUD,'' ''Mixed family,'' ''National,'' ''Noncitizen,'' ''Section 214,'' and ''Section 214 covered program,'' to read as follows:

§ 912.2 Definitions.

Child. A member of the family, other than the family head or a spouse, who is under 18 years of age.

Citizen. A citizen or national of the United States.

* * * * *

Evidence of citizenship or eligible immigration status. The documents which must be submitted to evidence citizenship or eligible immigration status (see § 912.6(b)).

* * * * *

Head of household. The adult member of the family who is the head of the household for purposes of determining income eligibility and rent.

HUD. The Department of Housing and Urban Development.

* * * * *

Mixed family. A family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

National. A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

Noncitizen. A person who is neither a citizen nor national of the United States.

* * * * *

Section 214. Section 214 of the Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a). Section 214 restricts HUD from making financial assistance available for noncitizens unless they meet one of the categories of eligible immigration status specified in Section 214.

Section 214 covered programs. Programs to which the restrictions imposed by Section 214 apply are programs that make available financial assistance pursuant to the United States Housing Act of 1937 (42 U.S.C. 1437–1440), Section 235 or Section 236 of the National Housing Act (12 U.S.C. 1715z and 1715z–1) and Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s).

* * * * *

92. Part 912 is amended by redesignating §§ 912.1 through 912.4 as subpart A, and by adding the subpart heading to read, ''Subpart A—General'', and by adding a new subpart B consisting of §§ 912.5 through 912.14, to read as follows:

Subpart B—Restrictions on Assistance to Noncitizens

Sec.
912.5 General.
912.5a Requirements concerning documents.
912.6 Submission of evidence of citizenship or eligible immigration status.
912.7 Documents of eligible immigration status.
912.8 Verification of eligible immigration status.
912.9 Delay, denial, or termination of assistance.
912.10 Preservation of mixed families and other families.
912.11 Proration of assistance.
912.12 Prohibition of assistance to noncitizen students.
912.13 Compliance with nondiscrimination requirements.
912.14 Protection from liability for PHAs, State, local, and tribal government agencies and officials.

Subpart B—Restrictions on Assistance to Noncitizens

§ 912.5 General.

(a) *Restrictions on assistance.* Assistance provided under a Section 214 covered program is restricted to:

(1) *Citizens;* or

(2) *Noncitizens* who have eligible immigration status in one of the following categories:

(i) A noncitizen lawfully admitted for permanent residence, as defined by section 101(a)(20) of the Immigration and Nationality Act (INA), as an immigrant, as defined by section 101(a)(15) of the INA (8 U.S.C. 1101(a)(20) and 1101(a)(15), respectively) (immigrants). (This category includes a noncitizen admitted under section 210 or 210A of the INA (8 U.S.C. 1160 or 1161), (special agricultural worker), who has been granted lawful temporary resident status);

(ii) A noncitizen who entered the United States before January 1, 1972, or such later date as enacted by law, and has continuously maintained residence in the United States since then, and who is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General under section 249 of the INA (8 U.S.C. 1259);

(iii) A noncitizen who is lawfully present in the United States pursuant to an admission under section 207 of the INA (8 U.S.C. 1157) (refugee status); pursuant to the granting of asylum (which has not been terminated) under section 208 of the INA (8 U.S.C. 1158) (asylum status); or as a result of being granted conditional entry under section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic national calamity;

(iv) A noncitizen who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) (parole status);

(v) A noncitizen who is lawfully present in the United States as a result of the Attorney General's withholding deportation under section 243(h) of the

INA (8 U.S.C. 1253(h)) (threat to life or freedom); or

(vi) A noncitizen lawfully admitted for temporary or permanent residence under section 245A of the INA (8 U.S.C. 1255a) (amnesty granted under INA 245A).

(b) *Family eligibility for assistance.* (1) A family shall not be eligible for assistance unless every member of the family residing in the unit is determined to have eligible status, as described in paragraph (a) of this section;

(2) Despite the ineligibility of one or more family members, a mixed family may be eligible for one of the three types of assistance provided in § 912.10. A family without any eligible members and receiving assistance on June 19, 1995 may be eligible for temporary deferral of termination of assistance as provided in § 912.10.

§ 912.5a Requirements concerning documents.

For any notice or document (decision, declaration, consent form, etc.) that §§ 912.5 through 912.14 require a PHA to provide to an individual, or require that the PHA obtain the signature of the individual, the PHA, where feasible, must arrange for the notice or document to be provided to the individual in a language that is understood by the individual if the individual is not proficient in English. (See 24 CFR 8.6 of HUD's regulations for requirements concerning communications with persons with disabilities.)

§ 912.6 Submission of evidence of citizenship or eligible immigration status.

(a) *General.* Eligibility for assistance or continued assistance under a Section 214 covered program is contingent upon a family's submission to the PHA of the documents described in paragraph (b) of this section for each family member. If one or more family members do not have citizenship or eligible immigration status, the family members may exercise the election not to contend to have eligible immigration status as provided in paragraph (e) of this section, and the provisions of § 912.10 shall apply.

(b) *Evidence of citizenship or eligible immigration status.* Each family member, regardless of age, must submit the following evidence to the PHA:

(1) For citizens, the evidence consists of a signed declaration of U.S. citizenship;

(2) For noncitizens who are 62 years of age or older or who will be 62 years of age or older and receiving assistance under a Section 214 covered program on June 19, 1995, the evidence consists of:

(i) A signed declaration of eligible immigration status; and

(ii) Proof of age document.

(3) For all other noncitizens, the evidence consists of:

(i) A signed declaration of eligible immigration status;

(ii) The INS documents listed in § 912,7; and

(iii) A signed verification consent form.

(c) *Declaration.* For each family member who contend that he or she is a U.S. citizen or a noncitizen with eligible immigration status, the family must submit to the PHA a written declaration, signed under penalty of perjury, by which the family member declares whether he or she is a U.S. citizen or a noncitizen with eligible immigration status:

(1) For each adult, the declaration must be signed by the adult.

(2) For each child, the declaration must be signed by an adult residing in the assisted dwelling unit who is responsible for the child.

(d) *Verification consent form*—(1) *Who signs.* Each noncitizen who declares eligible immigration status, must sign a verification consent form as follows:

(i) For each adult, the form must be signed by the adult.

(ii) For each child, the form must be signed by an adult member of the family residing in the assisted dwelling unit who is responsible for the child.

(2) *Notice of release of evidence by PHA.* The verification consent form shall provide that evidence of eligible immigration status may be released by the PHA, without responsibility for the further use or transmission of the evidence by the entity receiving it, to:

(i) HUD is required by HUD; and

(ii) The INS for purposes of verification of the immigration status of the individual.

(3) *Notice of release of evidence by HUD.* The verification consent form also shall notify the individual of the possible release of evidence of eligible immigration status by HUD. Evidence of eligible immigration status shall only be released to the INS for purposes of establishing eligibility for financial assistance and not for any other purpose. HUD is not responsible for the further use or transmission of the evidence or other information by the INS.

(e) *Individuals who do not contend to have eligible immigration status.* If one or more members of a family elect not to contend that they have eligible immigration status and the other members of the family establish their citizenship or eligible immigration status, the family may be considered for assistance under §§ 912.10 or 912.11 despite the fact that no declaration or documentation of eligible status is submitted by one or more members of the family. The family, however, must identify to PHA the family member (or members) who will elect not to contend that he or she has eligible immigration status.

(f) *Notification of requirements of Section 214*—(1) *Timing of notice.* Notification of the requirement to submit evidence of citizenship or eligible immigration status, as required by this section, or to elect not to contend that one has eligible immigration status as provided by paragraph (e) of this section, shall be given by the PHA as follows:

(i) *Applicant's notice.* The notification described in paragraph (f)(1) of this section shall be given to each applicant at the time of application for financial assistance. Families whose applications are pending on June 19, 1995 shall be notified of the requirements to submit evidence of eligible status as soon as possible after June 19, 1995.

(ii) *Notice to families already receiving assistance.* For a family in occupancy on June 19, 1995, the notification described in paragraph (f)(1) of this section shall be given to each at the time of, and together with, the PHA's notice of the first regular reexamination after that date, but not later than one year following June 19, 1995.

(2) *Form and content of notice.* The notice shall:

(i) State that financial assistance is contingent upon the submission and verification, as appropriate, of the evidence of citizenship or eligible immigration status, as required by this section;

(ii) Describe the type of evidence that must be submitted and state the time period in which that evidence must be submitted (see paragraph (g) of this section concerning when evidence must be submitted); and

(iii) State that assistance will be prorated, denied or terminated, as appropriate, upon a final determination of ineligibility after all appeals have been exhausted (see § 912.9 concerning INS appeal, and PHA informal hearing process) or, if appeals are not pursued, at a time to be specified in accordance with HUD requirements. Families already receiving assistance also shall be informed of how to obtain assistance under the preservation of families provisions of § 912.10.

(g) *When evidence of eligible status is required to be submitted.* The PHA shall require evidence of eligible status to be submitted at the times specified in paragraph (g) of this section, subject to

any extension granted in accordance with paragraph (h) of this section.

(1) *Applicants.* For applicants, the PHA must ensure that evidence of eligible status is submitted not later than the date the PHA anticipates or has knowledge that verification of other aspects of eligibility for assistance will occur (see § 912.8(a)).

(2) *Families already receiving assistance.* For a family already receiving the benefit of assistance in a covered program on June 19, 1995, the required evidence shall be submitted at the first regular reexamination after June 19, 1995, in accordance with program requirements.

(3) *New occupants of assisted units.* For any new family members, the required evidence shall be submitted at the first interim or regular reexamination following the person's occupancy.

(4) *Changing participation in a HUD program.* Whenever a family applies for admission to a Section 214 covered program, evidence of eligible status is required to be submitted in accordance with the requirements of this part unless the family already has submitted the evidence to the PHA for a covered program.

(5) *One-time evidence requirement for continuous occupancy.* For each family member, the family is required to submit evidence of eligible status only one time during continuously assisted occupancy under any covered program.

(h) *Extensions of time to submit evidence of eligible status.*—(1) *When extension must be granted.* The PHA shall extend the time provided in paragraph (g) of this section, to submit evidence of eligible immigration status if the family member:

(i) Submits the declaration required under § 912.6(b) certifying that any person for whom required evidence has not been submitted is a noncitizen with eligible immigration status; and

(ii) Certifies that the evidence needed to support a claim of eligible immigration status is temporarily unavailable, additional time is needed to obtain and submit the evidence, and prompt and diligent efforts will be undertaken to obtain the evidence.

(2) *Prohibition on indefinite extension period.* Any extension of time, if granted, shall be for a specific period of time. The additional time provided should be sufficient to allow the family the time to obtain the evidence needed. The PHA's determination of the length of the extension needed, shall be based on the circumstances of the individual case.

(3) *Grant or denial of extension to be in writing.* The PHA's decision to grant or deny an extension as provided in paragraph (h)(1) of this section shall be issued to the family by written notice. If the extension is granted, the notice shall specify the extension period granted. If the extension is denied, the notice shall explain the reasons for denial of the extension.

(i) *Failure to submit evidence or establish eligible immigration status.* If the family fails to submit required evidence of eligible immigration status within the time period specified in the notice, or any extension granted in accordance with paragraph (h) of this section, or if the evidence is timely submitted but fails to establish eligible immigration status, the PHA shall proceed to deny, prorate or terminate assistance, or provide continued assistance or temporary deferral of termination of assistance, as appropriate, in accordance with the provisions of §§ 912.9 and 912.10 respectively.

§ 912.7 Documents of eligible immigration status.

(a) *General.* A PHA shall request and review original documents of eligible immigration status. The PHA shall retain photocopies of the documents for its own records and return the original documents to the family.

(b) *Acceptable evidence of eligible immigration status.* The original of one of the following documents is acceptable evidence of eligible immigration status, subject to verification in accordance with § 912.8:

(1) Form I–551, Alien Registration Receipt Card (for permanent resident aliens);

(2) Form I–94, Arrival-Departure Record, with one of the following annotations:

(i) ''Admitted as Refugee Pursuant to section 207'';

(ii) ''Section 208'' or ''Asylum'';

(iii) ''Section 243(h)'' or ''Deportation stayed by Attorney General'';

(iv) ''Paroled Pursuant to Sec. 212(d)(5) of the INA'';

(3) If Form I–94, Arrival-Departure Record, is not annotated, then accompanied by one of the following documents:

(i) A final court decision granting asylum (but only if no appeal is taken);

(ii) A letter from an INS asylum officer granting asylum (if application is filed on or after October 1, 1990) *or* from an INS district director granting asylum (if application is filed before October 1, 1990);

(iii) A court decision granting withholding of deportation; or

(iv) A letter from an INS asylum officer granting withholding of deportation (if application is filed on or after October 1, 1990).

(4) Form I–688, Temporary Resident Card, which must be annotated ''Section 245A'' or ''Section 210'';

(5) Form I–688B, Employment Authorization Card, which must be annotated ''Provision of Law 274a.12(11)'' or ''Provision of Law 274a.12'';

(6) A receipt issued by the INS indicating that an application for issuance of a replacement document in one of the above-listed categories has been made and the applicant's entitlement to the document has been verified; or

(c) *Other acceptable evidence.* If other documents are determined by the INS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the **Federal Register**.

§ 912.8 Verification of eligible immigration status.

(a) *When verification is to occur.* Verification of eligible immigration status shall be conducted by the PHA simultaneously with verification of other aspects of eligibility for assistance under a Section 214 covered program. (See § 912.6(g).) The PHA shall verify eligible immigration status in accordance with the INS procedures described in this section.

(b) *Primary verification.*—(1) *Automated verification system.* Primary verification of the immigration status of the person is conducted by the PHA through the INS automated system (INS Systematic for Alien Verification for Entitlements (SAVE)). The INS SAVE system provides access to names, file numbers and admission numbers of noncitizens.

(2) *Failure of primary verification to confirm eligible immigration status.* If the INS SAVE system does not verify eligible immigration status, secondary verification must be performed.

(c) *Secondary verification.*—(1) *Manual search of INS records.* Secondary verification is a manual search by the INS of its records to determine an individual's immigration status. The PHA must request secondary verification, within 10 days of receiving the results of the primary verification, if the primary verification system does not confirm eligible immigration status, or if the primary verification system verifies immigration status that is ineligible for assistance under a covered Section 214 covered program.

(2) *Secondary verification initiated by PHA.* Secondary verification is initiated by the PHA forwarding photocopies of the original INS documents listed in

§ 912.7 (front and back), attached to the INS document verification request form G–845S (Document Verification Request), or such other form specified by the INS, to a designated INS office for review. (Form G–845S is available from the local INS Office.)

(3) *Failure of secondary verification to confirm eligible immigration status.* If the secondary verification does not confirm eligible immigration status, the IHA shall issue to the family the notice described in § 912.9(d), which includes notification of appeal to the INS of the INS finding on immigration status (see § 912.9(d)(4)).

(d) *Exemption from liability for INS verification.* The PHA shall not be liable for any action, delay, or failure of the INS in conducting the automated or manual verification.

§ 912.9 Delay, denial, or termination of assistance.

(a) *General.* Assistance to a family may not be delayed, denied, or terminated because of the immigration status of a family member except as provided in this section.

(b) *Restrictions on delay, denial, or termination of assistance* —(1) *General.* Assistance to an applicant shall not be delayed or denied, and assistance to a tenant shall not be delayed, denied, or terminated, on the basis of ineligible immigration status of a family member if:

(i) The primary and secondary verification of any immigration documents that were timely submitted has not been completed;

(ii) The family member of whom required evidence has not been submitted has moved from the tenant's dwelling unit;

(iii) The family member who is determined not to be in an eligible immigration status following INS verification has moved from the tenant's dwelling unit;

(iv) The INS appeals process under § 912.9(e) has not been concluded;

(v) For a tenant, the PHA hearing process under § 912.9(f) has not been concluded;

(vi) Assistance is prorated in accordance with § 912.11;

(vii) Assistance for a mixed family is continued in accordance with § 912.10; or

(viii) Deferral of termination of assistance is granted in accordance with § 912.10.

(2) *When delay of assistance to an applicant is permissible.* Assistance to an applicant may be delayed after the conclusion of the INS appeal process, but not denied until the conclusion of the PHA informal hearing process, if an informal hearing is requested by the family.

(c) *Events causing denial or termination of assistance.* Assistance to an applicant shall be denied, and a tenant's assistance shall be terminated, in accordance with the procedures of this section, upon the occurrence of any of the following events:

(1) Evidence of citizenship (i.e., the declaration) and eligible immigration status is not submitted by the date specified in § 912.6(g) or by the expiration of any extension granted in accordance with § 912.6(h); or

(2) Evidence of citizenship and eligible immigration status is timely submitted, but INS primary and second verification does not verify eligible immigration status of a family member; and

(i) The family does not pursue INS appeal or PHA informal hearing rights as provided in this section; or

(ii) INS appeal and informal hearing rights are pursued, but the final appeal or hearing decisions are decided against the family member.

(d) *Notice of denial or termination of assistance.* The notice of denial or termination of assistance shall advise the family:

(1) That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance;

(2) That they may be eligible for proration of assistance as provided under § 912.11;

(3) In the case of a tenant, the criteria and procedures for obtaining relief under the preservation of families provision in § 912.10;

(4) The family has a right to request an appeal to the INS of the results of the secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal in accordance with the procedures of paragraph (e) of this section;

(5) The family has a right to request an informal hearing with the PHA either upon completion of the INS appeal or in lieu of the INS appeal as provided in paragraph (f) of this section;

(6) For applicants, the notice shall advise that assistance may not be delayed until the conclusion of the INS appeal process, but assistance may be delayed during the pendency of the PHA informal hearing process.

(e) *Appeal to the INS*—(1) *Submission of request for appeal.* Upon receipt of notification by the PHA that INS secondary verification failed to confirm eligible immigration status, the PHA shall notify the family of the results of the INS verification, and the family shall have 30 days from the date of the project owner's notification to request an appeal of the INS results. The request for appeal shall be made by the family communicating that request in writing directly to the INS. The family must provide the PHA with a copy of the written request for appeal and proof of mailing. For good cause shown, the PHA shall grant the family an extension of time within which to request an appeal.

(2) *Documentation to be submitted as part of appeal to INS.* The family shall forward to the designated INS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the INS document verification request form G–845S (used to process the secondary verification request) or such other form specified by the INS, and a cover letter indicating that the family is requesting an appeal of the INS immigration status verification results.

(3) *Decision by INS.*—(i) *When decision will be issued.* The INS will issue to the family, with a copy to the PHA, a decision within 30 days of its receipt of documentation concerning the family's appeal of the verification of immigration status. If, for any reason, the INS is unable to issue a decision within the 30 day time period, the INS will inform the family and the PHA of the reasons for the delay.

(ii) *Notification of INS decision and of informal hearing procedures.* When the PHA receives a copy of the INS decision, the PHA shall notify the family of its right to request an informal hearing on the PHA's ineligibility determination in accordance with the procedures of paragraph (f) of this section.

(4) *No delay, denial or termination of assistance until completion of INS appeal process; direct appeal to INS.* Pending the completion of the INS appeal under this section, assistance may not be delayed, denied or terminated on the basis of immigration status.

(f) *Informal hearing—(1) When request for hearing is to be made.* After notification of the INS decision on appeal, or in lieu of request of appeal to the INS, the family may request that the PHA provide a hearing. This request must be made either within 14 days of the date the PHA mails or delivers the notice under paragraph (d) of this section, or within 14 days of the mailing of the INS appeal decision issued in accordance with paragraph (e) of this section (established by the date of postmark).

(2) *Extension of time to request hearing.* The PHA shall extend the period of time for requesting a hearing (for a specified period) upon good cause shown.

(3) *Informal hearing procedures.* (i) For tenants, the procedures for the hearing before the PHA are set forth in 24 CFR part 966.

(ii) For applicants, the procedures for the informal hearing before the PHA are as follows:

(A) *Hearing before an impartial individual.* The applicant shall be provided a hearing before any person(s) designated by the PHA (including an officer or employee of the PHA), other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision;

(B) *Examination of evidence.* The PHA shall be provided the opportunity to examine and copy at the applicant's expense, at a reasonable time in advance of the hearing, any documents in the possession of the PHA pertaining to the applicant's eligibility status, or in the possession of the INS (as permitted by INS requirements), including any records and regulations that may be relevant to the hearing;

(C) *Presentation of evidence and arguments in support of eligible status.* The applicant shall be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings;

(D) *Controverting evidence of the project owner.* The applicant shall be provided the opportunity to controvert evidence relied upon by the PHA and to confront and cross-examine all witnesses on whose testimony or information the PHA relies;

(E) *Representation.* The applicant shall be entitled to be represented by an attorney, or other designee, at the applicant's expense, and to have such person make statements on the applicant's behalf;

(F) *Interpretive services.* The applicant shall be entitled to arrange for an interpreter to attend the hearing, at the expense of the applicant or PHA, as may be agreed upon by both parties;

(G) *Hearing to be recorded.* The applicant shall be entitled to have the hearing recorded by audiotape (a transcript of the hearing may, but is not required to be provided by the PHA); and

(H) *Hearing decision.* The PHA shall provide the applicant with a written final decision, based solely on the facts presented at the hearing within 14 days of the date of the informal hearing.

(g) *Judicial relief.* A decision against a family member, issued in accordance with paragraphs (e) or (f) of this section, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

(h) *Retention of documents.* The PHA shall retain for a minimum of 5 years the following documents that may have been submitted to the PHA by the family, or provided to the PHA as part of the INS appeal or the PHA informal hearing process:

(1) The application for financial assistance;

(2) The form completed by the family for income re-examination;

(3) Photocopies of any original documents (front and back), including original INS documents;

(4) The signed verification consent form;

(5) The INS verification results;

(6) The request for an INS appeal;

(7) The final INS determination;

(8) The request for a PHA informal hearing; and

(9) The final PHA hearing decision.

§ 912.10 Preservation of mixed families and other families.

(a) *Assistance available for mixed families.* (1) *Assistance available for tenant mixed families.* For a mixed family assisted under a Section 214 covered program on June 19, 1995, and following completion of the appeals and informal hearing procedures provided in § 912.9 if utilized by the family, one of the following three types of assistance may be available to the family:

(i) Continued assistance (see paragraph (b) of this section);

(ii) Temporary deferral of termination of assistance (see paragraph (c) of this section); or

(iii) Prorated assistance (see § 912.11; a mixed family must be provided prorated assistance if the family so requests); or

(2) *Assistance available for applicant mixed families.* Prorated assistance is also available for mixed families applying for assistance as provided in § 912.11.

(3) *Assistance available to other families in occupancy.* For families receiving assistance under a Section 214 covered program on the June 19, 1995 and who have no members with eligible immigration status, the PHA may grant the family temporary deferral of termination of assistance.

(b) *Continued assistance.* A mixed family may receive continued housing assistance if all of the following conditions are met:

(1) The family was receiving assistance under a Section 214 covered program on June 19, 1995;

(2) The family's head of household or spouse has eligible immigration status as described in § 912.5; and

(3) The family does not include any person (who does not have eligible immigration status) other than the head of household, any spouse of the head of household, any parents of the head of household, any parents of the spouse, or any children of the head of household or spouse.

(c) *Temporary deferral of termination of assistance.*—(1) *Eligibility for this type of assistance.* If a mixed family qualifies for prorated assistance (and does not qualify for continued assistance), but decides not to accept prorated assistance, or if a family has no members with eligible immigration status, the family may be eligible for temporary deferral of termination of assistance if necessary to permit the family additional time for the orderly transition of those family members with ineligible status, and any other family members involved, to other affordable housing. Other affordable housing is used in the context of transition of an ineligible family from a rent level that reflects HUD assistance to a rent level that is unassisted; the term refers to housing that is not substandard, that is of appropriate size for the family and that can be rented for an amount not exceeding the amount that the family pays for rent, including utilities, plus 25 percent.

(2) *Time limit on deferral period.* If temporary deferral of termination of assistance is granted, the deferral period shall be for an initial period not to exceed six months. The initial period may be renewed for additional periods of six months, but the aggregate deferral period shall not exceed a period of three years.

(3) *Notification requirements for beginning of each deferral period.* At the beginning of each deferral period, the PHA must inform the family of its ineligibility for financial assistance and offer the family information concerning, and referrals to assist in finding, other affordable housing.

(4) *Determination of availability of affordable housing at end of each deferral period.* Before the end of each deferral period, the PHA must:

(i) Make a determination of the availability of affordable housing of appropriate size based on evidence of conditions which when taken together will demonstrate an inadequate supply for affordable housing for the area in which the project is located, the consolidated plan (if applicable, as

described in 24 CFR part 91), the PHA's own knowledge of the availability of affordable housing, and on evidence of the tenant family's efforts to locate such housing; *and*

(ii) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination will be deferred again (provided that the granting of another deferral will not result in aggregate deferral periods that exceed three years), and a determination was made that other affordable housing is not available; *or*

(iii) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination of financial assistance will not be deferred because either granting another deferral will result in aggregate deferral periods that exceed three years, or a determination has been made that other affordable housing is available.

(d) *Option to select proration of assistance at end of deferral period.* A family who is eligible for, and receives temporary deferral of termination of assistance, may request, and the PHA shall provide, proration of assistance at the end of the deferral period if the family has made a good faith effort during the deferral period to locate other affordable housing.

(e) *Notification of decision on family preservation assistance.* A PHA shall notify the family of it's decision concerning the family's qualification for assistance under this section. If the family is ineligible for assistance under this section, the notification shall state the reasons, which must be based on relevant factors. For tenant families, the notice also shall inform the family of any applicable appeal rights.

§ 912.11 Proration of assistance.

(a) *Applicability.* This section applies to a mixed family other than a family receiving continued assistance under § 912.10(b), or other than a family who is eligible for and requests and receives temporary deferral of termination of assistance under § 912.10(c). An eligible mixed family who requests prorated assistance, must be provided prorated assistance.

(b) *Method of prorating assistance.* The PHA shall prorate the family's assistance by:

(1) *Step 1.* Determining total tenant payment in accordance with 24 CFR 913.107(a) (annual income includes income of all family members, including any family member who has not established eligible immigration status).

(2) *Step 2.* Subtracting the total tenant payment from a HUD-supplied ''public housing maximum rent'' applicable to the unit or the housing authority. (Public housing maximum rent shall be determined by HUD using the 95th percentile rent for the housing authority.) The result is the maximum subsidy for which the family could qualify if all members were eligible (''family maximum subsidy'').

(3) *Step 3.* Dividing the family maximum subsidy by the number of persons in the family (all persons) to determine the maximum subsidy per each family member who has citizenship or eligible immigration status (''eligible family member''). The subsidy per eligible family member is the ''member maximum subsidy.''

(4) *Step 4.* Multiplying the member maximum subsidy by the number of ''eligible'' family members.

(5) *Step 5.* The product of steps 1–4, as set forth in paragraph (b)(2) of this section is the amount of subsidy for which the family is eligible (''eligible subsidy''). The family's rent is the ''public housing maximum rent'' minus the amount of the eligible subsidy.

§ 912.12 Prohibition of assistance to noncitizen students.

(a) *General.* The provisions of §§ 912.10 and 912.11, permitting continued assistance, prorated assistance or temporary deferral of termination of assistance for certain families, do not apply to any person who is determined to be a noncitizen student, as defined in paragraph (b) of this section, or the family of the noncitizen student, as described in paragraph (c) of this section.

(b) *Noncitizen student.* For purposes of this part, a noncitizen student is defined as a noncitizen who:

(1) Has a residence in a foreign country that the person has no intention of abandoning;

(2) Is a bona fide student qualified to pursue a full course of study; and

(3) Is admitted to the United States temporarily and solely for purposes of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States, particularly designated by such person and approved by the Attorney General after consultation with the Department of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student (and if any such institution of learning or place of study fails to make such reports promptly the approval shall be withdrawn).

(c) *Family of noncitizen student.* The prohibition on providing assistance to a noncitizen student as described in paragraph (a) of this section also extends to the noncitizen spouse of the noncitizen student and minor children of any noncitizen student if the spouse or children are accompanying the student or following to join such student. The prohibition on providing assistance to a noncitizen student does not extend to the citizen spouse of the noncitizen student and the children of the citizen spouse and noncitizen student.

§ 912.13 Compliance with nondiscrimination requirements.

The PHA shall administer the restrictions on use of assisted housing by noncitizens with ineligible immigration status imposed by this part in conformity with the nondiscrimination requirements of, including, but not limited to, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–5) and the implementing regulations of 24 CFR part 1, section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations of 24 CFR part 8, the Fair Housing Act (42 U.S.C. 3601–3619) and the implementing regulations of 24 CFR part 100, and other civil rights statutes cited in the applicable program regulations. These statutes prohibit, among other things, discriminatory practices on the basis of race, color, national origin, sex, religion, age, disability and familial status in the provision of housing.

§ 912.14 Protection from liability for PHAs, State, local, and tribal government agencies and officials.

(a) *Protection from liability for PHAs.* HUD will not take any compliance, disallowance, penalty, or other regulatory action against a PHA with respect to any error in its determination of eligibility for financial assistance based on citizenship or immigration status:

(1) If the PHA established eligibility based upon verification of eligible immigration status through the verification system described in § 912.8;

(2) Because the PHA was required to provide an opportunity for the applicant or family to submit evidence in accordance with § 912.6;

(3) Because the PHA was required to wait for completion of INS verification of immigration status in accordance with § 912.8;

(4) Because the PHA was required to wait for completion of the INS appeal process provided in accordance with § 912.9(e); or

(5) Because the PHA was required to provide an informal hearing in

accordance with § 912.9(f) or 24 CFR part 966.

(b) *Protection from liability for State, local and tribal government agencies and officials.* State, local and tribal government agencies and officials shall not be liable for the design or implementation of the verification system described in § 912.8, and the informal hearings provided under § 912.9(f) and 24 CFR part 966, as long as the implementation by the State, local or tribal government agency or official is in accordance with prescribed HUD rules and requirements.

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

93. The authority citation for part 960 is revised to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437n, and 3535(d).

94. In § 960.204, paragraphs (a) and (d)(4) are revised to read as follows:

§ 960.204 PHA tenant selection policies.

(a) In addition to policies and regulations including preferences and priorities established by the PHA for eligibility and admission to its public housing projects pursuant to the Act, the ACC, and parts 912 and 913 of this chapter, each PHA shall adopt and implement policies and procedures embodying standards and criteria for tenant selection which take into consideration the needs of individual families for public housing and the statutory purpose in developing and operating socially and financially sound public housing projects that provide a decent home and a suitable living environment and foster economic and social diversity in the tenant body as a whole.

* * * * *

(d) * * *

(4) Provide for verification and documentation of information relevant to acceptance or rejection of an applicant, including documentation and verification of citizenship and eligible immigration status under 24 CFR part 912.

* * * * *

95. In § 960.206, paragraph (a) is revised to read as follows:

§ 960.206 Verification procedures.

(a) *General.* Adequate procedures must be developed to obtain and verify information with respect to each applicant. (See parts 912 and 913 of this chapter, and 24 CFR parts 750 and 760.) Information relative to the acceptance or rejection of an applicant or the grant or denial of a Federal preference under § 960.211 must be documented and placed in the applicant's file.

* * * * *

96. Section 960.209 is amended by adding two sentences at the end of paragraph (a), by adding one sentence at the end of paragraph (b), and by adding a new paragraph (c), to read as follows:

§ 960.209 Reexamination of family income and composition.

(a) * * * At the first regular reexamination after June 19, 1995, the PHA shall follow the requirements of 24 CFR part 912 concerning obtaining and processing information on the citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the PHA shall follow the requirements of 24 CFR part 912 concerning verification of the immigration status of any new family member.

(b) * * * At any interim reexamination after June 19, 1995 when there is a new family member, the PHA shall follow the requirements of 24 CFR part 912 concerning obtaining and processing information on the citizenship or eligible immigration status of the new family member.

(c) *Termination.* For provisions requiring termination of participation for failure to establish citizenship or eligible immigration status, see 24 CFR 912.9, and also 24 CFR 912.10 for provisions concerning assistance to certain mixed families (families whose members include those with citizenship and eligible immigration status and those without eligible immigration status) in lieu of termination of assistance.

Dated: March 8, 1995.

Henry G. Cisneros,

Secretary.

[FR Doc. 95–6358 Filed 3–14–95; 8:45 am]

BILLING CODE 4210–32–P

federal register

Monday
March 20, 1995

Part III

Department of Education

34 CFR Part 280

Magnet Schools Assistance Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 280

RIN 1810–AA76

Magnet Schools Assistance Program

AGENCY: Department of Education.

ACTION: Final rule.

SUMMARY: The Secretary revises the regulations governing the Magnet Schools Assistance Program (MSAP) to conform them to statutory provisions that authorize Magnet Schools Assistance. These regulations make technical changes in the existing regulations to incorporate the statutory amendments.

EFFECTIVE DATE: These regulations take effect April 19, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Steven L. Brockhouse, U.S. Department of Education, 600 Independence Avenue, SW., Room 4500, Portals Building, Washington, D.C. 20202–6140. Telephone: (202) 260–2476. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

A. Background

The Improving America's Schools Act (IASA) reauthorized the MSAP, which is now authorized under Part A of Title V of the Elementary and Secondary Education Act of 1965 (ESEA), as amended. The MSAP provides Federal financial assistance to local educational agencies (LEAs) for magnet schools that are part of approved desegregation plans that LEAs are implementing.

B. Explanation of Changes

The Secretary amends regulations in 34 CFR part 280 to conform to the amended statute. The statutory amendments incorporated in the regulations include—

- Add two new elements to the statement of purpose for the MSAP (§ 280.1(b) and (c))—one element addresses the development and implementation of magnet schools that will assist LEAs in achieving systemic reform; the other element addresses the development and design of innovative educational methods and practices;
- In § 280.2(a), add ''consortia of LEAs'' to those eligible to receive assistance under the MSAP;
- Clarify the definition of the term ''Magnet school'' in § 280.4(b) by inserting the words ''public elementary or secondary'' before the words ''school'' and ''education center;''
- Add a new assurance at § 280.20(b)(7) that applicants will give students residing in the local attendance area of the proposed magnet school projects equitable consideration for placement in those projects;
- Modify the assurance in § 280.20(b)(2) regarding the employment of teachers in courses of instruction assisted under the MSAP to include both teachers and those who supervise others who are teaching. Under the assurance both teachers and those who supervise other instructional personnel must be appropriately certified or licensed by the State;
- Modify the information required in grant applications by adding language in § 280.20(i)(1) that indicates that, as a part of an applicant's description of how MSAP assistance will promote desegregation, information must be included that describes how the proposed project will increase interaction among students of different social, economic, ethnic, and racial backgrounds;
- Further modify the information required in grant applications by specifying in § 280.20(i)(3) that applications must describe how an applicant will continue the magnet school project after MSAP assistance is no longer available including, if applicable, an explanation of why magnet schools that have been previously supported with MSAP funds cannot be continued without further assistance;
- Add requirements for information describing how and the extent to which MSAP assistance will increase student achievement in the instructional area or areas of the magnet school (§ 280.20(i)(2)); how MSAP assistance will be used to implement services and activities that are consistent with other programs under the ESEA, the Goals 2000: Educate America Act, and other Acts, as appropriate (§ 280.20(i)(4)); and what criteria will be used to select students to attend each magnet school proposed for the project (§ 280.20(i)(5));
- Add ''reading skills'' and ''geography'' to the subject areas identified in § 280.31(c)(2)(iii) and § 280.40(b)(2) in which instruction may be provided in magnet schools projects;
- Eliminate special considerations for ''Recentness of the implementation of the approved desegregation plan;'' ''Involvement of minority group children;'' and ''Degree of achievement.'' In their place, priorities are established for projects that propose to: carry out new, or significantly revised, magnet schools (§ 280.32(c)); select students to attend magnet schools by methods such as lottery, rather than through academic examination (§ 280.32(d)); and implement innovative educational approaches that are consistent with State and local systemic reform plans, if any, under title III of the Goals 2000: Educate America Act (§ 280.32(e)). The priority for ''Collaborative efforts'' (§ 280.32(f)) is revised to give priority to applicants whose projects seek to draw on comprehensive community involvement plans. This provides flexibility for applicants to promote various kinds of broad community collaboration (such as collaboration with business) in designing and implementing their magnet programs;
- Delete § 280.34, which indicates that a condition for receipt of a continuation award is satisfactory progress towards achieving the purposes of the program. However, the standard set forth in 34 CFR 75.253(a) of Education Department General Administrative Regulations requiring substantial progress continues to apply;
- Amend the rules governing allowable costs in § 280.40(a) by including planning and promotional costs directly related to the development of academic programs and services offered at magnet schools, in addition to the expansion, continuation, or enhancement of those programs and services;
- Further amend the allowable costs regulations in § 280.40(d) by including ''instructional staff, where applicable,'' to the personnel whose salaries may be paid or subsidized with MSAP funds. This permits funds to be used to employ instructional personnel other than licensed or certified teachers—such as instructional aides, artists in residence, instructors from institutions of higher education, and others—who would provide instruction to students;
- Further amend the allowable costs regulations in § 280.40(e) by permitting instructional activities designed to make the special curriculum of a magnet program available to students who are enrolled in the magnet school, but who are not enrolled in the magnet program, provided that the implementation of those instructional activities furthers the purposes of the MSAP;
- Eliminate the prohibition on the use of grant funds for consultants from § 280.41;
- Add a prohibition (§ 280.41(d)) on the use of funds for planning after the third year;
- Change the limitation in § 280.41(a) on the amount of funds that can be used for planning activities (*e.g.*, curriculum development, staff training) to permit

up to 50 percent of the amount received for the first year of the project to be used for planning; up to 15 percent of the amount received for the second year; and up to 10 percent of the amount received for the third year of the project;

- Remove § 280.42, which limited the amount that could be carried over from one budget period to the subsequent budget period; and
- Remove § 280.50, which prohibited a State from reducing State aid to an LEA because of assistance made available under the MSAP;

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering these grants effectively and efficiently. In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, the Secretary has determined that the benefits of the regulations justify the costs.

Intergovernmental Review

The program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Secretary's specific plans and actions for this program.

Waiver of Proposed Rulemaking

It is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations in accordance with the Administrative Procedure Act (5 U.S.C. 553). However, since these changes merely incorporate statutory amendments into the regulations and do not implement substantive policy, public comment could have no effect. Therefore, the Secretary has determined pursuant to 5 U.S.C. 553(b)(B) that public comment on these regulations is unnecessary and contrary to the public interest.

List of Subjects in 34 CFR Part 280

Civil rights, Desegregation, Education, Elementary and secondary education, Grant programs—education, Magnet schools, Reporting and recordkeeping requirements.

Dated: March 8, 1995.

Thomas W. Payzant,

Assistant Secretary for Elementary and Secondary Education.

(Catalog of Federal Domestic Assistance Number 84.165A—Magnet Schools Assistance Program)

The Secretary amends Part 280 of Title 34 of the Code of Federal Regulations as follows:

PART 280—MAGNET SCHOOLS ASSISTANCE PROGRAM

1. The authority citation for part 280 is revised to read as follows:

Authority: 20 U.S.C. 7201–7213, unless otherwise noted.

2. Section 280.1 is amended by adding the words ''or consortia of LEAs'' following ''(LEAs)'' and after ''LEAs'' in the undesignated introductory text; removing the word ''and'' at the end of paragraph (a); redesignating paragraph (b) as paragraph (d); adding new paragraphs (b) and (c); and revising the authority citation to read as follows:

§ 280.1 What is the Magnet Schools Assistance Program?

* * * * *

(b) The development and implementation of magnet school projects that will assist LEAs in achieving systemic reforms and providing all students the opportunity to meet challenging State content standards and challenging State performance standards;

(c) The development and design of innovative educational methods and practices; and

* * * * *

(Authority: 20 U.S.C. 7202)

3. Section 280.2 is amended by adding ''or consortium of LEAs'' after ''LEA'' in paragraphs (a), (a)(1), and (a)(2); by adding the words ''or those agencies'' after ''that agency'' at the end of paragraph (a)(1); and by revising the authority citation to read as follows.

(Authority: 20 U.S.C. 7205)

4. The authority citation for § 280.3 is revised to read as follows:

(Authority: 20 U.S.C. 7201–7213)

5. Section 280.4 paragraph (b) is amended by removing the definitions of ''Community-based organization,'' ''Implementation date,'' and ''Institution of higher education,'' by adding the words ''public elementary or secondary'' before the words ''school'' and ''education center'' in the definition of ''Magnet school,'' and by adding ''or consortium of LEAs'' after ''LEA'' in the definition of ''Special curriculum'', and by revising the authority citation to read as follows:

(Authority: 20 U.S.C. 7201–7213)

6. Section 280.10 paragraph (c) is amended by adding ''(1)'' after ''§ 280.2(a)'' and revising the authority citation to read as follows:

(Authority: 20 U.S.C. 7203)

7. Section 280.20 is amended by adding ''or consortium of LEAs'' after ''LEA'' in paragraphs (a), (b) introductory text, (c), (d), (e), (f), (f)(1), (f)(4), and (f)(5) introductory text; adding ''or consortium of LEAs' '' after ''LEA's'' in paragraph (f)(4)(ii), (f)(5)(ii), and (h); removing the word ''two'' in paragraphs (f)(4)(i)(C), (f)(4)(ii)(C), (f)(5)(i)(B), and (f)(5)(ii)(B); revising paragraphs (b) and (i); and revising the authority citation to read as follows:

§ 280.20 How does one apply for a grant?

* * * * *

(b) In its application, the LEA or consortium of LEAs shall provide assurances that it—

(1) Will use funds made available under this part for the purposes specified in section 5102 of the Act;

(2) Will employ teachers in the courses of instruction assisted under this part who are certified or licensed by the State to teach, or supervise others who are teaching, the subject matter of the courses of instruction;

(3) Will not engage in discrimination based upon race, religion, color, national origin, sex, or disability in the hiring, promotion, or assignment of employees of the agency or other personnel for whom the agency has any administrative responsibility;

(4) Will not engage in discrimination based upon race, religion, color, national origin, sex, or disability in the assignment of students to schools or to courses of instruction within schools of the agency, except to carry out the approved desegregation plan;

(5) Will not engage in discrimination based upon race, religion, color, national origin, sex, or disability in designing or operating extracurricular activities for students;

(6) Will carry out a high-quality education program that will encourage greater parental decisionmaking and involvement; and

(7) Will give students residing in the local attendance area of the proposed magnet school projects equitable consideration for placement in those projects.

* * * * *

(i) In addition to including the assurances required by this section, an LEA or consortium of LEAs shall describe in its application—

(1) How the applicant will use assistance made available under this part to promote desegregation, including how the proposed magnet school project will increase interaction among students of different social, economic, ethnic, and racial backgrounds;

(2) How and to what extent the assistance will increase student achievement in instructional areas offered;

(3) How the LEA or consortium of LEAs will continue the magnet schools project after assistance under this program is no longer available, including, if applicable, why magnet schools cannot be continued without the use of funds under this program.

(4) How assistance will be used to implement services and activities that are consistent with other programs under the Elementary and Secondary Education Act of 1965, the Goals 2000: Educate America Act, and other Acts, as appropriate, in accordance with section 14306 of the Act; and

(5) What criteria will be used in selecting students to attend the proposed magnet schools projects.

(Authority: 20 U.S.C. 7206)

8. Section 280.30(a) and (c) are amended by removing the words ''special consideration'' and inserting the word ''priority'' before the word ''factors''. The authority citation for § 280.30 is revised to read as follows:

(Authority: 20 U.S.C. 7201–7213)

9. In § 280.31 paragraph (c)(2)(iii) is amended by adding ''reading skills or'' after ''students' '' and ''geography,'' before ''English'', and the authority citation is revised to read as follows:

(Authority: 20 U.S.C. 7201–7213)

10. Section 280.32 is amended by revising the heading, removing paragraph (b), redesignating paragraph (d) as paragraph (b), removing the parenthetical reference to ''15 points'' from the redesignated paragraph (b), adding a new paragraph (d), and revising paragraphs (a), (c), (e), (f) and the authority citation to read as follows:

§ 280.32 How is priority given to applicants?

(a) *How priority is given.* In addition to the points awarded under § 280.31, the Secretary gives priority to the factors listed in paragraphs (b) through (f) of this section by awarding additional points for these factors. The Secretary indicates in the application notice published in the **Federal Register** how these additional points will be distributed.

* * * * *

(c) *New or revised magnet schools projects.* The Secretary determines the extent to which the applicant proposes to carry out new magnet schools projects or significantly revise existing magnet schools projects.

(d) *Selection of students.* The Secretary determines the extent to which the applicant proposes to select students to attend magnet schools by methods such as lottery, rather than through academic examination.

(e) *Innovative approaches and systemic reform.* The Secretary determines the extent to which the project for which assistance is sought proposes to implement innovative educational approaches that are consistent with the State's and LEA's systemic reform plan, if any, under the Goals 2000: Educate America Act.

(f) *Collaborative efforts.* The Secretary determines the extent to which the project for which assistance is sought proposes to draw on comprehensive community involvement plans.

(Authority: 20 U.S.C. 7207)

11. The authority citation for § 280.33 is revised to read as follows:

(Authority: 20 U.S.C. 7213(b))

12. Section 280.34 is removed.

13. Section 280.40 is amended by adding ''or consortium of LEAs'' after ''LEA'' in the undesignated introductory text; by adding ''development,'' before ''expansion'' and removing ''restriction in § 280.41(a)'' and adding, in its place, ''restrictions in § 280.41(a) and (d)'' in paragraph (a); by adding ''reading skills or'' before ''the knowledge'' and ''geography,'' before ''English'' in paragraph (b)(2); by adding ''reading skills or'' before ''the knowledge'' and ''geography,'' before ''English'' in paragraph (c)(3); by adding new paragraphs (d) and (e); and by revising the authority citation to read as follows:

§ 280.40 What costs are allowable?

* * * * *

(d) The payment or subsidization of the compensation of instructional staff, where applicable, who satisfy the requirements of paragraphs (c)(2) and (3) of this section.

(e) With respect to a magnet school program offered to less than the entire school population, for instructional activities that—

(1) Are designed to make available the special curriculum of the magnet school program to students enrolled in the school, but not in the magnet school program; and

(2) Further the purposes of the program.

(Authority: 20 U.S.C. 7208)

14. Section 280.41 is revised to read as follows:

§ 280.41 What are the limitations on allowable costs?

An LEA or consortium of LEAs that receives assistance under this part may not—

(a) Expend for planning more than 50 percent of the funds received for the first fiscal year, 15 percent of the funds received for the second fiscal year, and 10 percent of the funds received for the third fiscal year;

(b) Use funds for transportation;

(c) Use funds for any activity that does not augment academic improvement; or

(d) Use funds for planning after the third year.

(Authority: 20 U.S.C. 7209, 7210(b))

§ 280.42 [Removed]

15. Section 280.42 is removed.

Subpart F Removed

§ 280.50 [Removed]

16. Subpart F consisting of § 280.50 is removed.

[FR Doc. 95–6707 Filed 3–17–95; 8:45 am]
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federal register

Monday
March 20, 1995

Part IV

Department of Education

Magnet Schools Assistance Program, Applications for New Awards for Fiscal Year 1995; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.165A]

Magnet Schools Assistance Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1995

Purpose of Program Provides grants to eligible local educational agencies and consortia of such agencies to support magnet schools that are part of approved desegregation plans.
Eligible Applicants: Local educational agencies (LEAs) and consortia of such agencies.
Deadline for Transmittal of Applications: May 12, 1995.
Deadline for Intergovernmental Review: July 11, 1995.
Applications Available: March 20, 1995.
Available Funds: $111,359,000.
Estimated Range of Awards: $200,000–$4,000,000.
Estimated Average Size of Awards: $1,855,983.
Estimated Number of Awards: 60.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.
Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75 as published in the **Federal Register** on June 10, 1994 (59 FR 30258), 77, 79, 80, 81, 82, 85 and 86; and (b) the regulations in 34 CFR Part 280 as amended in this issue of the **Federal Register**.

Priorities

Background

The Magnet Schools Assistance Program (MSAP) makes grants to eligible LEAs and consortia of LEAs for programs that are designed to support——

- The elimination, reduction, or prevention of minority group isolation in public elementary and secondary schools with substantial proportions of minority group children;
- The development and implementation of magnet school projects that will assist in achieving systemic reform and providing all children the opportunity to meet challenging State content standards and challenging student performance standards;
- the development and design of innovative educational methods and practices; and
- courses of instruction within magnet schools that will substantially strengthen the knowledge of academic subjects and the grasp of tangible and marketable vocational skills of students attending those magnet schools.

Competitive Priorities

Under 34 CFR 75.105(c)(2)(i) and 34 CFR 280.32(b)-(f), the Secretary gives preference to applications that meet competitive priorities. Depending upon how well an application meets each priority, the Secretary awards additional points to the application for each priority up to the maximum number of points available for that priority. These points are in addition to any points the applicant earns under the selection criteria in 34 CFR 280.31.

The Secretary will award up to a total of 45 points for the following competitive priorities:

- *Need for assistance.* (15 points) The Secretary evaluates the applicant's need for assistance under this part, by considering—
- (a) The costs of fully implementing the magnet schools project as proposed;
- (b) The resources available to the applicant to carry out the project if funds under the program were not provided;
- (c) The extent to which the costs of the project exceed the applicant's resources; and
- (d) The difficulty of effectively carrying out the approved plan and the project for which assistance is sought, including consideration of how the design of the magnet school project—e.g., the type of program proposed, the location of the magnet school within the LEA—impacts on the applicant's ability to successfully carry out the approved plan.
- *New or revised magnet schools projects.* (10 points) The Secretary determines the extent to which the applicant proposes to carry out new magnet schools projects or significantly revise existing magnet schools projects.
- *Selection of students.* (10 points) The Secretary determines the extent to which the applicant proposes to select students to attend magnet schools by methods such as lottery, rather than through academic examination.
- *Innovative approaches and systemic reform.* (5 points) The Secretary determines the extent to which the project for which assistance is sought proposes to implement innovative educational approaches that are consistent with the State's and LEA's systemic reform plans, if any, under Title III of Goals 2000: Educate America Act.
- *Collaborative efforts.* (5 points) The Secretary determines the extent to which the project for which assistance is sought proposes to draw on comprehensive community involvement plans.

SUPPLEMENTARY INFORMATION: Applicants must submit with their applications one of the following types of desegregation plans: (1) A plan required by a court order; (2) a plan required by a State agency or official of competent jurisdiction; (3) a plan required by the Office for Civil Rights (OCR), United States Department of Education (ED), under Title VI of the Civil Rights Act of 1964 (Title VI plan); or (4) a voluntary plan adopted by the applicant.

Under the regulations, applicants are required to provide all of the information required under the regulations at § 280.20 (a)–(g) in order to satisfy the civil rights eligibility requirements found in § 280.2 (a)(2) and (b) of the regulations. In the past, if necessary, ED requested enrollment data or other information from applicants after their applications were submitted utilizing the procedures set forth in § 280.20(h). However, that follow-up process delayed awards under the program. In order to respond to requests from applicants and grantees that the Department announce MSAP awards earlier in the year, ED has modified the application review process for this competition.

Specifically, when conducting eligibility reviews of desegregation plans, under § 280.2 the Department will not follow up with applicants to obtain additional information or clarification. Accordingly, in order to satisfy the civil rights eligibility requirements found in § 280.2 (a)(2) and (b) of the regulations, it is very important that an applicant provide all of the information required under the regulations at § 280.20 (a)–(g). This notice describes that information.

In addition to the particular data and other items for required and voluntary plans, described separately in the information that follows, an application must include:

- Signed civil rights assurances (included in the application package);
- A copy of the applicant's desegregation plan; and
- An assurance that the plan is being implemented or will be implemented if the application is funded.

Required Plans

1. Plans Required by a Court Order

An applicant that submits a plan required by a court, State agency or official of competent jurisdiction, must submit complete and signed copies of all court or State documents demonstrating that the magnet schools are a part of the approved plan. Examples of the types of documents that would meet this requirement include—

- A Federal or State court order that establishes or amends a previous order

or orders by establishing additional or different specific magnet schools;

• A Federal or State court order that requires or approves the establishment of one or more unspecified magnet schools or that authorizes the inclusion of magnet schools at the discretion of the applicant.

2. Plans Required by a State Agency or Official of Competent Jurisdiction

An applicant submitting a plan ordered by a State agency or official of competent jurisdiction must provide documentation that shows that the plan was ordered based upon a determination that State law was violated. In the absence of this documentation, the applicant should consider its plan to be a voluntary plan and submit the data and information necessary for voluntary plans.

3. Title VI Required Plans

An applicant that submits a plan required by OCR under Title VI must submit a complete copy of the plan demonstrating that magnet schools are part of the approved plan.

4. Modifications to Required Plans

A previously approved desegregation plan that does not include the magnet school or program for which the applicant is now seeking assistance must be modified to include the magnet school component. The modification to the plan must be approved by the court, agency or official, that originally approved the plan. An applicant that wishes to modify a previously approved OCR Title VI plan to include different or additional magnet schools must submit the proposed modification for review and approval to the OCR Regional Office that approved its original plan.

An applicant should indicate in its application if it is seeking to modify its previously approved plan. However, all applicants must submit proof to ED of approval of all modifications to their plans by April 17, 1995.

Voluntary Plans

A voluntary desegregation plan must be approved each time an application is submitted for funding. Even if ED has approved a voluntary desegregation plan in an LEA in the past, the plan must be resubmitted to ED for approval as part of the application.

An applicant submitting a voluntary desegregation plan must include in its application:

• A copy of a school board resolution or other evidence of final official action adopting and implementing the desegregation plan, or agreeing to adopt and implement the desegregation plan upon the award of assistance.

• Enrollment and other information as required by the regulations at § 280.20(f) and (g) for applicants with voluntary desegregation plans. Enrollment data and information are critical to ED's determination of an applicant's eligibility under a voluntary desegregation plan.

A voluntary desegregation plan is a plan to reduce, eliminate, or prevent minority group isolation (MGI), either at a magnet school or at a feeder school—a school from which students are drawn to attend the magnet school. Under § 280.2, the establishment of the magnet school cannot result in an increase in MGI at a magnet school or any feeder school above the districtwide percentage of minority group students at the grade levels served by the magnet school.

The following example and those in subsequent sections of this notice are designed to assist applicants in the preparation of their application. The examples illustrate the types of data and information that have proven successful in the past for satisfying the voluntary desegregation plan regulation requirements.

District A has a districtwide percentage of 65.5 percent for its minority student population in elementary schools. District A has six elementary schools with the following minority student populations:

1. School A—67 percent.
2. School B—58 percent.
3. School C—64 percent.
4. School D—76 percent.
5. School E—47 percent.
6. School F—81 percent.

District A has five minority group isolated schools, i.e., five schools with minority student enrollment of over 50 percent. District A seeks funding to establish a magnet program at School F to reduce MGI at that school. For District A to be eligible for a grant, the establishment of the magnet program at School F should not increase the minority student enrollment at feeder school C to more than 65.5 percent (the districtwide percentage). Also, the establishment of the magnet program should not increase the minority student enrollment at feeder schools A or D at all because those schools are already above the districtwide percentage for minority students. If projected enrollments at a magnet or feeder school indicate that there will be an increase in MGI, District A should provide an explanation in its application for the increase that shows it is not caused by the establishment of the magnet program. See the discussion below.

An applicant that proposes to establish new magnet schools must submit projected data for each magnet and feeder school that show that the magnet schools and all feeders will maintain eligibility for the entire three-year period of the grant. Projected data are included in the examples below.

Objective: Reduction of Minority Group Isolation in Existing Magnet Schools

In situations where the applicant intends to reduce minority isolation in an existing magnet program, whether in the magnet school or in one or more of the feeder schools, and minority isolation has increased, the applicant must provide data and information to demonstrate that the increase was not due to the applicant's magnet program, in accordance with § 280.20(g). See the following examples.

Options for Demonstrating Reduction

1. Magnet School Analysis

District Z has two existing magnet high schools that began their magnet programs in different years. All of the other schools in the district are feeder schools to one or both of the magnet schools. District Z has six feeder schools and a districtwide minority enrollment of 59.95 percent. Since becoming a magnet school, Enterprise Magnet has increased its MGI from 74.40 percent to 76.55 percent. Because of this increase, this school would be found ineligible unless the increase in MGI was not caused by the magnet school. This may be shown through data indicating an increase either in minority enrollment districtwide or in the area served by the magnet school.

If District Z's districtwide minority enrollment has become more minority isolated due to districtwide demographic changes in the student population and if a magnet or a feeder school's increase in MGI is *less* than the districtwide increase in MGI, ED will conclude that the school's increase in MGI was not the result of the magnet programs, but due to the overall effect of demographic changes in the district as a whole.

District Z magnet school & base year	Base year					Current year					Increase in MGI
	Total enrollment	Minority		Nonminority		Total enrollment	Minority		Nonminority		
		Number	Percent	Number	Percent		Number	Percent	Number	Percent	
Jefferson (1993)	459	349	76.03	110	23.97	514	356	69.26	158	30.74	.....
Enterprise (1991)	375	279	74.40	96	25.60	388	297	76.55	91	23.45	2.15%

Note: ''Base Year'' is the year prior to the year each school became a magnet.

Feeder school (ranked in order of descending minority enrollments)	Base year					Current year					Increase in MGI
	Total enrollment	Minority		Nonminority		Total enrollment	Minority		Nonminority		
		Number	Percent	Number	Percent		Number	Percent	Number	Percent	
Rose	398	301	75.63	97	24.37	401	278	69.33	123	30.67	.....
Rocky Mount	289	199	68.86	90	31.14	291	211	72.51	80	27.49	3.65%
Wheeler	239	144	60.25	95	39.75	250	153	61.20	97	38.80	0.95%
King	289	144	49.83	145	50.17	277	149	53.79	128	46.21	.....
Tinker	451	211	46.78	240	53.22	423	221	52.25	202	47.75	.....
Holly	481	122	25.36	359	74.64	450	130	28.89	320	71.11	.....
Districtwide	2,981	1,749	58.67	1,232	41.33	2,994	1,795	59.95	1,199	40.05	1.28%

Projected magnet school & base year	1995–1996 Projected						1996–1997 Projected					1997–1998			
	Total enrollment	Minority		Nonminority		Total enrollment	Minority		Nonminority		Total enrollment	Minority		Non-minority	
		Number	Percent	Number	Percent		Number	Percent	Number	Percent		Number	Percent	Number	Percent
Jefferson (1993)	500	335	67	165	33	510	337	66	173	34	515	340	66	175	34
Enterprise (1991)	390	289	74	101	26	400	288	72	112	28	410	295	72	115	28

Feeder School	1995–1996 Projected					1996–1997 Projected					1997–1998 Projected				
	Total enrollment	Minority		Nonminority		Total enrollment	Minority		Nonminority		Total enrollment	Minority		Nonminority	
		Number	Percent	Number	Percent		Number	Percent	Number	Percent		Number	Percent	Number	Percent
Rose	400	272	68	128	32	400	272	68	128	32	400	264	66	136	34
Rocky Mount	300	210	70	90	30	300	210	70	90	30	300	204	68	96	32
Wheeler	250	148	59	102	41	250	148	59	102	41	250	148	59	103	41
King	280	151	54	129	46	280	151	54	129	46	280	151	54	129	46
Tinker	430	232	54	198	46	430	232	54	198	46	430	232	54	198	46
Holly	460	161	35	299	65	460	184	40	276	60	460	207	45	253	55
Districtwide	3,010	1,798	60	1,212	40	3,030	1,822	60	1,208	40	3,045	1,841	60	1,204	40

However, as with the magnet Enterprise, if the MGI in a magnet increases above the districtwide increase, an applicant must demonstrate that the magnet is not causing the problem. In order to show that the increase in MGI at a particular school is not the result of the operation of a magnet, a district should provide student transfer data on the number of minority and nonminority students that attend the magnet program from the other feeder schools in the district for the current year. If, by subtracting from the magnet enrollment those students that came from other schools, the MGI is higher than the districtwide average, it can be concluded that the increase in MGI was not caused by the magnet school.

Current year student transfer data for magnet schools that increase in minority group isolation over the districtwide minority enrollment.	Current year				
	Total enrollment	Minority		Nonminority	
		Number	Percent	Number	Percent
Enterprise	388	297	76.55	91	23.45
Students transferred to Jefferson to attend magnet program	25	4	.....	21	.....
Magnet school minority enrollment with transfer students ''returned'' to feeders.	363	293	80.72	70	19.28

Current year student transfer data for feeder schools that increase in minority group isolation over the districtwide minority enrollment.	Current year				
	Total enrollment	Minority		Nonminority	
		Number	Percent	Number	Percent
Rocky Mount	291	211	72.51	80	27.49
Students attending Jefferson	21	16	.....	5	.....
Students attending Enterprise	19	15	.....	4	.....
Feeder school minority enrollment with transfer students ''returned''from magnet	331	242	73.11	89	26.89

2. Feeder School Analysis

In District Z, two feeder schools, Rocky Mount and Wheeler, increased in MGI by 3.65 percent and 0.95 percent respectively. Since Wheeler's MGI increase of 0.95 percent is less than the districtwide MGI increase of 1.28 percent, Wheeler's MGI increase was due to the demographic changes in the district and further scrutiny of Wheeler is not required.

Because Rocky Mount, a feeder school to magnet programs at Jefferson and Enterprise, increased in MGI over the districtwide average from 68.86 percent to 72.51 percent, this would make both Jefferson and Enterprise ineligible unless the district demonstrates that the increase was not because of the magnet programs. The clearest way for an applicant to show this is to provide student transfer data on the number of minority and nonminority students that left Rocky Mount to attend magnet programs at Jefferson and Enterprise. By adding the number of students that transferred to the magnet programs to Rocky Mount's total enrollment, ED can determine whether the increase was due to the magnet program. If it can be demonstrated that without the magnet program, the MGI at the feeder school would be even higher, these magnet schools would be found eligible.

Some applicants may find it impossible to provide the type of student transfer data referred to above. In some cases, these applicants may be able to present demographic or other statistical data and information that would satisfy the requirements of the statute and regulations. This demographic data must persuasively demonstrate that the operation of a proposed magnet school would reduce, eliminate, or prevent minority group isolation in the applicant's magnet schools and would not result in an increase of MGI at one of the applicant's feeder schools above the districtwide percentage for minority students at the same grade levels as those served in the magnet school. (34 CFR § 280.20(g)). For example, an applicant might include data provided to it by a local social service agency about the numbers and concentration of families in a recent influx of immigrants into the neighborhood or attendance zone of the feeder school.

3. Additional Base-Year Data

If an applicant believes that comparing a magnet program's current-year enrollment data with its base year—*i.e.*, the year prior to the year each school became a magnet or a feeder—enrollment data is misleading due to significant changes that have occurred in attendance zones or other factors affecting the magnet school or in the closing and combining of other schools with the magnet school, additional and more recent enrollment data for an alternative to the base year may be submitted along with a justification for its submission.

Objective: Conversion of an Existing School to a New Magnet Program

District X will convert Williams, an existing elementary school, to a new elementary magnet program. Currently, Williams has a minority enrollment of 94.67 percent. The district projects that the magnet program will reduce minority group isolation at Williams to 89 percent in the first year of the project. The projection of enrollment should be based upon reasonable assumptions and should clearly state the basis for these assumptions, *e.g.*, parent or student interest surveys, or other objective indicators, such as waiting lists for other magnet schools in the district.

District X Magnet School	Current year					1995–1996 Projected				
	Total enrollment	Minority		Nonminority		Total enrollment	Minority		Nonminority—	
		Number	Percent	Number	Percent		Number	Percent	Number	Percent
Williams	450	426	94.67	24	5.33	450	400	89	50	11

Feeder School (Ranked in order of descending minority enrollments)	Current year					1995–1996 Projected				
	Total enrollment	Minority		Nonminority—		Total enrollment	Minority		Nonminority	
		Number	Percent	Number	Percent		Number	Percent	Number	Percent
Shaw	398	179	44.97	219	55.03	400	190	48	210	53
Lincoln	477	186	38.99	291	61.01	480	210	44	270	56
Districtwide	1,325	791	59.70	534	40.30	1,330	800	60	530	40

Magnet School	1996–1997 Projected					1997–1998 Projected				
	Total enrollment	Minority		Nonminority—		Total enrollment	Minority		Nonminority	
		Number	Percent	Number	Percent		Number	Percent	Number	Percent
Williams	450	392	87	59	13	450	383	85	67	15

Feeder School (Ranked in order of descending minority enrollments)	1996–1997 Projected					1997–1998 Projected				
	Total enroll-ment	Minority		Nonminority—		Total enroll-ment	Minority		Nonminority	
		Number	Percent	Number	Percent		Number	Percent	Number	Percent
Shaw	410	200	49	210	51	420	215	51	205	49
Lincoln	490	220	45	270	55	500	235	47	265	53
Districtwide	1,350	812	60	538	40	1,370	833	61	537	39

Objective: Construction of New Magnet School/Reopening a Closed School

District Y will construct a new school, Barton, and open its magnet program in 1996. There is no preexisting school, and consequently, it appears that no enrollment data are readily available to use as a comparison. However, the district estimates that if the proposed magnet school had opened as a ''neighborhood school,'' without a magnet program designed to attract students from outside the ''neighborhood'' or attendance zone, it would have a minority enrollment of 67 percent. This estimate was based on national census data, supplemented by more current data on the neighborhood provided by the local county government. The district further reasonably anticipates, based on surveys and other indicators, that when the new school opens as a magnet school in 1996, it will have a minority enrollment of 58 percent.

District Y Magnet School	Current year					1995–96 Projected					
	Total enroll-ment	Minority enroll-ment	Nonminority			Total percent	Minority	Nonminority			
			Number	Percent	Number		Enroll-ment	Number	Percent	Number	Percent
Barton	600	400	66.67	200	33.33	—	—	—	—	—	

Note: Since this magnet will not open until 1996, the current year is the base year. Provide hypothetical base year data for what the school would look like if it had opened as a neighborhood school. For example, census data could be used to estimate the hypothetical enrollment.

Feeder School (ranked in order of descending minority enrollments)	Total Enroll-ment	Current year					1995–96 projected			
		Minority		Nonminority		Total enroll-ment	Minority		Nonminority	
		Number	Percent	Number	Percent		Number	Percent	Number	Percent
Clark	298	101	33.89	197	66.11	—	—	—	—	—
Topper	324	111	34.26	213	65.74	—	—	—	—	—
Districtwide	1,222	612	50.08	610	49.92	—	—	—	—	—

Magnet School	1996–1997 Projected					1997–1998 Projected				
	Total enroll-ment	Minority		Nonminority		Total enroll-ment	Minority		Nonminority	
		Number	Percent	Number	Percent		Number	Percent	Number	Percent
Barton	600	336	58	250	42	580	331	57	249	43

Feeder School (ranked in order of descending minority enrollments)	1996–97 Projected					1997–98 Projected				
	Total enroll-ment	Minority		Nonminority		Total enroll-ment	Minority		Nonminority	
		Number	Percent	Number	Percent		Number	Percent	Number	Percent
Clark	300	125	42	175	58	310	136	44	174	56
Topper	330	135	41	195	59	340	146	43	194	57
Districtwide	1,230	610	50	620	50	1,230	613	50	617	50

Objective: Reduction, Elimination, or Prevention of MGI at Targeted Feeder Schools

Many applicants apply for MSAP funding to reduce, eliminate, or prevent minority group isolation at a magnet school. However, some applicants have established magnet programs at schools that are not minority-isolated for the purpose of reducing, eliminating, or preventing minority isolation at one or more targeted feeder schools. The data requirements and analysis for this type of magnet program are the same as described for ''Existing Magnet Schools.'' In this example, MGI is being reduced in each of the targeted feeder schools.

Magnet School	Base Year					Current Year				Nonminority
	Total enroll-ment	Minority		Nonminority		Total number	Percent	Minority		
		Percent	Number	Percent	Enroll-ment			Number	Percent	
Douglas	505	129	25.54	376	74.46	520	221	42.50	299	57.50

Feeder School (ranked in order of descending minority enrollments.)	Base year					Current year				
	Total enrollment	Minority		Nonminority		Total enrollment	Minority		Nonminority	
		Number	Percent	Number	Percent		Number	Percent	Number	Percent
North	398	309	77.64	89	22.36	401	275	68.58	126	31.42
Central	312	239	76.60	73	23.40	300	229	76.33	71	23.67
South	289	205	70.93	84	29.07	302	189	62.58	113	37.42
Districtwide	1,504	882	58.64	622	41.36	1,523	914	60.01	609	39.99

Magnet School	Total enrollment	1995–96 Projected					1996–97 Projected					1997–98 Projected			
		Minority		Nonminority		Total enrollment	Minority		Nonminority		Total enrollment	Minority		Nonminority	
		Number	Percent	Number	Percent		Number	Percent	Number	Percent		Number	Percent	Number	Percent
Douglas	520	234	45	286	55	525	247	47	278	53	530	276	52	254	48

Feeder School	1995–96 Projected					1996–97 Projected					1997–98 Projected				
	Total enrollment	Minority		Nonminority		Total enrollment	Minority		Nonminority		Total enrollment	Minority		Nonminority	
		Number	Percent	Number	Percent		Number	Percent	Number	Percent		Number	Percent	Number	Percent
North	410	275	67	135	33	410	267	65	143	35	410	258	63	152	37
Central	300	225	75	75	25	300	222	74	78	26	300	204	68	96	32
South	310	186	60	124	40	310	186	60	124	40	310	186	60	124	40
Districtwide	1,540	920	60	620	40	1,545	922	60	623	40	1,550	924	60	626	40

Objective: Prevention of Minority Group Isolation

An applicant that applies for MSAP funding for the purposes of preventing minority isolation must demonstrate that without the intervention of the magnet program, the magnet school or targeted feeder school will become minority-isolated within the project period. Generally this may be documented by showing a trend in the enrollment data for the proposed school. For example, if a neighborhood school currently has a 45 percent minority enrollment and, for the last three years, minority enrollment has increased an average of three percent each year (36 percent, 39 percent, and 42 percent), it is reasonable to expect that, in three years, the school would exceed 50 percent thereby becoming minority-isolated during the project period without the intervention of a magnet. The applicant in this example should submit this enrollment data in its application.

The preceding examples are not intended to be an exhaustive set of examples.

Applicants with questions about their desegregation plans and the information required in support of those desegregation plans (including applicants that find that these examples do not fit their circumstances and applicants who find that the enrollment data requested is unavailable or do not reflect accurately the effectiveness of their proposed magnet program) are encouraged to contact ED for technical assistance, prior to submitting their application by calling the contact person listed under the ''**FOR APPLICATIONS OR INFORMATION**'' heading.

FOR APPLICATIONS OR INFORMATION CONTACT: Steven L. Brockhouse, U.S. Department of Education, 600 Independence Avenue, SW., Portals Room 4509, Washington, DC 20202–6140. Telephone (202) 260–2476. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a dsicretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 3021–3032.

Dated: March 8, 1995.

Thomas W. Payzant,

Assistant Secretary, Elementary and Secondary Education.

[FR Doc. 95–6708 Filed 3–17–95; 8:45 am]

BILLING CODE 4000–01–P

federal register

Monday
March 20, 1995

Part V

Department of the Interior

Bureau of Indian Affairs

Availability of Final Environmental Impact Statement for Livestock Grazing and Prairie Dog Management for the Rosebud and Cheyenne River Sioux Reservations in South Dakota; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Availability of Final Environmental Impact Statement for Livestock Grazing and Prairie Dog Management for the Rosebud and Cheyenne River Sioux Reservations in South Dakota

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that a Final Environmental Impact Statement (FEIS) for proposed livestock grazing and prairie dog management for the Rosebud and Cheyenne River Sioux Reservations in South Dakota is available for final public review. This notice is furnished as required by the National Environmental Policy Act (NEPA) Regulations (40 CFR 1503 and 1506.9) to obtain comments from government agencies and the public on the FEIS.

DATE: Send comments on or before April 19, 1995.

ADDRESSES: *Send comments to:* Mr. Donald Whitener, Acting Area Director, Bureau of Indian Affairs, Aberdeen Area Office, 115 4th Avenue SE., Aberdeen, South Dakota 57401. Fax (605) 226–7446.

FOR FURTHER INFORMATION CONTACT: Mr. Wayland Lilly, Bureau of Indian Affairs, Aberdeen Area Office, 115 4th Avenue SE., Aberdeen, South Dakota 57401. Telephone (605) 226–7621. Fax (605) 226–7358. Copies of the FEIS are available at this address. All agencies and individuals who participated in the scoping process and public hearings have been sent copies.

SUPPLEMENTARY INFORMATION: In 1991, the Bureau of Indian Affairs (BIA) reviewed tribal council proposals to poison black-tailed prairie dogs on the Cheyenne River and Rosebud Sioux Reservations. An Environmental Assessment (EA) and a Biological Assessment were prepared, pursuant to NEPA and to the Endangered Species Act (ESA), respectively. Because of insufficient personnel, time, and funds, the BIA was unable to meet U.S. Fish and Wildlife Service (USFWS) and NEPA requirements for analyzing impacts on prairie dog/black-footed ferret habitat and threatened and endangered species, such as the bald eagle, peregrine falcon, and American burying beetle. The BIA, therefore, only investigated the effects of prairie dog poisoning programs proposed by the tribal councils.

The BIA initiated the EIS with a Notice of Intent in the **Federal Register** on November 18, 1992, after the USFWS issued an opinion that the proposed poisoning programs would jeopardize the endangered, black-footed ferret. The draft EIS was published in June 1994 (**Federal Register**, June 16, 1994).

Public involvement in scoping included three (3) open meetings on each reservation, radio and newspaper announcements, and direct mailings of scoping notices. The 60-day comment period on the draft EIS ended on August 20, 1994. Eleven (11) Federal, state, and local agencies, ten (10) organizations, and twelve (12) individuals provided comments. Some of these were submitted by letter, in response to extensive mailings of the draft EIS, summary, and availability notices. Others were delivered orally, at the public hearing on the draft held on each reservation. Most comment addressed the proposed action for the Rosebud Reservation.

The BIA received the draft Biological Opinion for comment from the USFWS on November 10, 1994. The Aberdeen Area Office responded with concerns regarding BIA trust responsibilities towards tribes and the implementation of reasonable and prudent alternatives and conservation measures. The final Biological Opinion was issued on December 29, 1994.

The alternatives for the Cheyenne River Reservation include No Action (current management); a Proposed Action (Prairie Management Plan); four alternatives that would preserve approximately 10,000 acres of prairie dogs on Indian trust lands along the Moreau River while treating various proportions of prairie dog acreage on trust lands away from the river; and a fifth alternative that would treat half of the prairie dog acres on the reservation, including those along the Moreau River.

Alternatives for the Rosebud Reservation include No Action; a Proposed Action that would treat 100 percent of prairie dog acres on Indian trust lands; an alternative that would not treat prairie dogs within the 7,416-acre Corn Creek Management Area (CCMA), but would treat 100 percent of prairie dog acres outside the CCMA; and an alternative that also would treat all prairie dog towns outside the CCMA, but would limit those on trust lands within the CCMA to a single treatment.

All action alternatives for both reservations include grazing management systems.

The preferred alternative for Cheyenne River is the Proposed Action, which consists of the tribal Prairie Management Plan. This would restore the prairie ecosystem to a more natural state, in which prairie dog populations and other wildlife species coexist with livestock production. The plan includes: (1) A grazing management system that would increase water development and fencing to improve cattle distribution; (2) funding for habitat set-asides, to compensate landowners for retaining prairie dog colonies in order to maintain biodiversity and enhance black-footed ferret populations, should the ferret be reintroduced; (3) conservation measures for threatened and endangered species; (4) education of permittees, landowners, tribal and BIA land managers, and the public on the use and benefits of proposed management techniques; and (5) limitations on the control of prairie dogs in certain areas, such as cemeteries, pow wow grounds, and near residences.

The preferred alternative for Rosebud is the Proposed Action. This consists of a plan that would restore the prairie ecosystem to where prairie dog populations are maintained at levels that improve range conditions for livestock production, and thus increase income to the tribe and to Indian landowners. It includes: (1) A grazing management system that would increase water development, fencing, mechanical treatments, and planting to improve cattle distribution; (2) use of zinc phosphide to eradicate black-tailed prairie dogs on 100% (45,000 acres) of trust lands, with additional treatments in the third and fifth year following to ensure complete control; and (3) safety and environmental mitigation measures, as listed on pages 3–14 through 3–15 of the DEIS, for the use of zinc phosphide. The black-footed ferret is not considered in this alternative, in deference to a Rosebud Sioux Tribal Council resolution requesting that the ferret not be reintroduced on or near the reservation.

Dated: March 13, 1995.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 95–6756 Filed 3–17–95; 8:45 am]

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federal register

Monday
March 20, 1995

Part VI

Postal Service

39 CFR Part 20

International Postal Rates and Fees; Proposed Changes; Proposed Rule

POSTAL SERVICE

39 CFR Part 20

International Postal Rates and Fees; Proposed Changes

AGENCY: Postal Service.

ACTION: Proposed changes in international postal rates and fees.

SUMMARY: Pursuant to its authority under 39 U.S.C. 407, the Postal Service is proposing changes in international postal rates and fees.

As required under the Postal Reorganization Act, the proposed changes will result in international postal rates that do not apportion the costs of the service so as to impair the overall value of the service to the users, are fair and reasonable, and are not unduly or unreasonably discriminatory or preferential.

DATES: Comments on the proposed changes must be received on or before April 19, 1995.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Pricing, U.S. Postal Service, 475 L'Enfant Plaza, SW., Room 6670, Washington, DC 20260–2406. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in room 6670, at the above address.

FOR FURTHER INFORMATION CONTACT: John F. Alepa, (202) 268–2650.

SUPPLEMENTARY INFORMATION: The proposed international rates and fees, shown in the tables below, are needed by the Postal Service to accommodate changes in the cost of providing international mail service.

The Postal Service proposes to eliminate the surface rates for letters, letter packages, and postal and post cards (surface LC rates). The costs associated with processing and dispatching LC items make it desirable to merge the air and surface mailstreams into a single air service that will provide the lowest combined cost and improve overall service quality. Surface LC volume has been declining for a number of years and has now reached the point where it is uneconomical to continue to separate the surface and air letter mailstreams. Surface LC is less than 1.5 percent of total air and surface LC volume.

The Postal Service also proposes to lower the minimum weight for M-bags (direct sacks of printed matter to a single addressee) from 15 to 11 pounds to increase the availability of M-bags for customers.

The rate structure for International Surface Air Lift (ISAL) is being simplified and modified. Currently, there is a piece rate of 32 cents to all countries only for items weighing 2 ounces or less. Items weighing more than 2 ounces are charged only a per-pound rate based on the rate group assigned to the country of destination. There are four country destination rate groups. The proposed rate structure has a per-piece charge for each rate group for all items regardless of weight and a per-pound charge based on the total weight of the mail to a particular rate group. The per-piece rates are 23 cents per piece to rate group 1 and 10 cents per piece to rate groups 2, 3, and 4. M-bags are not subject to the piece rate, only the per-pound charge. Countries continue in the same rate groups. The proposed gateway discount is 25 cents.

Rates for Express Mail International Service (EMS) have been revised. It is also proposed that the deaveraging of rates within certain rate groups would be beneficial to meet the market characteristics of mail flows to particular country-specific destinations. Accordingly, countries previously defined by rate group 1 are identified separately by their own country-specific rates. These countries are Canada, Mexico, and Great Britain. Rates for these countries are shown in section I.A.

Country-specific rates are also proposed for China and Japan, instead of including them in the rate groups to which they were previously assigned. The rates for these countries are shown in section I.A. All remaining countries have been configured into a revised set of rate groups. These rate groups are shown in section I.A.

A separate rate has been established for publishers' periodicals to Mexico, and, as a result, separate rates for books and sheet music to Mexico are established.

The bulk letter service to Canada is expanded from a maximum of 1 ounce to a maximum of 3 ounces. This increased maximum will enable more mailers to benefit from this program.

For air parcel post, Germany has been moved from rate group C to B. For air AO, Malta has been moved from rate group AA to EU.

In the tables below, some international fees are marked with an asterisk. The asterisk indicates that the Postal Service adopted these fees effective January 1, 1995, concurrent with the changes to domestic rates and fees that took effect on that date. These rates and fees are the same as the corresponding rates and fee for the equivalent domestic service. They are presented for convenience and information only.

Although the Postal Service is exempted by 39 U.S.C. 410(a) from the advance-notice requirements of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service invites public comment at the above address.

The Postal Service proposes to adopt the following rates and fees and to amend the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, Incorporation by reference, International postal services.

Stanley F. Mires,

Chief Counsel, Legislative.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. The International Mail Manual is amended to incorporate the following postal rates and fees:

International Postal Rates and Fees

I. Express Mail International Service

(See section VII for country rate groups.)

A. On Demand Service

1. Country-Specific Rates

Weight not over (lb.)	Country				
	Canada	Mexico	Great Britain	China	Japan
0.5	$15.50	$15.00	$16.50	$15.00	$15.00
1	18.00	17.50	18.75	17.50	17.00
2	22.00	21.00	22.50	20.00	19.50
3	25.50	24.50	26.50	26.00	25.00
4	28.50	28.00	30.00	33.00	31.00
5	32.00	30.75	34.00	36.00	34.00
Each add'l pound or fraction	3.50	2.75	3.75	6.00	5.50

2. Rate Group Countries

Weight not over (lb.)	Rate group					
	1	2	3	4	5	6
0.5	See Country-Specific Rates	$21.00	$15.00	$19.00	$18.00	$20.00
1		23.00	18.00	23.50	19.75	22.50
2		26.00	21.00	26.00	26.00	26.50
3		28.50	27.00	32.00	29.50	32.50
4		34.00	35.00	36.75	33.50	39.50
5		39.00	39.50	42.25	37.50	47.50
Each add'l pound or fraction		4.50	6.00	5.75	3.90	6.50

B. Custom Designed Service

1. Country-Specific Rates

Weight not over (lb.)	Country				
	Canada	Mexico	Great Britain	China	Japan
0.5	Custom Designed Service Not Available	$23.00	$24.50	$23.00	$23.00
1		25.50	26.75	25.50	25.00
2		29.00	30.50	28.00	27.50
3		32.50	34.50	34.00	33.00
4		36.00	38.00	41.00	39.00
5		38.75	42.00	44.00	42.00
Each add'l pound or fraction		2.75	3.75	6.00	5.50

2. Rate Group Countries

Weight not over (lb.)	Rate group					
	1	2	3	4	5	6
0.5	See Country-Specific Rates	$29.00	$23.00	$27.00	$26.00	$28.00
1		31.00	26.00	31.50	27.75	30.50
2		34.00	29.00	34.00	34.00	34.50
3		36.50	35.00	40.00	37.50	40.50
4		42.00	43.00	44.75	41.50	47.50
5		47.00	47.50	50.25	45.50	55.50
Each add'l pound or fraction		4.50	6.00	5.75	3.90	6.50

II. Letters and Letter Packages

All LC mail (letters, letter packages, post and postal cards, and aerogrammes) receives First-Class service in the United States, dispatch by the most expeditious transportation available, and airmail or priority service in the destination country. Mailer should endorse all LC items ''Airmail'' or ''Par Avion.''

A. Canada and Mexico

Weight not over		Canada [1]	Mexico
(lb.)	(oz.)		
0	0.5	$0.46	$0.4
0	1.	52	0.46
0	1.5	0.64	0.66
0	2	0.72	0.86
0	3	0.95	1.26
0	4	1.14	1.66
0	5	1.33	2.06

Weight not over (lb.)	Weight not over (oz.)	Canada [1]	Mexico
0	6	1.52	2.46
0	7	1.71	2.86
0	8	1.90	3.26
0	9	2.09	3.66
0	10	2.28	4.06
0	11	2.47	4.46
0	12	2.66	4.86
1	0	3.42	6.46
1	8	4.30	9.66
2	0	5.18	12.86
2	8	6.06	16.06
3	0	6.94	19.26
3	8	7.82	22.46
4	0	8.70	25.66

[1] A 4-pound maximum applies except for registered items sent to Canada. Canada-bound registered items may weigh up to 66 pounds. For registered items weighing over 4 pounds, the rate is $1.76 for each additional pound up to a 66-pound limit.

BULK LETTER SERVICE TO CANADA

[See IMM 225]

Weight not over (oz.)	Bulk letter service to Canada
0.5	$0.42
1	0.48
1.5	0.60
2	0.68
3	0.91

B. Countries Other Than Canada and Mexico

(Maximum weight: 64 ounces)

Weight not over (oz.)	All countries (other than Canada and Mexico)
0.5	$0.60
1.0	100
Each additional 0.5 ounce, up to and including 32 ounces	0.40
Each additional ounce over 32	0.40

C. International Priority Airmail (IPA)

(See section VII for country rate groups.)

Rate group	Piece rate	pound rate
Worldwide Nonpresort	$0.25	$8.55
Presort:		
Group 1	0.25	5.15
Group 2	0.10	71.5
Group 3	0.10	8.50

III. Post/Postal Cards and Aerogrammes

A. Post/postal Cards

Country	Rate
Canda	$0.40
Mexico	0.35
All others	0.50

B. Aerogrammes

All countries: $0.50 each.

IV. Other Articles (AO) (Includes Printed Matter and Small Packets)

A. Regular Printed Matter and Small Packets—Surface

Weight not over (lb.)	Weight not over (oz.)	Country: Canada	Mexico	All others
0	1	$0.46	$0.40	$0.50
0	2	0.60	0.60	0.80
0	3	0.88	0.80	1.00
0	4	1.02	0.94	1.21
0	5	1.16	1.22	1.63
0	6	1.30	1.22	1.63
0	7	1.44	1.50	2.05
0	8	1.58	1.50	2.05
0	9	1.72	1.78	2.47
0	10	1.86	1.78	2.47
0	11	2.00	2.06	2.89
0	12	2.14	2.06	2.89
0	13	2.28	2.34	3.31
0	14	2.42	2.34	3.31
0	15	2.56	2.62	3.73
1	0	2.70	2.62	3.73
1	2	2.90	2.86	4.03
1	4	3.10	3.10	4.33
1	6	3.30	3.34	4.63
1	8	3.50	3.58	4.93
1	10	3.70	3.82	5.23
1	12	3.90	4.06	5.53
1	14	4.10	4.30	5.83
2	0	4.30	4.54	6.13
3	0	5.58	6.14	8.05
4	0	6.86	7.74	9.97
Each add'l pound or fraction		1.28	1.60	1.92
M-bag rate per pound or fraction		1.06	1.32	1.45

B. Valuepost/Canada

Weight	Rate
Letter-size:	
1 ounce or less	$0.32
Over 1 ounce	0.30 plus $0.39 per pound or fraction of a pound.
Flat-size:	
5 ounces or less	$0.57
Over 5 ounces	0.34 plus $0.93 per pound or fraction of a pound.

C. Publishers' Periodicals—Surface

Weight not over (oz.)	Country		
	Canada	Mexico	All others
1	$0.40	$0.32	$0.32
2	0.46	0.40	0.40
3	0.52	0.52	0.52
4	0.59	0.60	0.60
5	0.65	0.75	0.76
6	0.72	0.75	0.76
7	0.78	0.90	0.92
8	0.85	0.90	0.92
9	0.91	1.05	1.08
10	0.98	1.05	1.08
11	1.04	1.20	1.24
12	1.11	1.20	1.24
13	1.17	1.35	1.40
14	1.24	1.35	1.40
15	1.30	1.50	1.56
16	1.37	1.50	1.56
18	1.43	1.64	1.71
20	1.49	1.78	1.86
22	1.55	1.92	2.01
24	1.61	2.06	2.16
26	1.67	2.20	2.31
28	1.73	2.34	2.46
30	1.79	2.48	2.61
32	1.85	2.62	2.76
3 lb.	4.00	3.58	3.72
4 lb.	4.64	4.54	4.68
5 lb.	5.28	5.50	5.64
6 lb.	5.92	6.46	6.60
7 lb.	6.56	7.42	7.56
8 lb.	7.20	8.38	8.52
9 lb.	7.84	9.34	9.48
10 lb.	8.48	10.30	10.44
11 lb.	9.12	11.26	11.40
Each add'l pound or fraction	0.64	0.96	0.96
M-bag rate per pound or fraction	0.64	0.72	0.79

D. Books and Sheet Music—Surface

Weight not over (lb.)	Country		
	Canada	Mexico	All others
1	$1.37	$1.50	$1.56
2	1.85	2.62	2.76
3	4.00	3.58	3.72
4	4.64	4.54	4.68
5	5.28	5.50	5.64
6	5.92	6.46	6.60
7	6.56	7.42	7.56
8	7.20	8.38	8.52
9	7.84	9.34	9.48
10	8.48	10.30	10.44
11	9.12	11.26	11.40
Each add'l pound or fraction	0.64	0.96	0.96
M-bag rate per pound or fraction	0.64	0.72	0.79

E. International Surface Air Lift (ISAL)

(See section VII for country rate groups.) Rates are per piece plus the per-pound rate for the each pound or fraction of a pound for the total weight in each rate group. M-bags are pound rates only.

Rate group	Piece rate	Regular per-pound rate		M-bag per-pound rate	
		Full service	Gateway/ direct shipment	Full service	Gateway/ direct shipment
1	$0.23	$2.10	$1.85	$2.12	$1.87
2	0.10	2.60	2.35	2.61	2.36
3	0.10	2.80	2.55	2.81	2.56
4	0.10	3.65	3.40	3.66	3.41

F. Air—Other Articles (Printed Matter, Matter for the Blind, and Small Packets)

1. Canada and Mexico—Air

Weight not over (oz.)	Canada	Mexico
0.5	$0.45	$0.46
1	0.51	0.60
1.5	0.62	0.70
2	0.70	0.80
3	0.93	1.00
4	1.11	1.20
5	1.29	1.40
6	1.47	1.60
7	1.65	1.80
8	1.83	2.00
9	2.01	2.20
10	2.19	2.40
11	2.37	2.60
12	2.55	2.80
16	3.27	3.60
24	4.07	5.20
32	4.87	6.80
2.5 lb.	5.67	8.40
3.0 lb.	6.47	10.00
3.5 lb.	7.27	11.60
4.0 lb.	8.07	13.20
Each add'l 0.5 pound or fraction	0.80	1.60
M-bag rate per pound or fraction	1.41	1.50

2. All Other Countries—Air (See section VII for country rate groups.)

Weight not over (oz.)	Western Hemisphere (except Canada and Mexico) (WH)	Europe (EU)	Asia/Africa (AA)	Pacific Rim (PR)
1	$0.75	$0.90	$0.98	$1.00
2	1.07	1.32	1.48	1.55
3	1.39	1.74	1.98	2.10
4	1.71	2.16	2.48	2.65
6	2.35	3.00	3.48	3.75
8	2.99	3.84	4.48	4.85
10	3.63	4.68	5.48	5.95
12	4.27	5.52	6.48	7.05
14	4.91	6.36	7.48	8.15
16	5.55	7.20	8.48	9.25
18	5.85	7.80	9.28	10.15
20	6.15	8.40	10.08	11.05
22	6.45	9.00	10.88	11.95
24	6.75	9.60	11.68	12.85
26	7.05	10.20	12.48	13.75
28	7.35	10.80	13.28	14.65
30	7.65	11.40	14.08	15.55
32	7.95	12.00	14.88	16.45
2.5 lb	9.15	14.40	18.08	20.05
3.0 lb	10.35	16.80	21.28	23.65
3.5 lb	11.55	19.20	24.48	27.25
4.0 lb	12.75	21.60	27.68	30.85
Each additional 0.5 pound or fraction of 0.5 pound	1.20	2.40	3.20	3.60
M-bag rate per pound or fraction of a pound	2.47	4.41	6.27	6.35

V. Parcel Post

The weight limits for parcels vary by country and are usually 22, 33, or 44 pounds. Algeria, Canada, Denmark, Faroe Islands, Greenland, Ireland, Great Britain and Northern Ireland, Liechtenstein, and Switzerland have 66-pound weight limits. The rates over 44 pounds are given in anticipation of other countries increasing parcel weight limits.

A. Surface

Weight not over (lb.)	Canada	Bahamas, Bermuda, Caribbean Islands, Central America, Mexico, and St. Pierre & Miquelon	All other countries
2	$6.95	$7.50	$9.00
3	8.23	8.94	10.92
4	9.51	10.38	12.84
5	10.79	11.82	14.76
6	12.07	13.26	16.68
7	13.35	14.70	18.60
8	14.63	16.14	20.52
9	15.91	17.58	22.44
10	17.19	19.02	24.36
11	18.39	20.46	26.28
12	19.59	21.90	28.20
13	20.79	23.34	30.12
14	21.99	24.78	32.04
15	23.19	26.22	33.96
16	24.39	27.66	35.88
17	25.59	29.10	37.80
18	26.79	30.54	39.72
19	27.99	31.98	41.64
20	29.19	33.42	43.56
21	30.31	34.86	45.48
22	31.43	36.30	47.40
23	32.55	37.74	49.32
24	33.67	39.18	51.24
25	34.79	40.62	53.16
26	35.91	42.06	55.08
27	37.03	43.50	57.00
28	38.15	44.94	58.92
29	39.27	46.38	60.84
30	40.39	47.82	62.76
31	41.51	49.26	64.68
32	42.63	50.70	66.60
33	43.75	52.14	68.52
34	44.87	53.58	70.44
35	45.99	55.02	72.36
36	47.11	56.46	74.28
37	48.23	57.90	76.20
38	49.35	59.34	78.12
39	50.47	60.78	80.04
40	51.59	62.22	81.96
41	52.71	63.66	83.88
42	53.83	65.10	85.80
43	54.95	66.54	87.72
44	56.07	67.98	89.64
Each add'l pound or fraction	1.12	1.44	1.92

B. Air

Weight not over (lb.)	Rate groups						
	Canada	Mexico	A	B	C	D	E
1	.....	$6.50	$6.50	$8.25	$9.75	$11.20	$12.80
2	$7.00	9.70	9.86	12.25	15.03	16.96	19.20
3	8.28	12.90	13.22	16.25	20.31	22.72	25.60
4	9.56	15.46	16.58	20.25	25.59	28.48	32.00
5	10.84	18.02	19.46	23.45	29.91	33.76	37.44
6	12.12	20.58	22.34	26.65	34.23	39.04	42.88
7	13.40	23.14	25.22	29.85	38.55	44.32	48.32
8	14.68	25.70	28.10	33.05	42.87	49.60	53.76
9	15.96	28.26	30.98	36.25	47.19	54.88	59.20
10	17.24	30.82	33.86	39.45	51.51	60.16	64.64
11	17.72	33.06	36.58	42.33	55.51	64.48	69.12
12	18.20	35.30	39.30	45.21	59.51	68.80	73.60

Weight not over (lb.)	Rate groups						
	Canada	Mexico	A	B	C	D	E
13	18.68	37.54	42.02	48.09	63.51	73.12	78.08
14	19.16	39.78	44.74	50.97	67.51	77.44	82.56
15	19.64	42.02	47.46	53.85	71.51	81.76	87.04
16	20.12	44.26	50.18	56.73	75.51	86.08	91.52
17	20.60	46.50	52.90	59.61	79.51	90.40	96.00
18	21.08	48.74	55.62	62.49	83.51	94.72	100.48
19	21.56	50.98	58.34	65.37	87.51	99.04	104.96
20	22.04	53.22	61.06	68.25	91.51	103.36	109.44
21	22.20	55.14	63.30	70.81	95.35	107.52	113.76
22	22.36	57.06	65.54	73.37	99.19	111.68	118.08
23	22.52	58.98	67.78	75.93	103.03	115.84	122.40
24	22.68	60.90	70.02	78.49	106.87	120.00	126.72
25	22.84	62.82	72.26	81.05	110.71	124.16	131.04
26	23.00	64.74	74.50	83.61	114.55	128.32	135.36
27	23.16	66.66	76.74	86.17	118.39	132.48	139.68
28	23.32	68.58	78.98	88.73	122.23	136.64	144.00
29	23.48	70.50	81.22	91.29	126.07	140.80	148.32
30	23.64	72.42	83.46	93.85	129.91	144.96	152.64
31	23.80	74.02	85.38	96.09	133.59	148.96	156.80
32	23.96	75.62	87.30	98.33	137.27	152.96	160.96
33	24.12	77.22	89.22	100.57	140.95	156.96	165.12
34	24.28	78.82	91.14	102.81	144.63	160.96	169.28
35	24.44	80.42	93.06	105.05	148.31	164.96	173.44
36	25.08	82.02	94.98	107.29	151.99	168.96	177.60
37	25.72	83.62	96.90	109.53	155.67	172.96	181.76
38	26.36	85.22	98.82	111.77	159.35	176.96	185.92
39	27.00	86.82	100.74	114.01	163.03	180.96	190.08
40	27.64	88.42	102.66	116.25	166.71	184.96	194.24
41	28.28	90.02	104.58	118.49	170.39	188.96	198.40
42	28.92	91.62	106.50	120.73	174.07	192.96	202.56
43	29.56	93.22	108.42	122.97	177.75	196.96	206.72
44	30.20	94.82	110.34	125.21	181.43	200.96	210.88
Each add'l pound or fraction	0.64	1.60	1.92	2.24	3.68	4.00	4.16

VI. Fees for Special Mail Services and Miscellaneous Charges

* = Fees changed effective January 1, 1995, based on changes in domestic rates and fees that took effect on that date.

A. Nonstandard Surcharge—Letters and regular printed matter weighing 1 ounce or less: $0.11*

B. Customs Clearance and Delivery Fee: $3.75*

C. Inquiry Fee: $6.60*

D. Return Receipt: $1.10*

E. Registered Mail

1. Canada

Limit of indemnity	Fee
$100.00	*$4.95
500.00	*5.40
1,000.00	*5.85

2. All Other Countries

Limit of indemnity	Fee
$32.25	*$4.85

F. Insured Mail

Limit of indemnity	Fee	
	Canada	All other countries
$50	*$0.75	$1.60
100	*1.60	2.45
200	*2.50	3.35
300	*3.40	4.25
400	*4.30	5.15
500	*5.20	6.05
600	*6.10	6.95
700		7.40
800		7.85
900		8.30
1,000		8.75
1,100		9.20
1,200		9.65

G. Money Orders

The fees for international money orders issued on form MP 1 ($3.00) and money orders issued pursuant to an Authorization to Issue an International Money Order ($7.50) are not changed. The use of domestic money orders was abolished on March 1, 1995.

H. Special Handling

Weight (lb.)	Fee
Not over 10	*$5.40
Over 10	*7.50

I. Special Delivery

Class of mail	2 pounds or less	More than 2 pounds
Letters, Letter Packages, and Post/Postal Cards	*$9.95	*$10.35
Printed Matter, Matter for the Blind, and Small Packets	*$10.45	*$11.25

J. Restricted Delivery: $2.75*

K. Recorded Delivery: $1.10*

L. Certificates of Mailing

Type of mailing	Fee
Piece Mailing:	
Basic service (Form 3817)	*$0.55
Firm mailing book (Form 3877)	*0.20
Bulk Mailing:	
Up to 1,000 identical pieces	*$2.75

Type of mailing	Fee
Each additional 1,000 pieces	*0.35
Duplicate copy	*$0.55

M. Return Charges

(For returned publishers' periodicals originally mailed to Canada by publishers or registered news agents, see IMM 781.5a.)

Weight not over (oz.)	Charge*
1	$0.32
2	0.55
3	0.78
4	1.01
5	1.24
6	1.47
7	1.70
8	1.93
9	2.16
10	2.39
11	2.60
12	2.90
13	2.90
14	2.95
15	2.95
16	2.95
Over 1 pound	Use domestic zone 8 fourth-class rates.

N. International Reply Coupons

Selling price for U.S.-issued coupons: $1.05. Redemption price for foreign-issued coupons: $0.60.

O. International Business Reply

Item	Fee
Envelope (not over 2 oz.)	$1.00
Card	0.60

P. Pickup Fee—$4.95*

VII. Country Table

Country	Air AO rate group	Express mail rate group	Air parcel post rate group	Int'l surface air lift (ISAL)	Int'l priority airmail (IPA)
Afghanistan[1]	AA		D		2
Albania	EU		C	1	2
Algeria	AA	6	D	4	2
Andorra	EU		B		2
Angola	AA	6	E	4	2
Anguilla	WH		A		2
Antigua & Barbuda	WH		A		2
Argentina	WH	5	D	2	2
Armenia	EU	4	E		3
Aruba	WH	5	A	2	2
Ascension	AA				2
Australia	PR	3	D	3	1
Austria	EU	4	B	1	3
Azerbaijan	EU	4	E		3
Azores	EU	4	C		3
Bahamas	WH	5	A		2
Bahrain	AA	6	D	4	2
Bangladesh	AA	6	E	4	2
Barbados	WH	5	B		2
Belarus	EU	4	E		3
Belgium	EU	2	D	1	3
Belize	WH	5	A	2	2
Benin	AA	6	C	4	2
Bermuda	WH	5	A		2
Bhutan	AA	[2]6	E		2
Bolivia	WH	5	B	2	2
Bosnia-Herzegovina	EU	4	C		3
Botswana	AA	6	E		2
Brazil	WH	5	E	2	2
British Virgin Islands	WH		A		2
Brunei Darussalam	AA	6	D		2
Bulgaria	EU	4	D	1	2
Burkina Faso	AA	6	D	4	2
Burma	AA		D		2
Burundi	AA	6	E	4	2
Cambodia (Kampuchea)	AA	6		2	2
Cameroon	AA	6	D	4	2
Canada	([3])	([4])	([3])		
Cape Verde	AA	6	D		2
Cayman Islands	WH	5	A		2
Central African Republic	AA	6	E	4	2
Chad	AA	6	D		2
Chile	WH	5	D	2	2
China	PR	([5])	D	3	3
Colombia	WH	5	B	2	3
Comoros	AA		E		2
Congo	AA	6	D	4	2
Corsica	EU	2	E		1
Costa Rica	WH	5	A	2	2
Cote d'Ivoire (Ivory Coast)	AA	6	D	4	2

Country	Air AO rate group	Express mail rate group	Air parcel post rate group	Int'l surface air lift (ISAL)	Int'l priority airmail (IPA)
Croatia	EU	4	C	.....	3
Cuba	WH	.....		2	2
Cyprus	AA	6	C	.....	2
Czech Republic	EU	4	C	1	3
Denmark	EU	4	C	1	1
Djibouti	AA	6	D	.....	2
Dominica	WH	.....	A	.....	2
Dominican Republic	WH	5	A	2	2
Ecuador	WH	5	C	2	2
Egypt	AA	6	D	4	2
El Salvador	WH	5	B	2	2
Equatorial Guinea	AA	6	D	.....	2
Eritrea	AA	6	D	.....	2
Estonia	EU	[6] 4	E	.....	3
Ethiopia	AA	6	D	4	2
Falkland Islands	WH	.....	([7])	.....	2
Faroe Islands	EU	4	C	.....	1
Fiji	PR	6	B	3	2
Finland	EU	4	D	1	1
France (incl. Monaco)	EU	[6] 2	E	1	1
French Guiana	WH	.....	C	2	2
French Polynesia	AA	.....	D	.....	2
Gabon	AA	6	D	4	2
Gambia	AA	.....	B	.....	2
Georgia, Republic of	EU	4	E	.....	3
Germany	EU	[6] 2	B	1	1
Ghana	AA	6	D	4	2
Gibraltar	EU	.....	C	.....	2
Great Britain & Northern Ireland	EU	([5])	C	1	1
Greece	EU	4	C	1	3
Greenland	EU	.....	D	.....	1
Grenada	WH	.....	A	.....	2
Guadeloupe	WH	.....	A	.....	2
Guatemala	WH	5	A	2	2
Guinea	AA	6	B	.....	2
Guinea-Bissau	AA	6	B	.....	2
Guyana	WH	5	B	2	2
Haiti	WH	.....	A	2	2
Honduras	WH	5	B	2	2
Hong Kong	PR	3	C	3	3
Hungary	EU	4	C	1	3
Iceland	EU	4	C	1	1
India	AA	6	D	4	3
Indonesia	PR	6	E	3	2
Iran	AA	.....	D	4	3
Iraq [8]	AA	[9] 6	D	[10] 4	2
Ireland	EU	2	C	1	1
Israel	AA	6	C	4	3
Italy	EU	4	C	1	1
Jamaica	WH	5	A	2	2
Japan	PR	([5])	E	3	1
Jordan	AA	6	C	4	2
Kazakhstan	EU	4	E	.....	3
Kenya	AA	6	D	4	2
Kiribati	AA	.....	B	.....	2
Korea, Dem. People's Rep. (North)	PR	.....		.....	2
Korea, Republic of (South)	PR	3	C	3	3
Kuwait	AA	6	C	4	2
Kyrgyzstan	EU	4	E	.....	3
Laos	PR	6	E	.....	2
Latvia	EU	4	E	.....	3
Lebanon	AA	.....	C	4	2
Lesotho	AA	6	E	.....	2
Liberia	AA	6	C	[10] 4	2
Libya	AA	.....	D	[10] 4	2
Liechtenstein	EU	2	B	1	2
Lithuania	EU	4	E	.....	3
Luxembourg	EU	4	B	1	1
Macao	PR	6	C	.....	2
Macedonia, Republic of	EU	4	C	.....	3
Madagascar	AA	6	E	4	2
Madeira Islands	EU	4	B	.....	3

Country	Air AO rate group	Express mail rate group	Air parcel post rate group	Int'l surface air lift (ISAL)	Int'l priority airmail (IPA)
Malawi	AA	6	D	.....	2
Malaysia	PR	6	D	3	3
Maldives	AA	6	D	.....	2
Mali	AA	6	C	4	2
Malta	EU	4	C	.....	2
Martinique	WH	.....	A	.....	2
Mauritania	AA	6	D	4	2
Mauritius	AA	6	E	4	2
Mexico	([11])	([5])	A	2	3
Moldova	EU	4	E	.....	3
Mongolia	AA	.....		.....	2
Montserrat	WH	.....	A	.....	2
Morocco	AA	6	C	4	2
Mozambique	AA	6	E	4	2
Namibia	AA	6	D	.....	3
Nauru	AA	6	C	.....	2
Nepal	AA	.....	D	.....	2
Netherlands	EU	[6] 2	C	1	1
Netherlands Antilles	WH	5	A	2	2
New Caledonia	AA	6	D	.....	1
New Zealand	PR	6	D	3	3
Nicaragua	WH	5	B	2	2
Niger	AA	6	D	4	2
Nigeria	AA	6	C	4	2
Norway	EU	4	D	1	1
Oman	AA	6	D	4	2
Pakistan	AA	6	D	4	2
Panama	WH	5	A	2	2
Papua New Guinea [8]	PR	6	D	3	2
Paraguay	WH	5	D	2	2
Peru	WH	5	B	2	2
Philippines	PR	6	D	3	3
Pitcairn Island	AA	.....	B	.....	2
Poland	EU	4	B	1	3
Portugal	EU	4	C	1	3
Qatar	AA	6	C	4	2
Reunion	AA	.....	E	4	2
Romania	EU	4	C	1	2
Russia	EU	4	E	1	3
Rwanda	AA	6	D	[10] 4	2
Saint Christopher (St. Kitts) & Nevis	WH	.....	A	.....	2
Saint Helena	AA	.....	C	.....	2
Saint Lucia	WH	5	A	.....	2
Saint Pierre & Miquelon	WH	.....	A	.....	2
Saint Vincent & the Grenadines	WH	5	A	.....	2
San Marino	EU	.....	C	1	2
Sao Tome & Principe	AA	.....	D	.....	2
Saudi Arabia	AA	6	D	4	3
Senegal	AA	6	D	4	2
Serbia-Montenegro (Yugoslavia) [8]	EU	4	C [9]	.....	3
Seychelles	AA	6	D	.....	2
Sierra Leone	AA	6	D	4	2
Singapore	PR	3	D	3	3
Slovak Republic	EU	4	C	.....	2
Slovenia	EU	4	C	.....	3
Solomon Islands	AA	6	C	.....	2
Somalia [1]	AA	6	D	4	2
South Africa	AA	6	D	4	3
Spain	EU	4	C	1	3
Sri Lanka	AA	6	D	4	2
Sudan	AA	6	D	4	2
Suriname	WH	.....	B	2	2
Swaziland	AA	6	D	.....	2
Sweden	EU	[6] 4	D	1	1
Switzerland	EU	2	B	1	3
Syria	AA	6	C	4	2
Taiwan	PR	3	C	3	3
Tajikistan	EU	4	E	.....	3
Tanzania	AA	6	E	4	2
Thailand	PR	3	D	3	3
Togo	AA	6	D	4	2
Tonga	AA	.....	B	.....	2

Country	Air AO rate group	Express mail rate group	Air parcel post rate group	Int'l surface air lift (ISAL)	Int'l priority airmail (IPA)
Trinidad & Tobago	WH	5	B	2	2
Tristan da Cunha	AA	.....	E	.....	2
Tunisia	AA	6	C	4	2
Turkey	EU	4	C	1	2
Turkmenistan	EU	4	E	.....	3
Turks & Caicos Islands	WH	.....	A	.....	2
Tuvalu	AA	.....	B	.....	2
Uganda	AA	6	D	4	2
Ukraine	EU	4	E	.....	3
United Arab Emirates	AA	6	D	4	2
Uruguay	WH	5	B	2	2
Uzbekistan	EU	.....	E	.....	3
Vanuatu	AA	[6] 6	B	.....	2
Vatican City	EU	.....	C	.....	2
Venezuela	WH	5	B	2	2
Vietnam	PR	6	E	.....	2
Wallis & Futuna Islands	AA	.....	D	.....	1
Western Samoa	AA	6	B	.....	2
Yemen	AA	6	E	4	2
Zaire	AA	6	E	4	2
Zambia	AA	6	E	4	2
Zimbabwe	AA	6	E	4	2

[1] All mail service suspended.
[2] On Demand Service not available.
[3] Sea separate rates for Canada.
[4] See country-specific rate. Custom Designed Service not available.
[5] See country-specific rate.
[6] Custom Designed Service not available.
[7] Surface parcel post service available.
[8] Restrictions apply. See IMM.
[9] Parcel post service suspended.
[10] ISAL service suspended.
[11] See separate rates for Mexico.

[FR Doc. 95–6781 Filed 3–17–95; 8:45 am]

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federal register

Monday
March 20, 1995

Part VII

Department of Housing and Urban Development

24 CFR Part 100

Housing for Older Persons; Defining Significant Facilities and Services; Proposed Amendments; Correction; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 100

[Docket No. R–95–1706; FR–3502–C–07]

Housing for Older Persons; Defining Significant Facilities and Services; Proposed Amendments; Correction

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Proposed rule; Correction.

SUMMARY: On March 14, 1995 (60 FR 13840), HUD published a rule which proposed to implement section 919 of the Housing and Community Development Act of 1992. Section 919 requires the Secretary of HUD to issue ''rules defining what are 'significant facilities and services especially designed to meet the physical or social needs of older persons' required under section 807(b)(2) of the Fair Housing Act to meet the definition of the term 'housing for older persons' in such section.'' The purpose of this document is to make a correction to the section of the proposed rule which sets forth the standards by which to ascertain whether a facility or service is ''significant'' or ''especially designed to meet the physical or social needs of older persons.''

FOR FURTHER INFORMATION CONTACT: Sara K. Pratt, Office of Investigations, Office of Fair Housing and Equal Opportunity, Room 5204, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500, telephone (202) 708–0836. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–0113, or 1–800–877–8399 (Federal Relay Service TDD). (Other than the ''800'' number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. 3601–19) (the Act) exempts ''housing for older persons'' from the prohibitions against discrimination because of familial status. Specifically, section 807(b)(2)(C) of the Act exempts housing intended and operated for occupancy by at least one person 55 years of age or older per unit that satisfies certain criteria. HUD has implemented the housing for older persons exemption at 24 CFR part 100, subpart E.

Section 919 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) requires the Secretary of HUD to issue a rule further defining what are ''significant facilities and services especially designed to meet the physical or social needs of older persons'' required under section 807(b)(2) of the Fair Housing Act to meet the definition of the term ''housing for older persons.''

On March 14, 1995 (60 FR 13840) HUD published a rule which proposed to implement the requirements of section 919 of the Housing and Community Development Act of 1992. This document makes a correction to proposed § 100.306, which sets forth the standards by which to ascertain whether a facility or service is ''significant'' or ''especially designed to meet the physical or social needs of older persons.''

Proposed § 100.306 sets forth a diverse ''menu'' of facilities and services which a community may choose to provide. The facilities and services are listed under twelve broad categories (e.g. Social Needs, Leisure Needs, Educational Needs). The preamble to the March 14, 1995 proposed rule discusses § 100.306 on page 13841, column one, paragraph four. The preamble states that ''[i]n order to qualify as 55-or-over housing, the community must provide at least two facilities or services from five of the categories, for a total of at least ten facilities or services.''

However, paragraph (c) of proposed § 100.306 reads: ''A housing provider provides significant facilities and services if it makes available, directly or indirectly, at least 2 facilities or services of the facilities described in paragraph (d)(10) of this section (category 10) or in paragraph (d)(11) of this section (category 11).'' The phrase ''in at least 5 categories described in paragraph (d) of this section, including at least two'' should have followed the phrase ''at least 2 facilities or services.'' This document inserts the missing phrase.

Accordingly, FR Doc. 95–1706, Housing for Older Persons; Defining Significant Facilities and Services; Proposed Amendments, published in the **Federal Register** on March 14, 1995 (60 FR 13840) is corrected as follows:

1. On page 13843, in column 2, paragraph (c) of § 100.306 is corrected to read as follows:

§ 100.306 Significant facilities and services specifically designed for older persons.

* * * * *

(c) A housing provider provides significant facilities and services if it makes available, directly or indirectly, at least 2 facilities or services in at least five categories described in paragraph (d) of this section, including at least 2 of the facilities described in paragraph (d)(10) of this section (category 10) or in paragraph (d)(11) of this section (category 11).

* * * * *

Dated: March 15, 1995.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 95–6912 Filed 3–16–95; 2:20 pm]

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3 (1993 Compilation and Parts 100 and 101)	(869–022–00002–1)	33.00	[1] Jan. 1, 1994
4	(869–026–00003–4)	5.50	Jan. 1, 1995
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1994. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1994. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1994. The CFR volume issued January 1, 1993, should be retained.

[7] No amendments to this volume were promulgated during the period October 1, 1993, to September 30, 1994. The CFR volume issued October 1, 1993, should be retained.