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WHO: The Office of the Federal Register.

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

WASHINGTON, DC

WHEN: March 28, at 9:00 a.m.
WHERE: Office of the Federal Register,
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RESERVATIONS: 202–523–5240

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WHEN: April 18:
1st Session 9:00 am to 12 noon.
2nd Session 1:30 pm to 4:30 pm
WHERE: 51 Southwest First Avenue
Room 914
Miami, FL
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CHICAGO, IL

WHEN: April 25, at 9:00 am
WHERE: 219 S. Dearborn Street
Conference Room 1220
Chicago, IL
RESERVATIONS: 1–800–366–2998

WASHINGTON, DC

WHEN: May 23, at 9:00 am
WHERE: Office of the Federal Register
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1100 L Street, NW, Washington, DC
RESERVATIONS: 202–523–5240 (voice); 202–523–5229 (TDD)

NOTE: There will be a sign language interpreter for hearing impaired persons at the May 23, Washington, DC briefing.

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

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[FV-91-234IFR]

Handling of Almonds Grown in California; Revision of Salable and Reserve Percentages for the 1990–91 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule invites comments on further revising the salable and reserve percentages for marketable California almonds received by handlers during the 1990–91 crop year, which began on July 1, 1990. The salable percentage will be increased from 70 to 80 percent and the reserve percentage will be decreased from 30 to 20 percent, while the export percentage will remain at 0 percent. This action relaxes restrictions on handlers and is necessary to provide a sufficient quantity of almonds to meet trade demand and carryover needs.

DATES: Effective: March 19, 1991. Comments which are received by April 18, 1991, will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456.

Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3923.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under marketing agreement and Order No. 981 (7 CFR part 981), both as amended, hereinafter referred to as the order, regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (U.S.C. 601–674), hereinafter referred to as the Act.

This interim final rule has been reviewed by the U.S. Department of Agriculture (USDA) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

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

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

There are approximately 95 handlers of almonds who are subject to regulation under the order and approximately 7,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This action decreases the quantity of California almonds which handlers must withhold from normal, competitive markets to meet their reserve obligations under the order for the 1990–91 crop year. The quantity of almonds which handlers must withhold to meet their reserve obligations will be decreased from 30 percent to 20 percent of marketable almonds received by handlers for their own accounts during the 1990–91 crop year. The salable percentage of the crop, which could be sold by handlers in any market, will increase from 70 percent to 80 percent. Therefore, this action relaxes restrictions on California almond handlers and will not impose any additional burden or costs on handlers.

On September 21, 1990, a final rule was published in the Federal Register (55 FR 38793) establishing salable, reserve, and export percentages of 65 percent, 35 percent, and 0 percent, respectively, for the 1990–91 crop year. That action was based on two recommendations of the Almond Board of California (Board), which works with the USDA in administering the order. The recommendations were made on June 27 and July 25, 1990. The recommendations were made pursuant to §§ 981.47 and 981.49 of the order, based on the then current estimates of marketable supply and combined domestic and export trade demand for the 1990–91 crop year.

On December 3, 1990, the Board met to review the salable and reserve percentages that had been established for the 1990–91 crop year and the supply and demand estimates from which those percentages were derived. At that meeting, pursuant to § 981.48 of the order, the Board recommended an increase in the salable percentage from 65 percent to 70 percent of the 1990–91 marketable production, and a corresponding decrease in the reserve percentage from 35 percent to 30 percent. On February 11, 1991, an interim final rule was published in the Federal Register (56 FR 5308) which revised the salable percentage for the 1990–91 crop year from 65 percent to 70 percent and revised the reserve percentage from 35 percent to 30 percent based on the Board's recommendation. The interim final rule provided that interested persons could submit comments through March 13, 1991. This interim final rule revises the February 11, 1991, interim final rule by further relaxing restrictions on almond handlers.

On February 21, 1991, the Board met and again reviewed the 1990–91 crop year salable and reserve percentages

and the supply and demand estimates from which those percentages were derived. At that meeting, pursuant to § 981.48 of the order, the Board recommended an increase in the salable percentage from 70 percent to 80 percent of the 1990–91 marketable production, and a corresponding decrease in the reserve percentage formm 30 percent to 20 percent.

The estimates used by the Board on February 21, 1990, in reviewing the salable and reserve percentages are shown below. The Board's July 25, 1990, and December 3, 1990, estimates are shown as a basis for comparison.

MARKETING POLICY ESTIMATES—1990 CROP

[Kernelweight basis in millions of pounds]

	7/25/90, initial estimates	12/3/90, revised estimates	2/21/91, revised estimates
Estimated Production:			
1. 1990 Production	655.0	655.0	655.0
2. Loss and Exempt—4.0%	26.0	26.0	26.0
3. Marketable Production	629.0	629.0	629.0
Estimated Trade Demand:			
4. Domestic	190.0	190.0	205.0
5. Export	375.0	375.0	410.0
6. Total	565.0	565.0	615.0
Inventory Adjustment:			
7. Carryin 7/1/90	215.0	202.0	202.0
8. Desirable Carryover 6/30/91	59.0	77.2	90.1
9. Adjustment (Item 8 minus item 7)	(156.0)	(124.8)	(111.9)
Salable/Reserve:			
10. Adjusted Trade Demand (Item 6 plus item 9)	409.0	440.2	503.1
11. Reserve (Item 3 minus item 10)	220.0	188.8	125.9
12. Salable Percentage (Item 10 divided by item 3×100)	65%	70%	80%
13. Reserve Percentage (100 percent minus item 12)	35%	30%	20%

Estimated 1990 crop production remains at 655.0 million kernelweight pounds. Estimated weight loss resulting from the removal of inedible kernels by handlers and losses during manufacturing also stays the same at 26.0 million kernelweight pounds. Therefore, marketable production remains at 629.0 million kernelweight pounds.

The Board's estimate of domestic trade demand has increased from 190.0 to 205.0 million kernelweight pounds. Estimated 1990–91 crop year export trade demand has increased from 375.0 to 410.0 million kernelweight pounds. Therefore, total estimated trade demand is increased from 565.0 to 615.0 million kernelweight pounds.

The Board's estimate of carryin on July 1, 1990, remains unchanged at 202.0 million kernelweight pounds. The Board's revised estimates include an increase in desirable carryover from 77.2 million kernelweight pounds to 90.1 million kernelweight pounds. The desirable carryover is the quantity of salable almonds deemed desirable to be carried out on June 30, 1991, for early season shipment during the 1991–92 crop year until the 1991 crop is available for market. After taking carryin and desirable carryover into account, the adjusted trade demand is increased from 440.2 million kernelweight pounds to 503.1 million kernelweight pounds. The increase in the salable percentage from 70 percent to 80 percent will meet the higher trade demand needs.

The remaining 20 percent (125.9 million kernelweight pounds) of the 1990 crop marketable production will be withheld by handlers to meet their reserve obligations. All or part of these almonds could be released to the salable category if it is found that the supply made available by the salable percentage is insufficient to satisfy 1990–91 trade demand needs, including desirable carryover requirements for use during the 1991–92 crop year. The Board is required to make any additional recommendations to the Secretary to increase the salable percentage prior to May 15, 1991. Alternatively, all or a portion of the reserve almonds would be sold by the Board, or by handlers under agreement with the Board, to governmental agencies or charitable institutions or for diversion into almond oil, almond butter, animal feed, or other outlets which the Board finds are noncompetitive with existing normal markets for almonds.

The order permits the Board to include normal export requirements with domestic requirements in its estimate of trade demand when recommending the establishment of salable, reserve, and export percentages for any crop year. For the 1990–91 crop year, estimated exports are included in the trade demand. Thus, an export percentage of 0 percent was established by the final rule published in the **Federal Register** on September 21, 1990 (55 FR 38793). Therefore, reserve almonds are not eligible for export to normal export outlets. However, handlers may ship their salable almonds to export markets. The export percentage is not changed as a result of this action.

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

After consideration of all relevant matter presented, the Board's recommendation and other available information, it is found that to revise § 981.237 so as to change the salable and reserve percentages for almonds during the crop year beginning on July 1, 1990, as set forth below will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impractical, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This final action increases the quantity of almonds that may be marketed immediately; (2) this action was discussed at a public meeting; (3) some handlers have exhausted their supply of almonds for the salable market and should be apprised as soon as possible

of the increased salable percentage for almonds contained in this interim final rule; (4) this action is a relaxation of a regulation; and (5) this action provides for a 30-day comment period.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Salable, Reserve, and Export Percentages

2. Section 981.237 is revised to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 981.237 Salable, reserve, and export percentages for almonds during the crop year beginning on July 1, 1990.

The salable, reserve, and export percentages during the crop year beginning on July 1, 1990, shall be 80 percent, 20 percent, and 0 percent, respectively.

Dated: March 13, 1991.

Robert C. Kenney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–6459 Filed 3–18–91; 8:45 am]

BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Part 1427

Standards for Approval of Warehouses for Cotton or Cotton Linters

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulation at 7 CFR 1427.1085 relating to the Commodity Credit Corporation (CCC) Standards for Approval of Warehouses for Cotton or Cotton Linters (Standards). This rule deletes the exception to the bond, financial, warehouse receipt, and bale tag requirements granted to warehouses previously operated by the State of South Carolina Department of Agriculture and approved under the Cotton Storage Agreement. Changes in the State of South Carolina warehouse law enacted during the past year necessitate that CCC amend the Standards. State-licensed warehouses in South Carolina are now required to meet the same conditions for approval contained in the Standards to obtain a Cotton Storage Agreement as other cotton warehouses.

EFFECTIVE DATE: July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Jerry Kretsch, Deputy Director, Storage Contract Division, USDA, room 5968-South Building, P.O. Box 2415, Washington, DC 20013, (202) 447-7433.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed in conformity with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major" since implementation of the provisions of this proposed rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, State, or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

This action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act is not applicable to this final rule. In addition, CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this final rule.

The information collection requirements required by 7 CFR part 1427 have been reviewed and approved by the Office of Management and Budget and assigned OMB No. 0560—0010. This final rule does not change the information collection requirements as approved by OMB. Public reporting burden for the information collection requirements is estimated to vary from 30 minutes to 1 hour per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

It has been determined that an environmental evaluation that this action will have no significant adverse impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The CCC Charter Act (15 U.S.C. 714 *et seq.*) authorizes CCC to conduct various activities to stabilize, support, and protect farm income and prices. CCC is authorized to carry out such activities as making price support available with respect to various agricultural commodities, removing and disposing of surplus agricultural commodities, exporting or aiding in the exportation of agricultural commodities, and procuring agricultural commodities for sale both in the domestic market and abroad.

Section 4(b) of the CCC Charter Act (15 U.S.C. 714b(b)) provides that CCC shall not acquire real property in order to provide storage facilities for agricultural commodities, unless CCC determines that private facilities for the storage for such commodities are inadequate. Further, section 5 of the CCC Charter Act (15 U.S.C. 714c) provides that, in carrying out the Corporation's purchasing and selling operations, and in the warehousing, transporting, processing, or handling of agricultural commodities, CCC is directed to use, to the maximum extent practicable, the usual and customary channels, facilities, and arrangements of trade and commerce.

Accordingly, CCC has published Standards for Approval of Warehouses for Cotton or Cotton Linters that must be met by warehousemen before CCC will enter into storage agreements with them for the storage of cotton and other commodities which are owned by CCC or which are serving as collateral for CCC price support loans.

Prior to a recent change in the State of South Carolina warehouse law the State operated Cotton warehouses in the State, and the State was the contracting entity with CCC. Presently, under 7 CFR 1427.1085(c), South Carolina warehouses are granted an exception to the bond requirements contained in the Standards and may at the discretion of the Kansas City Commodity Office be granted additional exceptions to the financial, warehouse receipt and bale requirements.

Amendments to the State law result in the State no longer operating cotton warehouses. The South Carolina

Department of Agriculture is now licensing the operators of those warehouses. Because the warehouses will no longer be operated by the State, the exception contained in the Standards for Approval of Warehouses for Cotton or Cotton Linters pertaining to those warehouses is now without foundation. Therefore, it was proposed to remove the exception to the Standards granted to warehouses previously operated by the State of South Carolina (See 55 FR 49056; November 26, 1990).

One comment was received. It was from the South Carolina State Department of Agriculture and was opposed to the removal of the exception from the Standards. The respondent felt that removal of the exception would adversely affect State licensed warehousemen and the State licensing system.

The new State law imposes financial and bonding requirements on State licensed warehousemen that meet or exceed the requirements contained in the Standards. Also, the warehouse receipts and bale tags used in the State system currently meet CCC standards. Therefore, CCC's requiring State licensed warehousemen to meet the Standards should have no impact on either State-licensed warehousemen or the State-licensing system.

After consideration of the comments received, the proposed change to 7 CFR 1427.1085 is adopted as presented in the proposed rule.

List of Subjects in 7 CFR Part 1427

Agriculture, Cotton, Loan program, Seed cotton, Surety bonds, Warehouses.

Final Rule

PART 1427—[AMENDED]

Accordingly, 7 CFR part 1427 is amended as follows:

1. The authority citation for part 1427 is revised to read as follows:

Authority: 15 U.S.C. 714b and 714c.

§ 1427.1085 [Amended]

2. Paragraph (c) of § 1427.1085 is removed.

Signed at Washington, DC on March 11, 1991.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91-6378 Filed 3-18-91; 8:45 am]

BILLING CODE 3410-05-M

Farmers Home Administration

7 CFR Parts 1810 and 1980

Guaranteed Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) revises its guaranteed loan program regulations. This action will increase the guarantee fee on guaranteed loans to offset some of the administrative costs for implementing the different guaranteed programs. The rate will vary with each program and will be the amount specified in the regulations on the date of the Conditional Commitment for Guarantee. The intended effect of this action is to increase the fee to partially cover administrative and default costs.

EFFECTIVE DATE: March 19, 1991.

FOR FURTHER INFORMATION CONTACT: Beverly I. Craver, Business and Industry Loan Specialist, Farmers Home Administration, USDA, room 6327, 14th and Independence Avenue, SW., Washington, DC. 20250, Telephone (202) 475-3805.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291 and has been determined to be non-major. The annual effect on the economy is less than $100 million and there will be no significant increase in costs or prices for consumers, individual industries, organizations, governmental agencies or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Intergovernmental Review

The programs impacted by this action are listed in the Catalog of Federal Domestic Assistance under numbers 10.422, Business and Industrial Loans; 10.423, Community Facilities Loans; 10.418, Water and Waste Disposal Systems Loans; 10.406, Farm Operating Loans; 10.407, Farm Ownership Loans; 10.416 Soil and Water Loans. Only Business and Industrial Loans, Community Facilities Loans, and Water and Waste Disposal Systems Loans are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, 48 FR 29112, June 24, 1983). FmHA conducts intergovernmental consultation in the manner delineated in FmHA Instructions 1901-H.

Environmental Impact Statement

The action has been reviewed in accordance with 7 CFR part subpart G, "Environmental Program." FmHA has determined that this proposed action does not constitute a major Federal action signficiantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act Statement

La Verne Ausman, Administrator, Farmers Home Administration, has determined the action will not have a significant economic impact on a substantial number of small entities because at this time it only affects the Business and Industry Program which focuses on loans to businesses for $500,000 or more and has little impact on small entities.

Background

The current regulations for the FmHA guaranteed programs set the guarantee fee at 1 percent for all program areas. OMB Circular A-129 states that fees shall be required on guaranteed loans to cover agency administrative and servicing costs and all or a portion of the estimated costs to the Government of default. This proposed action would increase the fee accordingly to each program area's requirements. Since the guarantee fee will be different for each program area and will be changing at different periods of time, a special exhibit will be established to delineate the different rates for the different program areas. The guarantee fee payable by the lender to FmHA will be the amount specified in the special exhibit on the date of the Conditional Commitment for Guarantee.

The current regulations for the FmHA guaranteed program contained the provision covering the Equal Credit Opportunity Act. The Consumer Protection Act required additional provisions for nondiscrimination by the lender or FmHA. Those provisions are now included in the Equal Opportunity Act Nondiscrimination Requirements of the current regulations.

Comments: This action was published as a proposed rule for public comment on June 11, 1990, in Volume 55, No. 112,

of the **Federal Register**, beginning on page 23553. Twenty-one letters of comment were received.

1. Ten writers expressed concern that the public would not be allowed to comment on the fee schedule and that arbitrary increases would be implemented.

The intent of this rule is to establish a mechanism in order to increase the guarantee fees to partially offset the administrative and default costs of each program. The fees will be gradually increased to avoid adversely affecting rural residents and businesses.

2. Six writers expressed concern that increasing the fees would increase the reluctance of lenders and borrowers to participate in FmHA guaranteed loan programs which ultimately could lead to the demise of all FmHA guaranteed loan programs.

It is necessary for FmHA to establish a mechanism of increasing fees in order to cover the costs of loan program administration and loan default to the Agency. The rule only provides the mechanism by which FmHA may increase the fees if the costs of the programs continue to increase.

3. Four writers stated increased guaranteed fees would negatively impact already financially distressed rural residents and debt-ridden farmers.

While it is not the intention to create additional financial burden on loan recipients it is necessary to provide a mechanism in order to increase fees if administration and default costs continue to increase.

4. Four writers stated increasing fees and the resulting negative impact on rural residents and businesses is contradictory to the Administration's policy of rural revitalization.

While it is understood that some rural residents and businesses may be negatively impacted, this is not expected to affect a signficant number of rural entities. The increase is guarantee fees is needed to help defray the cost of administration and servicing costs and a portion of the estimated cost to the Government of defaulted loans.

5. Two writers questioned the public policy implications of requiring user cost recovery on programs created to achieve a social purpose.

At one time Farmers Home Administration may have been viewed as solely fulfilling a social purpose, however in view of budget constraints and looming deficits the Agency must become fiscally responsible. The increase in guarantee fees to cover costs to the Government for administrative and servicing costs and estimated loan losses is needed.

6. On writer stated the proposal would have a negative impact on a state-funded program designed to make low-interest loans to farmers.

Farmers Home Administration encourages participation with other agencies to assist as many rural residents as possible. It is not the intent of the Agency to discourage other agencies in providing combined funding, however, it is necessary at this time to assess certain fees for services provided in processing, servicing and liquidating loans. The fees will increase gradually over a period of time and should not adversely affect most programs.

7. One writer stated the increased fees would make it difficult for farmers to recover from economic recession thus prolonging recessionary pressures on non-agricultural businesses.

The increases will be implemented gradually and should not adversely affect farmers recovering from economic recession.

8. One writer stated the proposal would jeopardize program consistency since lenders would not know the specific guarantee fee for the program at the time of loan closing.

The guarantee fees will be available to lenders and the general public from any FmHA office which should provide for consistency for each loan program.

9. One writer stated the proposal was procedurally defective under the Administrative Procedure Act and should be withdrawn because the public would not get to comment on specific changes.

The Agency knows of no requirement that the public must comment on change in guarantee fee rates. The Agency currently uses a similar process for dealing with interest rate changes.

Additionally, the respondents' comments were related to the establishment of a guarantee fee; however, the proposed rule provided only for a method by which the guarantee fee could be adjusted to partially offset the cost to the government of administering the program as well as the cost of losses caused by default. It did not establish the guarantee fee for any program. The proposed rule was published for public comment becasue it amended an existing rule and would have no effect on existing guarantees. The fees will not be arbitrarily adjusted by the Agency. The public may obtain the fee schedule for all guaranteed loans from any FmHA office.

Lists of Subjects in 7 CFR Parts 1810 and 1980

Loan programs—Agriculture, Business and industry, Rural areas and Loan programs—Housing and community development.

Accordingly, title 7, chapter XVIII, of the Code of Federal Rgulations is amended as follows:

PART 1810—INTEREST RATES, TERMS, CONDITIONS, AND APPROVAL AUTHORITY

1. The authority citation for part 1810 is added to read as follows:

Authority: 7 U.S.C. 1989; 14 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70 and the authority citation at the end of § 1810.2 is removed.

Subpart A—[Amended]

2. The title of subpart A is amended by adding the words "Guarantee Fee," after "Amortization."

3. Section 1810.1 is revised to read as follows:

§ 1810.1 Information concerning interest rates, amortization, guarantee fee, annual charge, and fixed period.

(a) Tables for computing the interest rates (including the annual charge rates and length of fixed period for initial repurchase agreement for insured loans), tables for use in determining the amounts of interest on loans at different rates, tables providing factors in amortizing loans, and the guarantee fee for guaranteed loans, may be obtained from any County, District, or State Office of FmHA or from its National Office at 14th and Independence Avenue SW., Washington, DC 20250.

(b) In the event that the tables provided for in paragraph (a) of this section do not furnish adequate information, questions should be directed to the Assistant Administrator, Finance Office, Farmers Home Administration, 1520 Market Street, St. Louis, Missouri 63103.

PART 1980—GENERAL

4. The authority citation for part 1980 continues to read as follows:

Authority: 7 USC 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—General

5. Section 1980.21 is revised to read as follows:

§ 1980.21 Guarantee fee.

(a) *Initial fee.* The fee will be the applicable rate multiplied by the principal loan amount or the Line of Credit ceiling amount multiplied by the per cent of guarantee, paid one time only at the time the Loan Note Guarantee or Contract of Guarantee is issued. The fee will be paid to FmHA by

the lender and is nonreturnable. The fee may be passed on to the borrower. Guarantee fee rates are specified in exhibit K of the FmHA Instruction 440.1 (available in any FmHA office).

(b) *Substitution fee.* In the event FmHA agrees to issue a Loan Note Guarantee in substitution for a Form FmHA 449–17, "Contract of Guarantee," issued under previous regulations (see § 1980.61(b)(2)) the lender will pay to FmHA at the time the substitution is made nonrefundable, one-time fee at the applicable rate multiplied by the current principal loan balance multiplied by the percent of guarantee. Guarantee fee rates are specified in exhibit K of the FmHA Instruction 440.1 (available in any FmHA office).

6. Section 1980.41 is amended by revising paragraph (a) to read as follows:

§ 1980.41 Equal opportunity and nondiscrimination requirements.

(a) *Equal Credit Opportunity Act.* In accordance with title V of Public Law 93–495, the Equal Credit Opportunity Act, with respect to any aspect of a credit transaction, neither the lender nor FmHA will discriminate against any applicant on the basis of race, color, religion, national origin, age, sex, marital status or physical/mental handicap providing the applicant can execute a legal contract or because all or part of the applicant's income derives from any public assistance program or because the applicant in good faith, exercised any rights under the Consumer Protection Act. The lender will comply with the requirements of this Act as set forth in the Federal Reserve Board's Regulation implementing this Act (see 12 CFR part 202). Such compliance will be accomplished prior to loan closing.

* * * * *

Dated: February 6, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91–6413 Filed 3–18–91; 8:45 am]

BILLING CODE 3410–07–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 34

RIN 3150–AD35

ASNT Certification of Industrial Radiographers

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations in 10 CFR part 34 concerning radiographic operations to provide license applicants and licensees the option to affirm that individuals acting as radiographers will be certified in radiation safety by the American Society for Nondestructive Testing (ASNT) prior to commencing duties as radiographers. License applicants may use ASNT certification in lieu of the portion of the current licensing requirement that specifies submission of descriptions of planned initial radiation safety training and qualification procedures. In addition, the amendment would permit existing NRC radiography licensees to substitute the ASNT examination for the licensee's radiation safety examination and to substitute ASNT certification for procedures used for verifying the training and testing of experienced radiographers as described in license applications. Licensees will not be required to have their licenses amended to make these substitutions until the next license renewal date.

The intent of this rulemaking is to encourage industrial radiography licensees and license applicants to participate in the ASNT program because the Commission believes that this program can contribute significantly to improved safety. The NRC staff plans to monitor the ASNT program, in part to obtain information which may be useful in any future rulemaking requiring third-party radiographer certification. It should be noted that this rulemaking does not affect the licensee's responsibility to assure that radiographers are properly trained in accordance with the requirements of part 34.

EFFECTIVE DATE: April 18, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. Nellis, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3628.

SUPPLEMENTARY INFORMATION:

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Background

The high activity radioactive sources used in industrial radiography pose serious hazards if radiation safety procedures are not rigorously followed. A significant fraction of occupational overexposures and serious radiation injuries reported to the NRC and the Agreement States has occurred in industrial radiography operations. For example, the State of Texas reported that 42 percent of all radiation overexposures in that State in 1987 were attributable to industrial radiographic operations.

Investigations by the NRC and Agreement States have indicated that inadequate training is often a major contributing factor to radiography incidents. To counter this problem, in October 1986, the Texas Bureau of Radiation Control implemented a comprehensive testing program for radiographers as a means of improving and verifying training and radiation safety practices in the industry. To date, approximately 3000 individuals have been tested and over 2500 radiographers have been issued industrial radiography identification cards by the State of Texas.

Previous Regulatory Initiatives

The concept of licensing or certifying radiographers as a means of helping to reduce radiation overexposures in the radiography industry is not new. In July 1964, the Atomic Energy Commission (AEC) directed its staff to consider whether individual radiographers should be licensed as were individual reactor operators at that time. The staff response was that the increased AEC workload created by either licensing or certification of individual radiographers by the Commission would be very large and was not warranted, but that the Commission could improve radiography safety by encouraging the certification of radiographers by third parties such as industrial societies and associations.

In June 1977, the Non-Destructive Testing Management Association (NDTMA) filed a petition for rulemaking with the NRC (PRM–34–2) to require registration of individual radiographers by the NRC, including the issuance of a registration card to qualified radiographers which would then be subject to recall or revocation on demand by the NRC. As a result of this petition, an Advance Notice of Proposed Rulemaking (ANPRM) on certification of industrial radiographers by an NRC-approved third party was published in the **Federal Register** on May 4, 1982 (47 FR 19152). Public meetings in connection

with the ANPRM were also held at four different locations in 1982. Comments received from these public meetings indicated that most commenters believed that a third-party certification program would not significantly reduce the number of overexposure incidents to personnel and that the costs associated with such a program would exceed the benefits. Although some organizations expressed interest in acting as third-party certifiers, none of these organizations came forth with an acceptable proposal for radiographer certification. As a result of the comments received and an analysis of the costs involved, the NRC staff requested withdrawal of the ANPRM and the Commission approved this recommendation in November 1985.

Shortly afterwards, on December 17, 1986, the NRC published for public comment the report of its Materials Safety Regulation Review Study Group (51 FR 45122), which recommended, among other things, that industrial radiographers be certified by the NRC or by an Agreement State through some form of third-party certification. In 1988, the General Accounting Office called for the NRC to adopt this recommendation.

The ASNT IRRSP Certification Program

The ASNT, recognizing the need for a qualified third-party certifying organization, formed a task group to develop an ASNT radiographer certification program for Industrial Radiography Radiation Safety Personnel (IRRSP). In February 1988, ASNT presented its first draft proposal to the NRC for consideration as a third-party certifying organization. Several subsequent drafts of the ASNT program were submitted for review by the NRC, and in July 1989, the NRC concluded that the certification program would help to assure that individuals performing radiographer duties have an acceptable knowledge of radiation safety practices and principles, and meet minimum regulatory requirements for assessing training and experience. As the NRC's Chairman indicated in his July 20, 1989 letter to the ASNT, the NRC believes that the ASNT program, and its "national registry" of certified radiographers, will provide greater assurance that only properly qualified individuals will conduct industrial radiography in the United States.

The ASNT IRRSP Certification Program, which is a program for certifying industrial radiographers, was approved by its Board of Directors in March of 1990. The program, which includes use of a written examination developed by the State of Texas,[1] has been reviewed extensively by NRC headquarters staff and regional staff. The ASNT program will offer certification for both isotope and x-ray users. This NRC rule, however, applies only to isotope radiography.

ASNT application requirements for industrial radiographer certification specify the documentation of a candidate's completion of 40 hours of classroom training in radiation safety topics specified by the ASNT (which includes those topics listed in appendix A of 10 CFR part 34); documentation of 520 hours of direct hands-on experience with radiography sources and devices under the control of an NRC or Agreement State licensee; and proof of successful completion of a practical examination on safety procedures administered by an institution recognized by the ASNT. Recognized institutions are generally the candidates' employers, who are licensed by the NRC or Agreement States for the use of radiography sources.

Upon approval of an application for certification by ASNT, a candidate radiographer will then be eligible to take the State of Texas written examination. The examination is administered by the ASNT or the Conference of Radiation Control Program Directors (CRCPD), and is sent to the State of Texas for grading and the results forwarded to the ASNT. The examination covers fundamental radiation safety principles outlined in appendix A of part 34, pertinent federal and state regulations, basic radiographic equipment operation, general operating and emergency procedures, radiation detection instrumentation, and radiation safety procedures applicable to industrial radiography. In addition, the candidate is required to sign an acknowledgement that he/she will abide by the ASNT Rules of Conduct which ASNT considers necessary to maintain the integrity of the ASNT/IRRSP Certification Program. Upon successful completion of the required examinations and other requirements, the candidate for certification is provided with a wallet card identifying him/her as an ASNT certified radiographer.

ASNT certification is valid for three (3) years unless suspended or revoked for cause. Renewal of certification may be accomplished both with or without re-examination. A candidate for renewal without re-examination must document continued active permanent employment in radiography for at least 24 of the last 36 months. In addition, the candidate must document at least 8 hours of annual classroom refresher training covering basic radiation safety principles, equipment operations, emergency procedures, new safety regulations, license requirements and other pertinent information. If these criteria are not met the candidate must retake the written examination.

As described above, the ASNT–IRRSP program requires certified individuals to abide by certain Rules of Conduct. The Rules of Conduct require that certified individuals comply with NRC and/or Agreement State regulations, the employer's radiation safety and operating and emergency procedures, and to act in a professional manner in matters pertaining to industrial radiography or to the ASNT–IRRSP certification.

The program also contains complaint and hearing procedures. Upon receipt of a written allegation of unauthorized practice by an ASNT–IRRSP individual, a formal complaint is prepared and distributed to the IRRSP Ethics Subcommittee. Should the subcommittee not dismiss the allegation for insufficiency or other reason, a formal hearing that includes all interested parties may be held. Should the ASNT IRRSP Ethics Subcommittee determine that an unauthorized practice has been committed, the committee can take the following actions, based upon one of three severity levels specified in the ASNT certification program:

Severity Level I—A severity level I violation is grounds for revocation of certification for a minimum of 1 year and surrender of the certification card to ASNT.

Severity Level II—A severity level II violation may result in suspension of certification for 30 to 180 days and surrender of the certification card to ASNT for the duration of the suspension.

Security Level III—Violations in this category shall result in a formal reprimand that describes the nature of the violation and any subsequent action which may result if the violation is repeated.

ASNT is currently implementing its certification program. It is expected that the program could be fully capable of certifying the estimated 7000 eligible radiographers within two (2) to three (3) years. The NRC staff will monitor the program to provide, through actual experience, information for assessing the impacts of this third-party certification program. This information

[1] TBRC IR–03–1988, "The Development of an Examination Item Bank for Industrial Radiographic Personnel," C. Weber, R. Sanders, R. McBurney & E. Baily, Texas Department of Health, Bureau of Radiation Control. (NRC Contract # NRC–02–86–009).

may be used in the development of future rulemaking to make such certification mandatory. In addition, the NRC and ASNT have entered into an agreement on the exchange of information. ASNT will share with the NRC, and with the Agreement States through the NRC, an up-to-date list of radiographers certified through the ASNT program. ASNT will also inform the NRC of radiographers who have been reprimanded or whose certification has been suspended, revoked or otherwise affected, and will provide the NRC with information concerning the basis for the ASNT action. Also, the ASNT will refer to the NRC allegations of unsafe practices that it receives from complainants concerning certified radiographers. Allegations pertaining to such radiographers working in Agreement States will be referred to the appropriate Agreement State. The NRC will review as appropriate those allegations referred to it and will inform the ASNT of the results of such reviews and on any regulatory action taken. Further, if the NRC takes enforcement action directly affecting an ASNT certified radiographer, the NRC will provide appropriate information to the ASNT so that the ASNT can consider appropriate action relating to the radiographer's ASNT certification.

More detailed information regarding the certification program is available from the American Society for Nondestructive Testing, Inc., 4153 Arlingate Plaza, P.O. Box 28518, Columbus, Ohio 43228–0518.

Current NRC Practices

Current NRC sealed source radiography licensing requirements, paragraph 34.11(b), specify that an applicant for a license will have an adequate program for training radiographers and radiographers' assistants and will submit to the Commission a schedule or description of the program, which specifies the following: Initial training; periodic training; on-the-job training; and the means to be used by the licensee to determine the radiographer's knowledge and understanding of and ability to comply with Commission regulations and licensing requirements, and the operating and emergency procedures of the applicant. Also, paragraph 34.31(a) specifies that a licensee shall not permit any individual to act as a radiographer until such individual has been instructed in 10 CFR part 34 appendix A subjects, NRC regulations and the licensee's operating and emergency procedures; has demonstrated competence in the use of the licensee's radiographic equipment; and has sucessfully completed a written test and field examination on the subjects covered under this paragraph.

When applying for a NRC license to conduct industrial radiography, an applicant must describe his training program for radiographers, in accordance with § 34.11(b). The applicant must submit an outline of the training course (which must include the topics in appendix A to part 34), specify the time to be spent on each topic and show that the training course totals approximately 40 hours, identify the individual (and provide qualifications) conducting the training, submit a copy of a typical written examination to be used, and describe the field or practical examination given to prospective radiographers.

For an individual who has been a radiographer for another licensee, i.e., who has received training from a previous employer, it is still the new employer's responsibility to determine that the individual has met all regulatory requirements and is competent to act as a radiographer. The newly hirded individual must receive formal instruction in at least the employer's operating and emergency procedures and must be given the written and field examinations. Licensees are expected to describe under §§ 34.11(b) (3) and (4) how they will conduct this instruction and describe their testing procedures as part of their program description. The training program descriptions submitted by a license applicant are incorporated by the NRC as a condition of the new license.

Description of Amendments

Upon review of the ASNT certification program, the NRC staff concluded that individuals certified under the program would meet minimum radiation safety and qualification requirements. Based upon this conclusion, in 1989 the NRC published for comment a proposed rule that would permit certification of industrial radiographers under the ASNT program in lieu of the current requirement for radiographer license applicants to submit a description of the applicants' initial training and testing program on radiation safety subjects in appendix A of 10 CFR part 34 and required under § 34.31 (54 FR 47089; November 9, 1989). This rulemaking, which is now being published in final form, complements and is consistent with other recent NRC actions relating to radiography, such as the final radiography device rule (55 FR 843, January 10, 1990) and the quarterly radiographer performance inspection program (51 FR 21736, June 16, 1986).

The amendments to 10 CFR 34.11 apply to all applicants for NRC industrial radiography licenses and to all current NRC radiography licensees. This final rule will provide radiography license applicants the option to affirm that all individuals acting as radiographers will be certified in radiation safety by the ASNT–IRRSP program prior to commencing duty as radiographers. This option is in lieu of the current requirement in § 34.11 for submitting a description of the applicant's initial training and testing program on radiation safety subjects listed in appendix A of 10 CFR part 34. Existing NRC radiography licensees will be allowed to substitute the ASNT examination for the written examination required by § 34.31(a)(4) described in their license application. However, this option applies only to that portion of the written examination that covers the topics outlined in appendix A to 10 CFR part 34 and does not affect other competency requirements such as those specified in § 34.31(a)(2) and § 34.31(a)(3).

Existing licensees will also be allowed to substitute ASNT certification as evidence that an individual has completed the necessary radiation safety training and testing requirements in lieu of any verification procedures the applicant may have described for previously trained individuals in its application. NRC's radiography licensees will be able to make these substitutions without applying to have their licenses amended. However, these allowed substitutions apply only for the current duration of the license. In the application that the licensee submits for license renewal after the effective date of this final rule, the licensee has three choices:

(1) Specify only the training and testing programs described in previous applications; or

(2) Delete the description of the initial radiation safety training program in previous applications and affirm that all of its radiographs will be ASNT certified; or

(3) Modify the description of the training program in previous applications to incorporate a provision to substitute ASNT certification as provided in this rulemaking for some or all of its radiographers.

Of course, at any time, an existing licensee can elect to seek amendment of its license to eliminate the description of its initial training program and to affirm that all of its radiographers will be ASNT-certified.

It is important that radiography licensees and applicants note that while

the rule permits licensees and applicants to use ASNT certification of radiographers in lieu of certain descriptions required by § 34.11(b), it does not waive the other requirements in § 34.11(b), § 34.31, and appendix A of 10 CFR part 34. Furthermore, this rule also does not change the requirements for radiographers' assistants and the descriptions of the periodic retraining and training and operating and emergency procedures as specified in § 34.11(b)(2) and § 34.11(b)(4). When reviewing a license application, as stated earlier, NRC staff will continue to examine how the applicant intends to train prospective radiographers in the appendix A radiation safety topics. If the license applicant intends to conduct this training in-house, the identity of the individual and his/her qualifications must be set forth in the application. The NRC will also require the applicant to confirm that prospective radiographers will receive approximately 40 hours of formal classroom training in the 10 CFR part 34 appendix A radiation safety topics.

As noted earlier, the NRC plans to monitor the ASNT certification program. The purpose of such monitoring is to assure that the certification program continues to adequately assess radiographer competence in radiation safety and to determine what impacts these amendments have on radiation safety within the radiography industry. The NRC will analyze the costs and benefits of the program as part of NRC's plan to initiate a subsequent rulemaking which would require third-party certification of all radiographers.

Public Comments

The proposed rule (54 FR 47089, November 9, 1989) specifically solicited comments on two issues:

1. The provision to provide license applicants the option to affirm that all of their active radiographers would be certified in radiation safety by the ASNT, prior to commencing duties as radiographers, in lieu of the current licensing requirement to submit descriptions of planned radiation safety training requirements and qualification procedures.

2. The costs of benefits of third-party radiation safety certification for use by the Commission in its consideration of a planned subsequent rulemaking that would require radiographer certification.

A total of 52 responses were received. However, the majority of the commenters did not comment on the first issue and directed their comments to the second issue involving third-party certification. The following is a discussion of the comments received.

1. Option to Affirm

This issue was addressed by only sixteen (16) of the fifty-two (52) comment letters received. Of those commenting, nine commenters favored the option, and seven were opposed.

Comments in Favor

Those commenters favoring the option made the following points:

(1) A standardized radiation safety program could save applicants time and money when submitting a request for a license, since the development of a description of the training program would not be required.

(2) The option might save some companies considerable effort and expense in that the ASNT program would eliminate the need for them to set up their own training programs and it could perhaps benefit smaller operators.

(3) Licensees would benefit because participation in the voluntary ASNT program has the potential to significantly improve radiation safety awareness and performance in the radiography industry and will provide a higher level of assurance for licensees that their radiographers have received the required training and have an adequate understanding of radiation safety principles.

NRC Response: Comment 2 of those favoring the option appears to indicate a misunderstanding of the proposed rule. Commenters assumed that certification would substitute for the licensee's training program and possibly save the licensee time and expense resulting from the training requirement.

The proposed rule was quite clear on this issue and provided that applicants could affirm that all individuals acting as radiographers would be certified under the ASNT program in lieu of the applicant having to describe an initial training program for radiographers. The proposed rule also clearly stated that the proposed provisions did not alter the requirements for providing the training specified in 10 CFR 34.31. It was never intended that the ASNT would provide the required training. Rather, ASNT, as part of its certification program, would require documentation that radiographers had received the specified training. The training of radiographers would remain the licensee's responsibility. A parenthetical statement included in the new § 34.11(b)(5) is intended to make clear that the licensee will still be required to provide radiographer training. The statement reads "This paragraph does not affect the licensee's responsibility to assure that radiographers are properly trained in accordance with § 34.31(a)." The ASNT certification would satisfy the examination requirements of § 34.31(a)(4) but only to the extent of the appendix A topics, and not for topics such as emergency procedures.

The NRC agrees with comment 3 of those favoring the option that the ASNT certification program could lead to improved safety awareness and performance. This comment also seems to imply that under the proposed rule NRC's current licensees would directly benefit from the rule change. As originally proposed however it was not clear whether the proposed rule only applied to license applicants. Current radiography licensees would have had to request an amendment to their licenses to utilize the ASNT program. As stated in the notice of proposed rulemaking, it was NRC's intent to encourage industrial radiography licensees as well as applicants for licenses to participate in the ASNT program. After further consideration, the NRC staff recognizes that requiring a current licensee to seek amendment of its license would not encourage licensees to participate in the program. In fact, license amendment costs could possibly deter many existing licensees from participating in the program. Therefore, the NRC has revised the language of the rule to provide for existing radiography licensees to participate in the certification program without the need for having their licenses amended.

Comments in Opposition

Those commenters opposing the option made the following points:

(1) The ASNT program costs too much.

(2) The ASNT program appears to remove oversight from the NRC and leave it in the hands of an organization with a vested interest in radiography. Third party certification rules must be administered by a regulatory body which has the statutory authority to promulgate rules and impose enforcement actions.

(3) Since the licensee would still be providing classroom and on-the-job training and conducting the practical examination; and since the ASNT has not committed to verifying training and practical examinations, it is imperative that the NRC continue to exercise regulatory control and oversight of radiographer training through its license application review process.

NRC Response: At the proposed rule stage the NRC estimated the cost of certification to be $1000 per radiographer. The NRC has reevaluated this cost due to a reduction in travel

costs based upon ASNT plans to offer the examination at approximately 70 locations. The NRC staff now believes the cost to be about $350 per radiographer which is reasonable considering the many facets of the program and the expected improvement of radiographer training and awareness of safety procedures that could result from certification. In any case, ASNT certification is to be voluntary. Licensees are not required to seek ASNT certification for radiographers.

With regard to the second comment concerning a perceived loss of oversight by the NRC, this is neither intended nor is it a likely result. The NRC will continue its inspection of licensee programs and will ensure that individuals acting as radiographers meet all regulatory requirements. By these efforts, the NRC staff will be evaluating the third-party certification program to ensure its effectiveness. Interested Agreement States may also recognize the ASNT program and thereby also make an assessment of the ASNT program through the inspection process within their own jurisdictions.

The NRC and the ASNT are also developing an agreement for periodic monitoring of the ASNT program. It is hoped that representatives from the CRCPD and the State of Texas will also participate. This monitoring will be supported through an exchange of information between ASNT and NRC (which has been stipulated in an agreement between the two parties and which is discussed in the section on ASNT IRRSP certification) concerning the disposition of reports of unauthorized practices by individual radiographers or problems with a licensee training program.

With regard to the last comment concerning NRC regulatory control and oversight of radiographer training, NRC will continue to monitor training since the final rule does not relinquish training or supervision of training to the ASNT, and does not affect the training of radiographer's assistants. The rule simply allows the ASNT certification to be used by licensees and license applicants as a means for meeting the requirements of § 34.11(b) and the examination requirements for radiation safety topics in § 34.31(a)(4). The NRC staff believes, however, that passing the ASNT examination may be a better indicator of the adequacy of a licensee's training program than an NRC review of the applicant's description of the training program and an outline of the list of subjects to be covered. The staff notes that State of Texas representatives have indicated that some companies providing training to industrial radiographers in that State have had to upgrade their training programs to ensure that trainees would be able to pass the Texas examination. As part of its license review process, the NRC will continue to determine how a licensee or license applicant intends to provide this training to its employees. If the licensee intends to conduct this training in-house, the NRC will continue to review the qualifications of the individuals conducting the training as well and will also assure that total duration of training will be a minimum of 40 hours.

2. Mandatory Third-Party Certification

The proposed rule solicited comments on the costs and benefits of third-party certification which would be used by the Commission in its consideration of planned subsequent rulemaking that would require radiographer certification (54 FR 47069).

Comments: Of the persons responding to the proposed rule, most commented on this issue. The proposed rule did not state that if there were mandatory third-party certification the ASNT would be the only third-party certifier. Nevertheless, most commenters assumed this would be the case, with the result that many comments included criticism directed toward the ASNT and provided little discussion of the major issues associated with requiring radiographer certification. In spite of this, numerous questions were raised regarding mandatory third-party certification which the Commission will consider in any subsequent proposed rulemaking relating to mandatory third party certification. The following is a summary of the comments made on this issue:

1. The criteria that other third-party certifiers would have to satisfy should be identified.

2. Will ASNT-certified radiographers have to be recertified in Texas or in other States that develop their own programs? Who will decide whether there will be reciprocity among the various certification programs?

3. If there are multiple certification programs, who will have the authority to decertify individual radiographers for cause?

4. Since the NRC does not regulate x-rays, who will certify x-ray radiographers in States that do not have their own certification program?

5. Unless there is a national certification program with reciprocity among all States, revoking a radiographer's certification in any particular State will be ineffective in preventing him/her from working in another State.

6. Rules that are to become matters of compatibility should be developed in close cooperation with the States through a joint rulemaking effort.

7. NRC should form a task force to develop procedures to handle reciprocal recognition of the training and experience criteria established by various entities for certification of industrial radiographers.

Impact of the Rule

The ASNT initially had estimated the initial cost of certification to be approximately $1000 per radiographer based on a conservative assumption that radiographers would have to travel to a central location to take the certifying examination. The cost estimate included examination and certification fees of $95 for ASNT members and $140 for non-members. The remainder of the estimate comprised the costs for travel, food and lodging for a radiographer applying for certification. At the present time, ASNT plans to offer the examination at approximately seventy (70) of its local ASNT chapters throughout the United States. This approach should reduce travel, food and lodging costs to about $200–$300 per radiographer. The present estimate of the initial cost is therefore approximately $300–$400.

Cost for renewal of certification, which is required every 3 years, is $55 per radiographer for certification without examination for members, and $100 for non-member certification without examination. The requirements for recertification without examination are discussed under this section "The ASNT IRRSP Certification Program." The costs of renewal where an examination is required would be the same as for an initial certification.

Based upon experience with similar voluntary certification programs in other industries such as welding, the staff estimates that about 10 percent of the eligible radiographers, numbering about 7,000, will seek certification each year. At an overall cost of $300 to $400 per radiographer, the annual cost to the industry will be $210,000 to $280,000. However, because the certification provided for by this rule is voluntary, all of the costs will be incurred voluntarily by licensees and individual radiographers. Those choosing the option to incur these costs will do so only because they perceive that the benefits obtained from pursuing this alternative are sufficient to justify the expense.

The NRC, as well as those who commented in favor of the proposed rule, believe that voluntary participation in the program has the potential to significantly benefit the industry as a whole as well as regulators, by adequately ensuring the effectiveness of the training, improving the standard of radiographer training and raising the level of professionalism and knowledge among radiographers and their attention to radiography safety procedures.

Environmental Impact: Categorical Exclusion

The NRC has determined that this regulation is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(3)(i). Therefore, neither an environmental impact statement nor an environmental assessement has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150–0007.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the draft analysis may be obtained from Dr. Donald O. Nellis, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–3628.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. While the regulation affects all industrial radiography licensees and license applicants, it is in the form of an option so that any costs incurred under the regulation are voluntary. Under the current regulations, license applicants are required under 10 CFR 34.11(b) to provide written descriptions of initial radiation safety training and the means used to determine radiographers' knowledge and understanding in this area. This final rule permits substitution of ASNT certification of radiographers for these written descriptions and allows current NRC radiography licensees as well as license applicants to take advantage of the ASNT program as previously described. Certification, which is voluntary, will initially cost $300 to $400 per radiographer. Certification is for a period of 3 years and the costs of recertification without re-examination are $55 for members and $100 for non-members for those qualified. The additional costs involved in this option are voluntary and could be incurred either by the licensee or by the individual radiographer. The NRC believes that those who select this option do so because they believe that the additional training and prestige that accompany certification are worth the added cost. However, the potential improvement in safety awareness and performance is believed to be significant and the overall benefit to industry is believed to outweigh any economic impact on small entities.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule and, therefore, that a backfit analysis is not required for this rule because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 34

Packaging and containers, Criminal penalties, Radiation protection, Radiography, Reporting and recordkeeping requirements, Scientific equipment, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR part 34.

PART 34—LICENSES FOR RADIOGRAPHY AND RADIATION SAFETY REQUIREMENTS FOR RADIOGRAPHIC OPERATIONS

1. The authority citation for part 34 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 945, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 34.32 also issued under sec. 206, 88 Stat. 1246 (42 U.S.C. 5846).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 34.22, 34.23, 34.24, 34.25 (a), (b), and (d), 34.28, 34.29, 34.31 (a) and (b) 34.32, 34.33 (a), (c), and (d), 34.41, 34.42, and 34.43 (a), (b) and (c), and 34.44 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 34.11(d), 34.25 (c) and (d), 34.26, 34.27, 34.28(b), 34.29(c), 34.31(c), 34.33 (b) and (e), and 34.43(d) are issued under sec 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 34.11, paragraph (b)(5) is redesignated as paragraph (b)(6) and a new paragraph (b)(5) is added to read as follows:

§ 34.11 Issuance of specific licenses for use of sealed sources in radiography.

* * * * *

(b) * * *

(5) In lieu of describing its initial training program for radiographers in the subjects outlined in appendix A of this part, and the description of and the means used to determine the radiographer's knowledge and understanding of these subjects, the applicant affirms that all individuals acting as radiographers will be certified in radiation safety through the Certification Program for Industrial Radiography Radiation Safety Personnel of the American Society for Nondestructive Testing, Inc. (ASNT–IRRSP) prior to commencing duties as radiographers. From April 18, 1991, to the date of the renewal of an existing license, an approved license application is deemed to include the option, for individuals who are certified in radiation safety through the ASNT–IRRSP, to substitute ANST–IRRSP certification in lieu of the described means to determine a radiographer's knowledge and understanding of the subjects in § 34.31(a)(1). (This paragraph does not affect the licensee's responsibility to assure that radiographers are properly trained in accordance with § 34.31(a)).

* * * * *

Dated at Rockville, Maryland, this 4th day of March 1991.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 91–6484 Filed 3–18–91; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 760, 887, and 905

[Docket No. R–91–1445; FR–2588–C–03]

RIN 2501–AA80

Procedures for Obtaining Wage and Claim Information From State Wage Information Collection Agencies, Final Rule; Correction

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule; Correction.

SUMMARY: On February 22, 1991, the Department published in the **Federal Register** a final rule that governed the collection and use of wage and claim information and the collection of employee income information about applicants and participants in HUD's subsidized FHA insurance and assisted housing programs. The purpose of this document is to make several typographical and editorial corrections found in certain sections of the published final rule.

EFFECTIVE DATE: March 25, 1991.

FOR FURTHER INFORMATION CONTACT: For questions concerning computer matching: Dennis Raschka, Director, Program Integrity Division, Office of Inspector General, room 8254, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–0006.

For the section 8 Programs (Certificates, Housing Vouchers, Moderate Rehabilitation) administered by Public Housing Agencies: Margaret Milner, Deputy Director, Office of Elderly and Assisted Housing, room 6130, 451 7th Street, SW., Washington, DC 20410, telephone number (202) 708–0720.

For the Indian Housing program administered by the Assistant Secretary for Public and Indian Housing: Dom Nessi, Director, Office of Indian Housing, room 4232, 451 7th Street, SW., Washington, DC 20410, telephone number (202) 708–1015. (None of these telephone numbers are toll-free.)

With regard to information on this rule for the hearing impaired, the telephone numbers listed in this section may be reached via Telecommunications Devices for the Deaf (TDD machines) by dialing the Federal Information Relay Service on 1–800–877–TDDY or 1–800–877–8339 or (202) 708–9300.

SUPPLEMENTARY INFORMATION: On February 22, 1991 (56 FR 7518), the Department published in the **Federal Register** a final rule that governed the collection and use of wage and claim information and the collection of employee income information about applicants and participants in HUD's subsidized FHA insurance and assisted housing programs. Covered programs included ithe subsidized FHA insurance programs under 24 CFR chapter II, subchapter B; and the section 8 and Public and Indian Housing programs under 24 CFR chapters VIII and IX. The purpose of the rule was to help decrease the incidence of fraud, waste, and abuse in those programs.

The purpose of this document is to make the following editorial and typographical corrections to the February 22, 1991 final rule:

1. In § 760.3, paragraphs (b) (1) through (14) should have been designated as (b) (1) through (13);

2. In § 887.105, the section heading erroneously referred to § 886.105" instead of "§ 887.105";

3. In § 887.403, a new paragraph (d) was incorrectly added to the section, instead of correctly adding a new paragraph (e); and

4. Since § 905.302 was redesignated as § 905.301 on June 18, 1990 (55 FR 24767), the reference to "§ 905.302(a)(3)" should be corrected to read "§ 905.301(a)(3)".

List of Subjects

24 CFR Part 760

Certain housing assistance programs, Income verification procedures.

24 CFR Part 887

Grant programs—housing and community development, Housing, Rent subsidies, Low and moderate income housing.

24 CFR Part 905

Grant programs—housing and community development, Grant programs—Indians, Indian housing, Loan Programs—Indians, Low and moderate income housing, Public housing, Homeownership.

Accordingly, in FR Doc. 91–4081, published in the **Federal Register** of February 22, 1991 (56 FR 7518), 24 CFR parts 760, 887, and 905 are corrected to read as follows:

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)

1. The authority citation for 24 CFR part 760 continues to read as follows:

Authority: Sec. 904, Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (42 U.S.C. 3544), secs. 3, 6, 8, 205, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437d, 1437f, 1437ee); sec. 202, Housing Act of 1959 (12 U.S.C. 1701q); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 760.3 [Corrected]

2. In § 760.3, on page 7532, third column, paragraphs (b) (1) through (14) are correctly designated as paragraphs (b) (1) through (13).

PART 887—HOUSING VOUCHERS

3. The authority citation for 24 CFR part 887 continues to read as follows:

Authority: Secs. 3, 5, and 8, U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 887.105 [Corrected]

4. In § 887.105, on page 7543, in the second column, the section heading entitled "§ 886.105 PHA responsibilities" is corrected to read "§ 887.105 PHA responsibilities".

§ 887.403 [Corrected]

5. In § 887.403, on page 7543, item 59, in the third column, correct the amendatory language from "In § 887.403, a new paragraph (d) is added * * *" to read "In § 887.403, a new paragraph (e) is added * * *", and correct the paragraph heading from "(d) *Requirement to sign consent forms.*" to read *"(e) Requirement to sign consent forms."*

PART 905—INDIAN HOUSING

6. The authority citation for 24 CFR part 905 continues to read as follows:

Authority: Secs. 201, 202, 203, 205, United States Housing Act of 1937, as added by the Indian Housing Act of 1988 (Pub. L. 100–358) (42 U.S.C. 1437aa, 1437bb, 1437cc, 1437ee); sec. 7(b), Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 905.301 [Corrected]

7. On page 7545, item 67, first column, correct the amendatory language from "In § 905.302, paragraph (a)(3) is revised * * *" to read "In § 905.301, paragraph (a)(3) is revised * * *" and correct the section heading from "§ 905.302 Admission policies." to read "§ 905.301 Admission policies.".

Dated: March 12, 1991.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 91–6404 Filed 3–18–91; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8331]

RIN 1545-AE38

Foreign Base Company Oil Related Income; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to Treasury Decision 8331, which was published in the Federal Register for Friday, January 25, 1991 (56 FR 2845). The final regulations relate to current taxation of foreign base company oil related income.

FOR FURTHER INFORMATION CONTACT: Richard Chewning, (202) 566-6285 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections provide guidance needed to comply with the changes made by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) and by the Tax Reform Act of 1984 and affect controlled foreign corporations with foreign oil related income and their U.S. shareholders.

Need for Correction

As published, T.D. 8331 contains typographical errors that, if not corrected, might cause confusion to taxpayers and practitioners.

Correction of Publication

Accordingly, the publication of final regulations (T.D. 8331) which was the subject of FR Doc. 91-1439, is corrected as follows:

1. On page 2846, in the preamble, column 1, under the heading "Explanation of Provisions", line 11, the language "well located in that foreign country or" is corrected to read "well located in that foreign country, or".

§ 1.954-8 [Corrected]

2. On page 2849, column 1, § 1.954-8(c)(4), under Example 4(ii), line 5, the language "from both purchased and refined products:" is corrected to read "from both purchased and refined products."

3. On page 2849, column 1, § 1.954-8(c)(4), under Example 4(ii)(A), last line in that column, the language "product can not be presumed to be extracted" is corrected to read "product cannot be presumed to be extracted".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-6408 Filed 3-18-91; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-91-07]

Special Local Regulations for Marine Events; Twelfth Annual Safety-at-Sea Seminar, Severn River, Annapolis, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.511.

SUMMARY: This notice implements 33 CFR 100.511 for the Twelfth Annual Safety-at-Sea Seminar, an annual event to be held April 6, 1991 on the Severn River, at Annapolis, Maryland. These special local regulations are necessary to control vessel traffic within the immediate vicinity of the U.S. Naval Academy during the Pyrotechnic Display, Helicopter Rescue Demonstration, and Sail Training Craft Maneuver Demonstration. The effect will be to restrict general navigation in this area for the safety of the spectators and the participants in these events.

EFFECTIVE DATE: The regulations in 33 CFR 100.511 are effective from 11 a.m. to 2:30 p.m., April 6, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Captain Michael K. Cain, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The U.S. Naval Academy, Annapolis, Maryland, submitted an application to hold the Twelfth Annual Safety-at-Sea Seminar on April 6, 1991 in the Severn River just off the Robert Crown Sailing Center, U.S. Naval Academy, Annapolis, Maryland. This event involves approximately 950 midshipmen, officers, coaches and guests. The event includes demonstrations of life rafts, pyrotechnics, use of anti-exposure suits, man overboard procedures, and a helicopter rescue. Since this event is of the type contemplated by these regulations, the safety of the participants will be enhanced by the implementation of the special local regulations. Commercial traffic should not be severely disrupted.

Dated: March 11, 1991.

P.A. Welling,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 91-6462 Filed 3-18-91; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 161

[CGD 90-048]

RIN 2115-AD62

Vessel Traffic Management in St. Marys River

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule changes the requirement for maintaining a radio listening watch on channel 16, to channel 12, for vessels in the St. Marys River Vessel Traffic Service (VTS) Area and also changes some of the reporting points for vessels transiting the VTS Area. Vessels in the VTS Area are presently required to maintain a listening watch on channels 16 and 13 while communicating with the Vessel Traffic Center (VTC) on channel 12. This change will result in lessening the confusion which may result from listening and communicating on three separate channels. Changing some of the reporting points will improve the overall operations of the VTS.

EFFECTIVE DATE: April 18, 1991.

FOR FURTHER INFORMATION CONTACT: Bruce Riley, Project Manager, Navigation Safety Special Projects Staff, Tel. (202) 267-0412.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Bruce Riley, Project Manager, and Nicholas Grasselli, Project Counsel, Office of Chief Counsel.

Regulatory History

On November 9, 1990, the Coast Guard published a notice of proposed rulemaking entitled Vessel Traffic Management in St. Marys River in the

Federal Register (55 FR 47077). The Coast Guard received 2 letters commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

A vessel transiting the St. Marys River VTS Area is required to maintain a watch and communicate on three separate VHF/FM channels, 13, 16, and 12, while simultaneously navigating through the restricted waters of the St. Marys River.

On February 6, 1989, Commander, Ninth Coast Guard District, granted a deviation to § 161.820, pursuant to 33 CFR 161.809. By this deviation, mariners were relieved of the requirement to continuously maintain the watch on channel 16, and were required instead to listen on channel 12 while transiting the St. Marys River VTS Area. With the deviation in effect, more reliable communications on channel 12 and 13 were realized.

Discussion of Comments and Changes

One comment was fully supportive of the proposal. A second comment suggested changing the reporting points contained in the St. Marys River VTS Area. The suggestion recommended the following: change the reporting point for downbound vessels from "Oak Ridge" to "West Neebish Channel Light 29;" change the reporting point for both upbound and downbound vessels from "Brush Point" to "Pointe Louise;" change the "Leaving locks" reporting point to "Clear of lock;" and change the final upbound reporting point "Ile Parisienne Light" to "Gros Cap Reefs Light." These recommended changes are in line with a survey conducted during 1988–1989 by the Lake Carriers Association, International Ship Masters' Association and the Canadian Shipowners' Association and would have no negative impact on the safety of navigation. The recommended change is accepted and reflected in this final rule.

Therefore, this rulemaking amends 33 CFR part 161 to require a vessel transiting the St. Marys River VTS Area to monitor channel 12 instead of channel 16, and also changes reporting points for vessels transiting the VTS Area in accordance with the comment.

Regulatory Evaluation

This rulemaking is not major under Executive Order 12291 and is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979).

The act of requiring a vessel to guard one radio channel instead of another is expected to have no economic impact for vessels transiting the St. Marys River VTS Area. These vessels will not be required to acquire any additional communications equipment to communicate on this new frequency. Therefore, the Coast Guard expects the economic impact of this rulemaking to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

The regular practices of present users of St. Marys River VTS will not change significantly because of this rulemaking. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

The Coast Guard considers operational communications within the VTS Area as transitory in nature and, therefore, has concluded that this rule contains no collection of information requirements, (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Environment

The Coast Guard considered the environmental impact of this rulemaking and concluded that under section 2.B.2. of Commandant Instruction M16475.1B, this rulemaking is categorically excluded from further environmental documentation. Since this rulemaking is primarily aimed at improving communications and navigation, no effect on the human environment is expected. A Categorical Exclusion Determination is available for inspection or copying in the rulemaking docket.

List of Subjects in 33 CFR Part 161

Harbors, Navigation (water), Vessels, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 161 as follows:

PART 161—VESSEL TRAFFIC MANAGEMENT

1. The authority citation for Part 161 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

2. Section 161.820 is revised to read as follows:

§ 161.820 Radio listening watch.

The master of a vessel in the VTS Area shall continuously monitor channel 13 VHF/FM (156.65 Mhz) and channel 12 VHF/FM (156.6 Mhz)

3. Section 161.834 is revised to read as follows:

§ 161.834 Reporting points.

The following locations are permanent reporting points:

Upbound vessels	Reporting points	Downbound vessels
Report	De Tour Reef Light	Report
Do	Munuscong Lake Junction Lighted Bell Buoy.	Do.
Do	West Neebish Channel Light 29.	Do.
Do	Ninemile Point	Do.
Do	Six Mile Point	Do.
Do	Mission Point	Do.
Do	Clear of lock	Do.
Do	Pointe Louise	Do.
Do	Round Island Light 32	Do.
Do	Gros Cap Reefs Light	Do.
Do	Ile Parisienne Light	Do.

Dated: February 11, 1991.

J. W. Lockwood,

Captain, U.S. Coast Guard Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 91–6463 Filed 3–18–91; 8:45 am]

BILLING CODE 4910–14–M

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual; Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service hereby describes the numerous miscellaneous revisions consolidated in the Transmittal Letter for issue 38 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations, see 39 CFR 111.1.

Most of the revisions are minor, editorial, or clarifying. Substantive changes, such as the regulations implementing the new rates, fees, and mail classifications, and the revised regulations on the examination of mail reasonably suspected of being dangerous to persons or property, have previously been published in the Federal Register.

EFFECTIVE DATE: February 24, 1991.

FOR FURTHER INFORMATION CONTACT: Neva R. Watson, (202) 268–2963.

SUPPLEMENTARY INFORMATION: The Domestic Mail Manual has been amended by the publication of a transmittal letter for issue 38, dated February 24, 1991. The text of all published changes is filed with the Director of the Federal Register. Subscribers to the Domestic Mail Manual receive these amendments automatically from the Government Printing Office.

The following excerpt from the Summary of Changes section of the transmittal for issue 38 covers the minor changes not previously described in interim or final rules published in the **Federal Register.**

Summary of Changes

* * * * *

Section 121.323c adds copolymer as an acceptable plastic film for shrinkwrapping mail. (*Postal Bulletin* 21782, 2–7–91)

Exhibits 122.63b–f, 122.63i, and 122.63m–r are revised to reflect changes in mail processing operations. The resultant changes in labeling requirements take effect on March 17, 1991. Changes are indicated by boldface type. (*Postal Bulletin* 21780, 1–10–91)

Section 134.221, which lists the type of personal correspondence that certain United States military personnel may mail without paying postage, adds video-recorded communications. The free mailing privilege is permitted only to members of the U.S. Armed Forces on active duty under the conditions in section 134.222. The note following 134.222 redefines the geographic areas covering the military bases eligible for free mailing privileges as a result of hostilities in the Persian Gulf. (*Postal Bulletin* 21779, 12–27–90)

Section 144.735, *Use of Meter Stamps,* is revised to clarify the conditions governing the use of post office meters. The portion of the regulation describing the sale of meter stamps for philatelic purposes is moved from 144.735 to 163.525, a new section. Section 163.525 also permits the sale of postage-due meter stamps for philatelic purposes. (*Postal Bulletin* 21779, 12–27–90)

Section 159.51 and the corresponding table in 159.511 are amended to show that the service area of the New York Dead Letter Branch is expanded to include Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. This change takes effect on March 9, 1991. The Boston Dead Letter Branch, currently serving post offices in those six states, will cease operations on the effective date. Changes in the table are indicated by boldface type. (*Postal Bulletin* 21780 1–10–91)

Chapter 2

Section 223.22 now requires customers to provide the Postal Service with a 30-day notice to change an Express Mail destination address for origin caller service mail. (*Postal Bulletin* 21782, 2–7–91)

Chapter 3

Sections 367.112b–d, 367.211, 367.221, 367.231, 367.312b–d, 441.24a–f, 443.25a–f, 444.25a–f, 445.225, 445.244b, 445.325, 445.344b, 445.444b, 641.121a–d, 644.144b, 644.224b, and 644.344b provide additional guidelines for ensuring the integrity and stability of mail packages. The revisions to these guidelines recommend a 4-inch maximum thickness (with a fixed threshold of 6 inches). The revisions also, recommend that banding be placed along the length of packages first and a second band along the girth and over the first band. The revisions also remind mailers that top caps are required on loaded pallets weighing less than 1,000 pounds gross, as well as on any pallet that will be double-stacked during staging or transit. (*Postal Bulletin* 21780, 1–10–91)

Parts 384, 663, and 784 are added and §§ 461.2, 463.1, 463.2, 463.3, and 463.4 are amended to describe the procedures and standards for computing, rounding, and expressing weight and postage for First-, second-, third-, and fourth-class mailings. The rounding of figures for weights and postage must now follow a standard formula. Weights are to be expressed in decimal pounds rather than pounds and ounces; postage amounts are to be written in dollars. (*Postal Bulletin* 21776, 11–15–90)

Chapter 9

Sections 917.211, 917.212, and 917.543 are corrected to state that Form 3614–A, *Application for a BRM Permit,* must be used to apply for Business Reply Mail privileges. Form 3621–A, *Renewal Notice for Annual Fees,* is used only to renew the annual fee for this mail. (*Postal Bulletin* 21782, 2–7–91)

Section 952.138 amends addressing requirements for Accelerated Reply Mail (origin caller service) to allow customers use of their unique 5-digit ZIP Codes. In addition, the delivery address provision for Express Mail Custom Designed Service option is clarified to allow shipment to any destination customers choose. (*Postal Bulletin* 21782, 2–7–91)

Glossary of Forms

The glossary of forms that appears in this issue has not been fully updated to include the numerous changes and revisions resulting from the implementation of new rates and regulations on February 3, 1991. A complete revision of the glossary will be published in DMM Issue 39.

Index

The index that appears in this issue has not been fully updated to include all changes and revisions resulting from the implementation of new postal rates and regulations on February 3, 1991. A complete revision of the index will be published in DMM Issue 39.

List of Subjects in 39 CFR Part 111

Postal service.

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. In consideration of the foregoing, the table at the end of § 111.3(e) is amended by adding at the end thereof the following:

§ 111.3 Amendments to the Domestic Mail Manual.

* * * * *

Transmittal letter for issue	Dated	**Federal Register** publication
38	Feb. 24, 1991.	56 FR [insert FR page number]

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 91–6403 Filed 3–18–91; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 135

[FRL 3760–3]

RIN 2040–AB50

Requirements for Citizen Suits Under the Clean Water Act

AGENCY: Environmental Protection Agency [EPA].

ACTION: Final rule.

SUMMARY: Section 505 of the Clean Water Act (CWA) authorizes any person to sue as alleged violator of

certain requirements of the CWA. The Water Quality Act of 1987 (WQA) amended CWA Sec. 505 to require that the citizen plaintiff shall serve a copy of the complaint filed in such a suit on the Administrator and the Attorney General. The WQA also provides that no consent judgment shall be entered by the court to resolve such a suit prior to 45 days following the receipt of the proposed consent judgment by the Administrator and the Attorney General. EPA is today promulgating regulations governing the manner in which parties in citizen suits must provide copies of filed complaints and proposed consent decrees under this new provision in order to effectively implement the requirements of the WQA.

EFFECTIVE DATE: The requirements contained in this rule will take effect April 18, 1991. In accordance with 40 CFR 23.7, this regulation will be considered final Agency action for the purposes of judicial review at 1 p.m. eastern time on April 2, 1991.

ADDRESSES: Public comments, supporting documents, and the public docket for this rulemaking are available for review during normal business hours at the Environmental Protection Agency, room 3109 in the Mall, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: David Drelich, Water Enforcement Division, Office of Enforcement [LE–134W], Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, telephone (202) 475–8180.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Statutory Authority

On February 4, 1987, the Water Quality Act of 1987 was enacted, amending the Clean Water Act of 1977 by the addition of section 505(c)(3), which states:

> Protection of Interests of the United States.—Whenever any action is brought under this section in a court of the United States, the plaintiff shall serve a copy of the complaint on the Attorney General and the Administrator. No consent judgment shall be entered in an action in which the United States is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Administrator.

Before this amendment, citizen plaintiffs who brought enforcement actions under section 505 of the Act, 33 U.S.C. 1365, were required only to provide a sixty day notice of intent to file the suit to the Administrator and the alleged violator. Section 505(b), 33 U.S.C. 1365(b).

II. Background

A. Statutory and Regulatory Background

On October 18, 1972, the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. 1251 *et seq.*, was enacted into law. That statute required, subject to two exceptions not relevant here, that any person who brought suit against an alleged violator of: (1) An effluent standard or limitation under that Act, or (2) an order issued by a State or the Administrator with respect to such a standard or limitation, must provide the Administrator with sixty days' notice of such action. Section 505 (a) and (b), 33 U.S.C. 1365 (a) and (b). On June 7, 1973, EPA promulgated the predecessor Prior Notice of Citizen Suits regulation at 38 FR 15040.

Section 504 of the Water Quality Act of 1987, Public Law 100–4, 101 Stat. 7 (33 U.S.C. 1365), amended the citizen suits provision of the Clean Water Act (as the FWPCA was renamed in 1977) to include a provision entitled "Protection of Interests of United States," quoted above, which placed additional requirements on parties to cases brought under section 505 of the Act. On August 30, 1989, the Agency proposed the amendment of 40 CFR 135 to include regulations which would govern "the manner in which parties in citizen suits must provide copies of filed complaints and proposed consent decrees under this new provision." 54 FR 36020. Today, after receipt and consideration of comments on that proposal, the Agency promulgates amendments to 40 CFR 135.

B. Public Comments on the Proposal

The Agency requested comments on its August 30, 1989, proposal. A summary of the major comments and the Agency's response to the issues they raise are presented in the following section. The Agency's complete response to the comments received are presented in the document "Response to Comments Received on the Proposed CWA Citizens' Suit Notification Regulations of August 30, 1989," which is available in the public docket for this rulemaking.

EPA received a total of eight written comments on the proposed rule from two commenters.

III. Response to Comments

In response to an inquiry from the Natural Resources Defense Council, Inc. (NRDC), whether the Agency "intends to standardize certain mechanical aspects of notice, but intends no change in the meaning or consequences of section 505(c)(3)," EPA confirms that that is the purpose and effect of this rule. In particular, the Agency does not intend that the regulations it is promulgating at 40 CFR 135.4 establish any additional limitations on citizen-plaintiffs regarding the service of complaints beyond those already required by the Clean Water Act. The Supreme Court ruled in *Hallstrom* v. *Tillamook*, 30 ERC 1425 (November 7, 1989), that a sixty day notice provision regarding intent to bring a lawsuit under the Resource Conservation and Recovery Act was "a specific limitation on a citizen's right to bring suit." 30 ERC at 1427. The Agency does not believe that section 505(c)(3) of the Act, by requiring contemporaneous service of complaints upon the Attorney General and the Administrator, establishes a similar jurisdictional limitation.

NRDC objected to the wording of proposed 40 CFR 135.5(b), arguing in part that in some cases a court may require the lodging of a decree "before the parties can receive certified-mail confirmation cards showing the date of receipt of the consent decree by the United States." EPA agrees with this remark, and has changed the wording of proposed 40 CFR 135.5(b) in this final rule so that the interests of the United States remain protected, while allowing the parties to have, as NRDC suggested, "flexibility in deciding when to submit a copy of the proposed consent judgment to the court." In addition, in response to the other commenter, who noted that section 505(c)(3) of the Act limits the applicability of the consent decree 45-day notice provision to actions in which the United States is not a party, the Agency has added a predicate to 40 CFR 135.5(b) incorporating that limitation.

EPA also agrees with NRDC that, for practical reasons, it may not always be possible for a citizen-plaintiff immediately to provide a "filed, date-stamped complaint" to the named governmental officials. Consequently, in the final form of this rule the Agency has rewritten proposed 40 CFR 135.4(b) to allow as an alternative the service of a conformed copy of the filed complaint indicating the assigned civil action number, and accompanied by a signed statement of the date of filing.

IV. Additional Changes

In addition to the changes described above, the Agency is promulgating the rule with an additional minor change to 40 CFR 135.5 which requires the citizen

plaintiff, rather than either party, to notify the Administrator and the Attorney General at the time the complaint is filed, and to notify the court whether the 45-day review period of section 505(c)(3) of the Act has run.

The Agency has adopted this approach in order to lend more certainty to the notification process and avoid any confusion that might result from a shared responsibility between the plaintiff and defendant in a citizen suit. EPA has found that, in the great majority of citizen suits, it is the plantiff who has taken the central role in communicating with the Agency. Consequently, EPA does not believe this change will significantly burden plaintiffs, or otherwise interfere with the resolution of these cases.

V. Other Regulatory Requirements

Paperwork Reduction Act

EPA has not prepared an information collection request under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) for the reporting requirements contained in this rule. EPA has received approximately nine notices of citizens suits under the CWA per month. The public reporting burden for individuals complying with this rule is estimated to average one hour or less. If the number of notices received by EPA substantially increases in succeeding years, EPA will prepare and solicit comment on an information collection request for today's rule, in accordance with 5 CFR 1320.14. In the meantime, any comments on the estimate of burden or any other aspect of the information collection requirements contained in this rule, including suggestions to reduce the burden, should be sent to: Chief, Information Policy Branch (PM–223), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 or Director, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Regulatory Impact Analysis

The Administrator has determined that this is a minor regulation under the terms of E.O. 12291 and does not require a regulatory impact analysis.

Regulatory Flexibility Act

There are no significant impacts on small entities as defined under the Regulatory Flexibility Act.

This regulation has been reviewed by the Office of Management and Budget.

List of Subjects in 40 CFR Part 135

Litigation notices, Service of intent to sue, Service of proposed settlement, water pollution control.

Dated: March 6, 1991.

William K. Reilly,

Administrator.

For the reasons set forth in the preamble, part 135 of title 40 of the Code of Federal Regulations is amended as set forth below:

PART 135—[AMENDED]

1. The authority citation for part 135 is revised to read as follows:

Authority: Subpart A, issued under Sec. 505, Clean Water Act, as amended 1987; Sec. 504, Pub. L. 100-4; 101 Stat. 7 (33 U.S.C. 1365). Subpart B, issued under Sec. 1449, Safe Drinking Water Act (42 U.S.C. 300j–8).

2. Section 135.1 is revised to read as follows:

§ 135.1 Purpose.

(a) Section 505(a)(1) of the Clean Water Act (hereinafter the Act) authorizes any person or persons having an interest which is or may be adversely affected to commence a civil action on his own behalf to enforce the Act or to enforce certain requirements promulgated pursuant to the Act. In addition, section 505(c)(3) of the Act provides that, for purposes of protecting the interests of the United States, whenever a citizen enforcement action is brought under section 505(a)(1) of the Act in a court of the United States, the Plaintiff shall serve a copy of the complaint on the Attorney General and the Administrator. Section 505(c)(3) also provides that no consent judgment shall be entered in any citizen action in which the United States is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Administrator.

(b) The purpose of this subpart is to prescribe procedures governing the giving of notice required by section 505(b) of the Act as a prerequisite to the commencing of such actions, and governing the service of complaints and proposed consent judgments as required by section 505(c)(3) of the Act.

3. Sections 135.4 and 135.5 are added to read as follows:

§ 135.4 Service of complaint.

(a) A citizen plaintiff shall mail a copy of a complaint filed against an alleged violator under section 505(a)(1) of the Act to the Administrator of the Environmental Protection Agency, the Regional Administrator of the EPA Region in which the violations are alleged to have occurred, and the Attorney General of the United States.

(b) The copy so served shall be of a filed, date-stamped complaint, or shall be a conformed copy of the filed complaint which indicates the assigned civil action number, accompanied by a signed statement by the plaintiff or his attorney as to when the complaint was filed.

(c) A citizen plaintiff shall mail a copy of the complaint on the same date on which the plaintiff files the complaint with the court, or as expeditiously thereafter as practicable.

(d) If the alleged violator is a Federal agency, a citizen plaintiff must serve the complaint on the United States in accordance with relevant Federal law and court rules affecting service on defendants, in addition to complying with the service requirements of this subpart.

§ 135.5 Service of proposed consent judgment.

(a) The citizen plaintiff in a citizen enforcement suit filed against an alleged violator under section 505(a)(1) of the Act shall serve a copy of a proposed consent judgment, signed by all parties to the lawsuit, upon the Administrator, Environmental Protection Agency, Washington, DC 20460, and the Attorney General, Department of Justice, Citizen Suit Coordinator, Room 2615, Washington, DC 20530. The plaintiff shall serve the Administrator and the Attorney General by personal service or by certified mail (return receipt requested.) The plaintiff shall also mail a copy of a proposed consent judgment at the same time to the Regional Administrator of the EPA Region in which the violations were alleged to have occurred.

(b) When the parties in an action in which the United States is not a party file or lodge a proposed consent judgment with the court, the plaintiff shall notify the court of the statutory requirement that the consent judgment shall not be entered prior to 45 days following receipt by both the Administrator and the Attorney General of a copy of the consent judgment.

(1) If the plaintiff knows the dates upon which the Administrator and the Attorney General received copies of the proposed consent judgment, the plaintiff shall so notify the court.

(2) If the plaintiff does not know the date upon which the Administrator and Attorney General received copies of the proposed consent judgment, the plaintiff shall so notify the court, but upon receiving such information regarding the dates of service of the

proposed consent judgment upon the Administrator and Attorney General, the plaintiff shall so notify the court of the dates of service.

[FR Doc. 91-6474 Filed 3-18-91; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 80 and 87

[PR Docket No. 89-622; FCC 91-41; RM-6578]

Maritime and Aviation Services; Modification and Clarification of the Technical Characteristics of Emergency Position Indicating Radiobeacons and Emergency Locator Transmitters in the Maritime and Aviation Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: These rules modify and clarify the technical characteristics applicable to emergency position indicating radiobeacons (EPIRBs) and emergency locator transmitters (ELTs) to improve the detection of these devices by satellite and to aid search and rescue units in their location. This action was taken in response to a Petition for Rule Making filed by the Radio Technical Commission for Maritime Services.

EFFECTIVE DATE: April 25, 1991.

FOR FURTHER INFORMATION CONTACT: William P. Berges, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632-7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, PR 89-622, adopted February 2, 1991, and released March 14, 1991.

The full text of this Commission decision, including the adopted rule changes are available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this rule making may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street NW., Washington, DC 20036.

Summary of Report and Order

In Response to a petition for rulemaking filed by the Radio Technical Commission for Maritime Services (RTCM), RM-6578, on January 10, 1990, the Commission released a Notice of Proposed Rulemaking, PR Docket No. 89-622, FCC 89-351, 55 FR 2393, January 24, 1990, which proposed to amend the rules to require EPIRBs and ELTs to meet certain technical standards involving the transmitted power. EPIRBs and ELTs are small battery operated transmitters used by mariners and aviators to send a distress signal. These standards will improve the detection of these devices by satellites and will aid search and rescue units in the location of the device. In a companion item to this rule making proceeding (General Docket 89-623, FCC 91-43) the Commission proposed to revise the test procedures for EPIRBs.

Ordering Clauses

Authority for issuance of the report and order is contained in section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

It is ordered that parts 80 and 87 of the Commission's Rules are amended as shown below, effective April 25, 1991.

It is further ordered that a copy of this Report and Order will be served on the Chief Counsel for Advocacy of the Small Business Administration.

It is further ordered that this proceeding is terminated.

List of Subjects

47 CFR Part 80

Maritime services, Maritime mobile stations, Communications equipment.

47 CFR Part 87

Aviation services, Aeronautical mobile stations, Communications equipment.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

Parts 80 and 87 of chapter I of title 47 of the Code of Federal Regulations are amended as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

§ 80.205 [Amended]

2. Section 80.205(a), the table under Class of emission and Emission designator is amended by removing A3N[3] and 3K20A3N and adding in their places respectively A3X[3] and 3K20A3X.

§ 80.207 [Amended]

3. Section 80.207(d), the table under Classes of emission is amended by removing A3E, A3N, NON, adjacent to the frequencies 121.500 MHz and 243.000 MHz and adding in its place A3E, A3X, NON.

§ 80.211 [Amended]

4. Section 80.211 is amended by redesignating paragraph (e) as (g) and adding a new paragraph (e) to read as follows:

§ 80.211 Emission limitations.

* * * * *

(e) The mean power of EPIRBs operating on 121.500 MHz, 243.000 MHz and 406.025 MHz must be as follows:

(1) On any frequency removed from the assigned frequency by more than 50 percent, up to and including 100 percent of the authorized bandwidth: At least 25 dB;

(2) On any frequency removed from the assigned frequency by more than 100 percent: at least 30 dB.

* * * * *

5. Section 80.223 is amended by revising paragraph (d) to read as follows:

§ 80.223 Special requirements for survival craft stations.

* * * * *

(d) Any EPIRB carried as part of a survival craft station must comply with the specific technical and performance requirements for its class contained in subpart V of this chapter.

6. Section 80.355 is amended by revising paragraph (d)(2) to read as follows:

§ 80.355 Distress, urgency, safety, call and reply Morse code frequencies.

* * * * *

(d) * * *

(2) EPIRB stations may be assigned 121.500 MHz and 243.000 MHz using A3E, A3X and NON emission or 156.750 MHz and 156.800 MHz using G3N emission to aid search and rescue operations. See subpart V of this part.

7. Section 80.1053 is amended by revising paragraphs (a)(4), (a)(5), (a)(6), (a)(7), (a)(8), (a)(12), (b)(3), (c), and (e) to read as follows:

§ 80.1053 Special requirements for Class A EPIRB stations.

(a) * * *

(4) Use A3X emission on a mandatory basis and A3E and NON emissions on an optional basis on the frequencies 121.500 MHz and 243.000 MHz;

(5) Transmission of A3E or NON emission must not exceed 90 seconds and must be followed by a transmission of at least three minutes of A3X emission; each transmission of a synthesized and/or pre-recorded voice message must be preceded by the words "this is a recording";

(6) The effective radiated power must not be less than 75 milliwatts after 48 hours of continuous operation and without replacement or recharge of batteries.

(7) The mandatory A3X emission must be amplitude modulated with an audio signal swept downward between 1600 and 300 Hz. The sweeping range of the audio signal must be 700 Hz or greater. Its sweep repetition rate must be between 2 and 4 times per second. The modulation factor must be at least 0.85 and the modulation duty cycle must be at least 33%, but not more that 55%.

(8) EPIRBs manufactured on or after October 1, 1988; EPIRBs carried as part of a ship station to satisfy USCG equipment carriage requirements that are newly installed on or after April 1, 1989; EPIRBs carried as part of a ship station to satisfy USCG equipment carriage requirements on or after August 1, 1991; and EPIRBs that are newly installed as part of a voluntarily equipped ship station after August 1, 1991, must have a clearly defined carrier frequency distinct from the modulation sidebands for the mandatory emission, A3X, and if used, the A3E or NON emissions. On 121.500 MHz at least thirty per cent of the total power emitted during any transmission cycle with or without modulation must be contained within plus or minus 30 Hz of the carrier frequency. On 243.000 MHz at least thirty per cent of the toal power emitted during any transmission cycle with or without modulation must be contained within plus or minus 60 Hz of the carrier frequency. Additionally, if the type of emission is changed during transmission the carrier frequency nust not shift more than plus or minus 30 Hz on 121.500 MHz and not more than plus or minus 60 Hz on 243.000 MHz. The long term stability of the carrier frequency must comply with the requirements in § 80.209(a) of this part.

* * * * *

(12) Meet the requirements of paragraphs (a) (1) through (9) of this section after a free fall into water 3 times from a height of 20 meters (66 ft.);

(b) * * *

(3) Reduce radiation to a level not to exceed 100 nanowatts at a distance of 30 meters (98 feet) irrespective of direction.

(c) EPIRBs manufactured on or after October 1, 1988, must be tested in accordance with subpart N, part 2 of this chapter. A report of the measurements must be submitted with each application for type acceptance. EPIRBs that meet the output power characteristics of this section must have a permanent label prominently displayed on the outer casting stating, "Meets FCC Rules for improved satellite detection." This label, however, must not be placed on the equipment without authorization to do so by the Commission. Application for such authorization may be made either by submission of a new application for type acceptance accompanied by the required fee and all information and test data required by parts 2 and 80 of this chapter or, for EPIRBs type accepted prior to October 1, 1988, an application for modification accompanied by the required fee requesting such authorization, including appropriate test data and a showing that all units produced under the original type acceptance authorization comply with the requirements of this paragraph without change to the original circuitry. If the intent is simply to add the proper label to an already approved and compliant EPIRB, a letter of notification prior to implementing the labeling requirements will be needed. This letter request should be sent to the attention of the Authorization and Evaluation Division, 7435 Oakland Mills Road, Columbus, Maryland 21046, attention EAB. The modulation, power and frequency stability requirements specified in paragraphs (a)(6), (a)(7) and (a)(8) of this section must be met under the environmental test conditions specified in subpart N, part 2 of this chapter.

* * * * *

(e) EPIRBs must be powered by a battery contained within the transmitter case or in a battery holder that is rigidly attached to the transmitter case. The battery connector must be corrosion resistant and positive in action and must not rely for contact upon spring force alone. The useful life of the battery is the length of time that the battery can be stored under marine environmental conditions without the EPIRB transmitter peak effective radiated power falling below 75 milliwatts prior to 48 hours of continuous operation. The month and year of the battery's manufacture must be permanently marked on the battery and the month and year upon which 50 percent of its useful life will have expired must be permanently marked on both the battery and the outside of the transmitter. The batteries must be replaced if 50 percent of their useful life has expired or if the transmitter has been used in an emergency situation. EPIRBs manufactured after April 27, 1992 must display prominently on the outer case one of the following: The battery installation instructions, the title of the manual that contains such information, or the company name and address where the battery installation can be performed.

* * * * *

8. Section 80.1055 is amended by revising paragraph (a)(3) to read as follows:

§ 80.1055 Special requirements for Class B EPIRB stations.

(a) * * *

(3) Meet the requirements in §§ 80.1053(a) (4) through (8), (a)(14), and (c) through (i) of this part. EPIRBs with water activated batteries must, additionally, meet the requirements contained in §§ 80.1053 (a)(10) and (a)(11) of this part,

* * * * *

9. Section 80.1059 is amended by revising paragraphs (d)(3) and (d)(4) to read as follows:

§ 80.1059 Special requirements for Class S EPIRB stations.

* * * * *

(d) * * *

(3) Meet the requirements in §§ 80.1053 (a)(4) through (a)(8) and (b) through (i) of this part;

(4) Class S EPIRBs may provide either continuous or intermittent operation. If the EPIRB is designed for intermittent operation, the duty cycle must be from 50 to 60 per cent and the period two minutes plus or minus 12 seconds. In either event, the EPIRB must meet the power output characteristics described in § 80.1053(a)(8) of this part;

* * * * *

10. Section 80.1061 is amended by revising in paragraphs (e) and (f) the NOAA address from "NOAA, NESDIS, USMCC Data Base Manager, Federal Building 4, Washington DC 20233" to "NOAA/NESDIS, SARSAT Operations Division, E/SP3, Federal Building 4, Washington, DC 20233" and by revising paragraph (b) to read as follows:

§ 80.1061 Special requirements for 406.025 MHz EPIRBs.

* * * * *

(b) The 406.025 MHz EPIRB must contain as an integral part a "homing" beacon operating only on 121.500 MHz that meets all the requirements described in the RTCM Recommended Standards document described in paragraph (a) of this section. The 121.500

MHz "homing" beacon must have a continuous duty cycle that may be interrupted during the transmission of the 406.025 MHz signal only. Additionally, at least 30 percent of the total power emitted during any transmission cycle must be contained within plus or minus 30 Hz of the carrier frequency.

* * * * *

B. PART 87—AVIATION SERVICES

1. The authority citation for part 87 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–156, 301–609.

§ 87.137 [Amended]

2. Section 87.137(a) the table under *Class of emission* and *Emission designator* are amended by removing A3N[4] and 3K20A3N and adding in their place respectively A3X[4] and 3K20A3X.

3. Section 87.139 is amended by revising the introductory text of paragraph (a) and adding paragraph (h) to read as follows:

§ 87.139 Emission limitations.

(a) Except for ELTs and when using single sideband (R3E, H3E, J3E), or frequency modulation (F9) or digital modulation (F9Y) for telemetry or telecommand in the frequency bands 1435–1535 MHz and 2310–2390 MHz, the mean power of any emissions must be attenuated below the mean power of the transmitters (pY) as follows:

* * * * *

(h) For ELTs operating on 121.500 MHz and 243.000 MHz the mean power of any emission must be attenuated below the mean power of the transmitter (pY) as follows:

(1) When the frequency is moved from the assigned frequency by more than 50 percent up to and including 100 percent of the authorized bandwidth the attenuation must be at least 25 dB;

(2) When the frequency is removed from the assigned frequency my more than 100 percent of the authorized bandwidth the attenuation must be at least 30 dB.

4. Section 87.141 is amended by revising paragraphs (g), (h) and (i) to read as follows:

§ 87.141 Modulation requirements.

* * * * *

(g) Except that symmetric side bands are not required, the modulation characteristics for ELTs must be in accordance with specifications contained in the Federal Aviation Administration (FAA) Technical Standard Order (TSO) Document TSO–C91a titled "Emergency Locator Transmitter (ELT) Equipment" dated April 29, 1985. TSO–C91a is incorporated by reference in accordance with 5 U.S.C. 552(a). TSO–C91a may be obtained from the Department of Transportation, Federal Aviation Administration, Office of Airworthiness, 800 Independence Avenue SW., Washington DC 20591.

(h) ELTs must use A3X emission and may use A3E or NON emissions on an optional basis while transmitting. Each transmission of a synthesized or recorded voice message from an ELT must be preceded by the words "this is a recording"; transmission of A3E or NON emission must not exceed 90 seconds; and any transmission of A3E or NON emissions must be followed by at least three minutes of A3X emission.

(i) ELTs manufactured on or after October 1, 1988, must have a clearly defined carrier frequency distinct from the modulation sidebands for the mandatory emission, A3X, and, if used, the A3E or NON emissions. On 121.500 MHz at least thirty per cent of the total power emitted during any transmission cycle with or without modulation must be contained within plus or minus 30 Hz of the carrier frequency. On 243.000 MHz at least thirty percent of the total power emitted during any transmission cycle with or without modulation must be contained within plus or minus 60 Hz of the carrier frequency. Additionally, if the type of emission is changed during transmission, the carrier frequency must not shift more than plus or minus 30 Hz on 121.500 MHz and not more than plus or minus 60Hz on 243.000 MHz. The long term stability of the carrier frequency must comply with the requirements in § 87.133 of this part.

5. In § 87.147, paragraphs (b) and (c) are redesignated as paragraphs (c) and (d), and a new paragraph (b) is added to read as follows:

§ 87.147 Type acceptance of equipment.

* * * * *

(b) ELTs manufacturered after October 1, 1988, must meet the output power characteristics contained in paragraph 87.141(i) of this part when tested in accordance with the Signal Enhancement Test Contained in subpart N, part 2 of this chapter. A report of the measurements must be submitted with each application for type acceptance. ELTs that meet the output power characteristics of the section must have a permanent label prominently displayed on the outer casing state, "Meets FCC Rule for improved satellite detection." This label, however, must not be placed on the equipment without authorization to do so by the Commission. Application for such authorization may be made either by submission of a new application for type acceptance accompanied by the required fee and all information and test data required by parts 2 and 87 of this chapter or, for ELTs type accepted prior to October 1, 1988, a letter requesting such authorization, including appropriate test data and a showing that all units produced under the original type acceptance authorization comply with the requirements of this paragraph without change to the original circuitry.

* * * * *

6. Section 87.187 is amended by revising paragraph (k) to read as follows:

§ 87.187 Frequencies.

* * * * *

(k) The frequencies 121.500 MHz and 243.000 MHz are emergency and distress frequences available for use by survival craft stations, emergency locator transmitters and equipment used for survival pruposes. Use of 121.500 MHz and 243.00 MHz shall be limited to transmission of signals and communications for survival purposes. Type A2A, A3E or A3N emission may be employed, except in the case of emergency locator transmitters where A3E, A3X and NON are permitted.

* * * * *

§ 87.195 [Amended]

7. Section 87.195 paragraphs (a) and (b) are amended by removing A3N and substituting in its place A3X.

[FR Doc. 91–6504 Filed 3–18–91; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 56, No. 53
Tuesday, March 19, 1991

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1230

[No. LS-91-001]

Pork Promotion and Research

AGENCY: Agricultural Marketing Service.

ACTION: Proposed rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act of 1985 and the order issued thereunder, this proposed rule would increase the amount of the assessment per pound due on imported pork and pork products to reflect an increase in the 1990 seven market average price for domestic barrows and gilts and to bring the equivalent market value of the live animals from which such imported pork and pork products were derived in line with the market values of domestic porcine animals.

DATES: Comments must be received by April 18, 1991.

ADDRESSES: Send two copies of comments to Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Division; Agricultural Marketing Service, USDA, room 2624–S; P.O. Box 96456, Washington, DC 20090–6456. Comments will be available for public inspection during regular business hours at the above office in room 2624, South Building; 14th and Independence Avenue, SW.; Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch (202) 382–1115.

SUPPLEMENTARY INFORMATION: This action was reviewed in accordance with Executive Order No. 12291 and Departmental Regulation 1512–1 and is hereby classified as a nonmajor rule because it does not meet the criteria contained therein for a major rule.

This action also was reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The effect of the order upon small entities was discussed in the September 5, 1986, issue of the **Federal Register** (51 FR 31898), and it was determined that the Order would not have a significant effect upon a substantial number of small entities. Many importers may be classified as small entities. This proposed rule would increase the amount of assessments on imported pork and pork products subject to assessment by four- to five-hundredth of a cent per pound, or as expressed in cents per kilogram, nine- to eleven-hundredths of a cent per kilogram. Adjusting the rate of assessments on imported pork and pork products will result in an estimated increase in assessments of $350,000 over a 12-month period. Accordingly, the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities.

The Port Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research, and consumer information program. The program is funded by an assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United states and an equivalent amount of assessment on imported porcine animals, port, and pork products. The final order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as corrected, at 51 FR 36383 and amended at 53 FR 1909 and 53 FR 30243) and assessments began on November 1, 1986.

The Order requires importers of porcine animals to pay the U.S. Customs Service (USCS), upon importation, the assessment of 0.25 percent of the animal's declared value and importers of pork and pork products to pay to the USCS, upon importation, the assessment of 0.25 percent of the market value of the live porcine animals from which such pork and pork products were produced. This proposed rule would increase the assessments on all of the imported pork and pork products subject to assessment that appears in 7 CFR 1230.110 (October 22, 1990; 55 FR 42554). This increase is consistent with the increase in the annual average price of domestic barrows and gilts at the seven markets for calendar year 1990 as reported by the USDA, AMS, Livestock and Grain Market News Branch (LGMN). This increase in assessments will make the equivalent market value of the live porcine animal from which the imported pork and pork products were derived reflect the recent increase in the market value of domestic porcine animals, thereby promoting comparability between importer and domestic assessments. This proposed rule would not change the current assessment rate of 0.25 percent of the market value.

The methodology for determining the per-pound amounts for imported pork and pork products was described in the supplementary information accompanying the order and published in the September 5, 1986, **Federal Register** at 51 FR 31901. The weight of imported pork and pork products is converted to a carcass weight equivalent by utilizing conversion factors which are published in the USDA Statistical Bulletin No. 616 "Conversion Factors and Weights and Measures." These conversion factors take into account the removal of bone, weight lost in cooking or other processing, and the nonpork components of pork products. Secondly, the carcass weight equivalent is converted to a live animal equivalent weight by dividing the carcass weight equivalent by 70 percent, which is the average dressing percentage of porcine animals in the United states. Thirdly, the equivalent value of the live porcine animal is determined by multiplying the live animal equivalent weight by an annual average seven market price for barrows and gilts as reported by the USDA, AMS, LGMN Branch. This average price is published on a yearly basis during the month of January in the LGMN Branch's publication "Livestock, Meat, and Wool Weekly Summary and Statistics." Finally, the equivalent value is multiplied by the applicable assessment rate of 0.25 percent due on imported pork and pork products. The end result is expressed in an amount per pound for each type of pork or pork product. To determine the amount per kilogram for pork and pork products subject to assessment under the Act and order, the cent-per-pound assessments are multiplied by a metric conversion factor 2.2046 and carried to the sixth decimal.

The formula in the preamble for the order at 51 FR 31901 contemplated that it would be necessary to recalculate the equivalent live animal value of imported pork and pork products to reflect changes in the annual average price of domestic barrows and gilts to maintain equity of assessments between domestic porcine animals and imported pork and pork products.

In 1990, the average annual seven market price increased to $54.55, an increase of about 23 percent of the 1989 per hundred weight price of $43.77 which results in an increase in assessments for all the harmonized Tariff Systems (HTS) numbers listed in the table in section 1230.110 of an amount equal to four- to five-hundredths of a cent per pound, or as expressed in cents per kilogram, nine- to eleven-hundredths of a cent per kilogram. Based on Department of Commerce, Bureau of Census, data on the volume of imported pork and pork products available for the period January 1, 1990, through October 31, 1990, the proposed increases in the assessment amounts would result in an estimated $350,000 increase in assessments over a 12-month period.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 1230 be amended as set forth below:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

2. Amend Subpart B—Rules and Regulations by revising section 1230.100 to read as follows:

§ 1230.110 Assessments on Imported Pork and Pork Products.

The following HTS categories of imported live porcine animals are subject to assessment at the rate specified.

Live porcine animals	Assessment
0103.10.00004	0.25 percent customs entered value.
0103.91.00006	0.25 percent customs entered value.
0103.92.00005	0.25 percent customs entered value.

The following HTS categories of imported pork and pork products are subject to assessment at the rates specified.

Pork and pork products	Assessment	
	cents/lb	cents/kg
0203.11.00002	.20	.440920
0203.12.10107	.20	.440920
0203.12.10205	.20	.440920
0203.12.90100	.20	.440920
0203.12.90208	.20	.440920
0203.19.20108	.23	.507058
0203.19.20901	.23	.507058
0203.19.40104	.20	.440920
0203.19.40907	.20	.440920
0203.21.00000	.20	.440920
0203.22.10007	.20	.440920
0203.22.90000	.20	.440920
0203.29.20008	.23	.507058
0203.29.40004	.20	.440920
0206.30.00006	.20	.440920
0206.41.00003	.20	.440920
0206.49.00005	.20	.440920
0210.11.00101	.20	.440920
0210.11.00209	.20	.440920
0210.12.00208	.20	.440920
0210.12.00404	.20	.440920
0210.19.00103	.23	.507058
0210.19.00906	.23	.507058
1601.00.20105	.27	.597009
1601.00.20908	.27	.597009
1602.41.20203	.29	.639334
1602.41.20409	.29	.639334
1602.41.90002	.20	.440920
1602.42.20202	.29	.639334
1602.42.20408	.29	.639334
1602.42.40002	.20	.440920
1602.49.20009	.27	.597009
1602.49.40005	.23	.507058

Done at Washington, DC, on: March 13, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91–6458 Filed 3–18–91; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Parts 1866 and 1951

Final Payment on Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) is proposing to amend its regulation regarding final payments on loans secured by real estate and redesignating and revising part 1866 (FmHA Instruction 451.4) as subpart D of part 1951 of this chapter. The present regulation is outdated and does not recognize some existing authorities. The intent is to give the authority to release documents to the appropriate servicing officials and create uniformity within FmHA in the processing of final payoffs.

DATES: Written comments must be received by May 20, 1991.

ADDRESSES: Submit written comments in duplicate to the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, U.S. Department of Agriculture, room 6348, South Agriculture Building, Washington, DC. 20250. All written comments will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Lucia A. McKinney, Loan Specialist or William M. Toney, Chief, Servicing Branch, Single Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, South Agriculture Building, room 5309, Washington, DC 20250, telephone: (202) 382–1452.

SUPPLEMENTARY INFORMATION: This action is necessary to update the criteria for satisfaction and release of security documents upon receipt of final payoff balances on loans. 7 CFR, part 1951, subpart D—Final Payment on Loans is a new regulation and a rewrite of 7 CFR part 1866 (FmHA Instruction 451.4). This regulation identifies the acceptable forms of payment for release of security documents upon receipt of final payment. With the automation of loan account status information, previous procedures used for obtaining payoff balances by accessing accounts under the Automated Data Processing System (ADPS). These revisions will be effective in minimizing errors in obtaining final payoff balances on rural housing accounts and in providing more efficient service to the public. Following are the major revisions incorporated in this rulemaking action: 1. Section 1951.154 provides authorization to appropriate servicing officials to execute and release security instruments and related documents when an account has been satisfactorily paid in full.

2. Section 1955.155(a) provides for disposition of funds remaining in a supervised bank account when the borrower is ready to pay off the loan. 3. Section 1955.155(c)(2) identifies acceptable forms of payments upon which documents can be released at the time of payoff.

Intergovernmental Consultation

The programs to which this activity is related are listed in the Catalog of Federal Domestic Assistance under the following numbers and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

10.404 Emergency Loans
10.405 Farm Labor Housing Loans and Grants
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.410 Low Income Housing Loans (Section 502 Rural Housing Loans)
10.411 Rural Housing Site Loans
10.414 Resource Conservation and Development Loans
10.415 Rural Rental Housing and Water Loans
10.416 Soil and Water Loans
10.417 Very Low-Income Housing Repair Loans and Grants (Section 504 Rural Housing Loans and Grants)
10.418 Water and Waste Disposal Systems for Rural Communities
10.419 Watershed Protection and Flood Protection Loans
10.420 Rural Self-Help Housing Technical Assistance)
10.421 Indian Tribes and Tribal Corporation Loans
10.422 Business and Industrial Loans
10.423 Community Facilities Loans
10.427 Rural Rental Assistance Payments (Rental Assistance)

Environmental Impact Statement

This proposed action has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969 (Pub. L. 91–190), an environmental impact statement is not required.

List of Subjects in 7 CFR Part 1951

Accounting, Loan programs—Agriculture.

Accordingly, Chapter XVIII, title 7, Code of Federal Regulations is proposed to be amended as follows:

PART 1866—[REMOVED]

1. Part 1866 is removed and reserved.

PART 1951—SERVICING AND COLLECTIONS

2. The authority citation for part 1951 continues to read as follows: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart D of part 1951 is added to read as follows:

Subpart D—Final Payment on Loans

Sec.
1951.151 Purpose
1951.152 Definitions
1951.153 Chattel Security or Note-Only Cases
1951.154 Satisfaction and Release of Documents
1951.155 County Office Actions
1951.156–1951.200 [Reserved]

Subpart D—Final Payment on Loans

§ 1951.151 Purpose.

This subpart prescribes authorizations, policies, and procedures of the Farmers Home Administration (FmHA) for processing final payment of all loans.

§ 1951.152 Definitions.

Mortgage. Includes real estate mortgage, deed of trust or any other form of security instrument or lien on real property.

§ 1951.153 Chattel security or note-only cases.

If a loan secured by both real estate and chattels is paid in full, the chattel security instrument will be satisfied or released in accordance with subpart A of part 1962 of this chapter. When a Rural Housing (RH) loan is evidenced by only a note and the note is paid in full, FmHA will deliver the note to the borrower in the manner prescribed in § 1951.155(c) of this subpart.

§ 1951.154 Satisfaction and release of documents.

(a) *Authorization.* FmHA is authorized to execute the necessary releases and satisfactions and return security instruments and related documents to borrowers. Satisfaction and release of security documents takes place:

(1) Upon receipt of payment in full of all amounts owed to the Government including any amounts owed to the loan insurance account, subsidy recapture amounts, all loan advances and/or other charges to the borrower's account;

(2) Upon verification that the amount of payment received is sufficient to pay the full amount owed by the borrower; or

(3) When a compromise or adjustment offer has been accepted and approved by the appropriate Government official in full settlement of the account and all required funds have been paid.

(b) [Reserved].

(c) *Lost note.* If the original note is lost FmHA will give the borrower an affidavit of lost note so that the release or satisfaction may be processed.

§ 1951.155 County office actions.

(a) Funds Remaining in Supervised Bank Accounts. When a borrower is ready to pay an insured or direct loan in full, any funds remaining in a supervised bank account will be withdrawn and remitted for application to the borrower's account. If the entire principal of the loan is refunded after the loan is closed, the borrower will be required to pay interest from the date of the note to the date of receipt of the refund.

(b) Determining Amount to be Collected. FmHA will compute and verify the amount to be collected for payment of an account in full. Requests for payoff balances on all accounts will be furnished in writing in a format specified by FmHA (available in any FmHA office).

(c) *Delivery of Satisfaction, Notes, and Other Documents.* When the remittance which paid an account in full has been processed by FmHA, the paid note and satisfied mortgage may be returned to the borrower. If other provisions exist, the mortgage will not be satisfied until the total indebtedness secured by the mortgage is paid. For instance, in a situation where a rural housing loan is paid-in-full and there is an interest credit recapture receivable balance that the borrower elects to delay repaying, the amount of subsidy to be repaid will be determined when the principal and interest balance is paid. The mortgage securing the FmHA debt will not be released of record until the total amount owed the Government is repaid. To permit graduation or refinancing by the borrower, the mortgage securing the subsidy owed may be subordinated.

(1) If FmHA receives final payments in a form other than cash, U.S. Treasury check, cashier's check, certified check, money order, bank draft, or check issued by an institution determined by FmHA to be financially responsible, the mortgage and paid note will not be released until after a 30-day waiting period. If other indebtedness to FmHA is not secured by the mortgage, FmHA will execute the satisfaction or release. When the stamped note is delivered to the borrower, FmHA will also deliver the real estate mortgage and related title papers such as title opinions, title insurance binders, certificates of title, and abstracts which are the property of the borrower. Any water stock certificates or other securities that are the property of the borrower will be returned to the borrower. Also, any assignments of income will be terminated as provided in the assignment forms.

(2) Delivery of documents at the time of final payment will be made when payment is in the form of cash, U.S. Treasury check, cashier's check, certified check, money order, bank draft, or check issued by an institution determined by FmHA to be responsible. FmHA will not accept payment in the form of foreign currency, foreign checks or sight drafts. FmHA will execute the satisfaction or release (unless other indebtedness to FmHA is covered by the mortgage) and mark the original note

with a paid-in-full legend based upon receipt of the full payment balance of the borrower's account(s), computed as of the date final payment is received. In unusual cases where an insured promissory note is held by a private holder, FmHA can release the mortgage and deliver the note when it is received.

(d) [Reserved].

(e) [Reserved].

(f) *Cost of recording or filing of satisfaction.* The satisfaction or release will be delivered to the borrower for recording and the recording costs will be paid by the borrower, except when State law requires the mortgagee to record or file satisfactions or release and pay the recording costs.

(g) *Property insurance.* When the borrower's loan has been paid-in-full and the satisfaction or release of the mortgage has been executed, FmHA may release the mortgage interest in the insurance policy as provided in part 1806 of this chapter (FmHA Instruction 426.1).

(h) [Reserved].

(i) Outstanding Loan Balance(s). FmHA will attempt to collect any account balance(s) that may result from an error by FmHA in handling final payments according to paragraph (b) of this section. If collection cannot be made, the debt will be settled according to subpart B of part 1956 of this chapter or reclassified to collection-only. A deficiency judgment may be considered if the balance is a significant amount ($1,000 or more) and the borrower has known assets.

§§ 1951.156–1951.200 [Reserved]

Dated: February 7, 1991.

David T. Chen,

Acting Administrator, Farmers Home Administration.

[FR Doc. 91–6457 Filed 3–18–91; 8:45 am]

BILLING CODE 3410–07–M

Rural Telephone Bank

7 CFR Part 1610

Rural Electrification Administration

7 CFR Parts 1735, 1737, 1744

RIN 0572–AA51

Rural Telephone Bank and Telephone Program Loan Policies, Procedures and Requirements

AGENCY: Rural Electrification Administration and Rural Telephone Bank, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Act of 1936 (RE Act) has been amended by the Rural Economic Development Act of 1990 (RED Act), title XXIII of the Farm Bill, Public Law 101–624. This action is intended to make changes in the regulations of the Rural Electrification Administration (REA) and the Rural Telephone Bank (RTB) that are required as a consequence of these amendments.

In addition to the changes related to the RED Act, REA proposes to amend Part 1735 General Policies, Types of Loans, Loan Requirements—Telephone Program, Chapter XVII in Title 7 of the Code of Federal Regulations by adding two additional defined terms, "access line" and "subscriber", to the definitions of parts 1735 and 1737. This action will conform REA usage of these terms to industry practice thereby simplifying reporting requirements.

All Rural Telephone Bank borrowers will be affected by the proposed amendment of part 1610 by spreading out the required purchase of class B stock.

All Telephone Program borrowers will be affected by the proposed amendment of parts 1735, 1737 and 1744 in that the obtaining of loans will be simplified.

DATES: Public comments concerning this proposed rule must be received by REA or bear a postmark or its equivalent no later than April 18, 1991.

ADDRESSES: Comments may be mailed to F. Lamont Heppe, Jr., Chief, Telephone Loans and Management Staff, Rural Electrification Administration, Room 2250–South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 382–8530. Comments received may be inspected in Room 2250. REA requests an original and three copies of all comments.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Chief Telephone Loans and Management Staff, Rural Electrification Administration, Room 2250 South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 382–8530.

SUPPLEMENTARY INFORMATION: This rule is issued in conformity with Executive Order 12291, Federal Regulation. This action will not: (1) Have an annual effect on the economy of $100 million or more: (2) result in a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of the United States-based enterprises to complete with foreign-based enterprises in domestic or export markets. Therefore, this rule has been determined to be "not major."

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq. (1976)) and therefore does not require an environmental impact statement or an environmental assessment.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. For the reasons set forth in the final rule related to notice 7 CFR part 3015, subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

The rule amendment contains no information or recordkeeping requirements which would require approval under the Paperwork Reduction Act of 1980 [44 U.S.C. 3507 et seq.]. The existing reporting and recordkeepng requirements have been approved by the Office of Management and Budget (OMB). The OMB approval number for these requirements is 0572–0079.

The proposed revisions to these regulations will require the redesignation of several sections. For the benefit of the reader, the following distribution table is included:

DISTRIBUTION TABLE FOR REDESIGNATED SECTIONS OF THE REGULATIONS

Old part or section	New part or section
1735.17(b)	Removed.
1735.17(c)	1735.17(b).
1735.17(d)	1735.17(c).
1735.42	Removed.
1737.20	Removed.
1737.22(b)(5)	1737.22(b)(10).
1737.41(b)(1)	1737.41(b)(2)(i).
1737.41(b)(2)	1737.41(b)(2)(ii).
1737.41(b)(3)	1737.41(b)(2)(iii).
1737.70(d)	1737.70(g).
1737.70(e)	1737.70(h).
1737.70(f)	1737.70)(i).
1737.70(g)	1737.70(i).
1737.90(a)(4)	Removed.
1737.90(a)(5)	1737.90(a)(4).
1737.90(a)(6)	1737.90(a)(5).
1737.90(a)(7)	1737.90(a)(6).
1737.90(a)(8)	Removed.

Background

Subtitle F of the Rural Economic Development Act of 1990, title XXIII of the Farm Bill, Public Law 101–624,

contains a number of provisons that amend the Rural Electrification Act of 1936 and require changes in the regulations of REA and RTB. The following is a list of prposed revisions resulting from the RED Act:

(1) Section 1610.9, Temporary Waiver of Prepayment Premium, has expired and shall be replaced with a new section involving the pro rata purchase of Class B stock as set forth by section 2364 of the RED Act. In addition, § § 1610.5 and 1610.6 will be revised to eliminate ambiguities and potential conflicts with § 1610.10, Determination of interest rate on Bank loans.

(2) Section 1735.2 and 1737.2, Definitions, shall be revised to incorporate the expanded definition of "telephone service" set out in section 2354 of the RED Act.

(3) Section 1735.10, General, shall be revised to include the provisions of section 2353 of the RED Act with regards to the level of general funds of a borrower.

(4) Section 1735.17, Facilities Financed, shall be changed in accordance with the facilities financed provision of section 2357 of the RED Act.

(5) Section 1735.22, Loan Security, shall be revised to implement the TIER provision in section 2355 and section 2361 of the RED Act. A borrower will not be required to increase its TIER as a condition for receiving a loan. For a loan made under section 305 of the RE Act, borrowers will be required to have a before-tax TIER of a least 1.0. Language shall be added to this section to clarify where a before- or after-tax TIER is required for obtaining a loan and for maintenance purposes.

(6) Section 1735.32, Guaranteed Loans, shall be revised to indicate that guarantees will only be considered when specifically requested by a borrower as provided for in section 2362 of the RED Act. In addition, language shall be added to clearly indicate that borrowers may request that loans guaranteed under this section be made by the Federal Financing Bank.

(7) Section 1735.43, Payment on Loans, shall be revised to allow borrowers to select loan maturities up to maximum of 35 years as provided in section 2360 of the RED Act. Under existing regulations the loan maturity period approximated the anticipated useful life of the facilities financed, as recommended in OMB Circular A–129. The provision of the RED Act creates a breach in the Government's loan security because when the loan maturity period is longer than the anticipated useful life of the facilities financed (depreciation period) and the capital recovered through depreciation is not used to replace plant, the loan could be undercollaterralized and the borrower's rate base may be eroded, thereby jeopardizing the borrower's ability to repay the loan. Therefore, additional provisions shall be added to ensure adequate collateralization over the life of the loan and provide assurance of the borrower's ability to repay the loan.

Similar loan maturity requirements for RTB loans were provided in section 2366 of the RED Act. Because the RTB has adopted the regulations of the REA Telephone Program (see 7 CFR 1610.8), the changes made in § 1735.43 will apply to both REA and RTB loans.

(8) Section 1735.47, Rescissions of Loans, shall be revised to agree with the rescission of loan provisions in section 2357 of the RED Act.

(9) Section 1735.51, Required Findings, shall be revised to agree with the loan amortization period provisions as provided in section 2360 and 2366 of the RED Act.

(10) Subpart C Part 1737, The Loan Application, shall be revised to clarify what constitutes an application package and the procedure for submitting an application.

(11) As a result of the above changes to subpart C of 1737, changes will also be made to Subpart E to allow in some cases requests for interim financing without having a "completed application" on file.

(12) Section 1737.70, Description of Feasibility, shall be revised to agree with the provisions of section 2355, 2357, and 2361 of the RED Act. These revisions affect the manner in which loan feasibility is determined. In particular, the RED Act requires the following consideration: (a) The use of existing or impending local service rates, (b) depending on the forecasted TIER, the interest rate charged for section 305 loans will vary from 2 to 5 percent, and (c) the use of appropriate depreciation expenses. In addition, the method in which debt service payments are calculated for feasibility purposes shall be added to this section. Language will also be adeed to this section in order to ensure REA's ability to project expenses which are representative of the normal operations of the borrower, and to inform borrowers of their options if REA determines that a loan application is not feasible.

(13) Section 1744.66, The Financial Requirement Statement, shall be revised to include the pro rata purchase of class B stock provision of section 2364 of the RED Act.

(14) Section 1744.68, Order and Method of Advances of Telephone Loan Funds, is presently in agreement with the order of advance provision of section 2357 of the RED Act, consequently no changes are required.

(15) The provisions of section 2356 regarding investments made by REA borrowers in rural development projects will be addressed by REA in a future regulation.

As a result of the above proposed changes, several terms shall be added to the regulations that require definition. The term "forecast period" shall be added to the definition section of parts 1735 and 1737. The terms "composite useful life," "funded reserve" and "useful life" shall be added to the definition section of part 1735. Due to the expansion of feasibility discussions in CFR 1737 to include TIER calculations, the definition of "TIER" previously found only in § 1737.2 shall be added to § 1732.2. The definition of TIER shall be revised in both sections to clarify references to "before-tax" and "after-tax" TIER found in other sections of the regulations.

In addition to the changes related to the RED Act, REA proposes to add two additional defined terms, "access line" and "subscriber", to the definition sections of parts 1735 and 1737 for the following reasons.

Consistency and accuracy in "subscriber" data are important to REA in calculating density (as required by section 408(b)(2) of the RE Act), conducting engineering studies, determining loan feasibility and preparing statistical reports.

While REA has traditionally used the term "subscriber" in these applications, REA has never formally defined this term. In years past this was of little concern as the industry generally understood the term. As technology evolved, expanding the range of telecommunication services offered, the term "subscriber" became nebulous in meaning and the term "access line" came into general use. Today, "subscriber" is a concept used primarily by REA. Many telephone companies maintain data only on access lines and not subscribers. This causes considerable confusion to a number of borrowers and their consulting engineers as to what to report to REA when asked for "subscriber" data.

The terms "subscriber" and "access line" are used somewhat interchangeably in the industry. "Access line" is the preferred term with "subscriber" falling into disuse because of the need to relate to the service provided. "Access line" is defined narrowly in technical terms that are understood industry wide, while "subscriber" is not.

We therefore propose to add definitions for the terms "subscriber" and "access line" to § 1735.2 Definitions. "Subscriber" for REA purposes will mean the same as access line. "Access line" will mean "a transmission path between user terminal equipment and a switching center that is used for local exchange service." For multiparty service, the number of access lines equals the number of lines/paths terminating on the mainframe of the switching center. This definition is based on the definition used by the National Exchange Carriers Association and the definition proposed by the National Telecommunications and Information Administration.

Density in terms of "subscribers" per mile as used in the RE Act is intended to be a relative measure of the cost of building a telephone system, i.e., a system with one subscriber per mile costs most to construct per "subscriber" than a system having four subscribers per mile. Defining "subscriber" as equal to an "access line" does not change the relativity of this measure. An analysis of the data reported to us by borrowers in 1988 indicates that a number of borrowers are already reporting "access lines" for "subscribers". Since "subscriber" is presently undefined, there is uncertainty as to what the remaining borrowers are reporting as "subscribers." The definition as proposed would eliminate this ambiguity and lend accuracy and consistency to the reported figures.

From both the engineering and financial forecasting viewpoints, "access line" is the preferred measure since it is the unit that determines plant capacities and requirements and the unit used for pricing services.

Incorporating the definition of "access line" into REA regulations will (1) ease borrower reporting requirements by clearly defining a required data element in terms of an accepted industry standard; (2) improve the accuracy and consistency of data reported to REA; and (3) improve the accuracy of studies and statistics derived from the reported data.

Also, parts 1737 and 1744 shall be further amended as follows: pursuant to OMB Circular A–129, REA will require borrowers to report any Federal debt delinquency and the reason for the delinquency prior to the approval of an REA loan or advance of funds, see §§ 1737.22(b)(9), 1737.41(b)(2)(iv) and 1744.66(i). Borrowers must also certify that they have been informed of the collection options the Federal government may use to collect delinquent debt, see § 1737–22(a)(19). Notification shall also be given that REA may obtain commercially available credit reports on borrowers, see § 1737.70(k).

List of Subjects

7 CFR Part 1610

Loan programs-communications, Telecommunications, Telephone.

7 CFR Parts 1735, 1737 and 1744

Loan programs-communications, Telecommunications, Telephone.

Therefore, REA proposes to amend 7 CFR chapters XVI and XVII to read as follows:

CHAPTER XVI—[AMENDED]

PART 1610–[AMENDED]

1. The authority citation for 7 CFR part 1610 is revised to read as follows:

Authority: 7 U.S.C. 941 et seq.

2. Section 1610.5 is revised to read as follows:

§ 1610.5 Concurrent REA and Bank loans.

The Bank will consider making a loan concurrently with REA when REA has requested the applicant, pursuant to section 307 of the Act, to obtain a loan for part of its credit needs from a credit source other than REA, and the Governor finds that the applicant could, consistent with achieving the objectives of the Act and with prudent operations, produce an after-tax TIER of 1.5, as determined by the feasibility study prepared in connection with these loans, on all its outstanding and proposed loans, including a loan from REA at its standard interest rate of 5 percent for enough of its current loan needs to qualify the applicant for a loan from the Bank in accordance with § 1610.11 for the balance of such current loan needs, as determined by the Governor. The interest rate on the Bank loan shall be determined as provided in § 1610.10.

3. Section 1610.6 is revised to read as follows:

§ 1610.6 Exclusive Bank financing for current loan needs.

The Bank will consider making a loan for the applicant's total current needs as determined by the Governor when the Governor finds that the applicant could, consistent with achieving the objectives of the Act and with prudent operations, produce an after-tax TIER of 1.5, as determined by the feasibility study prepared in connection with this loan, on all its outstanding and proposed loans, including an annual interest rate on the loan for the current needs as provided for in § 1610.11. The actual interest rate on the loan shall be determined as provided in § 1610.10.

4. Section 1610.9 is revised to read as follows:

§ 1610.9 Class B stock.

Borrowers receiving loans from the Bank shall be required to invest in class B stock at 5 percent of the total amount of loan funds advanced. Borrowers may purchase class B stock by paying an amount (using their own general funds) equal to 5 percent of the amount, exclusive of the amount for class B stock, of each loan advance, at the time of such advance, or requesting that funds for the purchae of class B stock be included in the loan. If funds for class B stock are included in a loan, the funds for class B stock shall be advanced in an amount equal to 5 percent of the amount, exclusive of the amount for class B stock, of each loan advance, at the time of such advance.

CHAPTER XVII—[AMENDED]

PART 1735—[AMENDED]

5. The authority citation for part 1735 continues to read as follows:

Authority: 7 U.S.C. 901 et seq., 7 U.S.C. 1921 et seq.

6. In supart A, § 1735.2, the paragraph designations at the beginning of the definitions are removed; the definitions for "Times Interest Earned Ratio" and "Telephone Service" are revised; and the remaining following definitions are added alphabetically to read as follows:

§ 1735.2 Definitions.

Access line means a transmission path between user terminal equipment and a switching center that is used for local exchange service. For multiparty service, the number of access lines equals the number of lines/paths terminating on the mainframe of the switching center.

* * * * *

Composite useful life as applied to facilities financed by loan funds means the weighted (by dollar amount of each class of facility in the loan) average useful of all classes of facilities in the loan.

* * * * *

Forecast period means the time period beginning on the date (base date) of the borrower's balance sheet used in preparing the feasibility study and ending on a date equal to the base date plus the number of years estimated in the feasibility study for completion of the project. Feasibility projections are usually for 5 years, see § 1737.70(a). For example, the forecast period for a loan based on a December 31, 1990 balance sheet and having a 5-year estimated

project completion time is the period from December 31, 1990 to December 31, 1995.

Funded reserve means a separate asset account consisting of Government securities purchased in the name of the borrower.

* * * * *

Subscriber means the same as access line.

* * * * *

Telephone service means any communication service for the transmission or reception of voice, data, sounds, signals, pictures, writing, or signs of all kinds by wire, fiber, radio, light, or other visual or electromagnetic means and includes all telephone lines, facilities and systems to render such service. It does not mean:

(1) Message telegram service;

(2) Community antenna television system services or facilities other than those intended exclusively for educational purposes; or

(3) Radio broadcasting services or facilities within the meaning of section 3(o) of the Communications Act of 1934, as amended.

Times Interest Earned Ratio (TIER) means the ratio of a borrower's net income plus interest expense plus taxes based upon income, all divided by interest expense (sometimes called before-tax TIER), except that for the purposes of section 408(b)(4)(ii) of the RE Act taxes shall not be included in the numerator of the TIER ratio (sometimes called after-tax TIER). For the purpose of this calculation, all amounts will be annual figures and interest expense will include only interest on debt with a maturity greater than one year.

Useful life as applied to facilities financed by loan funds, means the number of years resulting from dividing 100 percent by the depreciation rate (expressed as a percent) approved by the regulatory body with jurisdiction over the telephone service provided by the borrower for the class of facility involved or, if no approved rate exists, by the median depreciation rate expressed as a percent as published by REA in its "Statistical Report, Rural Telephone Borrowers" for all REA and RTB borrowers for the class of facility.

7–8. In subpart B, § 1735.10 is amended by revising the first two sentences and adding a new sentence after the second sentence to read as follows:

§ 1735.10 General.

The Rural Electrification Administration (REA) makes loans for the purpose of financing the improvement, expansion, construction, acquisition, and operation of telephone lines, facilities, or systems to furnish and improve telephone service in rural areas. Loans made or guaranteed by the Administrator of REA will be made in conformance with the Rural Electrification Act of 1936 (RE Act), as amended (7 U.S.C 901 et seq.), and 7 CFR chapter XVII. REA will not deny or reduce a loan or an advance of loans funds based on a borrower's level of generally funds. * * *

9. In § 1735.17, paragraph (b) is removed and paragraphs (c) and (d) are redesignated as paragraphs (b) and (c) respectively; in addition, newly designated paragraph (b)(1) is revised and paragraph (b)(4) is added to read as follows:

§ 1735.17 Facilities financed.

* * * * *

(b) * * *

(1) Station apparatus, except for that owned by the borrower, and any associated inside wiring.

* * * * *

(4) Any facilities that will be fully depreciated by end of the loan forecast period.

* * * * *

10. In § 1735.22, paragraphs (f) and (g) are revised to read as follows:

§ 1735.22 Loan security.

* * * * *

(f) To obtain a loan after November 29, 1990, a borrower shall meet the following Times Interest Earned Ratio (TIER) requirements.

(1) For a 100 percent insured loan that is, a loan made solely under section 305 of the RE Act, a borrower must have a before-tax TIER of at least 1.0 on all of its outstanding and proposed loans from REA and all other lenders as determined by the feasibility study prepared in connection with the loan, unless the borrower has recieved a loan subject to the provisions of 7 CFR 1735.22(f)(2). In the latter case, the borrower must continue to meet the before-tax TIER requirements of 7 CFR 1735.22(f)(2). The mortgage will contain a provision requiring the borrower to maintain at a minimum a before-tax TIER at least equal to the projected TIER, determined by the most recent feasibility study, but not greater than 1.5.

(2) For a loan guaranteed by REA or made concurrently by REA and the Rural Telephone Bank (RTB) (and for a 100 percent RTB loan), a borrower must have an after-tax TIER of at least 1.5 on all of its outstanding and proposed loans from REA and all other lenders as determined by the feasibility study prepared in connection with the loan. The mortgage will contain a provision requiring the borrower to maintain at a minimum a before-tax TIER of 1.5.

(g) A borrower will not be required to raise its TIER as a condition for receiving a loan. Additional financial, investment, and managerial controls appear in the loan contract and mortgage required by REA.

11. In § 1735.30, paragraph (a)(2) is revised, and a sentence is added to the end of paragraph (b) to read as follows:

§ 1735.30 Insured loans.

(a) * * *

(2) Cannot, in accordance with generally accepted management and accounting principals and without increasing rates to its subscribers, provide service consistent with objetives of the RE Act.

(b) * * * See subpart H of part 1737 for interest rate determination.

12. In § 1735.32, paragraph (a) and the first sentence of paragraph (d) are revised to read as follows:

§ 1735.32 Guaranteed loans.

(a) *General.* Loan guarantees under this section will be considered for only those borrowers specifically requesting a guarantee. Borrowers may also specify that the loan to be guaranteed shall be made by the Federal Financing Bank (FFB). REA provides loan guarantees pursuant to Section 306 of the RE Act to enable borrowers to secure major telephone loans from non-REA sources. A major telephone loan is a loan requiring over 7 million dollars or such other sum as may be determined from time to time by the Administrator. Guaranteed loans may be made concurrently with insured loans or RTB loans. REA will consider guaranteeing a loan if the borrower meets all requirements set forth in regulations applicable to a loan made by REA. No fees or charges are assessed for any guarantee of a loan provided by REA. In view of the Government's guarantee, REA generally obtains a first lien on all assets of the borrower; see 7 CFR 1735.46. REA will consider applications less than 7 million dollars at the discretion of the Administrator.

* * * * *

(d) **Federal Register** *notice.* After REA has reviewed an application and determined that it shall consider guaranteeing a loan for the proposed project and if the borrower has not specified that the loan be made from the FFB, REA shall publish a notice in the **Federal Register.** * * *

* * * * *

§ 1735.42 [Removed]

13. Section 1735.42 is removed and reserved.

14. Section 1735.43 is revised to read as follows:

§ 1735.43 Payments on loans.

(a) Borrowers shall, at the time a loan application is submitted, select a loan maturity up to a maximum of 35 years. If the maturity selected exceeds the composite useful life of the facilities to be financed by the loan by a period of more than three years, release of funds included in the loan shall be conditioned upon the borrower electing to either;

(1) Establish and maintain, pursuant to a plan approved by REA, a funded reserve in such an amount that the balance of the reserve plus the value of the facilities less depreciation shall at all times be at least equal to the remaining principal payments on the loan; or

(2) Maintain a net plant to secured debt ratio of at least 1.2. Secured debt shall mean the total of long term debt and current maturities of long term debt (whether owed to REA, RTB, or some other creditor) and capital leases.

The loan contract for the loan will contain the appropriate condition as selected by the borrower. If the funded reserve option is selected, funding of the reserve must begin within one year of approval of release of funds and must continue regularly over the composite useful life of the facilities financed. The fund shall be kept in investments consisting of Government securities.

(b) Principal and interest will be repaid in accordance with the terms of the notes. Generally, interest is payable each month as it accrues. Principal payments on each note generally are scheduled to begin 2 years after the date of the note. After this deferral period, interest and principal payments on all funds advanced during this 2-year period are scheduled in equal monthly installments. Principal payments on funds advanced 2 years or more after the date of the note will begin with the first billing after the advance. The interest and principal payments on each of these advances will be scheduled in equal monthly installments. Notes will generally provide that after 5 years from the date of the note, no more than two advances of funds may be made against the note in any one calendar year. This CFR Part supersedes these portions of REA Bulletin 320–12, "Loan Payments and Statements" with which it is in conflict.

15. Section 1735.47 is revised to read as follows:

§ 1735.47 Rescissions of loans.

(a) Rescission of a loan may be requested by a borrower at any time. To rescind a loan, the borrower must demonstrate to REA that:

(1) The purposes of the loan being rescinded have been completed;

(2) Sufficient funds are available from sources other than REA, RTB or FFB to complete the purposes of the loan being rescinded; or

(3) The purposes of the loan are no longer required to extend or improve telephone service in rural areas.

(b) Borrowers submitting loan applications containing purposes previously covered by a loan that has been rescinded shall include in the application an explanation, satisfactory to REA, of the change of conditions since the rescission that re-establishes the need for those purposes.

(c) REA may initiate the rescission of a loan if all of the purposes for which telephone loans have been made to the borrower under the Act have been accomplished with funds provided under the Act.

16. In § 1735.51, paragraph (a)(1) is revised to read as follows:

§ 1735.51 Required findings.

(a) * * *

(1) Self-liquidation of the loan within the loan amortization period; this requires that there be sufficient revenues from the borrower's system, in excess of operating expenditures (including maintenance and replacement), to repay the loan with interest.

* * * * *

PART 1737—[AMENDED]

17. The authority citation for part 1737 continues to read as follows:

Authority: 7 U.S.C. 901 et seq., 7 U.S.C. 1921 et seq.

18. In subpart A, § 1737.2 the paragraph designations are removed; the definitions "Telephone Service" and "Time Interest Earned Ratio" are revised; and the following remaining definitions are added alphabetically to read as follows:

§ 1737.2 Definitions.

Access line means a transmission path between user terminal equipment and a switching center that is used for local exchange service. For multiparty service, the number of access lines equals the number of lines/paths terminating on the mainframe of the switching center.

* * * * *

Forecast period means the time period beginning on the date (base date) of the borrower's balance sheet used in preparing the feasibility study and ending on a date equal to the base plus the number of years estimated in the feasibility study for the completion of the project. Feasibility projections are usually for 5 years, see § 1737.70(a). For example, the forecast period for a loan based on a December 31, 1990 balance sheet and having a 5-year estimated project completion time is the period from December 31, 1990 to December 31, 1995.

* * * * *

Subscriber means the same as access line.

* * * * *

Telephone service means any communication service for the transmission or reception of voice, data, sounds, signals, pictures, writing, or signs of all kinds by wire, fiber, radio, light, or other visual or electromagnetic means and includes all telephone lines, facilities and systems to render such service. It does not mean:

(1) Message telegram service;

(2) Community antenna television system services or facilities other than those intended exclusively for educational purposes; or

(3) Radio broadcasting services or facilities within the meaning of section 3(o) of the Communications Act of 1934, as amended.

Times Interest Earned Ratio (TIER) means the ratio of a borrower's net income plus interest expense plus taxes based upon income, all divided by interest expense (sometimes called before-tax TIER), except that for the purposes of section 408(b)(4)(ii) of the RE Act taxes shall not be included in the numerator of the TIER ratio (sometimes called after-tax TIER). For the purpose of this calculation, all amounts will be annual figures and interest expenses will include only interest on debt with a maturity greater than one year.

§ 1737.20 [Removed]

19–20. Section 1737.20 is removed and reserved.

21. In § 1737.21, a sentence is added at the end of paragraph (b), and paragraph (c) is added to read as follows:

§ 1737.21 The completed loan application.

* * * * *

(b) * * * Borrowers are to submit all information in paragraph (a) of this section to their REA field representatives, who will review and then forward the packages to REA headquarters.

(c) REA will make a determination of completeness of the application package and will notify the borrower of this

determination within 10 working days of receipt of the information at REA headquarters. If the application package is not complete, REA will notify the borrower of what information is needed in order to complete the application package. If the information required to complete the application package is not received by REA within 90 working days from the date the borrower was notified of the information needed, REA may return the application package to the borrower.

* * * * *

22. In § 1737 22, the introductory paragraph is revised, new paragraphs (a)(17), (a)(18), and (a)(19) are added, paragraph (b)(5) is redesignated as paragraph (b)(10), and new paragraphs (b)(5) through (b)(9) are added to read as follows:

§ 1737.22 Supplementary information.

REA requires additional information in support of the loan application form. The information listed in paragraphs (a), (b), and (c) of this section must be submitted as part of the loan application as specified in 7 CFR 1737.21.

(a) * * *

(17) A sketch or map showing the existing and proposed service areas.

(18) Executed assurance that the borrower will comply with the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, as amended (see 49 CFR 24.4).

(19) A certification (which is included on REA Form 490, "Application for Telephone Loan or Guarantee") that the borrower has been informed of the collection options listed below that the Federal government may use to collect delinquent debt. The Federal government is authorized by law to take any or all of the following actions in the event that a borrower's loan payments become delinquent or the borrower defaults on its loan:

(i) Report the borrower's delinquent account to a credit bureau.

(ii) Assess additional interest and penalty charges for the period of time that payment is not made.

(iii) Assess charges to cover additional administrative costs incurred by the Government to service the borrower's account.

(iv) Offset amounts owed to the borrower under other Federal programs.

(v) Refer the borrower's debt to the Internal Revenue Service for offset against any amount owed to the borrower as an income tax refund.

(vi) Refer the borrower's account to a private collection agency to collect the amount due.

(vii) Refer the borrower's account to the Department of Justice for litigation in the courts.

All of the actions in paragraph (a)(19) of this section can and will be used to recover any debts owed when it is determined to be in the interest of the Government to do so. The above notification and the required form of certification are included on REA Form 490, "Application for Telephone Loan or Guarantee."

(b) * * *

(5) A "Certification Regarding Lobbying" for loans, or a "Statement for Loan Guarantees and Loan Insurance" for loan guarantees, and when required, an executed Standard Form LLL, "Disclosure of Lobbying Activities," (see section 319, Pub. L. 101–121 (31 U.S.C. 1352)).

(6) Executed copy of Form AD–1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions" (see appendix A to 7 CFR part 3017).

(7) Borrower's determination of loan maturity, including information noted in § 1735.43(a) as required.

(8) Approved depreciation rates for items under regulatory authority jurisdiction.

(9) A statement that the borrower is or is not delinquent on any Federal debt, such as income tax obligations or a loan or loan guarantee from another Federal agency. If delinquent, the reasons for the delinquency must be explained and REA will take such explanation into consideration in deciding whether to approve the loan. REA Form 490, "Application for Telephone Loan or Guarantee," contains a section for providing the required statement and any appropriate explanation.

* * * * *

23. In § 1737.41, the parenthetical phrase at the end of paragraph (a) is transferred to the end of the section and paragraph (b) is revised to read as follows:

§ 1737.41 Procedure for obtaining approval.

* * * * *

(b) REA will not approve interim financing until it has reviewed and found acceptable:

(1) All of the information required under § 1737.21 or with REA approval.

(2) The following documents:

(i) The loan application (REA Form 490) clearly marked "in support of interim financing request."

(ii) The Loan Design (LD), or the portion thereof that covers the proposed construction if the completed LD is not available. See 7 CFR 1737.32.

(iii) Evidence that the borrower has satisfied the requirements of 7 CFR Part 1794 applying to the proposed interim construction.

(iv) A statement that the borrower is or is not delinquent on any Federal debt, such as income tax obligations or a loan or loan guarantee from another Federal agency. If delinquent, the reasons for the delinquency must be explained and REA will take such explanation into consideration in deciding whether to approve the interim financing, see 7 CFR 1737.22(b)(9).

(v) A "Certification Regarding Lobbying" for loans, or a "Statement for Loan Guarantees and Loan Insurance" for loan guarantees, and when required, an executed Standard Form LLL, "Disclosure of Lobbying Activities," (see section 319, Pub. L. 101–121 (31 U.S.C. 1352)).

(vi) Executed copy of Form AD–1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions" (see appendix A to 7 CFR part 3017).

(vii) Any other supporting data required by the Administrator.

* * * * *

24. In § 1737.70, paragraphs (d) through (g) are redesignated (g) through (j); paragraph (a), the last sentence of paragraph (b), newly designated paragraph (g), and the first sentence of newly designated paragraph (h) are all revised; and new paragraphs (d), (e), (f), (k) and (l) are added to read as follows:

§ 1737.70 Description of feasibility study.

(a) In connection with each loan REA shall prepare a feasibility study that includes sections on consolidated loan estimates, operating statistics, projected telecommunications plant, projected retirement computations, and projected revenue and expense estimates (including detailed estimates of depreciation and amortization expense, scheduled debt service payments, toll and access charge revenues, and local service revenues). Normally, projections will be for a 5-year period and used to determine the ability of the borrower to repay its loans in accordance with the terms thereof. REA will not require borrowers to raise local service rates. Local service revenue projections will be based on the borrower's existing local service rates or regulatory body approved rates not yet in effect but to be implemented within the forecast period. In the latter case, if a borrower is not required to obtain regulatory body approval for the implementation of such rates, REA will require a resolution of

the board of directors indicating when those rates will be in effect.

(b) * * * REA shall consider the factors discussed in paragraphs (c) through (j) of this section in determining feasibility.

* * * * *

(d) Pursuant to 7 CFR 1735.30, REA may make a loan at an interest rate lower than 5 percent but not less than 2 percent. A feasibility study will be prepared using the highest interest rate at which the borrower would be capable of producing a before-tax TIER of 1.0. If a loan is approved, the interest rate for the loan will be fixed, at the rate used in determining feasibility, from the date the loan is approved until the end of the forecast period. At the end of the forecast period, the interest rate for the loan may be adjusted upward annually by the Administrator to a rate not greater than 5 percent based, on the borrower's ability to pay debt service and maintain a minimum before-tax TIER of 1.0. To make this adjustment, projections set forth in the loan feasibility study will be revised annually (beginning within four months after the end of the forecast period) to reflect updated revenue and expense factors based on the borrower's current operating condition. Any such adjustment will be effective on June 30 of the year in which the adjustment was determined. When the Administrator determines that the borrower is capable of meeting the minimum TIER requirements of § 1735.22(f) at a loan interest rate of 5 percent then the loan interest rate shall be fixed, for the remainder of the loan repayment period, at the standard interest rate of 5 percent.

(e) Depreciation expense will be determined using depreciation rates appropriate to the normal operation of the borrower, based on:

(1) The borrowers regulatory body approved depreciation rates; and

(2) Where such rates as described in paragraph (e)(1) of this section do not exist for items which the borrower is seeking financing, the most recent median depreciation rates published by REA for all borrowers. REA will publish such depreciation rates annually in REA's "Statisical Report, Rural Telephone Borrowers."

(f) Projected scheduled debt service payments will generally be based on all of the borrower's outstanding and proposed loans from REA and all other lenders as of the end of the feasibility forecast period (i.e for a 5-year forecast period, the amount of debt outstanding in year 5).

(g) The financial and statistical data are derived from REA Form 479, "Financial and Statistical Data for Telephone Borrowers," of for initial loans, the data may be obtained from the borrower's financial statements and other reports, and from other information supplied with the completed loan application (see 7 CFR 1737.21 and 1737.22).

(h) When, in REA's opinion, the borrower's operating experience is not adequate or the borrower's current operations are not representative, the estimates in the feasibility study normally will be developed from state and regional standards based on the experience of REA borrowers. * * *

* * * * *

(k) REA may obtain and review commercially available credit reports on applicants for a loan or loan guarantee to verify income, assets, and credit history, and to determine whether there are any outstanding delinquent Federal or other debts. Such reports will also be reviewed for parties that are or propose to be joint owners of a project with a borrower.

(l) If it is determined that loan feasibility cannot be proven as described in this section, the loan application will be returned to the borrower with an explanation. A borrower whose application has been returned will have 90 working days, from the date the application was returned, to revise and resubmit its application. If a revised application is not received by REA within the 90-day period described above, the application will be cancelled and a new application will need to be submitted if the borrower wishes further consideration.

25. Section 1737.80, paragraph (a) is revised to read as follows:

§ 1737.80 Description of characteristics letter.

(a) After all of the studies and exhibits for the proposed loan have been prepared, but before the loan is recommended, REA shall inform the borrower, in writing, of the characteristics of the proposed loan. The purpose of the characteristics letter is to inform the borrower and obtain its concurrence, before further consideration by REA of the loan approval and the preparation of legal documents relating to the loan, in such matters as the amount of the proposed loan, its purposes, rate of interest, loan security requirements, and other prerequisites to the advance of loan funds. The letter, whether or not concurred in by the borrower, does not commit REA to approve the loan on these or any other terms.

* * * * *

§ 1737.90 [Amended]

26. In § 1737.90, paragraph (a)(4) and (a)(8) are removed and paragraphs (a)(5) through (a)(7) are redesignated as (a)(4) through (a)(6), respectively.

PART 1744—[AMENDED]

27. The authority citation for part 1744 continues to read as follows:

Authority: 7 U.S.C. 901 et seq., 7 U.S.C. 1921 et seq.

28. In § 1744.66, paragraph (b)(4)(iv) is revised and a new paragraph (i) is added to read as follows:

§ 1744.66 The financial requirement statement (FRS).

* * * * *

(b)(4) * * *

(iv) *Bank stock.* Based on the requirements for purchase of class "B" Rural Telephone Bank stock established in the loan. Funds for class B stock will be advanced in an amount equal to 5 percent of the amount, exclusive of the amount for class B stock, of each loan advance, at the time of such advance.

* * * * *

(i) The FRS shall be accompanied by a statement that the borrower is or is not delinquent on any Federal debt, such as income tax obligations or a loan or loan guarantee from another Federal agency. If delinquent, the reasons for the delinquency must be explained, and REA will take such explanation into consideration in deciding whether to approve the advance of funds, see 7 CFR 1737.22(b)(9).

Dated: February 25, 1991.

Gary C. Byrne,

Administrator, Rural Electrification Administration, Governor, Rural Telephone Bank.

[FR Doc. 91-6617 Filed 3-18-91; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS Number: 1310-91]

RIN 1115-AB72

Proposed Changes to Chapter 15 of the United States-Canada Free-Trade Agreement (FTA)

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule seeks public comment on proposed changes to

annex 1502.1 to chapter 15 of the United States-Canada Free-Trade Agreement (FTA). Publication of a proposed rule complies with the wishes of Congress that any changes or additions to chapter 15 be announced publicly with time allowed for comment. After the comment period has expired and all comments have been considered, the Immigration and Naturalization Service (INS) will publish a final regulation incorporating the changes to annex 1502.1.

DATES: Written comments must be received by May 20, 1991.

ADDRESSES: Written comments should be submitted in triplicate to Director, Policy Directives and Instructions, U.S. Immigration and Naturalization Service 425 I Street NW., room 5304, Washington, DC 20536. Please include INS Number 1310–91 on the mailing envelope to ensure proper handling.

FOR FURTHER INFORMATION CONTACT: Edward H. Skerrett, Senior Immigration Examiner, U.S. Immigration and Naturalization Service, 425 I Street NW, room 7122, Washington, DC 20536, Telephone: (202) 514–3946.

SUPPLEMENTARY INFORMATION: The FTA entered into force on January 1, 1989. Article 1503 of chapter 15 of the agreement calls for consultation, at least once a year, involving the participation of immigration officials from the United States and Canada to develop measures for further facilitating the temporary entry of business persons on a reciprocal basis and to develop amendments and additions to annex 1502.1 to chapter 15. To accomplish this end, a working group made up of representatives of Federal agencies from both countries was formed in early 1989.

The United States-Canada working group for chapter 15 met three times during 1990. The latest recommendations of the group, after agency approval, were then approved by the Canada-United States Trade Commission which was established by article 1802.1 of chapter 18 of the FTA. Amendment of the agreement, however, is subject to the domestic review procedures of both governments. This proposed rule reflects the amendments on which agreement has been reached and, in accordance with the wishes of Congress, the amendments will not be placed in regulation until time has been allowed for public comment and a final rule has been published. In Canada, the amendments will be published in the Canada Gazette to allow for public comment.

These proposed changes to chapter 15 relate only to annex 1502.1 specifically schedule 2. They include the addition of three professions to schedule 2, amendment or clarification of the minimum educational requirements/alternative credentials for four professions already in schedule 2, amendment of the job titles of "clinical lab technologist" and "medical technologist," and the addition of engineering as a discipline under the job title of "scientific technician/technologist." The proposed changes will be discussed in that order.

Additions to Schedule 2

During the first two years of implementation of the FTA, both U.S. and Canadian immigration officials have received inquiries and requests from interested parties regarding the addition of certain professions to Schedule 2. This notice reflects the professions on which agreement has been reached during the latest round of the consultative process. Professions or occupations other than those included have been presented for consideration, but common agreement on their addition has not yet been reached by the working group.

The professions now proposed for addition to Schedule 2 are geochemist, industrial designer, and interior designer. Representations for the addition of these professions came to the working group through the Canada Employment and Immigration Commission (CEIC).

The addition of geochemist is reasonable, considering that both geophysicist and geologist are already in Schedule 2. It should be noted that the professions of industrial designer and interior designer show the minimum requirement/alternative credentials of a baccalaureate degree, or post-secondary diploma and three years experience. United States citizens in these professions often hold at least a baccalaureate degree; Canadian citizens normally enter these professions after receiving a post-secondary diploma.

Alternative Credentials

Alternative credentials for accountants, animal breeders, computer systems analysts, and hotel managers have been frequent topics at working group meetings.

The addition of the designations C.P.A. (Certified Public Accountant) and C.A. (Chartered Accountant) as alternatives to a baccalaureate for an accountant is seen as providing a means of qualification for individuals who are well-established in the profession, but who may not hold baccalaureates. The title C.P.A. is well-known in the United States, while the title C.A. is widely found throughout the British Commonwealth, including Canada.

Canadian representatives to the working group had asked that the group explore alternatives to a baccalaureate for animal breeders. After research and consultation, the group determined that the negotiators of chapter 15 meant the term "animal breeder" to apply to an animal breeder who is a scientist; thus, the baccalaureate degree is a reasonable requirement for this profession and remains as such.

Since computer systems analysts work in an emerging profession, the working group felt that a post-secondary diploma with three years experience would be a reasonable alternative to a baccalaureate degree.

The profession of hotel manager in schedule 2 now carries the requirement that an individual have a baccalaureate degree and three years experience. The working group felt that this requirement was vague and did not account for a number highly-qualified individuals in the industry who do not have baccalaureates. Consequently, the working group proposed that the basic requirement be a baccalaureate (specifically in Hotel/Restaurant Management) or a post-secondary diploma in Hotel/Restaurant Management and three years experience in hotel/restaurant management.

"Clinical Lab Technologist" and "Medical Technologist"

Research by United States representatives to the working group revealed that in the United States the terms "clinical lab technologist" and "medical technologist" are synonymous. Research by Canadian representatives determined that the Canadian counterpart is a "medical laboratory technologist." These individuals perform clinical, biological, hematological, immunologic, microscopic, and bacteriological tests, procedures, experiments and analyses in laboratories for the diagnosis, treatment, and prevent of disease. The amendment to the schedule clarifies this issue by removing the term "clinical lab technologist" and providing the term "medical laboratory technologist (Canada)/medical technologist (U.S.)" along with a footnote as to the duties performed. It should be noted that other allied medical professions (primarily technicians of various types) are still under consideration for addition to schedule 2. Canadian representatives to the group have asked that consideration of adding these professions be held in abeyance, pending provincial input.

"Scientific Technician/Technologist"

The working group has proposed that engineering be added to the disciplines in which a scientific technician/technologist may perform services. This addition fills a need in the engineering industry and was brought to the group by the representatives of both countries. United States representatives have received inquiries on this addition through INS field offices. The working group has also revised the wording of the minimum educational requirements or alternative credentials for scientific technicians/technologists to provide clarity and to provide for expanded accessibility. This proposed change combines the last two requirements for these individuals into an alternative.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, aliens, authority delegation, employment, organization and functions, passport and visas.

Accordingly, part 214 of chapter I of title 8 of the Code of Federal Regulations will be amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1186a, 1187, and 8 CFR part 2.

2. In § 214.6, paragraph (d)(2)(ii) is revised to read as follows:

§ 214.6 Canadian citizens seeking temporary entry to engage in business activies at a professional level.

* * * * *

(d) * * *

(2) * * *

(ii) *Schedule 2 to Annex 1502.1 of the FTA.* Pursuant to the FTA, an applicant seeking admission under this section shall demonstrate business activity at a professional level in one of the professions or occupations set forth in schedule 2 to annex 1502.1. The professions or occupations in schedule 2 and the minimum requirements for each are as follows:

Schedule 2 (Annotated)

—Accountant—baccalaureate degree, C.P.A., or C.A.
—Architect—baccalaureate degree or state/provincial license [1]
—Computer Systems Analyst—baccalaureate degree, or post-secondary diploma and three years experience
—Disaster relief claims adjuster—baccalaureate degree or three years experience in the field of claims adjustment
—Economist—baccalaureate degree
—Engineer—baccalaureate degree or state/provincial license [1]
—Forester—baccalaureate degree or state/provincial license [1]
—Graphic desinger—baccalaureate degree, or post-secondary diploma and three years experience
—Hotel manager—baccalaureate degree in Hotel/Restaurant Management, or post-secondary diploma in Hotel-Restaurant Management and three years experience in hotel/restaurant management
—Industrial designer—baccalaureate degree, or post-secondary diploma and three years experience
—Interior designer—baccalaureate degree, or post-secondary diploma and three years experience
—Land surveyor—baccalaureate degree or state/provincial/federal license [1]
—Landscape architect—baccalaureate degree
—Lawyer—member of bar in province or state, or L.L.B., J.D., L.L.L., or B.C.L.
—Librarian—M.L.S., or B.L.S. (for which another baccalaureate degree was a prerequisite)
—Management consultant—baccalaureate degree or five years experience in consulting or related field
—Mathematician—baccalaureate degree
—MEDICAL/ALLIED PROFESSIONALS
  —Dentist—D.D.S., D.M.D., or state/provincial license [1]
  —Dietitian—baccalaureate degree or state/provincial license [1]
  —Medical laboratory technologist (Canada)/medical technologist (U.S.)—baccalaureate degree, or post-secondary diploma and three years experience [2]
  —Nutritionist—baccalaureate degree
  —Occupational therapist—baccalaureate degree or state/provincial license [1]
  —Pharmacist—baccalaureate degree or state/provincial license [1]
  —Physician (teaching and/or research only)—M.D. or state/provincial license [1]
  —Physio/physical therapist—baccalaureate degree or state/provincial license [1]
  —Psychologist—state/provincial license [1]
  —Recreational therapist—baccalaureate degree
  —Registered nurse—state/provincial license [1]
  —Veterinarian—D.V.M., D.M.V., or state/provincial license [1]
—Range manager (range conservationist)—baccalaureate degree
—Research assistant (working in a post-secondary educational institution)—baccalaureate degree
—Scientific technician/technologist
  —Must work in direct support of professionals in the following disciplines: agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology, or physics.
  —Must possess theoretical knowledge of the discipline.
  —Must solve practical problems in the discipline or apply principles of the discipline to basic or applied research.
—Scientist
  —Agriculturist (agronomist)—baccalaureate degree
  —Animal breeder—baccalaureate degree
  —Animal scientist—baccalaureate degree
  —Apiculturist—baccalaureate degree
  —Astronomer—baccalaureate degree
  —Biochemist—baccalaureate degree
  —Biologist—baccalaureate degree
  —Chemist—baccalaureate degree
  —Dairy scientist—baccalaureate degree
  —Entomologist—baccalaureate degree
  —Epidemiologist—baccalaureate degree
  —Geneticist—baccalaureate degree
  —Geochemist—baccalaureate degree
  —Geologist—baccalaureate degree
  —Geophysicist—baccalaureate degree
  —Horticulturist—baccalaureate degree
  —Meteorologist—baccalaureate degree
  —Pharmacologist—baccalaureate degree
  —Physicist—baccalaureate degree
  —Plant breeder—baccalaureate degree
  —Poultry scientist—baccalaureate degree
  —Soil scientist—baccalaureate degree
  —Zoologist—baccalaureate degree
—Social worker—baccalaureate degree
—Sylviculturist (forestry specialist)—baccalaureate degree
—Teacher
  —College—baccalaureate degree
  —Seminary—baccalaureate degree
  —University—baccalaureate degree
—Technical publications writer—baccalaureate degree, or post-secondary diploma and three years experience
—Urban planner—baccalaureate degree
—Vocational counselor—baccalaureate degree

* * * * *

Dated: February 6, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 91-6362 Filed 3-18-91; 8:45 am]

BILLING CODE 4410-10-M

[1] The terms "state/provincial license" and "state/provincial/federal license" mean any document issued by a state, provincial, or federal government as the case may be, or under its authority, which permits a person to engage in a regulated activity or profession.

[2] Must perform chemical, bilogical, hematological, immunologic, microscopic and bacteriological tests, procedures, experiments, and analyses in laboratories for diagnosis, treatment and prevention of disease.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-625-89]

RIN 1545-AN83

Deduction of Amounts Owed to Related Foreign Persons

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed Income Tax Regulations describing when an otherwise deductible amount owed to a related foreign person may be deducted. Changes to the applicable tax law were made by the Tax Reform Act of 1984 and the Tax Reform Act of 1986. These regulations provide guidance needed to comply with these changes and affect persons that owe otherwise deductible amounts to a related foreign person.

DATES: Written comments and requests for a public hearing must be received by May 20, 1991.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (INTL-625-89), Room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: James K. Sams of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:CORP:T:R (INTL-625-89) (202-566-6645, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed Income Tax Regulations (26 CFR part 1) under sections 163 and 267 of the Internal Revenue Code of 1986. These regulations reflect rules announced in Notice 89-84, 1989-31 I.R.B. 8 (July 31, 1989).

Explanation of Provisions

Section 163(e)(3)

Section 163(e)(3) provides that an amount allowable as a deduction to the issuer of a debt instrument that has original issue discount will not be deductible until such amount is paid, if the holder of the debt instrument is a related foreign person. However, this rule does not apply if the original issue discount is income of the related foreign person that is effectively connected with the conduct of a trade or business in the United States, unless the foreign person claims an examption from taxation (or is subject to a reduced rate of tax) pursuant to a treaty obligation of the United States.

A related foreign person is a foreign person that has a relationship with the issuer described in section 267(b). The regulations provide that, for purposes of this section, the definition of controlled group under section 267(b)(3) is determined without regard to section 1563(b)(2)(C). For purposes of this section, an amount is treated as paid if it would be considered paid for purposes of sections 1441 or 1442. This rule applies even though the amount required to be withheld is reduced or is zero pursuant to a treaty obligation of the United States.

Section 267(a)(3) in General

Under section 267(a)(2) and section 267(a)(3), a deduction for certain otherwise deductible amounts owed to a related foreign person that are of a type described in section 871(a)(1) or section 881(a) is not allowable until the amounts are paid. This rule also applies to interest that is from sources outside the United States. Section 267(a)(2) and section 267(a)(3) do not apply, however, to the following items: (1) amounts other than interest that are from sources outside the United States and that are not income of a related foreign person effectively connected with the conduct by such related foreign persons of a trade or business within the United States, and (2) amounts other than interest with respect to which the related foreign person claims exemption from taxation pursuant to a treaty obligation of the United States. Note that though the deducation deferral rules of section 267 do not apply to these items, the applicability of other provisions of the Code (and general tax principles) relating to the timing or amount of a deduction for such items is not affected by these regualtions.

Method of Accounting

These regulations under section 163(e)(3) and section 267 (a)(2) and (a)(3) generally require a taxpayer to use the cash method of accounting with respect to the deduction of amounts owed to a related foreign person. Accordingly, a taxpayer that has regulatrly used a method of accounting other than that required by these regulations will be required to change its method pursuant to section 446(e) and the regulations thereunder. Additional procedures for such change in method will be prescribed in forthcoming administrative procedures issued in connection with the regulations under section 446(e) and these regulations under sections 163 and 267.

Amounts Owed to a Foreign Sales Corporation

An amount (other than interest) owed to a foreign sales corporation that is exempt foreign trade income for purposes of section 921 *et seq.*, is not an amount that is covered by these regulations because such amount is treated as foreign source, non-effectively connected income. The regulations provide an exception to the general rule for interest owed to a foreign sales corporation that is exempt foreign trade income. Such interest is allowable as a deduction as of the day on which the amount is includible in the income of the foreign sales corporation.

Amounts Owed to Certain Foreign Corporations

The regulations provide that if an amount to which these regulations apply is owed to a related foreign corporation, then such amount is allowable as a deduction as of the day on which the amount is includible in the income of the related foreign corporation for purposes of the foreign personal holding company, the subpart F, or the passive foreign investment company provisions. This is a substantial exception to the otherwise applicable general rule of these regulations. Relief is deemed appropriate in such cases because there is little material distortion in the matching of income and deductions with respect to amounts owed to a related foreign corporation that is required to determine its taxable income and earnings and profits for United States tax purposes pursuant to the foreign personal holding company, subpart F, or passive foreign investment company provisions.

Effective Dates

The regulations in this document issued under section 163 of the Internal Revenue Code are proposed to apply to all original issue discount on debt instruments issued after June 9, 1984. The regulations in this document issued under section 267 are proposed to apply to interest allowable as a deduction under Chapter 1 (without regard to the regulations in this document issued under section 257) in taxable years beginning after December 31, 1983, but are not proposed to apply to interest accrued with respect to indebtedness incurred on or before September 29, 1983, or incurred after that date pursuant to a contract that was binding on that date and at all times thereafter

(unless the indebtedness or the contract was renegotiated, extended, renewed, or revised after that date). The regulations in this document issued under section 267 are propsoed to apply to all other deductible amounts that accrue after July 31, 1989.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis 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 thus an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Request for a Pulbic Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request by any person who submits written comments on the proposed rules. Notice of the time and place for the hearing will be published in the **Federal Register.**

Drafting Information

The principal author of these regulations is James K. Sams of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects in 26 CFR 1.61–1 through 1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

Proposed amendments to the regulations

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

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 is amended by adding the following citations:

Authority: 26 U.S.C. 7805 * * * Section 1.267(a)–3 issued under 26 U.S.C. 267(a)(3).

* * *

PAR. 2. New § 1.163–12 is added in the appropriate place as follows:

§ 1.163–12 Deduction of original issue discount on instrument held by related foreign person.

(a) *General rules*—(1) *Deferral of deduction.* Except as provided in pargraph (b) of this section, a deduction for an otherwise deductible portion of original issue discount with respect to a debt instrument will not be allowable as a deduction to the issuer until paid if, at the close of the issuer's taxable year in which such amount would otherwise be deductible, the person holding the debt instrument is a related foreign person. For purposes of this section, a related foreign person is any person that is not a United States person within the meaning of section 7701(a)(30), and that is a person that has a relationship with the issuer described in section 267(b). Also, for purposes of this section, the definition of controlled group under section 267(b)(3) is determined without regard to section 1563(b)(2)(C). An amount is treated as paid within the meaning of this section if the amount would be considered paid for purposes of sections 1441 or 1442. The rules of this paragraph (a) apply even if the original issue discount is not subject to United States tax, or is subject to a reduced rate of tax, pursuant to a provision of the Internal Revenue Code or a treaty obligation of the United States. For purposes of this section, original issue discount shall mean an amount described in section 1273 that is from sources inside or outside the United States.

(2) *Change in method of accounting.* Except as provided in paragraph (b) of this section, section 163(e)(3) requires a taxpayer to use the cash method of accounting with respect to the deduction of original issue discount owed to a related foreign person. Therefore, a taxpayer that regularly uses a method of accounting other than that required by the rules of this section is required to change its method of accounting to conform its method to the rules of this section. The taxpayer's change in method must be made pursuant to the rules of section 446(e), the regulations thereunder, and any applicable administrative procedures prescribed by the Commissioner. Because the rules of this section prescribe a method of accounting, these rules apply in the determination of a taxpayer's earnings and profits pursuant to § 1.312–6(a).

(b) *Exceptions*—(1) *Effectively connected income.* The provisions of section 267(a)(2) and the regulations thereunder, and not the provisions of paragraph (a) of this section, apply to an amount of original issue discount that is income of the related foreign person that is effectively connected with the conduct of a United States trade or business of such related foreign person. However, the exception of this paragraph (b)(1) does not apply if the related foreign person claims an exemption from United States income tax on the amount owed, or is subject to a reduced rate of tax, pursuant to a treaty obligation of the United States (such as under an article relating to the taxation of business profits).

(2) *Certain obligations issued by natural persons.* This section does not apply to any debt instrument described in section 163(e)(4) (relating to obligations issued by natural persons before March 2, 1984, and to loans between natural persons).

(c) *Application of section 267.* The provisions of section 267 and the regulations thereunder shall apply to any amount of original issue discount to which the provisions of this section do not apply.

(d) *Effective date.* The rules of this section are proposed to apply to all original issue discount on debt instruments issued after June 9, 1984.

Par. 3. New § 1.267(a)–3 is added in the appropriate place as follows:

§ 1.267(a)–3 Deduction of amounts owed to related foreign persons.

(a) *Purpose and scope.* This section provides rules under section 267(a)(3) governing when an amount owed to a related foreign person that is otherwise deductible under Chapter 1 may be deducted. Paragraph (b) of this section provides the general rules, and paragraph (c) of this section provides exceptions and special rules.

(b) *Deduction of amount owed to related foreign person*—(1) *In general.* Except as provided in paragraph (c) of this section, an amount that is owed to a foreign person and that is otherwise deductible under Chapter 1 may not be deducted by the taxpayer until such amount is paid to the foreign person, if the taxpayer and the person to whom the amount is owed (the "related foreign person") are persons specified in section 267 (b) or (e) at the close of the taxpayer's taxable year in which such

amount would otherwise be deductible. For purposes of this section, the definition of controlled group under section 267(b)(3) is determined without regard to section 1563(b)(2)(C). Also, for purposes of this section, an amount is treated as paid if the amount would be considered paid for purposes of sections 1441 or 1442.

(2) *Amounts covered.* This section applies to amounts that are of a type described in section 871(a)(1) (A), (B) or (D), or in section 881(a) (1), (2) or (4). The rules of this section also apply to interest that is from sources outside the United States. Amounts other than interest that are from sources outside the United States, and that are not income of a related foreign person effectively connected with the conduct by such related foreign person of a trade or business within the United States, are not subject to the rules of section 267(a) (2) or (3) or this section. See paragraph (c) of this section for rules governing the treatment of amounts that are income of a related foreign person effectively connected with the conduct of a trade or business within the United States by such related foreign person.

(3) *Change in method of accounting.* Except as provided in paragraph (c) of this section, section 267(a)(3) requires a taxpayer to use the cash method of accounting with respect to the deduction of amounts owed to a related foreign person. Therefore, a taxpayer that regularly uses a method of accounting other than that required by the rules of this section is required to change its method of accounting to conform its method to the rules of this section. The taxpayer's change in method must be made pursuant to the rules of section 446(e), the regulations thereunder, and any applicable administrative procedures prescribed by the Commissioner. Because the rules of this section prescribe a method of accounting, these rules apply in the determination of a taxpayer's earnings and profits pursuant to § 1.312–6(a).

(4) *Examples.* The provisions of this paragraph (b) may be illustrated by the following examples:

Example 1. (i) FC, a corporation incorporated in Country X, owns 100 percent of the stock of C, a domestic corporation. C uses the accrual method of accounting in computing its income and deductions, and is a calendar year taxpayer. In Year 1, C accrues an amount owed to FC for interest. C makes an actual payment of the amount owed to FC in Year 2.

(ii) Regardless of its source, the interest owed to FC is an amount to which this section applies. Pursuant to the rules of this paragraph (b), the amount owed to FC by C will not be allowable as a deduction in Year 1. Section 267 does not preclude the deduction of this amount in Year 2.

Example 2. (i) RS, a domestic corporation, is the sole shareholder of FSC. Both RS and FSC use the accrual method of accounting. In Year 1, RS accrues $z owed to FSC for commissions earned by FSC in Year 1. Pursuant to the foreign sales company provisions, sections 921 through 927, a portion of this amount, $x, is treated as effectively connected income of FSC from sources outside the United States. Accordingly, the rules of section 267(a)(3) and paragraph (b) of this section do not apply. See paragraph (c) of this section for the rules governing the treatment of amounts that are effectively connected income of FSC.

(ii) The remaining amount of the commission, $y, is classified as exempt foreign trade income under section 923(a)(3) and is treated as income of FSC from sources outside the United States that is not effectively connected income. This amount is one to which the provisions of this section do not apply, since the amount is an amount other than interest from sources outside the United States and is not effectively connected income. Therefore, a deduction for $y is allowable to RS as of the day on which it accrues the otherwise deductible amount, without regard to section 267 (a)(2) and (a)(3) and the regulations thereunder.

(c) *Exceptions and special rules*—(1) *Effectively connected income subject to United States tax.* Paragraph (b) of this section does not apply to an amount owed to a related foreign person that is income of the related foreign person effectively connected with the conduct of a United States trade or business of such related foreign person, whether from sources within or without the United States, and that is subject to a rate of United States tax that is not reduced or eliminated pursuant to a treaty obligation of the United States. Instead, section 267(a)(2) and the regulations thereunder apply. Accordingly, an amount described in this paragraph (c)(1) is allowable as a deduction as of the day on which the amount is includible in the gross income of the related foreign person as effectively connected income under sections 872(a)(2) or 882(b) (or, if later, as of the day on which the deduction would be so allowable but for section 267(a)(2)).

(2) *Items exempt from tax by treaty.* Except with respect to interest, neither paragraph (b) of this section nor section 267 (a)(2) or (a)(3) apply to any amount that is income of a related foreign person with respect to which the related foreign person properly claims an exemption from United States taxation on the amount owed pursuant to a treaty obligation of the United States (such as under an article relating to the taxation of business profits). Interest that is effectively connected income of the related foreign person under section 872(a)(2) or 882(b) is an amount covered by paragraph (c)(1) of this section. Interest that is not effectively connected income of the related foreign person is an amount covered by paragraph (b) of this section, regardless of whether the related foreign person claims an exemption from United States taxation on the amount owed pursuant to a treaty obligation of the United States.

(3) *Items subject to reduced rate of tax by treaty.* Paragraph (b) of this section applies to amounts that are income of a related foreign person with respect to which the related foreign person claims a reduced rate of United States income tax on the amount owed pursuant to a treaty obligation of the United States (such as under an article relating to the taxation of dividends).

(4) *Amounts owed to a foreign sales corporation (FSC).* If interest is owed to a related foreign person that is a FSC within the meaning of section 922, and the foreign trade income of the FSC is derived from a transaction to which section 925(a)(1) or section 925(a)(2) (or the corresponding provisions of the regulations prescribed under section 925(b)) applies, then the deduction of such interest amount is allowable as of the day on which it is includible in the gross income of the FSC. For purposes of this paragraph (c)(2), the day on which an amount is includible in the gross income of a FSC is determined pursuant to the rules of sections 921 through 927.

(5) *Amounts owed to a foreign personal holding company, controlled foreign corporation, or passive foreign investment company*—(i) *Foreign personal holding companies.* If an amount to which paragraph (b) of this section otherwise applies is owed to a related foreign person that is a foreign personal holding company within the meaning of section 552, then the amount is allowable as a deduction as of the day on which the amount is includible in the income of the foreign personal holding company. The day on which the amount is includible in income is determined with reference to the method of accounting under which the foreign personal holding company computes its taxable income and earnings and profits for purposes of sections 551 through 558. See section 551(c) and the regulations thereunder for the reporting requirements of the foreign personal holding company provisions (sections 551 through 558).

(ii) *Controlled foreign corporations.* If an amount to which paragraph (b) of this section otherwise applies is owed to a related foreign person that is a controlled foreign corporation within the

meaning of section 957, then the amount is allowable as a deduction as of the day on which the amount is includible in the income of the controlled foreign corporation. The day on which the amount is includible in income is determined with reference to the method of accounting under which the controlled foreign corporation computes its taxable income and earnings and profits for purposes of sections 951 through 964. See section 6038 and the regulations thereunder for the reporting requirements of the controlled foreign corporation provisions (sections 951 through 964).

(iii) *Passive foreign investment companies.* If an amount to which paragraph (b) of this section otherwise applies is owed to a related foreign person that is a passive foreign investment company within the meaning of section 1296, then the amount is allowable as a deduction as of the day on which amount is includible in the income of the passive foreign investment company. The day on which the amount is includible in income is determined with reference to the method of accounting under which the earnings and profits of the passive foreign investment company are computed for purposes of sections 1291 through 1297. See sections 1291 through 1297 and the regulations thereunder for the reporting requirements of the passive foreign investment company provisions. This exception shall apply, however, only if the person that owes the amount at issue has made and has in effect an election pursuant to section 1291 with respect to the passive foreign investment company to which the amount at issue is owed.

(iv) *Examples.* The rules of this paragraph (c)(5) may be illustrated by the following examples. Application of the provisions of sections 951 through 964 are provided for illustration only, and do not provide substantive rules concerning the operation of those provisions. The principles of these examples apply equally to the provisions of paragraph (c)(5) (i) through (iii) of this section.

Example 1. P, a domestic corporation, owns 100 percent of the total combined voting power and value of the stock of both FC1 and FC2. P is a calendar year taxpayer that uses the accrual method of accounting in computing its income and deductions. FC1 is incorporated in Country X, and FC2 is incorporated in Country Y. FC1 and FC2 are controlled foreign corporations within the meaning of section 957, and are both calendar year taxpayers. FC1 computes its taxable income and earnings and profits, for purposes of sections 951 through 964, using the accrual method of accounting, while FC2 uses the cash method. In Year 1 FC1 has gross income of $10,000 that is described in section 952(a) ("subpart F income"), and which includes interest owed to FC1 by P that is described in paragraph (b) of this section and that is otherwise allowable as a deduction to P under chapter 1. The interest owed to FC1 is allowable as a deduction to P in Year 1.

Example 2. The facts are the same as in Example 1, except that in Year 1 FC1 reports no subpart F income because of the application of section 954(b)(3)(A). Because the amount owed to FC1 by P is includible in FC1's gross income in Year 1, the interest owed to FC1 is allowable as a deduction to P in Year 1.

Example 3. The facts are the same as in Example 1. In Year 1, FC1 accrues interest owed to FC2 that would be allowable as a deduction by FC1 under chapter 1 if FC1 were a domestic corporation. The interest owed to FC2 by FC1 is paid by FC1 in Year 2. Because FC2 uses the cash method of accounting in computing its taxable income for purposes of subpart F, the interest owed by FC1 is allowable as a deduction by FC1 in Year 2, and not in Year 1.

(d) *Effective date.* The rules of this section are proposed to apply to interest that is allowable as a deduction under chapter 1 (without regard to the rules of this section) in taxable years beginning after December 31, 1983, but do not apply to interest that is accrued with respect to indebtedness incurred on or before September 29, 1983, or incurred after that date pursuant to a contract that was binding on that date and at all times thereafter (unless the indebtedness or the contract was renegotiated, extended, renewed, or revised after that date). The rules of this section are proposed to apply to all other deductible amounts that accrue after July 31, 1989.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91-6409 Filed 3-18-91; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 66 and 164

[CGD 88-011]

RIN 2115-AD04

Private Electronic Aids to Maritime Navigation

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rule-making; notice of withdrawal.

SUMMARY: This action withdraws an advance notice of proposed rule-making (ANPRM) published in the **Federal Register** on July 22, 1988 (53 FR 27708). The imminence of new Federally provided systems for electronic navigation threatens, with instant obsoleteness, any rule such as that implied by the ANPRM. Withdrawal of the ANPRM lets the Coast Guard engage in a comprehensive rule-making later, without having led anyone to rely on an obsolescent system in the meantime.

DATES: The ANPRM is withdrawn as of March 19, 1991.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander William H. Bourland, Project Manager, Commandant (G-NRN), U.S. Coast Guard, room 1413, 2100 Second Street SW., Washington, DC 20593-0001, (202) 267-0286.

SUPPLEMENTARY INFORMATION:

Background

33 CFR 66.01-1(d) prohibits the establishment of private electronic aids to maritime navigation. (It expressly excepts radar beacons, or racons, and shore-based radar stations. Likewise, the Coast Guard effectively excepts commercial radiolocation systems—which have provided highly accurate positioning for surveying, dredging, and finding oil and minerals, among other purposes—by not treating them as private electronic aids to maritime navigation within the meaning of 33 CFR 66.01-1(d). Otherwise, the ban is complete.) The ANPRM contemplated allowing the establishment of many kinds of private electronic aids to maritime navigation.

Current Federally provided systems for electronic navigation meet all current requirements for coastal and oceanic navigation. Still, the 1988 Federal Radionavigation Plan (FRP) proposes, for Harbor-and-Harbor-Approach, a requirement that these systems cannot meet. The Coast Guard's Research and Development Center is concentrating on methods to standardize, and increase the accuracy of, one Federally-provided system for electronic navigation and so to meet the FRP's proposed requirement: That system is the Differential Global Positioning Service (DGPS), which the Center expects in turn to standardize, and increase the accuracy of, the GPS Standard Positioning Service enough to meet the FRP's proposed requirement.

Six comments on the ANPRM reached the Coast Guard. Each respondent endorsed the Coast Guard's allowing the establishment of private electronic aids to maritime navigation and its regulating this industry according to standards set, licenses issued, and enforcement through monitoring, all by the Coast Guard.

Setting standards for various private radionavigation systems, then issuing licenses for them, and then monitoring them for enforcement is beyond the scope of the Coast Guard's budget and personnel. Even if these feats were possible, with implementation of the GPS Standard Positioning Service a fact, and with development of DGPS as a standardized, more accurate, Federally-provided system of electronic navigation along the coastal areas of the United States a near-certainty, the establishment of various private systems at this time would be undesirable.

Dated: March 11, 1991.

J.W. Lockwood,

Captain, U.S. Coast Guard, Chief, Office of Navigation Safety, and Waterway Services.

[FR Doc. 91-6460 Filed 3-18-91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD1-91-013]

Drawbridge Operation Regulations; Taunton River, MA

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Massachusetts Department of Public Works (MDPW), the Coast Guard is considering a change to the regulations governing the Bristol County (Center Street) Bridge at Berkley, over the Taunton River at mile 10.3 in Berkley, Massachusetts, by permitting the bridge to open on signal if at least 24 hours advance notice is given by commercial or recreational vessels. This proposal is being made because there have been only five requests for bridge openings since July 1986. This action should relieve the bridge owner of the burden of having a person constantly available to open the draw and still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before May 3, 1991.

ADDRESSES: Comments should be mailed to Commander (obr), First Coast Guard District, Bldg. 135A, Governors Island, NY 10004-5073. The comments and other materials referenced in this notice will be available for inspection and copying at that address. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668-7170.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped self-addressed post card or envelope.

The Commander, First Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Lieutenant John McDonald, Project Officer, and Lieutenant John Gately, project attorney.

Discussion of Proposed Regulations

The Bristol County bridge over the Taunton River in Berkley has vertical clearances of 7' MHW and 11' MLW. The current regulations for the Bristol County Bridge at Berkley are that from May 1 to October 31 5 a.m. to 10 p.m. and from November 1 to April 30 6 a.m. to 6 p.m. the bridge shall open on signal. At all other times a one half hour notice is required for an opening. The Coast Guard is aware that the bridge is unmanned and that no regulation signs are posted to advise mariners where to call to request an opening. The MDPW has requested that the bridge regulations be changed requiring a 24 hour advance notice for bridge openings at all times. This request was made since there have been only 5 requests for openings since July 1986. Additionally, the proposed regulations require clearance gages be maintained at the draw to assist small vessels transiting the bridge and that public vessels of the United States, state, and local vessels used for public safety be passed as soon as possible.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation, and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact is expected to be so minimal that a full regulatory evaluation is unnecessary. This opinion is based on the fact that the proposed change would not prevent the mariners from transiting the bridge but just require advance notice for openings. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism Implication Assessment

This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that this proposed regulations does not have sufficient federalism implications to warrant preparation of a federal assessment.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations, as follows:

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.619 is revised to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.619 Taunton River.

The Bristol County Bridge, mile 10.3 at Berkley, shall operate as follows:

(a) Public vessels of the United States and state or local vessels used for public safety shall be passed as soon as possible.

(b) The owners of this bridge shall provide and keep in good legible condition clearance gauges for each draw with figures not less than 12 inches high designed, installed and maintained according to the provisions of paragraph 118.160 of this chapter.

(c) Shall open on signal if at least 24 hours notice is given by commercial or recreational vessels.

Dated: March 11, 1991.

P.L. Collom,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 91-6461 Filed 3-18-91; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AE98

Claims Based on Exposure to Herbicides Containing Dioxin (PCT/Chloracne)

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulation.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its regulations which govern the adjudication of claims for service-connected disability compensation based on exposure to a herbicide containing dioxin. The proposed amendments would (1) extend, from three to nine months, the period during which chloracne must appear following exposure to a herbicide containing dioxin in order to establish service connection, and (2) provide that there is no significant statistical association between exposure to a herbicide containing dioxin and porphyria cutanea tarda (PCT). These changes are necessary to implement our determinations based on a review of scientific and medical studies. The intended effect will be to establish a rule for making determinations regarding claims for service connection for chloracne and PCT for all veterans who were exposed to herbicides containing dioxin during service.

DATES: Comments must be received on or before April 18, 1991. Comments will be available for public inspection until April 29, 1991. The change to § 3.311a(d) is proposed to be effective September 25, 1985. The change to § 3.311a(c) is proposed to be effective the date of publication of the final rule.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these changes to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments will be available for public inspection only in the Veterans Services Unit, room 132, at the above address and only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until April 29, 1991.

FOR FURTHER INFORMATION CONTACT: Joel Drembus, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, (202) 233-3005.

SUPPLEMENTARY INFORMATION: Under 38 CFR 1.17(c), when VA determines that a significant statistical association exists between exposure to a herbicide containing dioxin and any disease, 38 CFR 3.311a shall be amended to provide guidelines for the establishment of service connection for the disease(s). These determinations are to be made after receiving the advice of the Veterans' Advisory Committee on Environmental Hazards (Advisory Committee) based on its evaluation of scientific or medical studies. In making these determinations, VA must apply the reasonable doubt doctrine found in 38 CFR 1.17(d)(1).

The Advisory Committee held a public meeting on August 22-23, 1990, in Washington, DC. At that meeting, the committee considered 30 scientific and medical documents relating to the association, if any, between exposure to a herbicide containing dioxin and either chloracne or PCT. The committee found that the relative weights of valid positive and valid negative studies (as defined in 38 CFR 1.17(d)(2)-(4)) permit the conclusion that there is a significant statistical association between exposure to a herbicide containing dioxin and the manifestation, within nine months of such exposure, of chloracne. The committee also found that the relative weights of valid positive and valid negative studies do not permit the conclusion that there is a significant statistical association between exposure to a herbicide containing dioxin and the subsequent development of PCT.

In making our determination with respect to the nine month manifestation period for chloracne, we have relied primarily on data reported in studies of a population exposed to dioxin as a consequence of an industrial explosion in Seveso, Italy, in 1976. We have determined that it is at least as likely as not that there is a significant statistical association between exposure to herbicides containing dioxin and the manifestation, within nine months of such exposure, of chloracne. Our regulations currently provide (at 38 CFR 3.311a(c)) that exposure to dioxin together with the development of chloracne within three months from the date of exposure is sufficient to establish service connection for resulting disability. We propose to amend § 3.311a(c) to extend the manifestation period for chloracne to nine months following the last date of exposure to a herbicide containing dioxin.

In making our determination with respect to PCT, we found the valid negative studies somewhat persuasive. There were several papers dealing with exposures in industrial settings that presented positive findings; however, there was present in those instances a confounding factor, i.e., exposure to hexachlorobenzene, which is recognized as inducing PCT. We note that the members of the Scientific Council of the Advisory Committee could not agree unanimously on the import of a finding of PCT in two members of a family who had been exposed to dioxin as a result of the Seveso explosion noted above. A majority of the members believed that finding, while leaving open the possibility of an association, was not sufficiently persuasive to permit the conclusion that there is such an association. In light of these considerations, it is our determination that the relative weights of the valid positive and valid negative studies do not permit the conclusion that it is at least as likely as not that there is a significant statistical association between exposure to a herbicide containing dioxin and the subsequent development of PCT.

In Nehmer v. *United States Veterans' Administration*, 712 F. Supp. 1404 (N.D. Cal. 1989), the court invalidated VA's requirement of proof of a causal relationship in determining service connection for diseases associated with dioxin exposure. Accordingly, we proposed to remove and reserve § 3.311a(d) (56 FR 7632, February 25, 1991) as not being of any force and effect pending the Secretary's determinations for other diseases, including porphyria cutanea tarda, pursuant to the court's remand order, after receiving the advice of the Advisory Committee. We now propose to reinsert a revised § 3.311a(d).

Further, because the *Nehmer* decision invalidated VA's original service connection determinations in 38 CFR 3.311a(d) *ab initio*, and because those determinations were the original regulatory response to the mandate in section 5(a)(1) of Public Law 98-542, we propose to make the amendment to § 3.311a(d) effective retroactive to September 25, 1985, the original effective date of the section. We believe that, because § 3.311a(d) serves as a substitute for a void regulation, this effective date is appropriate.

We propose to make the amendment of § 3.311a(c) effective the date of publication of the final rule. The Secretary finds good cause for doing so since the extension of the manifestation period for chloracne from three to nine months following exposure to a herbicide containing dioxin relieves a restriction and will not work to the detriment of any claimant. This decision is fully consistent with VA's longstanding policy to administer the

law under a broad interpretation for the benefit of veterans and their dependents (38 CFR 3.102).

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that these regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises in domestic or export markets.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

The Catalog of Federal Domestic Assistance program numbers are 64.101, 64.109, and 64.110.

Approved: February 6, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR Part 3, Adjudication, is proposed to be amended as follows:

PART 3—[AMENDED]

1. In § 3.311a(c), remove the word "three" where it appears and insert, in its place, the word "nine".

2. Section 3.311a, as proposed to be amended at 56 FR 7633, February 25, 1991, is further amended by adding a new paragraph (d) to read as follows:

§ 3.311a Claims based on exposure to herbicides containing dioxin.

* * * * *

(d) *Diseases not associated with exposure to herbicides containing dioxin.* Sound scientific and medical evidence does not establish a significant statistical association between exposure to herbicides containing dioxin and porphyria cutanea tarda.

* * * * *

(Authority: Pub. L. 98–542; 38 U.S.C 210(c)).

[FR Doc. 91–6112 Filed 3–18–91; 8:45 am]

BILLING CODE 8320–01–M

POSTAL SERVICE

39 CFR Part 111

Postal Service Appropriations Act, 1991 Eligibility Requirements for Certain Special Bulk Rate Third-Class Mail

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: On November 5, 1990, the President signed into law H.R. 5241, the "Treasury, Postal Service and General Government Appropriations Act, 1991" (Pub. L. 101–509). Title II of the Act amends 39 U.S.C. 3626, by adding subsections (j) and (k). These sections concern the administration of subsidized bulk third-class postage rates for certain qualified nonprofit organizations.

New subsection (j) makes certain specific types of matter ineligible to be mailed at the special rates. New subsection (k) establishes procedures for assessing and collecting postage deficiencies arising from the misuse of special rates. These new subsections took effect February 3, 1991.

This notice contains regulations the Postal Service proposes for implementing this legislation. The language in the regulations approximates that set forth in the law. Interested parties should submit their comments.

DATES: Comments must be received on or before April 18, 1991.

ADDRESSES: Mail or deliver written comments to: Director, Office of Classification and Rates Administration, U.S. Postal Service, room 8430, 475 L'Enfant Plaza, SW., Washington, DC 20260–5903. Copies of all written comments may be inspected and photocopied between 9 a.m. and 4 p.m., Monday through Friday, in room 8430 at the above address.

FOR FURTHER INFORMATION CONTACT: Jerome M. Lease, (202) 268–5188.

SUPPLEMENTARY INFORMATION: Until this legislation was enacted, the only restriction on the use of special bulk third-class rates under existing law and regulations has been that their use was limited to matter which was solely that of the authorized organization. Under this restriction, an authorized nonprofit organization may not "delegate or lend the use of" its permit to any other person or organization, nor can it mail matter "in behalf of or produced for" an organization not itself authorized to mail at the special rates at the post office where the mailing is deposited. Violations of these regulations are commonly referred to as improper "cooperative mailings." As long as the mailing was solely that of the permit-holder, no prohibition existed concerning the subject or contents of third-class material a nonprofit organization could mail at the special bulk third-class rates.

The new legislation establishes restrictions upon the subject or contents of matter that may be mailed at the special rates. The proposed regulations revise the Domestic Mail Manual to implement provisions of the new law. It should be noted that the Postal Service views these provisions as supplementary to, rather than a change to or replacement for, the existing postal regulations which restrict cooperative mailings. That is, mailings which are not third-class matter or which are "cooperative" under existing rules are ineligible to be entered at the special rates, regardless of whether or not they violate the new restrictions. Further, mailings which violate the new restrictions may not be sent at the special rates regardless of whether they are eligible for special rates under existing rules.

The Postal Service continues to study the legislation enacted by Congress, and in addition to comments upon the specific proposals here, invites comments concerning other appropriate rules, e.g., concerning the restrictions on insurance or travel mailings, which might be adopted. The Postal Service may, as it finds necessary, conduct further rulemakings concerning these matters.

Explanation of Changes

Section 625.52 of the Domestic Mail Manual will be renumbered to § 625.521, with minor changes in terminology to ensure consistency with 133.

New § 625.522 will restrict mailings which advertise, promote, offer, or for a fee or consideration, recommend, describe, or announce the availability of any credit, debit, or charge card, insurance, or travel program, other than certain limited insurance and travel mailings. Again, it is emphasized that the mailings which are not made ineligible for special rates under these exceptions must still pass scrutiny as mailings that are solely the material of the authorized nonprofit organization, and which are not determined to be improper cooperative mailings.

New § 625.523 permits an incidental reference to commercial products or

organizations in material mailed at the special rates under limited circumstances. Section 625.524 confirms the Postal Service's authority to require an organization authorized to mail at the special rates to submit evidence that a particular mailing is eligible for the special rates, and imposes sanctions upon mailers who do not comply with these requests. The proposed requirement and sanctions are in addition to any others available to the Postal Service under law. The Postal Service may request this evidence at any time, either before or after the mail matter has been accepted.

Sections 625.525 and 625.526 set forth provisions of the new law which prohibit a person or organization to mail, or cause to be mailed by contractual agreement or otherwise, any ineligible matter at the special bulk rates. Thus, while the Postal Service would normally hold the authorized nonprofit organization responsible for any revenue deficiency incurred as a result of improper mailings made under its nonprofit authorization, the new regulations also confirm that the Postal Service may hold other parties such as commercial promoters who, by contract, arrange for a nonprofit organization to mail ineligible matter, responsible for the deficiency.

Finally, new §§ 625.526 and 625.527 set forth procedures for the assessment and collection of revenue deficiencies. Section 625.526 provides the appeal procedures for a party against whom a revenue deficiency is assessed for violation of § 625.5. The other provision sets forth Postal Service authority to collect the deficiency by applying postage accounts or other monies of the party against whom the deficiency was assessed. This right applies to that portion of any deficiency assessment incurred within twelve months of the date of the final mailing upon which the deficiency assessment was based, and is in addition to the Postal Service's right to collect the deficiency by any other lawful means.

Although exempt from the notice and comment provisions of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the following proposed amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Postal Service

PART 111—[AMENDED]

1. The authority citation for part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001-3011, 3201–3219, 3403-3406, 3621, 5001.

2. Parts 148 and 625 of the Domestic Mail Manual are revised to read as follows:

Part 148—Revenue Deficiency

* * * * *

148.2 Appeal of Ruling. Except as provided in 625.526, a mailer may appeal a ruling assessing a revenue deficiency by filing a written appeal, within 15 days of receipt of the ruling, with the general manager, rates and classification center (RCC), for the entry post office. Remainder of Text Unchanged

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PART 625—ADDITIONAL CONDITIONS FOR SPECIAL BULK RATES ELIGIBILITY

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625.5 What May be Mailed

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625.52 Cooperative Mailings

625.521 General. Cooperative mailings may be made at the special bulk rates only when each of the cooperating organizations is individually authorized to mail at the special bulk rates at the post office where the mailing is deposited. Cooperative mailings involving the mailing of any matter in behalf of or produced for an organization not itself authorized to mail at the special bulk rates at the post office where the mailing is deposited must be paid at the applicable regular rate. If a mailer disagrees with a postmaster's decision that the regular rate of postage applies to a particular mailing, it may appeal the decision in accordance with 133. (See Form 3602–N, Statement of Mailing with Permit Imprints, or Form 3602–PC, Statement of Mailing with Meter or Precanceled Postage Affixed, for the certifications required of special bulk-rate mailers for mailings made under this section.)

625.522 Nonpermissible Mailings. Except as provided in 625.523, special bulk third-class rates shall not be used for the entry of material which advertises, promotes, offers, or for a fee or consideration, recommends, describes, or announces the availability of any of the following:

a. Any credit, debit, or charge card or similar financial instrument or account, provided by or through an arrangement with any person or organization not authorized to mail at the special bulk third-class rates at the entry post office.

b. Any insurance policy, unless the organization which promotes the purchase of such policy is authorized to mail at the special bulk rates at the entry post office; the policy is designed for and primarily promoted to the members, donors, supporters, or beneficiaries of that organization; and the coverage provided by the policy is not generally otherwise commercially available.

c. Any travel arrangement, unless the organization which promotes the arrangement is authorized to mail at the special bulk rates at the entry post office; the travel contributes substantially (aside from the cultivation of members, donors, or supporters, or the acquisition of income or funds) to one or more of the purposes which constitute the basis for the organization's authorization to mail at the special bulk rates; and the arrangement is designed for and primarily promoted to the members, donors, supporters, or beneficiaries of that organization.

625.523 Permissible Reference to Commercial Products or Organizations.

An incidental reference to a commercial product or organization will not disqualify an authorized organization's material from being mailed at the special rates under 625.522 solely because that material contains, but is not primarily devoted to:

a. Acknowledgments of organizations or individuals who have made donations to the authorized organization; or

b. References to and a response card or other instructions for making inquiries concerning services or benefits available as a result of membership in the authorized organization, provided that advertising, promotional, or application materials specifically concerning such services or benefits are not included.

625.524 Evidence. Upon request, an organization authorized to mail at the special bulk rates shall furnish evidence to the Postal Service, or cause evidence held by another party to be furnished to the Postal Service, concerning the eligibility of any of its mail matter or mailings to be sent at those rates. Any failure to furnish evidence necessary for a ruling on the eligibility of matter to be sent at the special rates, or to cause such evidence to be furnished, will be a sufficient basis for a finding that the matter is not eligible for the special rates, as well as the revocation of the organization's authorization to mail at the special rates.

625.525 Other Restrictions. No person or organization shall mail, or cause to be mailed by contractual agreement or otherwise, any ineligible matter at the special rates.

625.526 Revenue Deficiency and Appeal Procedure. A revenue deficiency may be assessed in the amount of the unpaid postage against any person or organization that mailed, or caused to be mailed, ineligible matter at the special bulk third-class rates in violation of 625.525. The party may appeal the decision in writing within 30 days to the postmaster at the post office where the mailing was entered. The postmaster will forward the appeal to the general manager of the rates and classification center (RCC) (see 132), who will issue the initial agency decision on the appeal. The decision of the general manager will become final unless the party against whom the deficiency was assessed appeals it in writing within 30 days to the Director, Office of Classification and Rates Administration, who will issue the final agency decision. If the general manager of an RCC issues the initial decision assessing the revenue deficiency, the initial decision on the appeal will be made by the General Manager of the Business Requirements Division, Office of Classification and Rates Administration. The decision of the General Manager, Business Requirements Division, will become final unless the party against whom the deficiency was assessed appeals it in writing within 30 days to the Director, Office of Classification and Rates Administration, who will issue the final agency decision. If a general manager of any division within the Office of Classification and Rates Administration issues the initial decision assessing the revenue deficiency, the initial decision of the appeal will be made by the Director of the Office of Classification and Rates Administration. The decision of the Director will become final unless the party against whom the deficiency was assessed appeals it in writing within 30 days to the Senior Assistant Postmaster General, Marketing and Customer Service Group, who will issue the final agency decision.

625.527 Collection. Any deficiency assessed under 625.526 which is found to be due and payable to the Postal Service following the issuance of a final agency decision must be paid promptly. If the Postal Service does not receive payment within 30 days, the amount of that deficiency incurred within twelve (12) months of the date of the final mailing upon which the deficiency was assessed may be deducted from any postage accounts or other monies of the violator in the possession of the Postal Service.

* * * * *

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 91-6490 Filed 3-18-91; 8:45 am]

BILLING CODE 7710-12-M

Notices

Federal Register
Vol. 56, No. 53
Tuesday, March 19, 1991

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.

ACTION

VISTA Literacy Corps Projects; Availability of Funds

AGENCY: ACTION

ACTION: Notice of availability of funds; VISTA literacy corps projects in Massachusetts, New Jersey, Pennsylvania, Texas, and California.

ACTION Regions I, II, III, VI and IX announce the availability of funds for fiscal year 1991 for new VISTA Literacy Corps grants authorized by section 109 of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113) in the States of Massachusetts, New Jersey, Pennsylvania, Texas, and California. VISTA Literacy Corps grants will be awarded for up to a 12-month period.

Application packages and technical assistance on grant preparation are available from: Massachusetts—Malcolm Coles, ACTION Region I, 10 Causeway Street, room 473, Boston, MA 02222, (617) 565–7018; New Jersey—Stanley Gordon, ACTION Region II, 402 East State Street, room 426, Trenton, New Jersey 08608, (609) 989–2243; Pennsylvania—Jorina Ahmed, ACTION Region III, U.S. Customs House, room 108, 2d & Chestnut Street, Philadelphia, PA 19106, (215) 597–3543; Texas—Jerry Thompson ACTION Region VI, 611 East Sixth Street, suite 409, Austin, TX 78701, (512) 482–5671; California—Barbara Boehringer, ACTION Region IX, Federal Bldg., room 14218, 11000 Wilshire Blvd., Los Angeles, CA 90024, (213) 575–7421.

A. Background and Purpose

Volunteers In Service to America (VISTA) is authorized under title I, part A of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113). The statutory mandate of the VISTA program is to eliminate and alleviate poverty and its related problems in the United States. VISTA is a full-time, year-long volunteer program which encourages and enables men and women 18 years and older from all backgrounds to perform meaningful and constructive volunteer service. The Volunteers live among, and at the economic level of, the low-income people served. The VISTA program has served poor individuals most effectively by assisting low-income communities and residents to develop the facility, skills, and resources needed for achieving self-sufficiency. VISTA also enlists the commitment and support of the private sector toward attainment of this goal. Literacy training and education represent a longstanding and integral part of the VISTA mission. VISTA Volunteers have been involved in the mobilization of community efforts to combat illiteracy among disadvantaged populations since the inception of the VISTA program.

The Domestic Volunteer Service Act Amendments of 1986 (Pub. L 99–551) directed the VISTA program to commit additional volunteers to the literacy challenge through the formation of the VISTA Literacy Corps.

The statutory purpose of the VISTA Literacy Corps is to use VISTA Volunteers in developing, strengthening, supplementing and expanding the literacy efforts of both public and private nonprofit organizations at the local, State, and Federal levels to mobilize local, State, Federal and private sector financial and volunteer resources in attacking the problem of illiteracy, particularly within low-income areas throughout the United States. In addition, the VISTA Literacy Corps encourages public/private partnerships; promotes voluntarism; heightens the visibility of the literacy issue; and increases the capacity of low-income communities to address their respective literacy needs.

Objectives

Literacy Corps grants will utilize VISTA Volunteers in the following emphasis areas:

1. Literacy projects which provide comprehensive services to curb the intergenerational transfer of illiteracy within low-income families by instructing parents and children together.

2. Literacy projects which focus on overcoming employment barriers by providing the unemployed and marginally employed with occupational literacy skills which make them more competitive within the labor force.

3. Literacy projects which provide English as a Second Language (ESL) to legalized aliens as well as those seeming amnesty under the Immigration Reform and Control Act of 1986.

4. Literacy projects which concentrate on preventive educational training for potential school dropouts and other low-income young adults who may be "educationally at risk".

5. Literacy projects which focus on the rehabilitation of offenders and ex-offenders by providing literacy training to incarcerated and formerly incarcerated adults with low-level reading skills.

B. Eligible Applicants

Eligible applicants for VISTA Literacy Corps grants include: public or private nonprofit agencies; local, State and national literacy councils and organizations; community-based nonprofit organizations; local and State education agencies; local and State agencies administering adult basic education programs; educational institutions; libraries; anti-poverty organizations; and local, municipal and State governmental entities designated to administer job training plans under the Job Training Partnership Act.

C. Scope of Grant

Each grant will support 10–15 VISTA Volunteers for one year of service. The amount of each grant includes the monthly subsistence and readjustment allowance for VISTA Volunteers. This support is commensurate with the cost-of-living of the assignment area and covers the cost of food, housing and incidentals, and a monthly stipend paid to the VISTA Literacy Corps Volunteer upon completion of his/her service.

The average Federal cost per volunteer service year, i.e. total Federal cost divided by total number of VISTA Volunteers, will range from $8500 to $9800 depending upon the location of the Volunteers' assignment. Specific budget guidance is available from the individuals identified in paragraph 2 of this announcement.

Applicants should demonstrate their commitment for matching the Federal contribution toward the operation of the VISTA Literacy Corps grant in the areas of volunteer transportation, supervision, and/or in-service training. This support

can be achieved through cash or allowable in-kind contributions. In particular, there must be a 50% non-Federal match for the supervisor's salary and fringe benefits. The supervisor of the VISTA project must serve on at least a half-time basis.

Publication of this announcement does not obligate ACTION to award any specific number of grants or to obligate the entire amount of funds available, or any part thereof, for grants under the VISTA Literacy Corps program.

D. General Criteria for Grant Selection

The general criteria for the VISTA Literacy Corps projects are consistent with those established for the selection of VISTA sponsors and projects. All of the following elements must be incorporated in the applicant's submission.

The project must:

- Be poverty-related in scope and otherwise comply with the provisions of the Domestic Volunteer Service Act of 1973 as amended (42 U.S.C. 4951, *et seq.*) applicable to VISTA and all published regulations, guidelines and ACTION policies;
- Comply with applicable financial and fiscal requirements established by ACTION or other elements of the Federal Government;
- Show that the goals, objectives, and volunteer tasks are attainable within the time frame during which the volunteers will be working on the project and will produce a measurable and verifiable result;
- Provide for reasonable efforts to recruit and involve low-income community residents in the planning, development and implementation of the VISTA project;
- Have evidence of local public and private sector support (in the form of endorsement letters limited to those organizations, government entities, and institutions that are aware of and will be involved in supporting the VISTA project's efforts);
- Be designed to generate private sector resources and encourage local, part-time volunteer service;
- Have a permanent mechanism of self-evaluation;
- Provide frequent and effective supervision of the volunteers;
- Identify resources needed and make them available to volunteers to perform their tasks;
- Have the management and technical capability to implement the project successfully.

In addition to the general criteria, the authorizing statute stipulates that priority consideration will be given to the following literacy programs and projects that apply for funding:

- Those that assist individuals in greatest need of literacy training who reside in unserved or underserved areas with the highest concentration of illiteracy and of low-income individuals and families;
- Those that serve individuals reading at zero to fourth grade levels;
- Those that focus on providing literacy services to high risk populations;
- Those that operate in areas with the highest concentration of individuals and families living at or below the poverty level;
- Those providing literacy services to parents of disadvantaged children between the ages of two and eight who may be educationally at risk; and
- Statewide programs and projects that encourage the creation of new literacy efforts, encourage coordination of intrastate literacy efforts and provide technical assistance to local literacy efforts.

E. Application Review Process

ACTION Regions 1, 2, 3, 6 and 9 will review and evaluate all eligible applications from the State within their jurisdiction prior to submission to the Director of VISTA and Student Community Service Programs, ACTION, for final selection. ACTION reserves the right to ask for evidence of any claims of past performance or future capability.

F. Application Submission and Deadline

One signed original and two copies of all completed applications must be submitted to the appropriate ACTION Office as noted in paragraph 2 of this announcement. The deadline for receipt of applications is 5PM local time, Friday, May 17, 1991. Applications post-marked 5 days before the deadline date will also be accepted for consideration.

All grant applications must consist of:

a. VISTA Program Grant Application (Form A–1421B) with a detailed budget justification.

b. CPA certification of accounting capability.

c. Copy of recent Articles of Incorporation.

d. Proof of non-profit status or an application for non-profit status, and related documentation.

e. Current resume of potential VISTA Supervisor, if available, or the resume of the director of the applicant agency or project.

f. Organizational chart illustrating the relationship of the VISTA project to the overall objectives of the sponsor organization.

g. List of the members of the Board of Directors including their professional affiliations and literacy-related activities.

Signed at Washington, DC this 14th day of March, 1991.

Jane A. Kenny,

Director.

[FR Doc. 91–6455 Filed 3–18–91; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Forest Service

Sloan-Kennally Timber Sale

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) for the proposed Sloan-Kennally Timber Sale, McCall Ranger District, Payette National Forest, Idaho. The proposed timber sale would regenerate previously cutover timber stands by harvesting the residual trees and planting seedlings. This would increase tree stocking levels and improve future tree growth. Both evenaged and unevenaged silvicultural systems will be examined in the alternative development process.

This area is scheduled for treatment in the Land and Resource Management Plan for the Payette National Forest (Forest Plan) Activity Schedule, appendix A. The project analysis area contains a portion of the Needles Inventoried Roadless Area. The Forest Plan allocated a portion of the Needles Inventoried Roadless Area to timber management. The remaining undeveloped portion of the Needles Inventoried Roadless Area is recommended for Wilderness classification.

The agency invites comments and suggestions on the scope of the analysis to be included in the draft environmental impact statement (DEIS). In addition, the agency gives notice of the full environmental analysis and decision-making process that is beginning on the proposal so that interested and affected people know how they may participate and contribute to the final decision.

DATES: To be most useful, comments on the scope of the analysis should be received by April 15, 1991.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Linda Fitch, McCall District Ranger or Erin Rohlman, EIS

Team Leader, Payette National Forest, McCall Ranger District, P.O. Box 1026, McCall, Idaho 83638.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action should be directed to Erin Rohlman or Clark Lucas, phone (208) 634–1446 or (208) 634–1445.

SUPPLEMENTARY INFORMATION: The Payette Forest Plan (1988) provides Forestwide direction for management of the resources of the Payette National Forest. The environmental impact statement for the Forest Plan (1988) analyzed a range of development and nondevelopment alternatives for the Needles Inventoried Roadless Area. The Plan allocates portions of the area to timber management and assigns them to Management Area #20.

As well as Forestwide direction, the Plan gives specific direction for this management area. It requires integrated management of the multiple resources, including recreation, range, soil and water, fish, wildlife, timber, and fire/fuels to meet the desired future condition of the Forest.

Timber stands within the analysis area outside of the Needles Inventoried Roadless Area were partially harvested in the 1960's and 1970's. Currently, the remaining Douglas-fir and grand fir are becoming infested with bark beetles, causing higher than normal mortality rates. The primary objectives of this proposal are to regenerate cutover timber stands to improve tree growth and stocking levels, salvage beetle-infested trees to contain insect spread, and evaluate a portion of the Needles Inventoried Roadless Area for timber management in the tentatively suited timber base.

Public participation will be especially important at several points during the analysis, particularly during scoping of issues and review of the DEIS.

The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those covered by a relevant previous environmental analysis.
4. Determining potential cooperating agencies and task assignment.

The U.S. Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat.

The Forest Service has conducted internal and external scoping on the proposed timber sale and has identified preliminary issues and concerns that fall into these categories:

—Water Quality and Fisheries
—Roadless/wilderness
—Recreation and Visual Quality
—Wildlife
—Threatened, Endangered. and Sensitive Species
—Timber
—Economics
—Wetlands and floodplains

The second major opportunity for public input is the DEIS. The DEIS will analyze a range of alternatives to the proposed action, including the no-action alternative and alternative amounts of timber harvesting. The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in March 1992. EPA will then publish a notice of availability of the DEIS in the **Federal Register** Public comments are invited.

The comment period on the DEIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register.** It is important that those interested in the management of the affected areas participate at that time. To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed. Federal court decisions have established that reviewers of draft EIS's must structure their participation of the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 [1978]), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement (*Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 [E.D. Wis. 1980]). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond in the final EIS (FEIS).

Comments on the DEIS will be analyzed and considered by the Forest Service in preparing the FEIS, which is scheduled to be completed in December 1992. In the FEIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The Responsible Official will consider the comments, responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies in making the decision and stating the reasons for it in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

Veto J. LaSalle, Forest Supervisor of Payette National Forest, McCall, Idaho, is the responsible official for this EIS.

Dated: March 8, 1991.

Veto J. LaSalle,

Forest Service.

[FR Doc. 91–6430 Filed 3–18–91; 8:45 am]

BILLING CODE 3410–11–M

White Mountain National Forest; Wildcat River Advisory Commission Meeting

AGENCY: Forest Service, USDA.

ACTION: Wildcat River Advisory Commission Meeting.

SUMMARY: The Wildcat River Advisory Commission will meet on Tuesday, April 23, 1991 at the Jackson Elementary School in Jackson, New Hampshire. The meeting will begin at 7 P.M. An agenda for the meeting includes review of a draft cooperative agreement between the Town of Jackson, State of New Hampshire and US Forest Service, obtaining a river profile for predicting future streamcourse movement and a progress review for completing the river conservation plan.

Interested members of the public are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions about this meeting to Carl F. Gebhardt, Staff Officer, White Mountain National Forest, 719 Main Street, Laconia, NH 03247, (phone 603–528–8778).

Dated: March 11, 1991.

Carl F. Gebhardt,

Planning Staff Officer.

[FR Doc. 91–6473 Filed 3–18–91; 8:45 am]

BILLING CODE 3410–11–M

Rural Electrification Administration

Northern Virginia Electric Cooperative, Inc.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Finding of no significant impact.

Notice is hereby given that the Rural Electrification Administration (REA) pursuant to the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations (40 CFR part 1500 through 1508), and REA Environmental Policy and Procedures (7 CFR part 1794), has made a Finding of No Significant Impact (FONSI) with respect to the construction of 6.3 miles of 230 kilovolt (kV) transmission line in Prince William County, Virginia, by

Northern Virginia Electric Cooperative, Inc. (NOVEC).

FOR FURTHER INFORMATION CONTACT: Larry A. Belluzzo, Director, Northeast Area—Electric, Rural Electrification Administration, room 0241 South Agriculture Building, Washington, DC 20250, telephone (202) 382–1420.

SUPPLEMENTARY INFORMATION: REA in conjunction with a request for financing assistance from NOVEC, required that NOVEC develop environmental support information reflecting the potential environmental impacts of the project. The information supplied by NOVEC is contained in a Borrower's Environmental Report (BER), prepared by the Gilpin Group, which has been adopted by REA as its Environmental Assessment (EA). REA has concluded that the BER represents an accurate assessment of the environmental impact of the proposed subject and that the impacts are acceptable.

The proposed project consists of constructing 6.3 miles of single circuit 230 kV transmission line between the existing NOVEC Gainsville and Wheeler Substations. The line will be initially operated at 115 kV. It will be located predominantly within the 60 to 100 feet wide right-of-way (ROW) of an existing NOVEC 69 kV transmission line. The existing line will be dismantled after the proposed line is constructed. The electric conductors will be supported on single concrete and steel pole structures that will vary between 90 and 125 feet high.

REA has concluded that the proposed project will have no effect on prime rangeland or forestland, wetlands or floodplains, listed or proposed threatened or endangered species or critical habitat, and properties listed or eligible for listing in the National Register of Historic Places. Placement of the new structures will impact less than 0.1 acre of important farmland. Wetlands and floodplains located within the existing ROW will be spanned and avoided by the proposed project. No other matters of environmental concern have come to REA's attention.

Alternatives examined for the proposed project included no action, energy conservation, converting existing lines to a higher voltage, building new distribution lines, and constructing a 115 kV line on the existing ROW. Alternative routes were determined not to be feasible. REA determined that there is a need for the proposed project and that constructing the transmission line as recommended is an environmentally acceptable alternative for NOVEC to meet the growing electrical loads and shorten the outage time for its electric consumers in western Prince William and eastern Fauquier Counties, Virginia.

As a result of its independent evaluation, REA has concluded that approval of the Gainsville to Wheeler transmission line project would not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, REA has made a FONSI with respect to the proposed project. The preparation of an environmental impact statement is not necessary.

Copies of REA's FONSI and NOVEC's BER can be obtained from or reviewed at the offices of REA in the South Agriculture Building, room 0241, 14th and Independence Avenue, SW., Washington, DC 20250; or at the office of Northern Virginia Electric Cooperative, Inc. (Harry K. Bowman, Manager), Manassas, Virginia 22110–2710, during regular business hours.

In accordance with the public notification requirements of REA Environmental Policy Procedures (7 CFR part 1794), NOVEC had both a legal notice and an advertisement published in the Potomac News and the Journal Messenger which have a general circulation in Prince William County. The notice appeared in the January 25 and 26 editions of both newspapers. The public was given at least 30 days to respond to the notice. No comments were received by NOVEC or REA.

Dated: March 12, 1991.

John H. Arnesen,

Assistant Administrator—Electric.

[FR Doc. 91–6415 Filed 3–18–91; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–201–012]

Carbon Black From Mexico; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administratiion/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On February 1, 1991, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on carbon black from Mexico. We have now completed that review and determine the total bounty or grant to be 11.21 percent *ad valorem* for Hules Mexicanos, S.A. and 4.69 percent *ad valorem* for all other firms during the period January 1, 1986 through August 23, 1986.

EFFECTIVE DATE: March 19, 1991.

FOR FURTHER INFORMATION CONTACT: Philip Pia or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 4042) the preliminary results of its administrative review of the countervailing duty order on carbon black from Mexico (48 FR 29564; June 27, 1983). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of Mexican carbon black. During the review period, such merchandise was classifiable under item number 473.0400 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under item number 2803.00.00 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1986 through August 23, 1986 and 12 programs: (1) FOMEX, (2) NDP Discounts, (3) FONEI, (4) preferential pricing of carbon black feedstock, (5) CEPROFI tax certificates, (6) FOGAIN, (7) Bancomext loans, (8) import duty reductions and exemptions, (9) Article 94 and Article 15 loans, (10) state tax incentives, (11) delay of payments on loans, (12) delay of payments to PEMEX of fuel charges.

We gave interested parties an opportunity to comment on th preliminary results. We received no comments.

Final Results of Review

As a result of our review, we determine the total bounty or grant during the period January 1, 1986 through August 23, 1986 to be 11.21 percent *ad valorem* for Humex and 4.69 percent *ad valorem* for all other firms.

Therefore, the Department will instruct the Customs Service to assess

countervailing duties of 11.21 percent of the f.o.b. invoice price on shipments from Humex and 4.69 percent of the f.o.b. invoice price on shipments from all other firms exported on or after January 1, 1986 and entered, or withdrawn from warehouse, for consumption on or before August 23, 1986. Because the Department revoked the countervailing duty order effective August 24, 1986 (54 FR 53163; December 27, 1989), there is no requirement for cash deposit of estimated countervailing duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: March 12, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-6495 Filed 3-18-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-333-001]

Cotton Sheeting and Sateen From Peru; Determination Not To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the countervailing duty order on cotton sheeting and sateen from Peru.

EFFECTIVE DATE: March 19, 1991.

FOR FURTHER INFORMATION CONTACT: Al Jemmott or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: On February 21, 1991, the Department of Commerce ("the Department") published in the **Federal Register** (56 FR 7013) its intent to revoke the countervailing duty order on cotton sheeting and sateen from Peru (48 FR 4501; February 1, 1983). In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth (or subsequent) anniversary month. We had not received a request for an administrative review of the order for more than four consecutive annual anniversary months.

On February 28, 1991, Arkwright Mills and Milliken & Company, Inc., domestic producers of the subject merchandise, objected to our intent to revoke the order. Therefore, we no longer intend to revoke the order.

This notice is in accordance with 19 CFR 355.25(d).

Dated: March 12, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-6496 Filed 3-18-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-333-002]

Cotton Yarn From Peru; Determination Not To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the countervailing duty order on cotton yarn from Peru.

EFFECTIVE DATE: March 19, 1991.

FOR FURTHER INFORMATION CONTACT: Al Jemmott or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: On February 21, 1991, the Department of Commerce ("the Department") published in the **Federal Register** (56 FR 7013) its intent to revoke the countervailing duty order on cotton yarn from Peru (48 FR 4501; February 1, 1988). In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth (or subsequent) anniversary month. We had not received a request for an administrative review of the order for more than four consecutive annual anniversary months.

On February 26, 1991, American Yarn Spinners Association, Inc., the original petitioner in this case, objected to our intent to revoke the order. Therefore, we no longer intend to revoke the order.

This notice is in accordance with 19 CFR 355.25(d).

Dated: March 12, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-6497 Filed 3-18-91; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 91-00003." A summary of the application follows.

Summary of the Application

Applicant: Fabiano & Associates, Inc. ("FAI"), 236 East Town Street, suite 130,

Columbus, Ohio 43215, Telephone: (614) 227–6090.

Application No.: 91–00003.

Date Deemed Submitted: March 6, 1991.

Members (in addition to applicant): None.

Export Trade:

1. *Products*

All products.

2. *Services*

All services.

3. *Export Trade Facilitation Services (as they relate to the export of Products and Services)*

Export Trade Facilitation Services, including professional services in the areas of government relations, economic development and finance, foreign trade and business protocol, marketing, marketing research, negotiations, joint ventures, acquisitions and/or mergers, shipping, export management, advertising, documentation, insurance and financing, trade show exhibitions, organizational development, management strategies, transfer of technology, and venture capital.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. As an export intermediary, FAI seeks to:

a. Provide and/or arrange for the provisions of Export Trade Facilitation Services;

b. Engage in promotional and marketing activities;

c. Enter into exclusive export sales agreements with its suppliers for the export of Products and Services to the Export Markets;

d. Establish the price of Products and/or Services for sale in the Export Markets;

e. Allocate export orders among its suppliers;

f. Enter into exclusive export sales agreement with its suppliers that prohibit them from exporting independently from FAI;

g. Enter into exclusive agreements with distributors in Export Markets;

h. Enter into contracts for shipping; and

i. Allow its suppliers to withdraw from FAI upon six months written notice. In the case of withdrawal, the former supplier will agree not to sell through foreign distributors with whom FAI deals for a period of two years.

2. FAI and individual suppliers may exchange information on a regular basis regarding inventories and near-term production schedules in order that the availability of supplies for export can be determined and effectively coordinated by FAI with its distributors in the Export Markets.

Dated: March 14, 1991.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 91–6498 Filed 3–18–91; 8:45 am]

BILLING CODE 3510–DR–M

Applications; for Duty-Free Entry of Scientific Instruments; Pennsylvania State, Inc. et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket number: 90–165R. *Applicant:* The Pennsylvania State University, Aerospace Engineering Department, 233 Hammond Building, University Park, PA 16802. *Instrument:* 12-Channel Anemometer with Accessories. *Manufacturer:* AA Lab Systems, Ltd., Israel. Original notice of this resubmitted application was published in the Federal Register of October 15, 1990.

Docket number: 90–220. *Applicant:* University of Minnesota, Department of Pharmacy, 3–249 Millard Hall, 435 Delaware Street, SE., Minneapolis, MN 55455. *Instrument:* Stopped-Flow Spectrofluorimeter, Model SHU/13–106. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Intended use:* The instrument will be used to investigate the structure of the voltage gated sodium channel with respect to its interaction with the plasma membrane, with respect to the folding pattern of the major polypeptide (M 250 K) that constitutes this channel and with respect to the location of four different neurotoxin binding sites that affect the function of the channel. *Application Received by commissioner of customs:* December 3, 1990.

Docket number: 91–019. *Applicant:* Vanderbilt University School of Medicine, Department of Molecular Physiology and Biophysics, 21st and Garland Avenue, 702 Light Hall, Nashville, TN 37232–0615. *Instrument:* Volume Controller for Microinjections. *Manufacturer:* Singer, United Kingdom. *Intended use:* The instrument will be attached to a microscope and used to control the volume of injections into frog oocytes. The experiment will consist of detailed functional analysis and will necessitate injection of isotopes and metabolic inhibitors or stimulators in occcytes. *Application received by a commissioner of customs:* February 4, 1991.

Docket number: 92–020. *Applicant:* U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268. *Instrument:* Electron Microscope, Model JEM–1200EX/SEG/DP/DP. *Manufacturer:* JEOL, Japan. *Intended use:* The instrument will be used to study the release of potentially carcinogenic asbestos fibers for various engineering and operation and maintenance activities. *Application received by commissioner of customs:* February 6, 1991.

Docket number: 91–021. *Applicant:* Beth Israel Medical Center, First Avenue and 16th Street, New York, NY 10003. *Instrument:* Optional Disk Upgrade Kit. *Manufacturer:* Image Recognition Systems Ltd., United Kingdom. *Intended use:* The instrument will be used as an accessory to store digital images of chromosomes and karotypes generated by Cytoscan, an automated system to analyze chromosomes. The experiments relate to the examination of several cells for each human sample to establish the cytogenetic status of individual. In addition, the instrument will be used to teach the basic tests of genetics and cytogenetic to medical students, residents and research fellows. *Application received by commissioner of customs:* February 6, 1991.

Docket number: 91–022. *Applicant:* Northwestern University, 303 East Chicago Avenue, Chicago, IL 60611. *Instrument:* Reflex Microscope. *Manufacturer:* Reflex Measurement Ltd., United Kingdom. *Intended use:* The instrument will be used for studies of bones and teeth of fossil and living animals during investigations of the phylogenetic relationships and functional attributes of these animals.

Application received by commissioner of customs: February 7, 1991.

Docket number: 91–023. *Applicant:* Duke University Medical Center, Sans Building, Research Drive (room 458), Durham, NC 27710. *Instrument:* Flashlamp System JML–E for Photolysis Experiments. *Manufacturer:* Optische und elektronische Gerate Dr. Rapp, West Germany. *Intended use:* The instrument will be used for muscle contraction experiment to give rapid flash photolysis of "caged ATP", "caged AMPPNP", "caged calcium", "caged phosphate" etc., which are photosensitive precursors of free ATP, AMPPNP, calcium ion, phosphate ion, etc., agents which cause or modify muscle contraction., Experiments are designed to detect and modify the actin-attachment and power-stroke behavior of myosin crossbridges, 5x20nm projections formed by heads of myosin molescules whose tails pack into the "backbones" of thick (myosin) filaments. *Application received by commissioner of customs:* February 8, 1991.

Docket number: 91–024. *Applicant:* University of California, Lawrence Livermore National Laboratory, 7000 East Avenue, P.O. Box 808, Livermore, CA 94550. *Instrument:* Three Gigabit Per Second Bit Error Rate Tester. *Manufacturer:* Anritsu Corp., Japan. *Intended use:* The instrument will be used to determine operational characteristics of computer related high speed networks and associated peripheral components. The materials to be studied will include: fiber plant i.e., fiber optic cables, connectors, and distribution chassis, circuit switch hardware and computer interfaces. *Application received by commissioner of customs:* February 11, 1991.

Docket number: 91–025. *Applicant:* University of Illinois, Purchasing Division, 506 South Wright Street, Urbana, IL 61801. *Instrument:* Electron Microscope for Surface Studies, Model JEM 2000EX. *Manufacturer:* JEOL, Japan. *Intended use:* The instrument will be used for studies of the surfaces near surface regions of many solid-state materials, particularly semiconductors, metals and ceramics. Experiments will include the study of clean surfaces, their cleaning behavior and the atomic rearrangements that occur during surface reaction, e.g., oxidation. In addition, the instrument will be used to teach electron microscopy and surface science. *Application received by commissioner of customs:* February 12, 1991.

Docket number: 91–026. *Applicant:* The Regents of the University of California, Riverside, Materials Management Department, Riverside, CA 92521. *Instrument:* Inductively Coupled Plasma/Mass Spectrometer, Model PlasmaQuad PQ2. *Manufacturer:* VG Instruments, United Kingdom. *Intended use:* The instrument will be used to analyze the elemental and isotopic composition of surface and ground waters, soils and other geologic materials. Research topics include: Carbonate diagenesis in sedimentary basins; minor element tracers of the diagenetic history of organic and inorganic carbonates; petrology, geochemistry, and rock-water interactions of geothermal and hydrothermal systems; groundwater resources, contamination, and remediation; trace and heavy metal chemistry of acid mine drainage; trace element chemistry and bioavailability in metal-contaminated evaporation pond sediments and roadside and sewage sludge-amended soils; and rhizosphere metal chemistry. In addition, the instrument will be used for educational purposes in the courses: Groundwater Geochemistry, Soil Chemistry and Research for Thesis or Dissertation. *Application received by commissioner of customs:* February 12, 1991.

Docket number: 91–027. *Applicant:* University of Pittsburgh, Department of Biological Sciences, Pittsburgh, PA 15260. *Instrument:* Laser Scanning Confocal Microscope. *Manufacturer:* Carl Zeiss, West Germany. *Intended use:* The instrument will be used to investigate the structure of a wide variety of eukaryotic cell types. These studies include an analysis of the distribution of the extracellular matrix, the location and movement of glucocorticoid receptors, the location of the nerve cell specific markers, viral antigen location within cells, analysis of cell lineages during mammalian and round worm development, muscle cell differentiation, and nucleolar assembly, among others. *Application received by commissioner of customs:* February 12, 1991.

Docket number: 91–028. *Applicant:* University of Pittsburgh, Department of Biological Sciences, Pittsburgh, PA 15260. *Instrument:* Electron Microscope, Model EM 902/PC. *Manufacturer:* Carl Zeiss, West Germany. *Intended use:* The instrument will be used for studies of biological materials from viral structure of eukaryotic cells. All aspects of structure will be analyzed with focus on structural details of cellular organization. In particular, specific molecular organizations will be analyzed through use of elemental analysis capabilities of the spectrometer system of this instrument. *Application received by commissioner of customs:* February 13, 1991.

Docket number: 91–029. *Applicant:* VA Medical Center, 130 Kingsbridge Road, Bronx, NY 10468. *Instrument:* Dynamic Dedicated Brain SPECT System, Model Tomomatic 564. *Manufacturer:* Medimatic A/S, Denmark. *Intended use:* The instrument will be used for studies to evaluate brain receptor density and affinities in normal people and those with neuropsychiatric illness. This work includes kinetic model studies in the brain, clinical models of psychiatric illnesses and treatment response/non-response evaluation. In addition, the instrument will be used for training residents and fellows in psychiatry. *Application received by commissioner of customs:* February 14, 1991.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91–6499 Filed 3–18–91; 8:45 am]

BILLING CODE 3510–DS–M

Texas Tech University Health Sciences Center, et al.; Consolidated Decision on Applications for Duty-free Entry of Scientific Instruments; Texas Tech University Health Sciences Center

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket number: 90–163. *Applicant:* Texas Tech University Health Sciences Center, Lubbock, TX 79430. *Instrument:* Electron Microscope Accessories. *Manufacturer:* Nissei Sangyo, Japan. *Intended use:* See notice at 55 FR 41739, October 15, 1990. *Advice submitted by:* National Institutes of Health, January 23, 1991.

Docket number: 90–209. *Applicant:* Massachusetts Institure of Technology, Cambridge, MA 02139. *Instrument:* Microtherm Electrothermal Vaporization Inlet System. *Manufacturer:* VG Elemental, United Kingdom. *Intended use:* See notice at 55 FR 51752, December 17, 1990. *Advice received from:* National Institute of Standards and Technology, November 19, 1990.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments, for the purposes for which the instruments are intended to be used, is being manufactured in the United States. *Reasons:* These are compatible accessories for instruments previously imported for the use of the applicants. In each case, the instrument and accessory were made by the same manufacturer. NIH and NIST advise that the accessories are pertinent to the intended uses and that they know of no comparable domestic accessories.

We know of no domestic accessories which can be readily adapted to the previously imported instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91-6500 Filed 3-18-91; 8:45 am]

BILLING CODE 3510-DS-M

University of Florida; Decision on Application for Duty-Free Entry of Scientific Instrument; University of Florida

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket number: 90-223. *Applicant:* University of Florida, Gainesville, FL 32611-2046. *Instrument:* QQ-Option for Mass Spectrometer. *Manufacturer:* Finnigan MAT, West Germany. *Intended use:* See notice at 56 FR 1512, January 15, 1991.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* This is a compatible accessory for an instrument previously imported for the use of the applicant. The instrument and accessory were made by the same manufacturer.

We know of no domestic accessory which can be readily adapted to the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91-6501 Filed 3-18-91; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Amended Public Meeting Agenda and a Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

An agenda, published in the **Federal Register** at 56 FR 5684, on February 12, 1991, for the North Pacific Fishery Management Council's (Council) Fishery Planning Committee public meeting in Seattle, WA, on March 19, 1991, has been amended. In addition to items published at 56 FR 5684, the Council's Ad Hoc Bychatch Committee also will hold a public meeting. Details of the amended agenda are as follows:

Amended Agenda: The Fishery Planning Committee public meeting scheduled on March 19, 1991, at the National Marine Fisheries Service, Alaska Fisheries Science Center, 7600 Sand Point Way, NE., Building 4, room 2079, Seattle, WA, may extend into March 20. The Committee will begin meeting at 9 a.m., on March 19; the latest it will adjourn is noon on March 20. The Committee is scheduled to review preliminary results of the inshore/offshore analysis; develop alternatives for a moratorium on entry into all fisheries within the Council's jurisdiction; and continue to refine halibut individual fishing quota (IFQ) management alternatives.

The Council's AD Hoc Bycatch Committee also will meet at the same Seattle, WA, location as stated above, on March 20 at 1:30 p.m., following the meeting of the Fishery Planning Committee, and may continue its meeting through March 22. The Bycatch Committee will review the status of the 1991 bycatch program; hear a status report on salmon bycatch; begin development of a bycatch incentive program; and discuss bycatch management plans for 1992

For more information contact Steve Davis, Deputy Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271-2809.

Dated: March 13, 1991.

David S. Crestin,

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

[FR Doc. 91-6423 Filed 3-18-91; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustments of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Sri Lanka

March 11, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: March 18, 1991.

FOR FURTHER INFORMATION CONTACT: Kim-Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1965, as amended (7 U.S.C. 1854).

The current limit for Categories 350/650 is being increased for carryover and swing. The limit for Category 644 is being reduced to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 25861, published on June 5, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Donald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 11, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on June 19, 1990 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Sri Lanka and exported

during the period which began on July 1, 1990 and extends through June 30, 1991.

Effective on March 18, 1991, the directive of June 19, 1990 is being amended to adjust the limits for cotton and man-made fiber textile products in the following categories, as provided under the provisions of the current bilateral agreement between the Governments of the United States and Sri Lanka:

Category	Adjusted 12-month limit [1]
350/650	92,023 dozen.
644	283,615 numbers.

[1] The limits have not been adjusted to account for any imports exported after June 30, 1990.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-6419 Filed 3-18-91; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comments on Bilateral Textile Consultations with the Government of the Philippines

March 11, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: March 18, 1991.

FOR FURTHER INFORMATION CONTACT: Kim-Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-6735. For information on embargoes and quota re-openings, call (202) 377-3715. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:.

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On February 27, 1991, under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Non-cotton Vegetable Fiber Apparel Agreement of March 4, 1987, as amended, between the Governments of the United States and the Philippines, the Government of the United States requested consultations with the Government of the Philippines with respect to cotton robes and dressing gowns in Category 350.

The purpose of this notice is to advise the public that pending agreement on a mutually satisfactory solution concerning Category 350, the Government of the United States has decided to control imports during the ninety-day consultation period which began on February 27, 1991 and extends through May 27, 1991.

If no solution is agreed upon in consultations between the two governments, CITA, pursuant to the agreement, may later establish a specific limit for the entry and withdrawal from warehouse for consumption of textile products in Category 350, produced or manufactured in the Philippines and exported during the prorated period beginning on May 28, 1991 and extending through December 31, 1991, of not less than 51,694 dozen.

A summary market statement concerning Category 350 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 350, or to comment on domestic production or availability of products included in this category, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230, ATTN: Public Comments.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments of information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 350. Should a solution be reached in consultations with the Government of the Philippines, further notice will be published in the Federal Register.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 55 FR 50756, published on December 10, 1990).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 11, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Non-cotton Vegetable Fiber Apparel Agreement of March 4, 1987, as amended, between the Governments of the United States and the Philippines; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on March 18, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 350, produced or manufactured in the Philippines and exported during the ninety-day period which began on February 27, 1991 and extends through May 27, 1991, in excess of 25,244 dozen.[1]

Textile products in Category 350 which have been exported to the United States on and after January 1, 1991 shall remain subject to the Group II limit established in the directive dated December 12, 1990 for the period January 1, 1991 through December 31, 1991.

Textile products in Category 350 which have been exported to the United States prior to February 27, 1991 shall not be subject to the ninety-day limit established in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

[1] The limit has not been adjusted to account for any imports exported after February 28, 1991.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Market Statement: Cotton Robes and Dressing Gowns Category 350

Philippines, February 1991.

Import Situation and Conclusion

U.S. imports of cotton robes and dressing gowns, Category 350, from the Philippines reached 73,783 dozen in 1990, 51 percent above the 49,016 dozen imported a year earlier and almost three times the 27,544 dozen imported in 1988. The Philippines is the fifth largest supplier of cotton robes and dressing gowns, accounting for 7 percent of total imports in 1990.

The sharp and substantial increase in Category 350 imports from the Philippines is causing disruption in the U.S. market for cotton robes and dressing gowns.

U.S. Production and Market Share

U.S. production of cotton robes and dressing gowns, Category 350, declined from 1,057 thousand dozen in 1987 to 876 thousand dozen in 1989, a decline of 17 percent. The share of this market held by domestic manufacturers fell from 57 percent in 1987 to 45 percent in 1989, a decline of 12 percentage points.

U.S. Imports and Import Penetration

U.S. imports of cotton robes and dressing gowns, Category 350, increased from 782 thousand dozen in 1987 to 1,082 thousand dozen in 1990, an increase of 38 percent. The ratio of imports to domestic production increased from 74 percent in 1987 to 120 percent in 1989.

Duty-Paid Value and U.S. Producers' Price

Approximately 92 percent of Category 350 imports from the Philippines in 1990 entered under HTSUSA number 6208.91.1010—women's cotton bathrobes, dressing gowns, and similar articles. These robes and dressing gowns entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable products.

[FR Doc. 91-6420 Filed 3-18-91; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Ad Hoc Committee on Alternative Strategies for Software and Computer Processor Upgrades to Software Intensive Aircraft will meet on 3-4 April 1991 from 8 a.m. to 5 p.m. at ANSER Corporation, 1215 Jefferson Davis Highway, Arlington, Virginia.

The purpose of this meeting is to gather information in support of the SAB study.

The meeting will be closed to the public in accordance with section 552(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4811.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 91-6502 Filed 3-18-91; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

NAME OF THE COMMITTEE: Army Science Board (ASB).

DATES OF MEETING: 8-9-10 April 1991.

TIME: 0800-1600 hours each day.

PLACE: 8-9 April: Picatinny Arsenal, NJ. 10 April: Fort Monmouth, NJ.

AGENDA: The Army Science Board Ad Hoc Subgroup on Improving the Quality of Science and Engineering in the Army will meet 8-9 April with the Directors and Staff of the U.S. Army Armament RD&E Center and Ballistic Research Laboratory to discuss their efforts to capture indicators of quality of R&D work and personnel. The group will meet 10 April with the Directors and Staff of the U.S. Army Communications-Electronics RD&E Center to also discuss their efforts to capture indicators of quality of R&D work and personnel. These meetings will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695-0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91-6434 Filed 3-18-91; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.215A]

The Fund for Innovation in Education (FIE); Innovation in Education Program

ACTION: Notice Inviting Applications for New Awards for Fiscal Year 1991.

Purpose of the Program: To provide grants for projects that show promise of identifying and disseminating innovative educational approaches at the preschool, elementary, and secondary levels.

Eligible Applicants: State educational agencies, local educational agencies, institutions of higher education, private schools, and otehr public and private agencies, organizations and institutions or consortia of those agencies..

Deadline for Transmittal of Applications: 6-3-91.

Deadline for Intergovernmental Review: 8-5-91.

Applications Available: 4-2-91.

Available Funds: $9,000,000 (est).

Estimated Range of Awards: $200,000-$750,000.

Project Period: Up to 36 months.

Budget Period: 12 months..

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 78, 80, 81, 82, 85, and 86.

Invitational Priorities: The Secretary is interested in identifying effective strategies for restructuring and reforming schools and school systems with the goal of enabling every student to demonstrate competency in challenging subject matter and the ability to reason, solve problems, apply knowledge, and write and communicate effectively. The Secretary is particularly interested in strategies tailored to the specific problems and needs of students who are achieving under the current school system.

The Secretary believes that a comprehensive approach to restructuring and reform is essential and requires school-wide or system-wide changes. For the purpose of this competition, the Secretary encourages applicants to focus on all of the following areas:

(a) *New and challenging curricula to increase the academic performance of all students.* The curricula should identify desired student learning outcomes, diverse instructional materials, student assessment tools, and rigorous programs of instruction. The curricula should include activities that will increase students' ability to think critically, solve problems and apply knowledge. For underachieving students, it is particularly important that the curricula offer challenging learning opportunities in the regular school setting and provide alternatives to ability grouping and tracking. These learning opportunities may include, but are not limited to, peer-tutoring, cooperative learning, or reciprocal teaching.

(b) *Effective teacher development and instructional approaches to improve teacher quality and learner outcomes.*

These approaches should include opportunities for professional development and training of teachers in new instructional strategies and school organization, utilization of advanced information technologies and telecommunication, shared decision-making about school reform, and development of challenging learning opportunities for all students. These approaches should also include innovative strategies to recruit, train, and reward good teachers, such as alternative career routes, new leadership roles, and performance incentives.

(c) *New school organizational patterns and management strategies to create more productive working and learning environments.* These strategies should focus on the achievement of higher student performance outcomes, involvement of administrators and teachers in decision-making and allocation of resources, and provision of additional responsibility to parents in setting their children's performance goals. For underachieving students, the Secretary is particularly interested in comprehensive, school-wide approaches that integrate compensatory education, special education, bilingual education, and vocational education with regular education programs.

The Secretary invites applications for projects to develop and implement comprehensive reforms as described above. The Secretary is particularly interested in supporting nationally significant projects that will:

- Develop curricula, including the use of new technologies, to improve student achievement;
- Provide training for elementary and secondary teachers and administrators necessary to solve management and instructional problems and utilize technology;
- Revise the structure of the teaching career—involving new roles and responsibilities for teachers;
- Establish partnerships among schools, institutions of higher education, and business and community groups to restructure schools for the purpose of improving educational performance; and
- Create new methods of managing schools to give teachers and administrators more decision-making authority and accountability for results.

These examples are meant to illustrate the types of activities the Secretary is interested in supporting. Applicants are encouraged to submit applications that expand upon, or combine the suggested activities, and to propose other activities to achieve comprehensive school-wide or system-wide reforms aimed at improving educational performance. Applicants are encouraged to demonstrate a strong commitment to the proposed project after the initial federal funding.

Funds should not be used as general operating revenue to meet local needs of any applicant. Funds provided for these grants are intended to support planning, development, extra staff training, and other costs incidental to comprehensive restructuring.

Applicants are expected to provide for rigorous documentation of proposed activities, with emphasis on documenting changes in student and school performance, and for the outside evaluation and dissemination of program outcomes. The Secretary intends to support a documentation and evaluation project to learn from the collective actions and results of the projects funded in response to this invitation, and expects grantees to cooperate fully in this evaluation effort.

Although the Secretary encourages applications for comprehensive restructuring projects, under 34 CFR 75.105(c)(1), an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Selection criteria: Under 34 CFR 75.210(c), the Secretary is authorized to distribute an additional 15 points among the criteria to bring the total to a maximum of 100 points. For the purpose of this competition, the Secretary will distribute the additional points as follows:

Plan of operation. (34 CFR 75.210(b)(3). Ten (10) additional points will be added for a possible total of 25 points for this criterion.

Evaluation plan. (34 CFR 75.210(b)(6). Five (5) additional points will be added for a possible total of 10 points for this criterion.

Supplementary information: Although the Secretary has chosen to use the EDGAR selection criteria and invitational priorities for this competition, the Secretary may establish program regulations or absolute priorities, or both, for future grant competitions.

For applications or information contact: Shirley Steele, U.S. Department of Education, Fund for the Improvement and Reform of Schools and Teaching, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208–5524. Telephone (202) 219–1496. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern Time.

Authority: 20 U.S.C. 3151.

Dated: February 27, 1991.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 91–6411 Filed 3–18–91; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.136A]

Assistance for Training in the Legal Profession Program

ACTION: Withdrawal of notice inviting applications for new awards under the assistance for training in the legal profession program for fiscal year 1991.

On March 12, 1991, the Assistant Secretary for Postsecondary Education published in the **Federal Register** (56 FR 10418) a notice inviting applications for fiscal year 1991 under the Assistance for Training in the Legal Profession Program. This notice withdraws that notice.

FOR FURTHER INFORMATION CONTACT: Mr. Walter T. Lewis, Program Manager, U.S. Department of Education, room 3022, ROB–3, Washington, DC 20202–5251. Telephone: (202) 708–9393. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m. Eastern time.

Authority: 20 U.S.C. 1134r.

Dated: March 13, 1991.

Leonard L. Haynes III,

Assistant Secretary for Postsecondary Education.

[FR Doc. 91–6410 Filed 3–18–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Idaho Operations Office; Solicitation for Financial Assistance

AGENCY: Department of Energy, Idaho Operations Office.

ACTION: Availability of solicitation for the Teacher's Skill Enhancement Program.

SUMMARY: DOE's Idaho Operations Office is issuing Solicitation DE–PS07–91ID13097 which solicits grant applications for the Teacher's Skill Enhancement Program. Eligibility is limited to teachers presently teaching grades seven through twelve within the states of Idaho and Montana. This activity is part of the DOE–ID's, Office of Environmental Restoration Waste Management's Science Education

Outreach Program. A need has been recognized that more emphasis should be placed on the application of math and sciences in the classroom. This emphasis is necessary to insure that the nation's workforce is prepared to handle all future technological challenges, particularly those in environmental restoration and waste management. The objective of this local program is to provide assistance to secondary science and mathematics teachers so that they may acquire a better understanding of science and math application as practiced in industry. The intent is to enable teachers to become more cognizant of this subject matter by interfacing with Idaho National Engineering Laboratory (INEL) professionals. A week of this program will be devoted to topics dealing with waste management and environmental restoration. Teachers will be paired with an INEL scientist or engineer who will act as a mentor. The teacher and the mentor will develop a program that will match the teacher's needs for enhancement of his or her skills.

Selected teachers will be required to attend the full four week program. It is anticipated that the teachers will utilize this information in their classroom curriculum to make it more exciting and applicable to today's needs.

AUTHORITY: DOE Organization Act, Public Law 95–91 (42 U.S.C. 7101); Stevenson—Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3701, *et seq.*) DOE Financial Assistance Regulation, 10 CFR part 600, subparts A and C

AWARDS: DOE anticipates that approximately $50,000 will be available for this program which should provide support for about twenty awards.

FOR FURTHER INFORMATION CONTACT: Ms. Susan L. Hensley, U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402, phone: (208) 526–8534.

Issued in Idaho Falls, Idaho on March 12, 1991.

R. Jeffrey Hoyles,

Acting Director, Contracts Management Division.

[FR Doc. 91–6491 Filed 3–18–91; 8:45 am]

BILLING CODE 6450–01–M

Advisory Committee on Nuclear Facility Safety; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Advisory Committee on Nuclear Facility Safety.

Date & Time: Friday, April 5, 1981, 8 a.m. to 6 p.m.

Place: The United States Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, Room 6E069.

Contact: Wallace R. Kornack, Executive Director, ACNFS, AC–21, 1000 Independence Avenue, SW, Washington, DC 20585, 202/586–1770.

Purpose of the Committee: The Committee was established to provide the Secretary of Energy with advice and recommendations concerning the safety of the Department's production and utilization facilities, as defined in section 11 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014).

Tentative Agenda

8 a.m. John F. Ahearne Opens Meeting, Review of Selected Technical Issues, Review of Facility Safety Issues, Subcommittee Reports, Committee Business
5:30 p.m. Public Comment Session
6 p.m. Meeting adjourns

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Wallace Kornack at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Ave., SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on March 14, 1991.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 91–6492 Filed 3–18–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. TM90–9–32–001]

Colorado Interstate Gas Co.; Report of Refunds Under Order No. 528

March 12, 1991.

Take notice that on February 4, 1991, Colorado Interstate Gas Company (CIG) tendered for filing with the Federal Energy Regulatory Commission (Commission) its Report of Refunds under Order No. 528 relating to the flowthrough of direct-billed amounts refunded by Northwest Pipeline Corporation (Northwest) in Docket No. RP90–118–000.

Order No. 528 stayed the authority of pipelines to collect take-or-pay fixed charges based on a purchase deficiency methodology effective December 1, 1990. CIG states that in response to the Commission's order issued in Docket No. RM91–2 on December 14, 1990, staying Northwest's direct-billing of its Docket No. RP90–118 costs, Northwest refunded such costs allocated to and paid by CIG.

CIG further states that on January 10, 1991, it made related refunds to its sixteen affected customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214. All such protests should be filed on or before March 22, 1991. 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. Persons that are already parties to the proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–6416 Filed 3–18–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. FA85–34–001]

Stingray Pipeline Co.; Informal Settlement Conference

March 12, 1991.

Take notice that an informal settlement conference will be convened in this proceeding on Wednesday, March 20, 1991, at 1:30 p.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426, for the purpose of discussing the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Warren C. Wood (202) 208–2091 or Cynthia A. Govan (202) 208–0745.

Lois D. Cashell,

Secretary.

[FR Doc. 91–6417 Filed 3–18–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP89–484–000]

Transcontinental Gas Pipe Line Corp.; Offer of Settlement

March 11, 1991.

Take notice that on March 4, 1991, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251–1396, filed in Docket No. CP89–484–000 a stipulation and agreement pursuant to sections 7(b) and 7(c) of the Natural Gas Act and 18 CFR 385.602 of the Commission's Regulations in purported settlement of issues arising from Transco's December 23, 1988, application filed in the subject docket in which Transco requested a certificate of public convenience and necessity authorizing the abandonment of service and the establishment of Delivery Point Entitlements (DPEs) on its system, all as more fully set forth in the stipulation and agreement, which is on file with the Commission and open to public inspection.

Transco states that its stipulation and agreement, which constitutes an offer of settlement, is submitted for the purpose of securing all requisite certificate, tariff, and abandonment authorizations in connection with the establishment of DPEs on the Transco system. Transco asserts that DPEs are necessary because the flexibility designed into Transco's pipeline system to accommodate swings in deliveries among delivery points on a daily basis is limited. Transco explains that under certain circumstances, such swings in deliveries to accommodate certain customers could jeopardize Transco's ability to make firm deliveries to other customers on the system. Accordingly, it is averred, under the proposed settlement, certain limitations on delivery point flexibility on a daily basis would be defined. Transco states that the settlement would not change its informal operating procedures with respect to customers' hourly swings at delivery points.

Transco states that the key features of the settlement are as follows:

(1) Certain limitations on delivery point flexibility on a daily basis would be established on the Transco system as well as certain formal operating procedures to enforce such limitations. At the same time, the establishment of DPEs would for the first time on Transco's system provide customers with firm delivery quantities specified at each delivery point and Facility Group on the system.

(2) The DPEs would apply to firm service customers with multiple points of delivery with the exception of customers that are currently or have previously been served under Transco's Rate Schedules G and OG.

(3) Separate DPEs would be established for the winter and summer periods. Maximum DPEs would be established for each delivery point and, where applicable, each group of delivery points in a Facility Group.

(4) Upon prior request by a firm service customer, Transco would deliver excess volumes on a firm basis to the customer's delivery points and/or Facility Group provided the customer's total scheduled deliveries do not exceed its maximum daily contract demand quantity, and if Transco is able reasonably to determine that such excess deliveries will not adversely affect its ability to provide firm services to other customers on the system.

(5) Penalties would be established for unauthorized takes on any day at individual delivery points and Facility Groups.

(6) Transco would update customer DPEs consistent with any increase in delivery point flexibility that results from incremental capacity expansion projects.

Any person desiring to be heard or to make any protest with reference to said stipulation and agreement should on or before April 1, 1991, 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 approval of the stipulation and agreement and the grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transco to appear or be represented at the hearing.

Reply comments shall be due on or before April 11, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 91–6418 Filed 3–18–91; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Research

High Energy Physics Advisory Panel; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: High Energy Physics Advisory Panel (HEPAP).

Date and Time: Monday, April 15, 1991, 8:30 a.m.–5 p.m. Tuesday, April 16, 1991, 8:30 a.m.–3 p.m.

Place: National Science Foundation, 1800 G Street, NW., room 540, Washington, DC 20550.

Note: Due to increased security, entry to building will be permitted with picture I.D. (For example, Driver's License, Passport or Company I.D.).

Contact: Dr. Enloe T. Ritter, Executive Secretary, High Energy, Physics Advisory Panel, U.S. Department of Energy, ER–221, GTN, Washington, DC 20585, Telephone: (301) 353–4829.

Purpose of Panel: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda:

Monday, April 15, 1991 and Tuesday, April 16, 1991

—Discussion of National Science Foundation Elementary Particle Physics Programs
—Discussion of Department of Energy Physics Programs
—Discussion of Department of Energy Superconducting Super Collider (SSC) Project Activities
—Discussion of the Impact of FY 1992 Presidential Budget on High Energy Physics Accelerator Laboratories
—Report on the Linear Collider at the Stanford Linear Accelerator Center
—Reports on and Discussions of Topics of General Interest in High Energy Physics
—Public Comment

Public Participation: The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading Room, room IE–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on March 14, 1991.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 91–6493 Filed 3–18–91; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Issuance of Proposed Decision and Order During the Week of Febraury 25, Through March 1, 1991

During the week of February 25 through March 1, 1991, 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 procedureal 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 p.m. and 5 p.m., except federal holidays.

Dated: March 13, 1991.

George B. Breznay,

Director, Office of Hearings and Appeals.

Smith Tank Line, Fresno, CA, Reporting Requirements LEE–0020

Smith Tank Lines (Smith) filed an Application for Exception from the requirement to file Form EIA–782B, entitled "Reseller/Retailer's Monthly Petroleum Product Sales Report." If the exception request were granted, Smith would not be required to file this form. On March 1, 1991, the DOE issued a Proposed Decision which tentatively denied Smith's application for exception relief.

[FR Doc. 91–6494 Filed 3–18–91; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE–FR–L–3914–6]

Financial Assistance Program; Eligible for Review

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of pollution prevention grants.

SUMMARY: The Office of Pollution Prevention at the Environmental Protection Agency (EPA) is announcing the availablity of approximately $4 million in FY 91 grant/cooperative agreement funds under the Pollution Prevention Incentives for States grant program. The purpose of this program is to support State-based programs that address the reduction or elimination of pollution across all environmental media: air, land, and water. Grants/cooperative agreements will be awarded under the authority of the Pollution Prevention Act of 1990.

FOR FURTHER INFORMATION CONTACT: Jackie Krieger or Lena Hann in the Office of Pollution Prevention, Mail Code PM–222B, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Phone: (202) 382–2237.

SUPPLEMENTARY INFORMATION: Since its inception in 1989, approximately $11 million has been awarded to 40 State and regional organizations under EPA's multimedia pollution prevention grant program. In March 1989, EPA awarded approximately $4 million to 13 States and one regional organization. At that time, the program was called the Source Reduction and Recycling Technical Assistance (SRRTA) state grant program. In 1990, the program was renamed Pollution Prevention Incentives for State (PPIS) to acknowledge EPA's increased emphasis on multimedia pollution prevention. EPA awarded approximately $7 million to 26 State organizations in May 1990 under the PPIS program. In addition to these multimedia pollution prevention grants, in 1988 EPA awarded $3.2 million to 14 States to initiate hazardous waste minimization training and technical assistance projects under the RCRA Integrated Training and Technical Assistance (RITTA) grant program.

Last November, the Pollution Prevention Act of 1990 was enacted, establishing as national policy that pollution should be prevented or reduced at the source whenever feasible. Section 5 of the Act authorizes EPA to make matching grants to States to promote the use of source reduction techniques by businesses through technical assistance and training in source reduction techniques. In evaluating grant applications, the Act directs EPA to consider whether the proposed State programs will:

(1) Make technical assistance available to businesses seeking information about source reduction opportunities, including funding for experts to provide on-site technical advice and to assist in the development for source reduction plans;

(2) Target assistance to businesses for whom lack of information is an impediment to source reduction; and

(3) Provide training in source reduction techniques.

In addition to this grant making authority, the Pollution Prevention Act establishes a national source reduction clearinghouse centered at EPA, expands EPA's source reduction and recycling data collection authorities, and requires periodic reports to Congress on EPA's progress in implementing the Act.

In February 1991, EPA formally announced its Pollution Prevention Strategy, a comprehensive document designed to provide guidence and direction for incorporating pollution prevention within EPA's existing regulatory and non-regulatory programs. The Strategy affirms EPA's belief that pollution prevention can benefit both the environment and the economy, and outlines EPA's approach to maximize private sector initiatives by working

with industry to achieve prevention goals while at the same time acknowledging a continuing need for a strong regulatory and enforcement program under existing statutes. The Strategy discusses several activities that form the basis for implementing EPA's program, including identifying and overcoming obstacles to prevention, expanding public participation and choice, investing in States, providing outreach and training, and using the existing regulatory framework to provide incentives for prevention. In addition, the Strategy outlines EPA's Industrial Toxics Project which targets specific high-risk chemicals that are reported and tracked in the Toxics Release Inventory. The Agency will seek voluntary commitments from major industrial sources of the contaminants to reduce environmental releases through prevention. EPA's goal is to reduce aggregate environmental releases of these targetd chemical by at least 50% by 1995.

Consistent with the Pollution Prevention Act, the Strategy includes using State grants to foster exchange of information about source reduction techniques, to disseminate such information to businesses, and to provide technical assistance to businesses. With this publication, EPA is announcing the availability of approximately $4 million in grant/cooperative agreement funds for fiscal year 1991. Awards will be made through a competitive process for amounts not to exceed $300,000. Projects may last up to three years. EPA strongly encourages applicants to submit proposals for grants/cooperative agreements under $300,000. Eligible applicants are States and Federally-recognized Indian tribes. For purposes of eligibility for funding under this program, States include the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any agency or instrumentality of a State including State universities. For convenience, the term State in this notice refers to all eligible applicants. Local governments, private universities, private non-profits, private businesses, and individuals are not eligible. In addition, due to the limited funds available for this program this year, those organizations awarded a pollution prevention grant in March 1989 and May 1990 are not eligible for funding again in FY 1991. However, organizations excluded from applying directly are encouraged to work with eligible applicants in developing proposals that include them as participan's in the projects. EPA strongly encourages this type of cooperative arrangement. The Catalogue of Federal Domestic Assistance number assigned to this program is 66.900. Organizations receiving pollution prevention grant funds are required to match Federal funds by at least 50% (in other words, the Federal government will provide ½ of the total allowable cost of the project, the State ½ of the total allowable cost of the project). State contributions may include dollars and/or in-kind goods and services.

In general, the purpose of the Pollution Prevention Incentives for States grant program is to support the establishment and expansion of State-or regional-based pollution prevention programs. EPA specifically seeks to build State pollution prevention capabilities or to test, at the State level, innovative pollution prevention approaches and methodologies. Funds awarded under the Pollution Prevention Incentives for States grant program must be used to support pollution prevention programs that address the transfer of potentially harmful pollutants across all environmental media: air, water, and land. Programs should reflect comprehensive and coordinated pollution prevention planning and implementation efforts State- or region-wide. States might focus on, for example:

- Institutionalizing multimedia pollution prevention as an environmental management priority, establishing prevention goals, developing strategies to meet those goals, and integrating the pollution prevention ethic within both governmental and non-governmental institutions of the state or region;
- Other multimedia pollution prevention activities, including but not limited to: providing direct technical assistance to businesses; collecting and analyzing data to target outreach and technical assistance opportunities; conducting outreach activities; developing measures to determine progress in pollution prevention; and identifying regulatory and non-regulatory barriers and incentives to pollution prevention and developing plans to implement incentives, where possible;
- Initiating demonstration projects that test and support innovative pollution prevention approaches and methodologies.

In addition to those specified in the Act, the criteria against which grant/cooperative agreement applications will be evaluated include the following:

- Goals and objectives are clearly identified and a strategy for meeting them is defined.
- Multimedia opportunities and impacts are identified. A multimedia pollution prevention program addresses the prevention of pollution in and across all environmental media: air, land, and water.
- Significant needs of the State or region are addressed and areas for significant risk reduction are targeted and integrated into overall pollution prevention goals and implementation strategies. Proposals are encouraged to support programs focused on implementation of EPA's Industrial Toxics Project outlined in the Pollution Prevention Strategy (Feb. 1991), and to address the targeted high risk chemicals identified in the Industrial Toxics Project. A more complete summary of EPA's Pollution Prevention Strategy and the Industrial Toxics Project will be provided in each application kit.
- The pollution prevention activities of other programs or organizations in the State or region are integrated and leveraged into the proposed program, as appropriate. Activities funded augment and complement pollution prevention activities already underway in the State.
- Measures of success are identified. There is a reasonable expectation for significant accomplishments in pollution prevention and there is an adequate system planned for measuring progress with environmental and/or programmatic indicators.
- A plan for dissemination of project results is identified. Planned projects should not unnecessarily duplicate existing efforts or, if so, should justify why duplication is necessary and/or desirable.

These criteria will be clarified further in the grant application guidance.

EPA is committed to supporting the development of pollution prevention programs in *all* States. As noted above, EPA has awarded over $14 million to State or regional organizations through its multimedia pollution prevention or hazardous waste minimization grant programs. Seventeen States have not received EPA support; these include: New Hampshire, Vermont, Puerto Rico, the Virgin Islands, Maryland, Alabama, South Carolina, Arkansas, New Mexico, North Dakota, South Dakota, Montana, Wyoming, Utah, Arizona, Nevada, and Hawaii. To achieve its goal of supporting the development of pollution prevention programs in all States, EPA will accord a high priority to competitive applications from these States during the application review process.

To apply for funds, interested organizations must:

(1) Contact Lena Hann or Jackie Krieger at the phone number or address listed above to request an application kit. Application kit will contain EPA application forms, instructions and additional guidance for completing the application, and further information on EPA's pollution prevention program.

(2) Submit a complete application to the Grants Operations Branch, Grants Administration Division (PM–216F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Applications postmarked after June 7, 1991 will not be considered for an award.

EPA's Pollution Prevention Strategy also recognizes that there are substantial opportunities to promote prevention in other sectors, including agriculture and energy/transportation, and commits the Agency to work with other Federal agencies to develop specific strategies for these sectors in the near future. Consistent with this goal, the pollution prevention grants program will target the following sectors with a high potential for risk reduction and for significant gains in pollution prevention:

• *Agriculture*—EPA and the U.S. Department of Agriculture are jointly administering a State grant program focused on sustainable agriculture. The program, Agriculture in Concert with the Environment (ACE), will support initiatives focused on the economic implications of sustainable agriculture, training, demonstrations of promising sustainable farming practices, and research on the effect of agricultural chemicals on wildlife and fish habitat.

• *Energy and Transportation*—With the Department of Energy, EPA is exploring the feasibility of establishing a jointly managed State grant program that will support demonstrations of energy conservation, alternative fuel applications, improved transportation efficiency, and other energy efficiency and renewable energy projects.

• *Municipal Water Pollution Prevention*—In conjunction with EPA's Office of Water, the Office of Pollution Prevention is designing an initiative to foster the development of State pilot programs aimed at harnessing POTWs as a force for achieving pollution prevention.

• *Comparative Risk*—EPA will provide grant funds to States to support State- or regional-based efforts to address highly ranked environmental risk areas through pollution prevention approaches.

The agriculture, energy and transportation, municipal water, and comparative risk grant initiatives will be funded and managed separately from the Pollution Prevention Incentives for States grant program discussed in this notice.

Dated: March 6, 1991.

Daniel P. Beardsley,

Acting Assistant Administrator.

[FR Doc. 91–6475 Filed 3–18–91; 8:45 am]

BILLING CODE 6560–50–M

[FRL–39145]

Gulf of Mexico Program Policy Review Board; Meeting

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of meeting of the Policy Review Board of the Gulf of Mexico Program.

SUMMARY: The Gulf of Mexico Program Policy Review Board will hold a meeting on March 22, 1990 at the Ramada Airport Hotel and Conference Center, 5303 W. Kennedy Blvd., Tampa, Florida.

FOR FURTHER INFORMATION CONTACT: Mr. William Whitson, Gulf of Mexico Program Office, Stennis Space Center, MS, at 601/688–3726 (FTS 494–3726).

SUPPLEMENTARY INFORMATION: This notice, required by the Federal Advisory Committee Act (FACA), officially notifies interested parties of an open meeting of the Policy Review Board. Agenda items include Year of the Gulf planning, proposed new members, Environmental Monitoring & Assessment Program (EMAP), Mobile Bay Demonstration Project, Congressional Sunbelt Caucus (Gulf Task Force), and a briefing on the Habitat Action Plan.

Joseph R. Franzmathes,

Assistant Regional Administrator for Policy and Management.

[FR Doc. 91–6476 Filed 3–18–91; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

March 12, 1991.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452–1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0089.

Title: Application for Land Radio Station License in the Maritime Services (Report and Order, PR Docket No. 90–133).

Form Number: FCC Form 503.

Action: Revision.

Respondents: Individuals or households, state or local governments, non-profit institutions, and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 2,926 responses; 1 hour average burden per response; 2,926 hours total annual burden.

Needs and Uses: The adopted program change to FCC Rules contained in PR Docket No. 90–133 will require public coast station applicants to file a statement of need and a record of current frequency use if they wish to apply for frequencies made available as a result of the World Administrative Radio Conference for the Mobile Services, 1987. Applicants for the newly available High Frequencies (HF) are required to show the schedule of service of each currently licensed or proposed series of frequencies and to show a need for additional frequencies based on a 40% usage of existing frequencies. The technical data is necessary to evaluate a request for station authorization in the Maritime Services or an Alaskan Public Fixed Station.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

FR Doc. 91–6395 Filed 3–18–91; 8:45 am]

BILLING CODE 6712–01–M

Comments Invited on Wyoming Regional Public Safety Plan

March 12, 1991.

The Commission has received the public safety radio communications plan for Wyoming (Region 46).

In accordance with the Commission's Report and Order in General Docket No. 87–112 implementing the Public Safety National Plan, parties are hereby given thirty days from the date of **Federal Register** publication of this public notice

to file comments and fifteen days to reply to any comments filed. (See Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987), at paragraph 54.)

In accordance with the Commission's Memorandum Opinion and Order in General Docket No. 87–112, Region 46 consists of the State of Wyoming. General Docket No. 87–112, 3 FCC Rcd 2113 (1988).)

Comments should be clearly identified as submissions to PR Docket 91–59, Wyoming—Region 46 and commenters should send an original and five copies to the Secretary, Federal Communications Commission, Washington, DC 20554.

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632–6497 or Ray LaForge, Office of Engineering and Technology, (202) 653–8112.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91–6396 Filed 3–18–91; 8:45 am]

BILLING CODE 6712–01–M

Low Power Television and Television Translator Filing Window From April 29, 1991, Through May 3, 1991

AGENCY: Federal Communications Commisison.

ACTION: Notice of filing window.

SUMMARY: This action gives notice of an application filing window for the tendering of applications for new construction permits and for major changes in existing facilities for low power television and television translator stations. The filing window will be subject to certain geographic restrictions on the filing of applications for new low power television and television translator station construction permits. This notice sets forth the geographic restrictions and the filing procedures, including when and where to file and the applicable application form to be used, and information concerning application filing fees.

DATES: April 29, 1991 through May 3, 1991.

FOR FURTHER INFORMATION CONTACT: Keith A. Larson or Molly Fitzgerald, Low Power Television Branch, Mass Media Bureau, (202) 632–3894.

SUPPLEMENTARY INFORMATION:

Notice of Limited Power Television/ Television Translator Filing Window From April 29, 1991 Through May 3, 1991

Released: March 12, 1991.

Commencing April 29, 1991, and continuing to and including May 3, 1991, the Commission will permit the filing of applications for new construction permits and for major changes in existing facilities for low power television and television translator stations. All of these applications must be filed at the Pittsburgh, Pennsylvania locations specified herein.

This filing window is subject to geographic restrictions on the filing of applications for new station construction permits. The Commission will permit only new station applications that specify transmitting antenna site coordinates (geographic latitude and longitude) located more than 161 kilometers (100 miles) from the reference coordinates of the cities listed in Attachment I to this Notice. These restrictions are necessitated by the Commission's proceeding on Advanced Television Systems (ATV) and the large number of low power television and television translator stations already authorized in and around these metropolitan areas.[1]

Applications for new stations that specify sites within the restricted areas, except as provided below, will be considered unacceptable for filing and will be returned to applications without refund of any fee required to be submitted with their applications. The Commission will consider requests for waiver of the geographic restrictions based on terrain shielding. Such waivers will be granted only in cases where applicants demonstrate that their proposed facilities are completely shielded by terrain barriers from the applicable television market areas.[2] The spectrum requirements for ATV systems will weight heavily against the granting of requests for waiver of the restrictions based on reasons other than terrain shielding.

Geographic restrictions will not apply to the filing of applications for major changes in authorized facilities or in construction permit applications now pending at the Commission. Major change applications may be filed in this window for all station locations.[3]

No more than five (5) applications for new low power television or television translator stations may be tendered for filing by any applicant, or by any individual or entity having an interest of one percent (1%) or greater in any applicant(s) filing in the April 29–May 3, 1991, window. This restriction does not apply to major change applications.

All applications must be "complete and sufficient" when tendered for filing, in accordance with § 73.3564 of the Commission's Rules. As noted below, a fee of $425.00 must accompany each application. Further, applicants filing during this window period must use the February 1988 edition of FCC Form 346.[4] See 53 FR 15225 (April 28, 1988). Applicants required to pay and submit a fee with their applications must complete and attach to their original applications the FEE PROCESSING FORM (FCC Form 155). Applications filed on obsolete editions of Form 346 or,

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[1] In 1987, the Commission imposed a freeze on full-service television applications and allotments in the vicinity of these urban areas. 52 FR 28346 (July 29, 1987). This freeze did not apply to applications for low power television and television translator stations. The Commission then reasoned that, because of their secondary status, continued authorizations of these stations would not restrict its spectrum planning options in the ATV proceeding. See also First Report and Order in the ATV proceeding, MM Docket No. 87–268, 5 FCC Rcd 5627 (1990). Since then, however, numerous low power TV and TV translator stations have been authorized in and around these urban areas; areas for which available broadcast spectrum for future ATV systems is most limited. It is possible that some of these secondary stations may be displaced in channel if and when the spectrum is needed by full-service television stations for ATV use. The restrictions against additional new stations in and around these urban areas is intended to minimize the extent to which low power TV and TV translator service to the public may be disrupted. In this regard, low power television and television translator stations continue to have secondary status with regard to the introduction of ATV service. The geographic restrictions herein are comparable to those imposed in the 1987 television freeze; taking into account the typical differences in levels of full-service television and low power television station operating power.

[2] Through this extension of the Commission's policy on terrain shielding (See Policy Statement, 3 FCC Rcd 2664, reconsideration granted in part 3 FCC Rcd 7105 (1988)), opportunities will not be foreclosed for additional low power television and television translator service in locales that are completely insulated from the applicable urban TV markets due to substantial terrain obstructions; for example, large mountain ranges in the Western States. Requests for terrain-related waivers must be supported by detailed profiles of the terrain in all pertinent directions toward the applicable urban market areas. Profiles should be prepared in accordance with the guidelines given in the Commission's terrain Policy Statement. In the context of geographic filing restrictions, the scope of terrain shielding waivers will not be limited to those applications that are not mutually exclusive with other applications. Prospective applicants are cautioned that such waivers will not be granted in cases where proposed facilities are only partially shielded from the listed market areas or in cases of marginal terrain shielding; for example, due to rolling hills.

[3] The need for major changes in authorized facilities often is compelled by unforseen and unavoidable circumstances, such as the loss or unsuitability of a station's antenna site. Commission authorization of such changes may be vital to preserving an existing low power television or television translator service. Allowance for major changes also will facilitate the construction and operation of unbuilt and planned stations for which considerable resources may have been expended. Fairness dictates that station projects now underway be given the opportunity to be completed.

[4] Form 346 is in the process of being revised and will be submitted for OMB approval. Until an undated form is available, the February 1988 edition of FCC Form 346 remains in use.

where applicable, omitting the Form 155 will be returned as defective and unacceptable for filing. FCC Forms 346 and 155 can be obtained by calling the FCC's Forms Distribution Center at Telephone No. (202) 632–FORM and leaving your request on the answering machine provided for this purpose.

In this window application filing process, the Commission will utilize the facilities of a Treasury Department lockbox bank. Window application filings can be made, either by mail or by person, at the following locations only:

If mailed—Federal Communications Commission, Low Power Television Window Filing, P.O. Box 358924, Pittsburgh, PA 15251–5924.

If hand-delivered—Federal Communications Commission, Low Power Television Window Filing, c/o Mellon Bank, Three Mellon Bank Center, 525 William Penn Way, 27th Floor, room 153–2713, Pittsburgh, PA 15259–0001, Attn: Wholesale Lockbox Shift Supervisor.

Hand-carried or couriered applications can be delivered daily at the Three Mellon Bank Center location during normal business hours (8:30 a.m. to 5 p.m.). Detailed instructions to get to this location are included in this Public Notice as Attachment II. Submissions tendered after close of business (5 p.m.) on Friday, May 3, 1991, will not be accepted. Mailed applications must be actually received no later than May 3. Window application filings will not be accepted at the offices of the Federal Communications Commission in Washington, DC.

An original and two copies of the application and all required exhibits must be filed. To facilitate the initial processing of these applications, all applicants are requested to enclose in a single envelope the original and duplicate copies of the application, with each duplicate copy clearly denoted by the applicant. Where more than one new station or major change application is being filed, separate envelopes enclosing the individual application (*i.e.*, an original and two copies) can be mailed in a single package. Receipts will not be provided by the lockbox bank facility. However, for mailed window application filings, a "return copy" of the application can be furnished *provided* the applicant clearly identifies the "return copy" and attaches to it a stamped, self-addressed envelope. For hand-carried or couriered applications delivered to the Three Mellon Bank Center location, bank personnel, if requested in person, will care stamp as received a proffered copy of the application and return it to the requester. Only one piece of paper per individual application (*i.e.*, an original and two copies) will be stamped for receipt purposes.

Generally, applicants seeking to construct a new low power television or television translator station or to make a major change in the facilities of an existing low power television or television translator station are required to pay and submit a fee with the filing of the application. A separate fee payment of $425.00, attached (but not stapled) to the FEE PROCESSING FORM (FCC Form 155) of each original application, must be submitted for each new station or major change application filed during this window. Applicants required to submit the FEE PROCESSING FORM are instructed to enter "MOL" as the Fee Type Code in response to Column (A) of Section I of that form. The Fee Multiple for applicants in this low power television window is "0001" and that number should be entered in Column (B), Section I, FCC Form 155. A single fee payment for multiple applications will not be accepted.

Payment of the required fee can be made by check, bank draft or money order payable to the Federal Communications Commission, denominated in U.S. dollars, and drawn upon a U.S. financial institution. No postdated, altered or third-party checks will be accepted. Do no send cash.

Applications submitted without a required FEE PROCESSING FORM, with insufficient or inappropriate payments, or without any payments will be dismissed and returned to the applicant without processing. See Section 1.1107 of the Commission's Rules. Following the fee review process, applications that are found to be patently defective, not "complete and sufficient," or filed on an obsolete edition of the FCC Form 346 will be rejected and returned to the applicant.

Governmental entities are exempt from the $425.00 fee. As defined by the Commission's rules, governmental entities include "any possession, state, city, county, town, village, municipal corporation or similar political organization or subpart thereof controlled by publicly elected and/or duly appointed public officials exercising sovereign direction and control over their respective communities or programs." Also exempted from this fee are noncommercial educational FM and full-service television broadcast station licenses seeking to make major changes in the facilities of their existing low power television or television translator stations or to construct new low power television or television translator stations, provided those stations operate or will be operated on a noncommercial educational basis. A licensee or permittee of a low power television or television translator station, which is filing a major change application and which earlier obtained either a fee refund because of a NTIA facilities grant for that station or a fee waiver because of demonstrated compliance with the eligibility and service requirements of Section 73.621 of the Commission's Rules, is similarly exempt from payment of the $425.00 fee. See Section 1.1112 of the Commission's Rules. To avail itself of any fee exemption an applicant must indicate its eligibility by checking the most appropriate box on page 1 of FCC Form 346 (February 1988 edition).

For further information concerning the filing window, contact Keith A. Larson or Molly Fitzgerald, Low Power Television Branch, Mass Media Bureau at Telephone No. (202) 632–3894.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

ATTACHMENT I.—REFERENCE COORDINATES FOR AREAS NOT ELIGIBLE FOR NEW STATION APPLICATIONS

[Source of Coordinates: 76.53 of FCC Rules]

	Latitude	Longitude
	(Degrees-Minutes-Seconds)	
New York, NY	40–45–06	73–59–39
Los Angeles, CA	34–03–15	118–14–28
Chicago, IL	41–52–28	87–38–22
Philadelphia, PA	39–56–58	75–09–21
San Francisco, CA	37–46–39	122–24–40
Boston, MA	42–21–24	71–03–25
Detroit, MI	42–19–48	83–02–57
Dallas, TX [1]	32–47–09	96–47–37
Ft. Worth, TX [1]	32–44–55	97–19–44
Washington, DC	38–53–51	77–00–33
Houston, TX	29–45–26	95–21–37
Cleveland, OH	41–29–51	81–41–50
Pittsburgh, PA	40–26–19	80–00–00
Seattle, WA [1]	47–36–32	122–20–12
Tacoma, WA [1]	47–14–59	122–26–15
Miami, FL	25–46–37	80–11–32
Atlanta, GA	33–45–10	84–23–37
Minneapolis, MN [1]	44–58–57	93–15–43
St. Paul, MN [1]	44–56–50	93–05–11
Tampa, FL	27–56–58	82–27–26
St. Petersburg, FL [1]	27–46–18	82–38–16
Saint Louis, MO	38–37–45	90–12–22
Denver, CO	39–44–58	104–59–22
Sacramento, CA [1]	38–34–57	121–29–41
Stockton, CA [1]	37–57–30	121–17–16
Indianapolis, IN	39–46–07	86–09–46
Hartford, CT [1]	41–46–12	72–40–49
New Haven, CT [1]	41–18–25	72–55–30
Portland, OR	45–31–06	122–40–35
Milwaukee, WI	43–02–19	87–54–15
Cincinnati, OH	39–06–07	84–30–35
Kansas City, MO	39–04–56	94–35–20
Charlotte, NC	35–13–44	80–50–45
Nashville, TN	36–09–33	86–46–55
Columbus, OH	39–57–47	83–00–17
New Orleans, LA	29–56–53	90–04–10

[1] City is part of hyphenated television market.

Attachment II

Directions to Three Mellon Bank Center

From Greater Pittsburgh International Airport and Interstate 79

Proceed east on Parkway (Interstate 279) towards downtown Pittsburgh. Go through the Fort Pitt tunnels and across the Fort Pitt bridge to Liberty Avenue.

From Library Avenue, turn right onto the Boulevard of the Allies. Travel approximately 3–4 blocks to Smithfield Street. Turn left onto Smithfield and proceed approximately 5 blocks to Oliver Avenue. Turn right onto Oliver. Proceed 1 block. Turn right onto William Penn Way. Three Mellow Bank Center is on the right side of the street and occupies the first block. Enter the building at 525 William Penn Way. This address is a specific office location where applications will be received.

From Pennsylvania Turnpike

Take Exit 6 (Monroeville) to Parkway (Interstate 376). Go west on Parkway to the Grant Street Exit (Exit 3).

Proceed on Grant Street to Fifth Avenue (approximately 4 blocks). Turn left onto Fifth Avenue and travel 2 blocks to Smithfield Street. Turn right onto Smithfield Street and travel 1 block to Oliver Avenue. Turn right onto Oliver Avenue. Proceed 1 block. Turn right onto William Penn Way. Three Mellon Bank Center is on the right side of the street and occupies the first block. Enter the building at 525 William Penn Way. This address is a specific office location where applications will be received.

[FR Doc. 91–6394 Filed 3–18–91; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Georgia Ports Authority/A/S Ivarans Rederi et al; 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, 1100 L Street, NW., room 10220. 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: 224–200103–005.

Title: Georgia Ports Authority/A/S Ivarans Rederi Marine Terminal Agreement.

Parties: Georgia Ports Authority, A/S Ivarans Rederi.

Synopsis: The Agreement, filed March 8, 1991, modifies the rate schedule of the basic agreement by revising the consolidated rates for loaded and empty container movement and drayage charges, effective March 8, 1991. These rates are suject to change on October 1 of each succeeding year in an amount equal to the percentage increase for similar type services as listed in the U.S. Consumer Price Index, but not more than 6% in any one year.

Dated: March 13, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–6421 Filed 3–18–91; 8:45 am]

BILLING CODE 6730–01–M

City of Long Beach/Crescent Terminals, Inc., et al., Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) 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, 1100 L Street, NW., room 10220. 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.: 224–003877–002.

Title: City of Long Beach/Crescent Terminals, Inc. Terminal Agreement.

Parties: City of Long Beach, Crescent Terminals, Inc.

Synopsis: The Agreement amends the parties' basic agreement to provide for: (1) A new compensation formula for that portion of the term ending June 30, 1995; (2) the description of the assigned premises; (3) the extension of the term of the agreement; (4) a credit to Crescent Terminals, Inc. for capital improvements made by it; and (5) the construction of a transit shed on the premises.

Agreement No.: 224–200484.

Title: Southern Pacific Transportation Company/Mitsui O.S.K. Lines Ltd. Terminal Agreement.

Parties: Southern Pacific Transportation Company, Mitsui O.S.K. Lines.

Synopsis: The Agreement filed March 7, 1991, provides for a 10-month initial-term lease of property at 1780 Middle Harbor Road in the City of Oakland, California to be used for cargo handling and container freight station operations.

Agreement No.: 224–200483.

Title: Jacksonville Port Authority/Companhia Maritima, Nacional Terminal Agreement.

Parties: Jacksonville Port Authority (JPA), Companhia Maritima Nacional (CMN).

Synopsis: The Agreement provides for: (1) CMN to guarantee 20 vessel calls per year at the Port of Jacksonville; and (2) JPA to grant CMN selected tariff discounts on wharfage and container/chassis receiving and delivery.

Dated: March 13, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–6422 Filed 3–18–91; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Royal Caribbean Cruises Ltd. and Nordic Empress Shipping Inc., 1050 Caribbean Way, Miami, FL 33132.

Vessel: Nordic Empress.

Dated: March 13, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–6505 Filed 3–18–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Caisse Nationale de Credit Agricole S.A.; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a) or (f) of the Board's Regulation Y (12 CFR 225.23(a) 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. 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 8, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Caisse Nationale de Credit Agricole S.A., Paris, France; to engage *de novo* through its subsidiary, Credit Agricole Futures, Inc., in (1) Acting as a futures commission merchant for nonaffiliated persons in the execution and clearance on commodity exhcanges of futures and options on futures contracts for financial instruments approved in prior Board orders and to the extent allowed by applicable law; (2) providing investment advice, including counsel, publications, written analysis and reports with respect to the purchase and sale of futures contracts and options on futures contracts for the instruments approved for such activitiy in Board orders and to the extent permissible by applicable law; (3) and engaging in the following incidental activities in connection with the proposed activities: providing client account information and reconciliation of trades, providing communication linkage between the client and the exchange floor, and such other incidental activities that are necessary to perform the permissible activities. These activities are permissible pursuant to prior Board orders and § 225.21(a)(2) of the Board's Regulation Y. *Saban S.A.*, 73 Federal Reserve Bulletin 224 (1987); *Chase Manhattan Corp.*, 72 Federal Reserve Bulletin 203 (1986); *Manufacturers Hanover Corp.*, 72 Federal Reserve Bulletin 144 (1986); *J.P. Morgan Co., Inc.*, 71 Federal Reserve Bulletin 251 (1985); *Bankers Trust*, 71 Federal Reserve Bulletin 110 (1985); and *Northern Trust Corp.*, 74 Federal Reserve Bulletin (1980).

Board of Governors of the Federal Reserve System, March 13, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-6431 Filed 3-18-91; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[File No. 912 3008]

Canandaigua Wine Company, Inc.; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the maker of Cisco, a flavored wine product, from representing that Cisco is a low-alcohol product, from implying that a bottle of Cisco constitutes a single serving, and from encouraging retailers to display Cisco next to low-alcohol products like wine coolers. In addition, the consent agreement would require new packaging for the product.

DATES: Comments must be received on or before May 20, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Judith Wilkenfeld, FTC/S–4002, Washington, DC 20580. (202) 326–3150.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Before Federal Trade Commission

In Matter of Canandaigua Wine Co., Inc., a corporation; Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Canandaigua Wine Company, Inc., ("CWC"), a corporation, hereinafter sometimes referred to as proposed respondent, and it now appearing that proposed respondent is willing to enter into an agreement to cease and desist from the use of certain acts and practices being investigated.

It Is Hereby Agreed by and between counsel for the Federal Trade Commission and CWC, by its duly authorized officer and its attorney, that:

1. Proposed respondent CWC is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its offices and principal place of business located at 116 Buffalo Street, Canandaigua, New York 11424.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps; and

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All rights under the Equal Access to Justice Act.

4. This Agreement shall not become part of the public record in the proceeding unless and until it is accepted by the Commission. If this

agreement is accepted by the Commission, it, together with the draft of the complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of the agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of the complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and with the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to-order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

ORDER

Part I

(A) *It Is Ordered* that respondent, Canandaigua Wine Company, its successors and assigns, and its officers, representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, but not including any wholesaler or retailer, in connection with the advertising, offering for sale, sale, or distribution in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, of Cisco brand wine or any other flavored wine product containing more than 14% but not more than 24% alcohol by volume, do forthwith cease an desist from:

(1) Representing, directly or by implication, that any such product is a low-alcohol product that contains less than 7% alcohol by volume;

(2) Representing, directly or by implication, that any package of any such product contains only a single serving unless the contents of said container are 100 milliliters or less; and,

(3) Requesting or otherwise encouraging any distributor or retailer to display any such product with or next to any alcoholic beverage that contains less than 7% alcohol by volume.

(B) *Provided That:*

(1) The packaging for the respective products depicted in exhibit A attached hereto, in any size or flavor, or packaging that does not differ therefrom in any material respect, shall not constitute a violation of Subparagraphs (A)(1) or (A)(2);

(2) The shipment prior to July 1, 1991, to any wholesaler of Cisco in the packaging depicted in exhibit B in any size or flavor, or packaging that does not differ therefrom in any material respect, shall not constitute a violation of Subparagraphs (A)(1) or (A)(2). Shipment to any wholesaler of any such product in the packaging depicted in exhibit B, or in a substantially similar bottle with the same or a substantially similar label configuration, after July 1, 1991, shall constitute a violation of either of those subparagraphs except to the extent that, and only as long as, shipping Cisco repackaged as depicted in exhibit A1 to any wholesaler from the Cicsco bottling facility normally supplying it with Cisco is prevented solely by an act or acts outside respondent's control, such as, but not limited to, failure of the glass manufacturer(s) to deliver the bottles, failure of the bottler to bottle the product, failure to receive changeover parts from bottling equipment producers, or failure of the label provider to provide the labels; and, only if and so long as respondent has acted in good faith and has used all reasonable efforts to effectuate shipping to wholesalers from said bottling plants, the product repackaged as depicted in exhibit A1 at the earliest possible date after July 1, 1991. *Provided,* that in no event shall the shipping of Cisco to any wholesaler in the packaging depicted in exhibit B or in a substantially similar bottle with the same or substantially similar label configuration continue for more than 90 days after July 1, 1991; and,

(3) Advertising for the products depicted in exhibit A, other than Cisco, created and first disseminated before the date of signing of this agreement, shall not constitute a violation of Subparagraphs (A)(1) or (A)(2).

(C) *Provided further that* no representation prohibited by Subparagraphs (A)(1) or (2) shall arise in whole or part from any label, bottle or other container to the extent such label, bottle or other container has been formally approved prior to its use under section 105(e) of the Federal Alcohol Administration Act, 27 U.S.C. § 205(e) and the regulations thereunder.

Part II

It is further ordered that respondent, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale or distribution of any unflavored wine product containing more than 14% but not more than 24% alcohol by volume, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall cease and desist from distributing any product in the bottle with the label configuration depicted on exhibit B hereto, or in any substantially similar bottle with that or a substantially similar label configuration.

Part III

It is further ordered that respondent shall, at any time prior to twenty (20) days following the date this order becomes final, send by first class mail to all Cisco distributors and to all retailers of Cisco whose names and addresses shall have been requested from and to the extent they have been furnished by such distributors, a letter:

(A) Requesting the removal from retail display and disposal or return to CWC of all existing Cisco point-of-sale

advertising and promotional materials depicting any human form; and

(B) Requesting that Cisco not be displayed for sale with or next to any alcoholic beverage containing less than 7% alcohol by volume, on the shelf, in the cooler or coldbox, or otherwise; and, that Cisco instead be displayed with other fortified wines, if these are sold.

The distributor letter shall be sent to all active Cisco wholesalers as of the date of mailing. The retailer letter shall be sent within 30 days of receipt of retailers' names and addresses from their wholesalers.

Part IV

It is further ordered that respondent shall distribute a copy of this Order to each of its operating divisions and to each of its officers, directors, agents, or employees, but not including wholesalers or retailers, having sales, advertising, or policy responsibilities with respect to the subject matter of this Order, and secure from each such person a signed statement acknowledging receipt of the Order.

Part V

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of a subsidiary, or any other change in the corporation that may affect compliance obligations under this Order.

Part VI

It is further ordered that respondent shall, within sixty (60) days after the date of service of this Order, and at such other times as the Commission may require, file with the Commission a written report setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondents Canandaigua Wine Company, a Delaware corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

The Commission's complaint in this matter charges Canandaigua with making misleading representations as to the nature and alcoholic content of Cisco, a flavored wine product with an alcohol content of 20% by volume. Paragraph Four of the complaint charges that the packaging for Cisco resembles that of a wine cooler or other low-alcohol, single-serving beverage. Paragraph Five of the complaint charges that Canandaigua's marketing documents suggest that Cisco should be sold alongside other beverages in cooler-shaped bottles. Paragraph Six of the complaint charges that advertising for Cisco shows models about to consume a large glass or full 12.7-ounce bottle of Cisco. The complaint alleges that through the packaging, marketing, and advertising described in Paragraphs Four, Five, and Six, Canandaigua represented that Cisco was a wine cooler or other low-alcohol, single-serving beverage. The complaint further alleges that through these practices, respondent has represented that Cisco may be consumed in quantities similar to wine coolers or other low-alcohol, single-serving beverages without increased risk of injury. In fact, the complaint alleges, these representations are misleading because Cisco is neither a wine cooler nor a low-alcohol, single-serving beverage, but rather, a 20% alcohol product that is three to five times a as potent as those beverages. Moreover, consumption of Cisco as if it were a wine cooler or other low-alcohol beverage has resulted in injury.

The consent order contains provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts in the future.

Part I(A) of the proposed order requires the respondent, in connection with the advertising, sale, or distribution of Cisco or any other flavored wine product containing more than 14% but not more than 24% alcohol by volume, to cease (1) misrepresenting the alcoholic content of any such product, (2) misrepresenting that the package of any such product is a single serving, and (3) encouraging its distributors and retailers to display any such product adjacent to low-alcohol beverages. Part I(B) provides that a proposed new package for Cisco contained in order exhibit A is acceptable under part I, and that shipment to wholesalers of Cisco in its current package after July 1, 1991, is permitted only if events beyond Canandaigua's control delay repackaging. Part I(B)(2), however, provides that in no event may shipping of Cisco to any wholesaler in its current package or any substantially similar package continue for more than 90 days after July 1, 1991. Part I(B)(1) and (3) also provide that the current packaging and advertising for two other Cisco products are acceptable under part I(A). Finally, part I(C) provides that no violation of part I(A) will arise for any package, label, or bottle to the extent such package, label, or bottle has been formally approved by the Bureau of Alcohol, Tobacco, and Firearms.

Part II of the proposed order prohibits the respondent from distributing any unflavored wine product containing in excess of 14% but no more than 24% alcohol by volume (*i.e.*, unflavored fortified wine) in the current Cisco bottle or in any substantially similar bottle. Part III of the order requires the respondent to send, at any time prior to twenty (20) days following finality of the order, a letter to all distributors and retailers of Cisco requesting (A) the removal and return or destruction of all point-of-sale advertising and promotional materials from Cisco depicting human form, and (B) that Cisco not be displayed adjacent to any beverage containing less than 7% alcohol by volume, and that it instead be displayed with other fortified wines, if carried.

Parts IV, V, and VI of the order are standard order provisions requiring respondents to distribute copies of the order to certain company officials and employees, to notify the Commission of any changes in corporate structure that might affect compliance with the order, and to file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 91-6466 Filed 3-18-91; 8:45 am]

BILLING CODE 6750-01-M

[Dkts. C-3324 and C-3325]

Lewis Galoob Toys, Inc.; and Towne, Silverstein, Rotter, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Orders.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair

methods of competition, the consent orders prohibit, among other things, a San Francisco, CA based toy company ("Galoob") and a New York City based advertiser ("TSR") from making deceptive advertising claims for toys. In addition, Galoob is prohibited from making misrepresentations, as to whether its toys must be purchased separately or the toys' assembly requirements, in the labelling, packaging, sale or distribution, as well as the advertising, of its toys.

DATES: Complaints and Orders issued February 27, 1991.[1]

FOR FURTHER INFORMATION CONTACT: Janet Evans, FTC/S–4002, Washington, DC 20580. (202) 326–3088.

SUPPLEMENTARY INFORMATION: On Monday, December 17, 1990, there was published in the **Federal Register**, 55 FR 51770, two proposed consent agreements with analysis In the Matter of Lewis Galoob Toys, Inc. and Towne, Silverstein, Rotter, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaints in the form contemplated by the agreements, made its jurisdictional findings and entered its orders to cease and desist, as set forth in the proposed consent agreements, in disposition of the proceedings.

Authority: (Sec. 6, 38 Stat. 721; U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 91–6465 Filed 3–18–91; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Tribal Management Program for American Indians/Alaska Natives; Grants Application Announcement

AGENCY: Indian Health Service, HHS.

ACTION: Notice of competitive grant applications for tribal management grants or American Indians/Alaska Natives, with comment.

SUMMARY: The Indian Health Service (IHS) announces that competitive grant applications are now being accepted for Tribal Management Grants for American Indians/Alaska Natives. These grants are established under the authority of section 103(b)(2) of the Indian self-Determination and Education Assistance Act. Public Law 93–638, as amended by Public Law 100–472, 25 U.S.C. 450h(b)(2). There will be only one funding cycle during fiscal year (FY) 1991. This program is described at 93.228 in the Catalog of Federal Domestic Assistance (previously at 13.228). These grants will be awarded and administered in accordance with this announcement; Department of Health and Human Services regulations governing Public Law 93–638 grants at 42 CFR 36.101 *et seq.* and 45 CFR part 92, Department of Health and Human Services, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, or 45 CFR part 74, Administration of Grants to Non-profit recipients; the Public Health Service Grant Policy Statement; and applicable Office of Management and Budget Circulars. Executive Order 12372 requiring intergovernmental review is not applicable to this program.

DATES: A. In accordance with Office of Management and Budget Circular A–102, Grants and Cooperative Agreements for State and Local Governments, interested parties are invited to comment on the proposed funding priorities. This comment period is 30 days; written comments received by April 18, 1991, will be considered before the final funding priorities are established. No funds will be allocated or selections made until a final notice is published stating what funding priorities will be applied. Written comments on the proposed funding priorities should be addressed to: Bea Bowman, Director, Division of Community Services, Indian Health Service, Parklawn Building, room 6A–05, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Office of Tribal Activities, Indian Health Service, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m., beginning approximately 2 weeks after publication of the notice.

B. *Application receipt date.*—An original and two (2) copies of the completed grant application must be submitted with all required documentation to the Grants Management Branch, Division of Acquisition and Grants Operations, Twinbrook Building, suite 605, 12300 Twinbrook Parkway, Rockville, Maryland 20852, by close of business April 26, 1991.

Applications shall be considered as meeting the deadline if they are either: (1) Received on or before the deadline with hand carried applications received by close of business 5 p.m. or (2) postmarked on or before the deadline and received in time to be reviewed along with all other timely applications. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant and will not be considered for funding.

Additional Dates

1. *Application review:* June 24, 1991.
2. *Applicants notified of results:* August 1, 1991 (approved, recommended for approval but not funded, or disapproved).
3. *Anticipated start date:* September 1, 1991.

FOR FURTHER INFORMATION CONTACT: For assistance on programmatic information, contact Ms. Bea Bowman, Division of Community Services, Indian Health Service, Parklawn Building, room 6A–05, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6840. For grants information, contact Mrs. Kay Carpentier, Grants Management Branch, Indian Health Service, Twinbrook Building, suite 605, 12300 Twinbrook Parkway, Rockville, Maryland 20852. (301) 443–5204. (The telephone numbers are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This announcement provides information on the general program purpose, eligibility, programmatic priorities, project types, fund availability, required affiliation, period of support and application procedures for FY 1991.

A. General Program Purpose

To improve the management capacity of a tribal organization to enter into a contract under Public Law 93–638. Tribal management grants assist tribal organizations to assume operation of all or part of an existing IHS direct operation health care program by enabling them to develop and maintain their management capabilities. Tribal Management grants are also available for tribal organizations under the authority of Public Law 93–638 section 103(e) for obtaining technical assistance from providers designated by the tribal organization, including tribal

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

organizations that operate mature ocntracts, for the purposes of (1) Program planning and evaluation, including the development of any management systems necessary for contract management, and the development of cost allocation plans for indirect cost rates, and (2) the planning, designing, monitoring, and evaluation of Federal health programs serving the tribe, including Federal administrative functions. Tribal management grants may not be used to support operational programs or to supplant existing public and private resources. The grants may, however, be used as matching shares for other Federal grant programs that develop tribal capabilities to contract for the administration and operation of health programs.

B. Eligible Applicants

Any federally recognized Indian tribe or Indian tribal organization is eligible to apply for a grant. Applicants include tribal organizations that operate mature contracts who are designated by a tribe or tribes to provide technical assistance and/or training.

C. Program Priorities

The IHS proposes the following funding priorities for awarding Tribal Management grants. Only one tribal managment grant wil be awarded and funded to a tribe or tribal organization per funding cycle.

Priority I

An Indian tribe that has received Federal recognition (new, restored, unterminated, funded or unfunded) within the past three (3) years and is in the process of establishing health care services. (Verification of documents is required, i.e.: Letter of Acknowledgment, **Federal Register** notice. See Section I, Required Affiliation).

Priority II

An Indian tribe or Indian tribal organization stating an interest in contracting IHS health programs for the first time. The feasibility study will address requirements for assumptions of currently operated IHS health programs.

Priority III

An Indian tribe or Indian tribal organization planning to develop/update their health plan, develop tribal health management structure, human resource development, and evaluation studies to expand their operation of health programs.

Priority IV

An Indian tribe or Indian tribal organization currently operating all health programs previously provided by IHS, which plans to update its health plan, enhance its tribal health management structure, facilitate human resources development, and conduct evaluation studies.

D. Project Types

The tribal management grant program consists of five (5) types of projects: (1) Feasibility, (2) planning, (3) development of tribal health management structure, (4) human resources development, and (5) evaluation.

Projects related to water, sanitation, waste management, and long term care will not be considered for funding. Projects for training and technical assistance related to Indian Self-Determination and Education Assistance Act, Public Law 93–638, as amended by Public Law 100–472, will not be considered for funding.

Project Types Descriptions

1. *Feasiblity study*—A study of a specific IHS program or segment of a program to determine if tribal management of the program is possible. This study indicates necessary plans, approach, training and resources required to assume tribal management of the program. The study includes four (4) major components:

—Health needs and health care services assessments, which identify existing health care services and delivery system, program divisibility issues, health status indicators, unmet needs, volume projections, and demand analysis.
—Management analysis of existing management structure, proposed management structure, implementation plans and requirements; and personnel staffing requirements and recruitment barriers.
—Financial analysis of historical trends data, financial projections and new resource requirements for program and management costs, and analysis of potential revenues from Federal/Non-Federal sources.
—Decision stage incorporates findings; conclusions and recommendations; and the presentation of the study and recommendations to the governing body for a tribal determination as to whether tribal assumption of program(s) is desirable or warranted.

2. *Planning*—A collection of data to establish goals, policies, methods of action or procedures for overall tribal health activities. Health plans specify the antiticipated phasing of tribal assumption and operation of specific IHS programs. A health plan includes the following components:

—A plan of action including goals and benefits to be obtained.
—The objectives of tribal assumption and operation of selected IHS programs.
—Strategies including methods, policies, and procedures for operation of tribal health programs.
—Detailed plans for each major program or functional area to correspond with the identified goals, benefits, objectives and strategies.

3. *Development of Tribal Health Managment Structure*—The development, requisition or enhancement of management systems (including skills and knowledge to operate the management system) as defined through a feasibility study or health plan. Management studies shall address the following:

—Determine and outline the specific purpose/mission of the program to design a management structure which provides for optimum performance.
—Improve worker productivity and achievement. This includes the organization of work as it relates to the performance of the program as well as the responsibility, leadership and role of management.
—Determine social impact of tribal operation on the service population and surrounding community.
—Develops current, short range and long range strategies for tribal operation of programs.

4. *Human resources development*—The development of a particular skill or group of skills required for tribal staff to manage or operate an IHS program. The human resources development training plan shall include:

—Assessment of current staff to identify qualifications (experience and education) and special skills.
—Determination of current human resources program requirements in order to provide services.
—Project short range and long range program training requirements based on training needs.

5. *Evaluation studies*—An objective and systematic assessment to:

—Determine the value or extent of the effects of previous studies as they relate to the goals and objectives, policies and procedures, or programs on target groups.
—Determine effectiveness and efficiency of tribal program operation such as direct services, financial management, personnel, data collection and analysis, and third

party payments, which will assist tribal efforts to improve health care delivery systems.

E. Fund Availability

In FY 1991, it is anticipated that approximately $4,135,000 will be available for new tribal management grants. Although it is expected that project funding needs will vary depending on the scope of work and the review process recommendations, it is anticipated that 75 awards will be issued averaging $55,000 each. Grant funding levels include both direct and indirect costs. Only one project grant will be awarded per tribe or tribal organization.

F. Period of Support

1. The anticipated start date for approved projects is August 1, 1991. Feasibility studies and planning are limited to a one-year funding award; development of tribal health management structure, human resources development, and evaluation studies may be multi-year projects depending on the scope of work. Each proposal shall address only one (1) project type to be accomplished.

2. *Multi-year projects*—Determination of the length of multi-year projects will be based on the scope of work. Projects that are based on previous studies or activities should provide a description of accomplishments to date and establish how this proposed project will accomplish the projected goal. A plan addressing funding requirements for each year must be submitted with the application. The second and third year continuations will be based on the following criteria: (1) Satisfactory progress; (2) availability of funds; and (3) continuation is deemed to be in the best interest of the Government.

G. Application Process

An IHS Grant Application Kit, including required form PHS 5161–1 (rev. 3/89), may be obtained from the Grants Management Branch, Division of Acquisition and Grants Operations, Twinbrook Building, Suite 100, 12300 Twinbrook Parkway, Rockville, Maryland 20852. Telephone (301) 443–5204. Information being collected on form PHS 5161–1 as well as the narrative has been approved under OMB No. 0937–0169.

H. Application

These instructions are to be used in preparing the narrative and are the instructions on pages 15–18 of the PHS–5161–1. Completed applications must include:

1. Abstract.
2. Table of Contents.
3. Narrative (p.1).
   a. Introduction.
   b. Need for assistance.
   c. Objective(s), Result, and Benefit expected.
   d. Approach.
4. Key Personnel.
5. Adequacy of Management Controls.

Applications must be complete and contain all information needed for review. Material will not be accepted after the receipt date for inclusion in an application. The application shall consist of no more than 37 pages (including Abstract and Table of Contents). Pages must be numbered. Applications exceeding the 35 (excluding Abstract and Table of Contents) pages will not be accepted for review.

1. *Abstract*—An abstract may not exceed one typewritten page. The abstract should clearly present the grant application in summary form, from a "who-what-when-where-how-cost" point of view so that reviewers see how the multiple parts of the application fit together to form a coherent whole.

2. *Table of contents*—A one page typewritten table of content must be included.

3. *Narrative*—This section of the application should be written in a manner that is self-explanatory to outside reviewers who are unfamiliar with prior related activities of the applicant. It should be succinct and well organized, should not exceed 25 single spaced pages, and include the following:

a. Introduction

—Identify funding priority with justification of why the priority was selected.
—Identify the type of project.
—State the type and date of resolution (specific or blanket) submitted with the application. (Refer to Section I, Required Affiliation).

b. Need for Assistance

—Explain the reason for the project.
—Provide a precise location of the project or area to be served by the proposed project including a map.
—Describe the overall and specific need for assistance by explaining the current situation or demand and unmet requirements (i.e.: resources, staffing, equipment, staff, training, etc.).
—Identify relevant physical, economical, social, financial, institutional or organizational problems requiring solutions.
—Include relevant statistical and/or historical data.
—Identify the data to be collected and maintained for the project.
—If this project is based on a previous and/or current tribal management grant, state the accomplishments of the other project on this application.

c. Objective(s), Result and Benefit Expected

—State in measurable terms, realistic principal and subordinate objectives of the project.
—Define the population, number of participants, and personnel to benefit from the project.
—Identify the expected results, benefits and outcome or product to be derived from this project.
—Describe the relationship between this project and other work planned, anticipated, or underway which are supported by other Federal funds.

d. Approach

—Outline the plan of action, and program activities with activities grouped under the objective to be achieved. Identify the staffing and the position descriptions of individuals responsible for each activity.
—Provide a workplan including a start and completion calendar of activities.
—Discuss data collection to include how it was obtained, analyzed, and maintained by the project.
—Describe any unusual features of the project, if any, which may affect the project (i.e.: design, uniqueness, reduction in cost or time, or special, social and community involvement).
—If consultant or contractor is to be used, state specifically the scope of work to be performed.
—Identify the accomplishments (deliverables/outcomes) to be achieved.
—Describe the evaluation component of the project to determine the achievement of the project accomplishments.
—Identify who will conduct the evaluation to determine the achivements of the projected deliverables/outcomes.
—Identify individuals or group to whom the final results of the grant will be presented within the tribal/organizational structure.

Up to 10 type written pages may be used to describe sections 4 and 5. This 10 page limit does not include cost agreement documentation.

4. *Key personnel.*

—Provide a position description and resume for the project director/staff, including experience, and formal education/training that is related to the success of this project.

—List the qualifications and experience of consultants or contractors where their use is anticipated.

5. *Adequacy of management controls.*

—Prepare an itemized budget for the 12 month budget period with a narrative rationale and justification for cost and purchases.

—Describe adequacy of project facilities and equipment.

—List equipment purchases necessary for implementation of the project. Include narrative rationale and justification for computer hardware/software. Identify the IHS area office staff contacted to determine the compatibility of any ADP equipment purchases with IHS systems.

—If indirect costs are claimed, applicant must submit a copy of the current negotiated indirect cost agreement.

—Applicant must demonstrate that the organization has adequate systems and expertise to manage Federal funds.

—To prevent delays in payment on funded project, please provide your Central Registry System number.

I. Required Affiliation

A. *Documentation of newly recognized tribes*—A copy of the **Federal Register** Notice or letter from the Bureau of Indian Affairs verifying tribal status must accompany the application.

B. *Tribal resolution*—(1) A resolution of the Indian tribe served by the project must accompany the application submission. (2) Applications which propose services affecting more than one Indian tribe must include resolutions from all affected tribes to be served. (3) Applications by tribal organizations will not require a specific tribal resolution(s) if the current tribal resolution(s) under which they operate would encompass the proposed grant activities. A statement of proof or a copy of the current operational resolution must accompany the application. If a resolution or a statement is not submitted, the application will be considered incomplete and will be returned without consideration.

J. Assurances

The application shall contain assurances to the Secretary that the applicant will comply with program regulations, 42 CFR part 36 subpart H.

K. Reporting

1. *Progress report*—Program progress reports will be submitted quarterly with a final report for each budget period to be included in the continuation application. A final progress report will be due for the final budget period 90 days after the end of the project period.

2. *Financial status report*—Quarterly financial status reports will be submitted with a final status report due 90 days after the end of each budget period. Standard Form 269 (long form) will be used for financial reporting.

L. Grant Administration Requirements

Grants are administered in accordance with the following documents:

1. 45 CFR part 92, Department of Health and Human Services, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, or 45 CFR part 74, Administration of Grants to Non-profit recipients.

2. Public Health Service Grant Policy Statement, and

3. *Appropriate cost principles:* OMB Circular A–87, State and Local Governments, or OMB Circular A–122, Non-profit Organizations.

M. Objective Review Process

Applications meeting eligibility requirements that are complete and conform to this program announcement will be reviewed by a centralized Ad Hoc Objective Review Committee (ORC) appointed by IHS primarily for review of these applications. The review will be conducted at the IHS Headquarters and in accordance with IHS objective review procedures. The objective review process ensures nationwide competition for limited funding. The ORC will be comprised of IHS (40% or less) and other federal or non-federal individuals (60% or more) with appropriate expertise. The ORC will review each application against established criteria. Based upon the evaluation criteria, the reviewers assign a numerical score to each application, which will be used in making the final funding decision.

N.

A. Evaluation Criteria

To score individual applications the following weights and criterion are considered:

Weights	Criteria
5	Introduction.
10	Need for Assistance.
25	Results.
35	Approach.
10	Key Personnel.
15	Adequacy of Management Controls.
100	Total Criterion Weight.

1. Introduction

—Does the Introduction have the funding priority identified and justified?

—Is only one project type selected?

—Is a specific/blanket tribal resolution attached to the application?

—Is the approved tribal resolution (specific/blanket) current?

2. Need for Assistance

—Is there an explanation of the reason for the project?

—Is the precise location of the project or area to be served by the proposed project including a map provided?

—Does it describe the overall and specific need for assistance by explaining the current situation or demand and unmet requirements (i.e.: resources, staffing, equipment, training, etc.)?

—Are relevant statistical/historical data included?

—Is data collection, analysis and maintenance addressed?

—State impact of previous or current tribal management grant on this application.

3. Objective(s), Result and Benefit Expected

—Principal and subordinate objectives of the project are stated in realistic and measurable terms?

—The population, number of participants and personnel to benefit from the project are defined?

—The expected results, benefits and outcome or product to be derived from this project are identified?

—The relationship between this project and other work planned, anticipated, or underway which are supported by other Federal funds are identified?

4. Approach

—An outline of the plan of action and program activities to achieve each objective is provided? Activities need to be grouped under the objective they are designed to achieve. Indicate staff position responsible for each activity. Identifies IHS staff used for technical assistance, if any?

—Provides a workplan including start and completion calendar of activities?

—Identifies data collection, analysis and maintenance.

—If required, identifies the scope of work for a consultant or contractor?

—Describes any unusual features of the project, if any which may affect the project (i.e.: design, uniqueness, reduction in cost or time, or special social and community involvement?

—Identifies the accomplishments, deliverables/outcomes to be achieved?
—Describes the evaluation component of the project to determine the achievement of the projected accomplishments (deliverables/outcomes)?
—Identifies who will conduct the evaluation to determine the achievements of the projected deliverables/outcomes?
—Identifies who in the tribal/organization structure will receive the final results of the grant?

5. Key Personnel

—Provides a position description and resume for professional staff.
—Are qualifications and experience of consultants or contractors identified where applicable?

6. Adequacy of Management Controls

—Prepares a budget and descriptive narrative. The budget narrative provides a rationale/justification of cost and purchasing of equipment (i.e.: computer hardware/software).
—Describes adequacy of facilities and equipment for the project?
—Lists equipment purchases necessary for implementation of the project, include a narrative rationale and justification (i.e.: Computer hardware/software)? Identifies the IHS Area Office contact used to determine compatibility of any ADP equipment purchases with IHS systems?
—Demonstrates that the applicant organization has adequate systems and expertise to manage Federal funds.

B. Qualitative Rating Factors for the Criteria Are

1.0=*Excellent*—Very comprehensive, in depth clear response. The application meets this standard with no omissions. Consistently high performance can be expected.

0.8=*Very Good*—Extensive, detailed application similar to excellent in quality, but with minor area requiring additional clarification. High quality performance is likely, but not assured due to minor omissions or areas where less than excellent performance might be expected.

0.6=*Good*—No deficiencies in the response. Better than acceptable performance can be expected, but in some significant area there is lack of clarity which might impact on performance.

0.4=*Fair*—The response generally meets minimum standards. Existing deficiencies are confined to areas with minor impact on performance and can be corrected without revision.

0.2=*Marginal*—Deficiencies exist in significant areas. The application can be corrected without major revision or serious deficiencies exist in areas with minor impact.

0.0=*Unsatisfactory*—Serious deficiencies exist in significant areas. The project cannot be expected to meet minimum requirements without revisions. The application only indicates a willingness to perform a project without specifying how or demonstrating the capacity to do so. Only vague indications exist regarding capability.

O. Results of the Review

The results of the Objective Review Committee are forwarded to the Associate Director, Office of Tribal Activities, for final review and approval. Applicants are notified of their approval or approval without funds, on August 1, 1991. A Notice of Grant Award will be issued approximately ten (10) days prior to the start date of September 1, 1991.

Unsuccessful applicants are notified in writing of disapproval not later than August 1, 1991. A brief explanation of the reason the application was not approved is provided along with the name of an IHS official to contact if more information is desired.

Dated: March 14, 1991.

Everett R. Rhoades,

Director, Indian Health Service.

[FR Doc. 91-6506 Filed 3-18-91; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU-6807]

Utah—Invitation To Participate in Coal Exploration Program; Coastal States Energy Co.

Coastal States Energy Company is inviting all qualified parties to participate in its proposed exploration of certain Federal coal deposits in the following described lands in Carbon County, Utah:

T. 12 S., R. 6E., SLM, Utah
Sec. 26, S½SW¼;
Sec. 34, all;
Sec. 35, lots 1-8.
T. 13 S., R. 6 E., SLM, Utah
Sec. 3, lots 1-4.
Containing 1,232.78 acres.

Any party electing to participate in this exploration program must send written notice of such election to the Bureau of Land Management, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145-0155 and to Kenneth May, Coastal States Energy Company, 175 East 400 South, suite 800, Salt Lake City, Utah 84111. Such written notice must be received within thirty days after publication of this notice in the **Federal Register.**

Any party wishing to participate in this exploration program must be qualified to hold a lease under the provisions of 43 CFR 3472.1 and must share all cost on a pro rata basis. A copy of the exploration plan, as submitted by Coastal States Energy Company is available for public review during normal business hours in the BLM office, (Public Room, Fourth Floor), 324 South State Street, Salt Lake City, Utah under Serial Number UTU-68087.

Ted D. Stephenson,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91-6472 Filed 3-18-91; 8:45 am]

BILLING CODE 4310-DQ-M

[OR-130-4410-08 GP1-137]

Spokane District West Side State Exchange; Availability Of The Draft Planning Analysis And Environmental Assessment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of draft planning analysis for Spokane District West Side State Exchange and invitation to comment.

SUMMARY: Notice is hereby given of the availability of the Draft Planning Analysis and Environmental Assessment for the Spokane District West Side State Exchange, involving Federal land administered by the Bureau of Land Management and State Lands administered by the Washington Department of Natural Resources in Clallam, King, Okanogan, San Juan, Skagit and Skamania Counties, Washington. The public comment period will close 60 days from the date of this publication.

SUPPLEMENTARY INFORMATION: The exchange proposal addressed in this document had its beginnings in early 1985, when the State Department of Natural Resources (DNR) proposed a trade of its 20.1 acre parcel adjacent to the BLM Iceberg Point land for the BLM's 77.25 acre tract near DNR land at Point Lawrence. The stated objective at that time was for both the BLM and DNR to consolidate their lands, the BLM intending to include the acquired land in a proposed Area of Critical Environmental Concern (ACEC) designation for Iceberg Point. Although

an exchange agreement was sigend, processing on the action was delayed until recently, when the proposal was enlarged to include 120 acres of DNR land at Chadwick Hill on Lopez Island, and seven additional parcels of BLM land scattered in five different counties. The objective is still the consolidation of both BLM and DNR ownerships, which is expected to result in more effective and efficient management of the respective lands. The exchange lands would be added to the ACEC, and managed in accordance with the existing plan and Bureau ACEC Guidelines. The purpose of this document is to comply with Federal regulations, which require that both an environmental assessment and a planning analysis be performed to examine the resource values of the lands, analyze long term management goals, and determine if these actions are in the public interest.

Two alternatives are considered. The Preferred Alternative and the No Action Alternative.

Under the Preferred Alternative, the Federal Government would acquire the surface and mineral estate of the offered State lands, exchanging in return the surface and mineral estate of all or a portion of the selected Federal lands. The land obtained through this exchange would be incorporated into the existing Iceberg Point and Point Colville ACEC and managed as a Natural Area.

The No Action Alternative would result in the continuation of the existing situation. Under this alternative, none of the selected public lands would pass out of Federal ownership, and no effort would be made to acquire any parcels in the vicinity of the existing ACECs.

FOR FURTHER INFORMATION CONTACT:

Joseph K. Buesing, District Manager, Spokane District Office, East 4217 Main Avenue, Spokane, WA 99202,
James F. Fisher, Area Manager, Wenatchee Resource Area Office, 1133 North Western Avenue, Wenatchee, WA 98801.

Copies of the Draft are available for review at the following offices and libraries:

U.S. Bureau of Land Management, Spokane District Office, East 4217 Main Avenue, Spokane, WA 99202.
U.S. Bureau of Land Management, Wenatchee Resource Area Office, 1133 North Western Avenue, Wenatchee, WA 98801.
Washington State Library, State Library Building, Olympia, WA 98504.
San Juan County Court House Annex Library, 135 Rhone Street, Friday Harbor, WA 98250.

A limited supply of copies of the Planning Analysis are available upon request to the Spokane District Manager and the Wenatchee Resource Area Manager.

DATES: Written comments concerning issues pertinent to this Planning Analysis will be accepted for 60 days.

No Public Meetings are scheduled. However, if public comment indicates a need, one will be scheduled and appropriate time allowances would be made.

Dated: March 12, 1991.

Joseph K. Buesing,

District Manager.

[FR Doc. 91-6405 Filed 3-18-91; 8:45 am]

BILLING CODE 4310-33-M

Fish and Wildlife Service

Federal Subsistence Board; Wolf Hunting and Trapping Closure

AGENCY: Interior.

ACTION: Notice.

SUMMARY: By emergency order of the Federal Subsistence Board, wolf hunting and trapping on Federal public lands within Alaska State Game Management Unit 13 is closed to all individuals to ensure a healthy population of wolves in the area.

DATES: The emergency closure is effective March 8, 1991.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Glennallen District Office, Box 147, Glennallen, Alaska 99588; telephone (907) 822-3217.

SUPPLEMENTARY INFORMATION: As empowered by 50 CFR 100.17(b), and 36 CFR 242.17(b), the Federal Subsistence Management Board has closed Federal public lands in Game Management Unit 13 to the hunting and trapping of wolves effective March 8, 1991. The closure is been enacted at the request of local biologists because the harvest in Game Management Unit 13 has reached the recommended harvest. This closure is enacted in order to ensure the biological integrity of the wolf population in the area.

Curtis V. McVee,

Chairman, Federal Subsistence Management Board.

[FR Doc. 91-6435 Filed 3-18-91; 8:45 am]

BILLING CODE 4310-55-M

Availability of Draft Recovery Plan for the Wyoming Toad (Bufo hemiophrys baxteri) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for Wyoming toad (*Bufo hemiophrys baxteri*). This endangered amphibian species occurs in the Laramie Basin of Wyoming. The Service solicits review and comment from the public on this draft recovery plan.

DATES: Comments on the draft recovery plan must be received on or before May 3, 1991 to ensure they receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting State Supervisor, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 2617 E. Lincolnway, suite A, Cheyenne, Wyoming 82001, 307-772-2374 or (FTS) 328-2374. Written comments and materials regarding this draft recovery plan should be sent to the State Supervisor at the address given above. Comments and materials received during the review period are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: State Supervisor, Wyoming State Office, (see **ADDRESSES** above) 307-772-2374 or (FTS) 328-2374.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's (Service) endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will

consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal Agencies also will take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The Wyoming toad is a glacial relic known only from Albany County, Wyoming. The species inhabits floodplains, ponds, and seepage lakes in the shortgrass communities of the Laramie Basin of Wyoming. Known historical distribution of the Wyoming toad was restricted to within 30 miles radius of the city of Laramie.

From the 1940's through the early 1970's, the Wyoming toad was abundant throughout its limited range. Rapid declines were observed in the mid-1970's. By the late 1970's, the Wyoming toad had become very rare. During the early 1980's, only a few individuals were observed. A single, healthy population was located southwest of Laramie in 1987. Surveys since 1988 revealed that this population appears to be stable. The once common Wyoming toad experienced a drastic population decrease in a relatively short time and is now extremely rare. Reasons for the decline in Wyoming toad abundance have been the subject of much speculation but little resolution. Theories explaining the Wyoming toad's decline, range from predation and diseases to changes in agricultural practices, pesticide usage, and possible climatic changes.

In September 1987, a recovery group was formed consisting of representatives from the Wyoming Game and Fish Department, the Service, the University of Wyoming, and The Nature Conservancy. This group is responsible for coordinating protection, research, and recovery efforts for the Wyoming toad. Draft recovery goals have been established for the Wyoming toad. The immediate goal will be to prevent extinction and maintain the existing population and habitat. The long-range goal is to establish at least 5 additional populations of 100 breeding individuals each within their former range.

The recovery plan is a planning document that identifies recovery actions. Actual implementation will depend on the commitment evidenced by government agencies and private entities with the authority and resources to help this species.

Public Comments Solicited

The Service solicits written comments on the Wyoming Toad Recovery Plan described above. All comments received by the date specified above will be considered prior to approval of the final Wyoming Toad Recovery Plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: March 12, 1991.

Galen L. Buterbaugh,

Regional Director.

[FR Doc. 91-6427 Filed 3-18-91; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being consdidered for listing in the National Register were received by the National Park Service before March 7, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by April 3, 1991.

Carol D. Shull,

Chief of Registration, National Register.

ALASKA

Bethel Borough-Census Area

St. Nicholas Russian Orthodox Church (Russian Orthodox Church Buildings and Sites TR), Lower Kuskokim R., Kwethluk, 91000385

CONNECTICUT

Fairfield County

Compo—Owenoke Historic District (Westport MPS), Roughly bounded by Gray's Cr., Compo Rd. S. and Long Island Sound, Westport, 91000393

Green Farms School (Westport MPS), Jct. of Morningside Dr. S. and Boston Post Rd., Westport, 91000391

Mill Cove Historic District (Westport MPS), Between Compo Mill Cove and Long Island Sound, Westport, 91000392

DISTRICT OF COLUMBIA

District of Columbia (State equivalent)

Grace Reformed Church, Sunday School and Parish House, 1405 15th St., NW., Washington, 91000396

Wetzell—Archbold Farmstead, 4437 Reservoir Rd., NW., Washington, 91000395

FLORIDA

Charlotte County

Icing Station at Bull Bay (Fish Cabins of Charlotte Harbor MPS), Off Bull Key in Bull Bay Placida vicinity, 91000399

West Coast Fish Company Residential Cabin at Bull Bay (Fish Cabins of Charlotte Harbor MPS), Bull Bay N of Bull Key, Placida vicinity, 91000401

Willis Fish Cabin at Bull Bay (Fish Cabins of Charlotte Harbor MPS), Bull Bay N of Bull Key, Placida vicinity, 91000400

Lee County

Fish Cabin at White Rock Shoals (Fish Cabins of Charlotte Harbor MPS), W. of Pine Island, Pine Island Sound, St. James City vicinity, 91000398

Hendrickson Fish Cabin at Captiva Rocks (Fish Cabins of Charlotte Harbor MPS), W of Little Wood Key, Pine Island Sound, Bokeelia vicinity, 91000402

Ice House at Captiva Rocks (Fish Cabins of Charlotte Harbor MPS), SW of Little Wood Key, Pine Island Sound, Bokeelia vicinity, 91000407

Ice House at Point Blanco (Fish Cabins of Charlotte Harbor MPS), SE of Point Blanco Island, Pine Island Sound, Bokeelia vicinity, 91000408

Larsen Fish Cabin at Captiva Rocks (Fish Cabins of Charlotte Harbor MPS), W of Little Wood Key, Pine Island Sound, Bokeelia vicinity, 91000404

Leneer Fish Cabin at Captiva Rocks (Fish Cabins of Charlotte Harbor MPS), W of Little Wood Key, Pine Island Sound, Bokeelia vicinity, 91000403

Norton Fish Cabin at Captiva Rocks (Fish Cabins of Charlotte Harbor MPS), W of Little Wood Key, Pine Island Sound, Bokeelia vicinity, 91000405

Whidden Fish Cabin at Captive Rocks (Fish Cabins of Charlotte Harbor MPS), W of Little Wood Key, Pine Island Sound, Bokeelia vicinity, 91000406

KENTUCKY

Nelson County

Cottage Grove Historic District, 1015 Old Bloomfield Pike, Bardstown, 91000390

MICHIGAN

Jackson County

US 12 St. Joseph River Bridge, US 12 over the St. Joseph R. Mottville Township, Mottville, 91000388

Wayne County

St. Catherine of Siena Roman Catholic Parish Complex, 4151 Seminole, Detroit, 91000389

MISSISSIPPI

Monroe County

Watkins, W. W. House (Aberdeen MRA), 600 W. Commerce St., Aberdeen, 91000387

MISSOURI

Ripley County

Ripley County Jail, Sheriff's Office and Sheriff's Residence, Courthouse Cir., Doniphan, 91000386

WEST VIRGINIA

Kanawha County

Charleston Downtown Historic District, Roughly bounded by Broad S., the

Kanawha R., Summers St. and the Conrail RR tracks, Charleston, 91000397

[FR Doc. 91–6397 Filed 3–18–91; 8:45 am]
BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 2, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by April 3, 1991.

Carol D. Shull,

Chief of Registration, National Register.

FLORIDA

Charlotte County

Punta Gorda Woman's Club (Punta Gorda MPS), 118 Sullivan St., Punta Gorda, 91000382

IOWA

Poweshiek County

Grinnell Historic Commercial District (Grinnell MPS), Roughly bounded by Main, Broad and Commercial Sts. and 5th Ave., Grinnell, 91000384

MONTANA

Big Horn County

Boyum, John, House (Hardin MPS) 225 W. Sixth St., Hardin, 91000371
Burke, Thomas M., House (Hardin MPS) 604 N. Cody, Hardin, 91000368
Ebeling, William, House (Hardin MPS) 704 N. Crow Ave., Hardin, 91000370
Eder, Charles S., House (Hardin MPS) 416 W. Third St., Hardin, 91000374
First Baptist Church (Hardin MPS) 524 N. Custer Ave., Hardin, 91000369
Fish, Wilber, House (Hardin MPS) 620 Crow Ave., Hardin, 91000375
Haverfield Hospital (Hardin MPS) 520 W. Third St., Hardin, 91000376
Kopriva, Francis, House (Hardin MPS) 416 Crawford Ave., Hardin, 91000377
Ping, J. J., House (Hardin MPS) 119 W. Sixth St., Hardin, 91000373
Reno Apartments (Hardin MPS) 719 N. Custer Ave., Hardin, 91000378
St. Joseph Catholic Church (Hardin MPS) 710 N. Custer Ave., Hardin, 91000379
Sullivan Rooming House (Hardin MPS) 217 W. Sixth St., Hardin, 91000372
Sullivan James J., House (Hardin MPS) 220 W. Third St., Hardin, 91000380
Tupper J. S., House (Hardin MPS) 502 N. Cody, Hardin, 91000381

[FR Doc. 91–6398 Filed 3–18–91; 8:45 am]
BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–43 (Sub-No. 152X)]

Illinois Central Railroad Co. Discontinuance of Service Exemption in Will, Sangamon, Macoupin, Jersey and Madison Counties, IL

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. 10903, *et seq.* the discontinuance of local service by Illinois Central Railroad Company over 74.5 miles of rail line in Will, Sangamon, Macoupin, Jersey and Madison Counties, IL, subject to standard labor protective conditions.

DATES: Provided no formal expressions of intent to file financial assistance offers are received, this exemption will be effective on April 18, 1991. Stay petitions and formal expressions of intent to file offers of financial assistance [1] must be filed by April 3, 1991. Petitions for reconsideration must be filed by April 15, 1991.

ADDRESSES: Send pleadings referring to Docket No. AB–43 (Sub-No. 152X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's representative: William C. Sippel, Oppenheimer Wolff & Donnelly, 233 North Michigan Avenue, suite 2400, Chicago, IL 60601.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245 (TDD for hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing inpaired is available through TDD services (202) 275–1721.)

Decided: March 11, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–6468 Filed 3–18–91; 8:45 am]
BILLING CODE 7035–01–M

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[Docket No. AB–12 (Sub-No. 136X)]

Southern Pacific Transportation Co. Abandonment Exemption in Mineral and Lyon Counties, NV

AGENCY: The Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by Southern Pacific Transportation Company of a 53.88-mile line of railroad between milepost 385.00, near Thorne, in Mineral County, NV, and milepost 331.12, near Wabuska, in Lyon County, NV, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on March 31, 1991. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by March 29, 1991. Petitions for reconsideration and requests for a public use condition must be filed by March 25, 1991.

ADDRESSES: Send pleadings referring to Docket No. AB–12 (Sub-No. 136X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and
(2) Petitioner's representative: Gary A. Laakso, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105;

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245 (TDD for hearing impaired: (202) 275–1721).

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., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD service (202) 275–1721).

Decided: March 12, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Philips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–6469 Filed 3–18–91; 8:45 am]
BILLING CODE 7035–01–M

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

National Crime Information Center; Renewal

In accordance with the provisions of the Federal Advisory Committee Act (title 5, United States Code, appendix 2), and title 41, Code of Federal Regulations, § 101–6.1015, the Director, FBI, with the concurrence of the Attorney General, has determined that the renewal of the National Crime Information Center (NCIC) Advisory Policy Board is in the public interest in connection with the performance of duties imposed upon the FBI by law, and hereby gives notice of its renewal.

The Board recommends to the Director, FBI, general policy with respect to the philosophy, concept, and operational principles of the NCIC, particularly the system's relationship with local and state criminal justice systems.

The Board consists of thirty members of which twenty are elected from state and local criminal justice representatives; six are appointed by the Director, FBI, consisting of two members each from the judicial, prosecutorial, and correctional segments of the criminal justice community; four are representatives of criminal justice professional associations, e.g., American Probation and Parole Association, National Sheriff's Association, National District Attorney's Association, and the International Association of Chiefs of Police.

The Board functions solely as an advisory body in compliance with the provisions of the Federal Advisory Committee Act. Its charter is being filed in accordance with the provisions of the Act.

The Designated Federal Officer for the Board is Mr. David F. Nemecek, Chief, National Crime Information Center, Technical Services Division, Federal Bureau of Investigation, Washington, DC 20535, telephone number 202–324–2606.

Dated: March 11, 1991.

William S. Sessions,

Director.

[FR Doc. 91–6424 Filed 3–18–91; 8:45 am]

BILLING CODE 4410–02–M

Federal Prison Industries, Inc.

UNICOR Independent Market Study Briefing; Location and Date Change

AGENCY: Federal Prison Industries, Inc., Bureau of Prisons, Justice.

ACTION: Notice.

SUMMARY: Efforts are underway to complete an independent market study of UNICOR, based on the objectives set forth in Public Law 101–515 and the statement of work RFP 1PI–0003–91, as announced in the **Federal Register** on December 7, 1990 (55 FR 50618). To ensure that all interested parties have ample opportunity to provide their comments and suggestions related to the study, two briefings were scheduled as announced in the **Federal Register** on February 28, 1991 (56 FR 8361). The first briefing, which was held on March 5, 1991, focused on the overall study approach and task activities, as well as potential interviewees and data sources.The second briefing, which was previously scheduled to be held on April 2, 1991, has been rescheduled for April 1, 1991 and will focus on the interpretation of the source data and information gathered through April 1, 1991. During the course of the study, written comments and suggestions may be submitted prior to the release of the interim report on May 1, 1991.

DATES: The briefing is rescheduled for April 1st (Monday)—1 p.m. to 3 p.m.

ADDRESSES: The briefing will be held in the Rayburn House Office Building, Independence Avenue, Washington, DC, room 2359A. Comments and suggestions on the market study may be sent to John C. Foreman, Deloitte & Touche, 1900 M Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: James Hagerty, (202) 508–8554.

Dated: March 14, 1991.

James Hagerty,

Manager, Market Research, Federal Prison Industries, Inc.

[FR Doc. 91–6483 Filed 3–18–91; 8:45 am]

BILLING CODE 4410–05–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total numbers of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Informationa nd Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Mine Safety and Health Administration.

Record of Preshift and Onshift Inspections of Slope and Shaft Areas (30 CFR 77.1901).

Each Shift.

Businesses or other for profit; small businesses or organizations.

40 recordkeepers, 220 days, 1.54 shifts, 1 hour 25 minutes; 16,940 total burden hours.

Requires coal mine operators to conduct inspections, including tests for methane and oxygen deficiency, of slope and shaft areas for hazardous conditions prior to and during each shift. Records are required to be kept of the results of the inspections and tests.

Signed at Washington, DC this 14th day of March, 1991.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 91-6477 Filed 3-18-91; 8:45 am]

BILLING CODE 4510-43-M

Health Insurance Claim Form, Uniform Health Insurance Claim Form, Resubmission Turnaround Document

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of expedited information collection clearance under the Paperwork Reduction Act.

SUMMARY: The Employment Standards Administration, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35, 5 CFR 1320 (53 FR 16618, May 19, 1988)), is submitting a request to the Office of Management and Budget for three information collections. The OWCP 1500 is a standard form used by all providers except hospitals and pharmacies to request payment for claimants under the Federal Employees' Compensation Act and the Black Lung Benefits provisions of the Federal Mine Safety and Health Act. The OWCP 82 is used by providers to bill the Office of Workers' Compensation Programs for payment for inpatient care provided to claimants. The CM 1173 collects missing information for the BL portion of the OWCP 1500 and OWCP 82. The OWCP 1500 form has been revised for simplification and identical to HCFA 1500; the OWCP 82 and the CM 1173 remain unchanged.

DATES: ESA has requested an expedited review of this submission under the Paperwork Reduction Act; this OMB review has been requested to be completed by

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding the information collections or reporting burden should be directed to Paul E. Larson, Departmental Clearance Officer, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., room N1301, Washington, DC 20210 (202) 523-6331). Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office of Management and Budget, room 3001, Washington, DC 20503.

Any member of the public who wants to comment on the information collection clearance package which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Average Burden Hours/Minutes Per Response: 5 to 17 min.

Frequency of Response: on occasion.

Number of Respondents: 877,000.

Annual Burden Hours: 174,266.

Affected Public: Individual/households, State or local governments, Businesses or other for profit; Federal agencies or employees; Non-profit institutions; Small businesses or other organizations.

Respondents Obligation To Reply: Required to obtain are retain a benefit.

Signed at Washington, DC this 12th day of March 1991.

Theresa M. O'Malley,

Acting Department Clearance Officer.

Justification: The Uniform Health Insurance Claim Form (UB-82) Health Insurance Claim Form (OWCP 1500) Resubmission Turnaround Document (RTD)

1. UB-82 Federal Employees' Compensation Act (FECA) Federal Black Lung Benefits Act (FBLBA)

The office of Workers' Compensation Programs (OWCP) is responsible for administering the Federal Employees' Compensation Act (FECA—5 U.S.C. 8101, *et seq.*), and the Black Lung Benefits (FBLBA) provisions of the Federal Mine Safety and Health Act (30 U.S.C. 901, *et seq.*). These statutes provide, in addition to compensation for employment related injury and or disability, payment to provider institutions for certain medical treatment and diagnostic services related to the injury or disability. To determine whether the medical bills submitted by institutional providers of medical services are appropriate, both FECA and Black Lung Programs require that the institution billing the government provide information necessary to identify the claimant/beneficiary, the type of injury/disease being treated or reason for providing the medical services rendered, the specific procedure(s) performed, the relationship to the accepted industrial injury for FECA claimants, the relationship to coal mine workers' pneumoconiosis for Black Lung claimants, and a list of charges for which payment is being requested.

The Uniform Health Insurance Claim Form, known as the UB-82, has been approved by the American Hospital Association, the Health Care Financing Administration and the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) for purposes of payment, and by the various other government health care programs for payment to institutional providers of medical services. Depending under which Act (FECA or FBLBA) payment is being requested, the form is identified as the OWCP-82a and 82b for OWCP for purposes. The UB-82 is the basic form; the OWCP-82a and 82b add detailed instructions developed by OWCP that provide the information necessary to providers who file claims for services that may be payable under these particular statutes.

The UB-82 form is an ideal billing instrument for the provider community that services both FECA and FBLBA beneficiaries because of its familiarity, its common use, and its acceptance by both government and private health service payors.

The regulatory provisions authorizing use of this information collection are found at 20 CFR 10.400 for the FECA and at 20 CFR 725.701 and 725.704 for FBLBA.

OWCP 1500—FECA

The Office of Workers' Compensation Programs (OWCP) is responsible for the administration of the Federal Employees' Compensation Act (FECA) (5 U.S.C. 8101, *et seq.*). The statute provides for payment of medical expenses necessitated by a work-related injury or disease. These include diagnostic and treatment services provided by physicians (5 U.S.C. 8103). To determine whether bills submitted for payment represent appropriate charges the Office must receive sufficient information to identify the beneficiary, the injury treated or diagnosed, specific services rendered, and their relationship to the work-related injury (20 CFR 10.400) (Division of Federal Employees' Compensation's (DFEC) regulations (20 CFR 10.411) require use of the OWCP 1500 (or HCFA 500) for physicians and other providers). In addition, an Internal Revenue Service ruling requires the reporting of payments to specific providers in excess of $600 in any one year, making it necessary to obtain the provider's tax identification number for each bill.

OWCP 1500—FBLBA

The Office of Workers' Compensation Programs is responsible for the administration of the Federal Black Lung Benefits Act (FBLBA) under The Federal Mine Health and Safety Act, as amended (30 U.S.C. 901 *et seq.*). This Act

provides for payment of medical examinations and related services to determine eligibility for benefits and for payment of black lung (coal mine workers' pneumoconiosis) related medical treatment provided to miners awarded compensation. 210 CFR 725.406 and 718.401 address Black Lung Disability Trust Fund liability for payment of medical services associated with benefit determination and § 725.70 and § 725.704 for payment of medical care provided to miners who are beneficiaries under the Act.

The Division of Coal Mine Workers' Compensation requires the use of the OWCP 1500 (HCFA 1500) standard health insurance claim from for collecting information necessary for processing of bills submitted for medical services covered under the Act and for reporting payment information required by the Internal Revenue Service.

Resubmission Turnaround Document (RTD)—FBLBA

The Standard Uniform Billing Claim Form (OWCP–82b) and the Standard Health Insurance Claim Form (OWCP–1500) are used by medical providers to bill the program for Black Lung related medical services. If the billing form does not contain complete and correct data required for processing the bill, an ARTD is generated by computer, requesting only the corrected or missing data from the medical provider.

2. UB–82—FECA

Hospital providers are asked to complete the UB–82 using the instructions designated OWCP–82a or 82b when requesting payment of a bill under FECA. Once completed, the bill is forward to an OWCP office where it is reviewed by both, OWCP and contract staff for relatedness to the accepted injury, for appropriateness of the services provided, and whether the amount charged is customary. The UB–82 presents the information necessary for this review in a standard format, using uniform nomenclature and codes. It is specifically designed to provide hospitals a method to group departmental charges (called revenue centers) and to provide patients and third party payors a method to review charges by category of service. The UB–82 is a standard form used by all hospitals. It is the form required for billings under Medicare and CHAMPUS; it is the form of choice for billing under Medicaid and under many private sector reimbursement plans.

UB–82—FBLBA

Hospitals billing for inpatient care, outpatient surgical care, chemotherapy and acute emergency room services relating the treatment of a miner beneficiary's black lung condition are required to bill on the Uniform Health Insurance Claim Form (UB–82). Providers mail their billings for these services directly to the program's servicing of medical bills. Detailed instructions are provided by the program for provider preparation of the UB–82.

If all the data required on the form is not collected, the program is not able to pay or deny these bills properly.

OWCP 1500—DFEC

The form is used by the bill payment staff to adjudicate requests for reimbursement of medical services provided by medical professionals other than those requests submitted by hospitals, pharmacies and certain other providers. The form is necessary for the payment of medical bills through the automated system. The automated system decreases processing time, eases implementation of quality control procedures, and enables operation of the medical fee schedule. The DFEC is preparing to implement a comprehensive automated system, which among other features, will permit bill processing without manual referral to the case file, will allow for improved quality control, and will monitor for fraud and/or abuse, both within the provider community and within OWCP and will further reduce processing time.

If omitted or incorrect data on billings is not collected, the program cannot adjudicate medical bills properly.

3. UB–82 FECA and FBLBA

The OWCP–82 instructions have been designed for computer generation and take advantage of the common acceptability of the UB–82 form. Use of this standard form keeps the paperwork burden to the public at a minimum because it lends itself to automation, provides information necessary to process payment of a bill, and is in a format that is acceptable to both government and private payors.

HCFA 1500—FECA and FBLBA

The HCFA 1500 is designed to capture medical procedure and diagnostic coding systems that are common to the health care industry. Other information on the form is that universally required by third party payors of medical services in both the government and private sectors. Use of this form minimizes the burden on health care providers billing for services provided under OWCP programs because the data elements are those commonly required by other payors of health care benefits.

RTD

The RTD is a provider-specific, computer generated form that is produced when a bill, which is computer reviewed, fails an edit(s). When the provider receives the form, both parts of the RTD contain all identifying information; the top half indicates the specific part of the bill that is being questioned and lists a description of the error(s). The provider inserts the correct data in the space provided on the lower half of the form and returns that half to the program. The top half provides a record of action taken for the provider's records.

With use of the RTD, a provider receives a single-paged document identifying all billing deficiencies based on computer review of a bill. By using an RTD, a bill remains in the system and processing of the bill continues once the program receives the necessary information. This, in turn expedites payment to the provider, reduces processing time, maintains an audit trail and is administratively cost effective.

4. The UB–82 and the OWCP 1500

These forms are used by both DFEC and DCMWC to obtain information necessary to appropriately process reimbursements for medical services provided under each program. Duplicate information is not obtained since the programs service different populations. Other federal agencies such as CHAMPUS, HCFA and Medicaid request similar information but the populations serviced are not the same; therefore, no duplication of information is expected.

RTD

No similar approved request for information form is used within the program or by other Federal programs. Since HCFA uses the same billing forms (HCFA 1500 and UB–82), HCFA was contacted and they know of no similar form utilized by them or by other federal agencies.

5. UB–82, OWCP 1500

All information collected on these forms for each program is bill specific and necessary to properly adjudicate each bill for reimbursement. The information is not available from another source.

RTD

All of the data gathered is bill specific. The program must request the omitted data and/or the error correction

directly from the provider who submitted the deficient billing to adjudicate (pay or deny) the bill properly.

6. UB–82—FECA

Small businesses are affected. Hospital associated Clinics that provide outpatient and/or inpatient care and small institutions are the primary "small businesses" involved. The burden on such providers has been minimized to the extent possible by the use of a commonly available standard form, and through use of explicit instructions for completion of the form that meet minimal processing requirements under the FECA.

UB–82—FBLBA

Hospitals that are classified as small businesses, are required to complete and submit UB–82 billing forms in accordance with program specifications for payment requests for inpatient care, outpatient surgical care, chemotherapy or acute emergency room services.

Efforts to minimize burden on providers includes requiring the use of a standard bill form that is readily available and accepted by it users, that facilitates automated bill processing, and that uses standard coding language for identification of conditions treated and services provided. Additionally the program provides detailed instructions for completion of the UB–82 in program provider manuals that are distributed to all providers enrolled in the program as well as opportunities for providers to attend workshops conducted by the program's servicing contractor, and to call contractor representatives on a toll-free number for information on form completion. The National Uniform Billing Committee evaluates the use of the UB–82 periodically and initiates changes when appropriate. Committee members represent HCFA, CHAMPUS, OWCP, AHA, major insurance companies, such as Blue Cross/Blue Shield, and state health care agencies.

OWCP 1500—DFEC

The billing information required is the minimum necessary to meet the needs of the program. In addition, a standard form is used, one which the provider is accustomed to completing for other government payors of medical benefits.

OWCP 1500—FBLBA

Health care delivery providers, (i.e. physicians, durable medical equipment and oxygen suppliers, home nursing services, pulmonary rehabilitation clinics and hospitals) billing for outpatient services are required to request reimbursement on the OWCP (HCFA) 1500 billing form. Program efforts to minimize burden on the health care provider community billing the program include requiring use of a standard billing form that is readily available, accepted and widely used by other government agency programs, and accepted by most private sector insurance companies. Program automation of the medical bill pay process has expedited payment to providers. Only those elements necessary for program processing are required.

RTD

Health care delivery providers, such as physicians, durable medical equipment and oxygen suppliers, pulmonary rehabilitation clinics and hospitals are involved.

Use of the RTD should minimize burden to program medical providers because it is a single-paged document that identifies all billing deficiencies based on computer review of a bill, it furnishes space for provider correction of deficiencies on a hard copy that is returned to the program and it furnishes a record for the provider of actions taken. In addition, a deficient bill remains in the program's system enabling processing to continue upon receipt of requested information on the provider-completed portion of the RTD. This facilitates prompt payment to the provider.

If the program returns a deficient billing (many multi-paged) to providers for correction, more time is required on the part of the provider to locate discrepancies and generate corrective data than is required to review the RTD and supply information in a predesignated locality. In addition, the potential for overlooked discrepancies increases when the entire bill is returned. Returning the entire bill would also result in its subsequent reentry into the bill processing system, as would be the case if a new bill were generated by the provider to correct deficiencies. In either of these cases, processing time would increase.

7. UB–82—FECA

A form is completed and submitted by the user after each hospital service or series of services to an eligible claimant. Billing cycles are established by the provider, for services and could in some instances affect benefit payments to claimants. Therefore, collection of this information less frequently than now collected would not be appropriate and may not meet accounting requirements inherent to the program.

UB–82—FBLBA

Frequency of data collection is based on the provider's request for program payment of covered services to miner beneficiaries. If bills were submitted less frequently, program payments to providers would be delayed.

OWCP 1500—FECA and FBLBA

Frequency of data collection is based on provider request for reimbursement of covered services rendered to the beneficiary. Since the form lends itself to multiple visits of services, the actual number of times the form is filed varies with the number of times during any period that the provider decides to submit billing. Less frequent collection of data would result in delayed payment to providers and in some instances could delay adjudication of benefit eligibility.

RTD

Information is collected on an as-needed basis. This information cannot be collected less frequently.

8. UB–82, OWCP 1500, and RTD

There are not special circumstances for the collection of this information to be inconsistent with the provisions of 5 CFR 1320.6.

9. UB–82

The National Uniform Billing Committee (NUBC) has been established to act as a clearing house for the development and revision of forms used by hospital provider types. This Committee consults with users and third party payors to meet the needs of both groups. The Committee is comprised of representatives from the federal government (HCFA, CHAMPUS), from private industry (AHA) and third party payors such as Blue Cross/Blue Shield. Voting membership is organizationally restricted but OWCP and other interested groups may attend open meetings, petition changes and request a hearing on issues.

OWCP 1500

OWCP is directly represented on the Uniform Claims Form Task Force which is responsible for the current revision of the form. The purpose for the revision is to ease the burden of form completion by medical providers, to reduce reimbursement delay through standardized data entry, standardized nomenclature/code used and standardized locator use, to improve quality/cost control measure and to improve its usefulness to third party payors (including both government and private sector users).

10. UB–82, OWCP 1500, RTD

All bill payment requests submitted on the OWCP 1500 are protected under the privacy provisons contained in the Privacy Act.

11. UB–82, OWCP 1500, RTD

There are no questions of a sensitive nature on any of the forms.

12. UB–82—FECA and FBLBA

There are no developmental, printing, or mailing costs associated with the UB–82 form. The forms are purchased from nongovernment sources by the provider or are computer generated bills which adhere to the instructions contained in OWCP–82a or 82b. The instructions for form completion are included in the program provider manuals that are disseminated by the servicing contractor to all providers in the programs. When necessary, updates are issued in the form of bulletins to the programs' provider community. Printing and mailing costs for provider manuals and bulletins are built into the fixed price contract that DOL has with the contractor providing program ADP support services.

FECA Processing Costs: Forms are viewed by bill payment clerks employed by the government at the GS–5 level. These examiners spend approximately 15 percent of their time inspecting these bills. Each payment is keyed into the computer by one of ca. 72 contract employees paid at the rate of $11.50 per hour. Approximately 65% of the keyers time is spent keying bills; of this, 15 percent is spent keying OWCP–82 bills. Thus:

80 GS–5 (step 3) employees at $18,105 per annum × 0.15=$217,260

72 Data entry employees × 2080 hours × $11.50 × 0.65 × 0.15=$167,918.40

FBLBA Processing Costs: All costs including manual review and automated processing of UB–82 billings are included in a fixed price contract that DOL has with the contractor providing ADP support services, with adjustments based on contract year and volume of bills resolved. Therefore, no breakdown on cost for processing these bills is available.

OWCP 1500—FECA and FBLBA

Printing costs: The DFEC and DCMWC programs print a total of ca. 553,000 OWCP 1500 forms annually at a cost of $350 per each five thousand forms. Printing costs for the form total ca. $38,710 per year.

Mailing costs: Physicians and other providers seeking payment from DFEC may obtain HCFA 1500 (OWCP 1500) forms from various sources. There are no distribution costs involved for DFEC. In DCMWC, if providers are testing claimants for the determination of benefit eligibility, DCMWC sends them precoded forms by mail; ca. 25,000 precoded forms × .29 ea. = $7,250 per year.

Forms for billing for treatment services provided under both FECA and the FBLBA are obtained from private sources.

Processing costs: In DFEC, forms are reviewed by ca. 80 bill pay clerks employed by the federal government at the GS–5 level; ca. 65% of their time is required. Bill payments are keyed by ca. 72 data entry operators, whose services are contracted from private concerns. About 65% of contract keyers' time is taken up with the payment of bills, and ca. 65 percent of that time is required for the payment of OWCP (HCFA) 1500 bills. The costs is ca. $11.50 per hour.

Federal government clerks: ca. 80 at $18,105 (step. 3) per annum × .65=$941,460

Contract data entry clerks: ca. 72 × 2,080 hours at $11.50 × .65=$1,119,456 × .65=$727,646.40

Processing costs: In DCMWC, ca. 13,000 OWCP–1500 forms will be used to reimburse providers who are performing disability determination diagnostic procedures. The forms are precoded and reviewed by GS–5 clerks. This takes 16 minutes per form.

16 minutes × 13,000 forms=3,467 hours

3,467 × $9.22 (hourly rate of a GS–5, step 5)=$31,965.74

ADP costs: A breakdown of ADP costs is not available for DCMWC. Program costs for all ADP services provided to the program are based on a fixed price contract with adjustments based on contract years and volume of bills resolved.

RTD

The total cost to the federal government for this form is contained in an overall medical bill processing contract which began October 1985. A breakout of the costs which includes development, printing, computer generating, mailing, reviewing and data entry costs is not available.

FECA Processing Costs—UB–82	$385,178.40
FECA Processing Costs—OWCP 1500	1,669,106.40
FBLBA Processing Costs—OWCP 1500 (Determination Only)	31,965.74
(FBLBA Processing Costs—OWCP 1500 and UB–82 under ADP contract—N/A by form type):	
Printing Costs—OWCP 1500	38,710.00
Mailing Costs—OWCP 1500	7,250.00
Total Federal Cost (known)	$2,132,210.54

13. UB–82 FECA

Most recent figures available indicate that approximately 51,000 UB–82s are processed annually. The user (hospital/clinic) completes the form using the data elements contained in the FECA instructions. There are 96 elements of which approximately 24 have to be completed by the user. Analysis indicates that it takes approximately 7.0 minutes per payment for the user to submit the basic data needed and approximately ten minutes to keypunch the data for processing.

The total burden imposed as a result of using the FECA format for the OWCP–82 is approximately 17.0 minutes; thus:

51,000 × .2833 (17 min)=14,450 hours

UB–82 FBLBA

The Federal Black Lung Program processed an estimated 46,000 UB–82 fillings during the last twelve-month period. The total estimate in burden hours to the providers is 6,900 hours allowing 9 minutes for bill preparation of each form. The 9-minute time estimate is based on a June 1987 estimate. It is estimated that approximately 120,500 RTD's are associated with error correction of the UB–82. The RTD greatly reduces potential net burden, since the time required to complete the RTD is more than offset by the time to that would be required to complete another original UB–82 with corrected data; thus: 46,000 × 0.15 (9 minutes)=6,900 hours.

OWCP 1500 DFEC

It is estimated that annual usage of the form under FECA is approximately 540,000. Approximately 15 minutes per response is estimated.

540,000 × .25=135,000 hours

OWCP 1500 FBLBA

An estimated 99,000 1500 billings forms were processed by DCMWC during the last twelve month period. Of those, 13,000 were for benefit determination related services authorized under the FBLBA. The burden estimate to the public requesting payment on precoded 1500 forms for benefit determination services is 1,083 hours (13,000 × 5 min.=1083 hours). The

estimated burden hours for completion of the 1500 for treatment services is 10 minutes, (86,000 × 10/60=14,333). The estimated total burden hours to the public, therefore, is 15,416 hours (1,083 + 14,333=15,416).

Total Burden Hours:

DFEC: 135,000
DCMWC: 15,416
Total: 150,416 Hours

The number of burden hours for DFEC use of the 1500 may increase as compliance with use of the form increases. This increase, however, will be offset by a decrease in completion time required for other form types and may actually reduce the total burden hours through uniform billing procedures.

The number of burden hours for DCMWC will decrease because the miner beneficiary population is decreasing approximately 10 percent per year because of death secondary to aging/terminal illness. Even though the amount of medical care increases during the terminal period, the overall burden will continue to decrease. In part, this decrease in burden hours is due to improved bill processing and because of use of the Resubmission Turnaround Document (RTD) which negates the need to submit a corrected 1500. It permits resubmittal of only the charge/service under review.

RTD

The burden estimate to medical providers relative to collection of data on RTD's is 2,500 hours. Of this total, 1,625 hours represents the estimated processing of 19,500 RTD's associated with error correction of the Standard Health Insurance Claim Form (OWCP–1500), and 875 hours for the processing of 10,500 RTD associated with error correction of the Standard Uniform Billing Claim Form, (OWCP–82) with an estimated time frame of 5 minutes for provider completion and return of each RTD. A summary of the total hours calculations are shown below:

		Hours
UB–82 FECA	51,000 forms × 17 min/form=	14,450
UB–82 (FBLBA)	46,000 forms × 9 min/form=	6,900
RTDs for UB–82	10,500 forms × 5 min/form=	875
OWCP 1500 (FECA)	540,000 forms × 15 min/form=	135,000
OWCP 1500 (FBLBA)	13,000 forms × 5 min/form=	1,083
	86,000 forms × 10 min/form=	14,333
RTD's for OWCP 1500	19,000 forms × 5 min/form=	1,625
		174,266

14. There are no changes in the estimated burden hours because of the changes in the OWCP 1500.

15. There are no plans to publish data collected.

Instructions for Completing the OWCP 1500 Health Insurance Claim Form for Medical Services Provided Under the Federal Employees' Compensation Act (FECA) and the Federal Black Lung Benefits Act (FBLBA)

General Information: Federal Employees' Compensation Claimants

Claims filed under the Federal Employees' Compensation Act (FECA) (5 U.S.C. 8101 *et. seq.*) are for employment-connected illness or injury. All services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to give relief, reduce the degree or period of disability, or aid in lessening the amount of the monthly compensation, may be furnished. "Physician" includes all Doctors of Medicine (M.D.s), podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. The term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct subluxation as demonstrated by x-ray to exist.

Fees:

The U.S. Department of Labor's Office of Workers' Compensation Programs (OWCP) is responsible for payment of all reasonable charges stemming from covered medical services to claimants eligible under FECA. OWCP employs a relative value scale fee schedule and other tests to determine reasonableness. Schedule limitations are applied through an automated billing system that is based on the AMA Current Procedural Terminology (CPT). Correct CPT code and modifier(s), for identification of services provided is required. Incorrect coding will result in inappropriate payment. For specific information about schedule limits which may apply to the services being provided, call the Dept. of Labor's Federal Employees' Compensation (FEC) office which services your area.

A medical report which indicates the dates of treatment, diagnosis(es), findings, and the type of treatment offered is required for services provided by a physician (as defined under the Act). The initial report should explain relationship of the injury or illness to the employment. Test results and x-ray findings should accompany billings.

General Information: Federal Black Lung Benefits Act (FBLBA) Claimants

Claims filed under the Black Lung Benefits Act (30 U.S.C. 901 *et seq.* are for diagnostic and therapeutic services for black lung disease as defined under the Act. For specific information about reimbursable services, call the Dept. of Labor's Black Lung office that services your facility or call the National Office in Washington, DC.

Notice to Patients about the Collection and Use of Information:

The OWCP is authorized (FECA, 5 U.S.C. 8101 *et seq.;* FBLBA 30 U.S.C. 901 *et seq.*) to collect information needed to administrate the FECA and the FBLBA. The information collected is used to identify the eligibility of the claimant for benefits, and to determine coverage of services provided. There are no penalties for failure to supply information; however, failure to furnish information regarding the medical service(s) received or the amount charged will prevent payment of the claim. Failure to supply other information, such as claim number or use of ICD–9 or CPT codes, will delay payment or may result in rejection of the claim because of incomplete information.

Signature:

Your signature in Item 31 indicates your agreement to accept the

Government's charge determination on covered services as payment in full, and indicates your agreement not to seek reimbursement from the patient of any amounts not paid by OWCP for covered services as the result of the application of its fee schedule (appeals are allowed) or related tests for reasonableness.

Your signature in Item 31 also indicates that the services shown on this form were medically indicated and necessary for the health of the patient and were personally rendered or were rendered incident to your direct order. Your signature indicates that you understand that any false claims, statements or documents, or concealment of a material fact, may be prosecuted under applicable Federal or State laws.

Form Submittal:

FECA: Send all forms for FECA to the appropriate Federal Employees' Compensation District Office, or to the patient's employing federal agency for forwarding to the correct address.

FBLBA: All forms for services provided under the FBLBA should be returned to the Federal Black Lung Program, P.O. Box 740, Lanham, MD 20706, unless otherwise instructed.

Instructions for Completing the Form:

A brief description of each data element and its applicability to requirements under FECA and FBLBA (Black Lung) are listed below. For additional information contact the U.S. Department of Labor.

1. Check the name of the program being billed.

1a. Enter the patient's social security number.

2. Enter the patient's last name, first name, middle initial.

3. Enter the patient's date of birth (MMDDYY).

4. For FECA leave blank.

For Black Lung, complete only if patient is deceased and this medical cost was paid by a survivor. Enter the name of the survivor to whom medical payment is due.

5. Enter the patient's address (street address, city, state, zip code; telephone number is optional.

6. Leave blank.

7. For FECA leave blank.

For Black Lung complete if Item No. 4 was completed. Enter the name and address of survivor to whom payment is due.

8. Leave blank.

9. Complete 9a–9d if 11d "yes" was checked. List any potential third party payors other than FECA or Black Lung. This includes other federal programs (Medicaid, Medicare, CHAMPUS, etc.) and any private policy. Include policy number and policy holder's name.

10. For FECA check the appropriate box under 10a–10c.

For Black Lung, not required.

11. For FECA enter the patient's claim number. Omission will result in delayed bill processing.

For Black Lung leave blank.

11a. Leave blank.

11b. For FECA enter the name of the federal employing agency.

For Black Lung leave blank.

11c. Leave blank.

11d. Check the appropriate box. If "Yes" is checked, list any potential third party payors under Item No. 9.

12. The signature of the patient or authorized representative authorizes release of the medical information necessary to process the claim, and requests payment. Signature is required. Signature by mark (X) must be co-signed by a witness and relationship to patient indicated.

13. Signature indicates authorization for payment of benefits directly to the provider. Acceptance of this assignment is considered to be a contractual arrangement. The "authorized person" may be the beneficiary (patient) eligible under the program billed, person with power of attorney or statement that the beneficiary's signature is on file with the provider billing.

14. For FECA enter date of injury or first symptom.

For Black Lung not required.

15. For FECA enter first date of similar illness, injury or symptoms.

For Black Lung not required.

16. For FECA enter dates (MMDDYY) patient is unable to work in current occupation. For Black Lung, leave blank.

17. and 17a. If this is a referral, enter full name and tax I.D. of referring physician.

18. If services were provided during an inpatient hospital stay, enter the inpatient service days covered.

19. Leave blank.

20. If laboratory service charges are included on the bill, this item must be completed. If the services were performed outside the physician's office, the "Yes" box must be checked, the amount charged entered, and the name and address of the person/facility providing the service entered in Item No. 32 with an *.

21. Enter the diagnosis of the condition(s) being treated using ICD–9 codes. When more than one condition is being treated, relate each diagnosis to the procedure billed (i.e. reference number 1, 2, 3 or 4), or enter the appropriate ICD–9 code. Coding structure must follow the International Classification, Clinical Modification, 9th revision or the latest revision published. A brief narrative may also be entered but not substituted for the ICD code.

22. Leave blank.

23. If a prior authorization number has been assigned provide that number; otherwise leave blank.

24. In column "A" enter the month, day, and year (MMDDYY) of each service/consultation provided. If the "from" and "to" date represent a series of identical services, the number of services should be entered in column "G".

In column "B" enter the correct HCFA/OWCP standard "place of service" code (see attached).

Leave column "C" blank.

In column "D" enter the applicable five digit AMA CPT (current edition) procedure code with appropriate modifier(s), the HCPCS, or the OWCP generic procedure code; a brief narrative may be entered in columns "J and "K."

In column "E" enter the number (1, 2, 3, or 4) relating to the appropriate ICD–9 code listed under Item No. 21, *or* the appropriate ICD–9 code.

In column "F" enter the total charge(s) for each listed service(s). Describe any unusual circumstances in column "K" to avoid processing delays.

In column "G" enter the number of services/units provided for period listed in column "A".

Leave column "H" blank.

Enter "Yes" in column "I" if this is an emergency service.

Columns "J" and "K" may be used for nomenclature or notes.

25. Enter the federal tax I.D. or social security number to which the payment will be assigned. This item must be completed for payment to be processed.

26. Enter the account number you have assigned the patient (optional).

27. Complete as appropriate.

28. Enter the total charges from column 24F.

29. If any payment has been made, enter that amount here.

30. Enter the balance now due.

31. Signature is required (also print name if not listed in items 32 or 33). Mechanical reproduction is acceptable for Black Lung.

32. Complete as appropriate: (1) if address is different than that in Item No. 33, (2) Item No. 20 applies, (3) other circumstances.

33. Enter the name and address to which payment is to be made. Enter your PIN and Group number (if appropriate). For Black Lung claims enter your Black Lung Six-Digit provider number (assigned to you previously by the program) in the space following "GRP #". Failure to enter this number

will delay payment of cause rejection of the bill for incomplete/inaccurate information.

Public Burden Statement: We estimate that it will take an average of ca. ten to fifteen minutes to complete the information required on this form. This includes review of instructions, abstracting information from the patient's records and entering the data unto the form. This time is based on familiarity with standardized coding structures and previous use of this common form. Send comments regarding this burden estimate or any other aspects of this data collection document, including suggestions for reducing this burden, to the Office of Information Management, U.S. Department of Labor, room N1301, 200 Constitution Avenue, NW., Washington, DC 20210 and to the Office of Management and Budget, Paperwork Reduction Project (1215--0055), Washington, DC 20503.

HCFA 1500 Place of Service Codes

00–09	(Unassigned)
11	Office
12	Home
10, 13–19	(Unassigned)
21	Inpatient Hospital
22	Outpatient Hospital
23	Emergency Room—Hospital
24	Ambulatory Surgical Center
25	Birthing Center
26	Military Surgical Center
27–29	(Unassigned)
31	Skilled Nursing Facility
32	Nursing Facility
33	Custodial Care Facility
34	Hospice
30, 35–39	(Unassigned)
41	Ambulance—Land
42	Ambulance—Air or Water
40, 43–49	(Unassigned)
51	Psychiatric Facility Inpatient
52	Psychiatric Facility Partial Hospitalization
53	Community Mental Health Center
54	Intermediate Care Facility/ Mentally Retarded
55	Residential Substance Abuse Treatment Facility
56	Psychiatric Residential Treatment Center
50, 57–59	(Unassigned)
61	Comprehensive Inpatient Rehabilitation Facility
62	Comprehensive Outpatient Rehabilitation Facility
65	End Stage Renal Disease Treatment Facility
60, 66–69	(Unassigned)
71	State or Local Public Health Clinic
72	Rural Health Clinic
70, 73–79	(Unassigned)
81	Independent Laboratory
80, 82–89	(Unassigned)
99	Other Unlisted Facility
90–99	(Unassigned)

Place of Service Definitions

11 Office

Location, other than a hospital, SNF, or ICF, where the health professional routinely provides health examinations, diagnosis and treatment of illness or injury on an ambulatory basis.

12 Home

Location, other than a hospital, or other facility, where the patient receives care in a private residence.

21 Inpatient Hospital

A facility, other than psychiatric, which primarily provides diagnostic, therapeutic (both surgical and nonsurgical) and rehabilitation services by or under the supervision of physicians to patients admitted for a variety of medical conditions.

22 Outpatient Hospital

A portion of a hospital which provides diagnostic, therapeutic (both surgical and nonsurgical), and rehabilitation services to sick or injured persons who do not require hospitalization or institutionalization.

23 Emergency Room—Hospital

A portion of a hospital where emergency diagnosis and treatment of illness or injury is provided.

24 Ambulatory Surgical Center

A freestanding facility, other than a physician's office, where surgical and diagnostic services are provided on an ambulatory basis.

25 Birthing Center

A facility, other than a hospital's maternity facilities or a physician's office, which provides a setting for labor, delivery and immediate post-partum care as well as immediate care of newborn infants.

26 Military Treatment Facility

A medical facility operated by one or more of the Uniformed Services. Military Treatment Facility (MTF) also refers to certain former U.S. Public Health Service (USPHS) facilities now designated as Uniform Service Treatment Facilities (USTF).

31 Skilled Nursing Facility

A facility which primarily provides inpatient skilled nursing care and related services to patients who require medical, nursing, or rehabilitative services but does not provide the level of care or treatment available in a hospital.

32 Nursing Facility

A facility which primarily provides to residents skilled nursing care and related services for the rehabilitation of injured, disabled, or sick persons or on a regular basis health-related care services about the level of custodial care to other than mentally retarded individuals.

33 Custodial Care Facility

A facility which provides room, board and other personal assistance services, generally on a long-term basis, and which does not include a medical component.

34 Hospice

A facility, other than a patient's home, in which palliative and supportive care for terminally ill patients and their families are provided.

41 Ambulance—Land

A land vehicle specifically designed, equipped and staffed for lifesaving and transporting the sick or injured.

42 Ambulance—Air or Water

An air or water vehicle specifically designed, equipped and staffed for lifesaving and transporting the sick or injured.

51 Psychiatric Facility Inpatient

A facility that provides inpatient psychiatric services for the diagnosis and treatment of mental illness on a 24-hour basis, by or under the supervision of a physician.

52 Psychiatric Facility Partial Hospitalization

A facility for the diagnosis and treatment of mental illness that provides a planned therapeutic program for patients who do not require full-time hospitalization, but who need broader programs than are possible from outpatient visits in a hospital-based or hospital-affiliated facility.

53 Community Mental Health Center

A facility that provides comprehensive mental health services on an ambulatory basis primarily to individuals residing or employed in a defined area.

54 Intermediate Care Facility/Mentally Retarded

A facility which primarily provides health-related care and services above the level of custodial care to mentally retarded individuals but does not provide the level of care or treatment available in a hospital or skilled nursing facility.

55 Residential Substance Abuse Treatment Facility

A facility which provides treatment for substance (alcohol and drug) abuse to live-in residents who do not require acute medical care. Services include individual and group therapy and counseling, family counseling, laboratory tests, drugs and supplies, psychological testing, and room and board.

56 Psychiatric Residential Treatment Center

A facility or distinct part of a facility for psychiatric care which provides a total 24-hour therapeutically planned and professionally staffed group living and learning environment.

61 Comprehensive Inpatient Rehabilitation Facility

A facility that provides comprehensive rehabilitation services under the supervision of a physician to inpatients with physical disabilities. Services include rehab nursing, physical therapy, occupational therapy, speech pathology, social or psychological services, and orthotics and prosthetics services.

62 Comprehensive Outpatient Rehabilitation Facility

A facility that provides comprehensive rehabilitation services under the supervision of a physician to outpatients with physical disabilities. Services include physical therapy, occupational therapy, and speech pathology services.

65 End Stage Renal Disease Treatment Facility

A facility other than a hospital, which provides dialysis treatment, maintenance and/or training to patients or caregivers on an ambulatory or home-care basis.

71 State of Local Public Health Clinic

A facility maintained by either State or local health departments that provides ambulatory primary medical care under the general direction of a physician.

72 Rural Health Clinic

A certified facility which is located in a rural medically underserved area that provides ambulatory primary medical care under the general direction of a physician.

81 Independent Laboratory

A laboratory certified to perform diagnostic and/or clinical tests independent of an institution or a physician's office.

99 Other Unlisted Facility

Other service facilities not identified above.

[FR Doc. 91-6478 Filed 3-18-91; 8:45 am]
BILLING CODE 4510-27-M

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of February 1991.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) The a significant number or proportion of the workers in the workers' firm or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,197; Brunner & Lay, Inc., Timkin Rock Bit Div., Colorado Springs, CO

TA-W-25,113; Comdial Communication Corp., Charlotteville, VA

TA-W-25,085; Wynwear Co., Brooklyn, NY

TA-W-25,199; Custom Main Corp., New York, NY

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-25,274; Tacoma Boat Building, Inc., Tacoma, WA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,205; John Deere Horicon Works, Horicon, WI

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,242; Cincinnati Milacron-Heald Corp, Worcester, MA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-25,260; National Standard Co., Niles MI

U.S. imports of carbon wire declined absolutely and relative to domestic shipments in 1989 compared to 1988 and in the first eleven months of 1990 compared to the same period in 1989.

TA-W-25,165; H.P. Deuscher Co., Hamilton, OH

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,261; Solvents & Chemicals Div., Neville Chemical Co, Pittsburgh, PA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-25,245; Craftex Mills Inc., Philadelphia, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,257; Lone Star Industries, Inc., Houston, TX

U.S. imports of cement declined absolutely and relative to domestic shipment in 1989 compared to 1988 and in 1990 compared to 1989.

TA-W-25,208; Manville Sales Corp., Plant #3, Defiance, OH

The investigation revealed that criterion (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification. It was also revealsed that criterion (2) was not met. Sales or production did not decline during the

relevant period as required for certification.

TA–W–25,249; Dukesa Sales Corp., Hammonton, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–25,152; The Timken Co., Canton, OH

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–25,259; Moore Business Forms & Systems Div., Buckhannon, WV

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–25,251; Family Foods, Grand Rapids, MI

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–25,258; Memorix-Telex Corp., Inc., King of Prussia, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–25,097 & TA–W–25,098; L.L. Bean, Inc., Lisbon Falls, ME, and Brunswick, ME

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–25,234; American Tree Co. Inc., Pittsburgh, PA

Increased imports did not contribute importantly to worker separations of the firm.

Affirmative Determinations

TA–W–25,333; Weather Tamer, Inc., Athens, AL

A certification was issued covering all workers separated on or after January 2, 1990.

TA–W–25,237; Bethel Cedar Products, South Bend, WA

A certification was issued covering all workers separated on or after December 17, 1989 and before January 1, 1991.

TA–W–25,262; North & Judd, Inc., Middletown, CT

A certification was issued covering all workers separated on or after December 26, 1989.

TA–W–25,179; Norwich Shoe Co., Inc., Norwich, NY

A certification was issued covering all workers separated on or after November 27, 1989.

TA–W–25,268; Prior Shingle Co., Forks, WA

A certification was issued covering all workers separated on or after December 12, 1989.

TA–W–25,244; Corey & Sons, Inc., Port Angeles, WA

A certification was issued covering all workers separated on or after December 17, 1989.

TA–W–25,238; Blue Bird Knitwear Co., Hampton, VA

A certification was issued covering all workers separated on or after December 20, 1989.

TA–W–25,255; Jumping Jacks Shoes, Inc., Monett, MO

A certification was issued covering all workers separated on or after December 17, 1989.

TA–W–25,263; Oxford Marking Products, Oxford, ME

A certification was issued covering all workers separated on or after December 13, 1989

TA–W–25,114; Crown Worsted Mills, Inc., Central Falls, RI

A certification was issued covering all workers separated on or after November 9, 1989.

TA–W–25,124; Belden Wire & Cable, Shrewsbury, MA

A certification was issued covering all workers separated on or after November 10, 1989.

TA–W–25,246; Dale Electronics, Inc., El Paso, TX

A certification was issued covering all workers separated on or after December 18, 1989.

TA–W–25,268; Prior Shingle Co., Forks, WA

A certification was issued covering all workers separated on or after December 12, 1989.

TA–W–25,219; Blue Bird Knitwear Co., New York, NY

A certification was issued covering all workers separated on or after December 7, 1989.

TA–W–25,238; Blue Bird Knitwear Co., Hampton, VA

A certification was issued covering all workers separated on or after December 20, 1989.

TA–W–25,129; CNG Producing Co., Tulsa Div., Headquartered in Tulsa, OK & Operating at Various Locations in the Following States; A; AR, B; CO, C; KS, D; LA, E; MT F; NV, G; NM, H; OK, I; TX, J; UT, K; WY

A certification was issued covering all workers separated on or after October 27, 1989.

TA–W–25,247; Damson Oil Corp., Houston, TX and Operating at Various Locations in The Following States: A; CA, B; CO, C; IL, D; IN, E; LA, F; MT, G; NM, H; ND, I; OK, J; PA, K; TX, L; WY

A certification was issued covering all workers separated on or after February 1, 1991.

I hereby certify that the aforementioned determinations were issued during the month of February, 1991. Copies of these determinations are available for inspection in room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: March 12, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91–6479 Filed 3–18–91; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–25,187]

TXO Production Corp. Shreveport, LA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at TXO Production Corporation, Shreveport, Louisiana. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–25,187; TXO Production Corporation Shreveport, Louisiana (March 11, 1991)

Signed at Washington, DC this 12th day of March, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91–6480 Filed 3–18–91; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–25, 330]

UNISYS Flemington, NJ; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on January 22, 1991 in response to a worker petition which was filed on January 22, 1991 on behalf of workers at UNISYS, Flemington, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 12th day of March, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-6481 Filed 3-18-91; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Under OMB Review

AGENCY: National Foundation on the Arts and the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted on or before April 18, 1991.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202-786-0494) and Mr. Daniel Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503 (202-395-7316).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202-786-0494 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, extensions, or reinstatements. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) the frequency of responses; (8) an estimate of the total number of hours needed to fill out the form; (9) an estimate of the total annual reporting and recordkeeping burden. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Revisions

Title: Application Instructions and Forms for the Translations Category.

Form Number: Not Applicable.

Frequency of Collection: Annual.

Respondents: Humanities researchers and institutions.

Use: Application for funding.

Estimated Number of Respondents: 185.

Frequency of Response: Once.

Estimated Hours for Respondents to Provide Information: 58 per respondent.

Estimated Total Annual Reporting and Recordkeeping Burden: 11,890 hours.

Thomas S. Kingston,

Assistant Chairman for Operations.

[FR Doc. 91-6467 Filed 3-18-91; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommitte on Plant License Renewal; Meeting

The Subcommitte on Plant License Renewal will hold a meeting on April 8, 1991, room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: Monday, April 8, 1991—1 p.m. until 5 p.m.

The Subcommittee will review the proposed final rule on Nuclear Power Plant License Renewal (10 CFR part 54).

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Elipdio Igne (telephone 301/492-8192) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc. that may have occurred.

Dated: March 12, 1991.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 91-6485 Filed 3-18-91; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-18039; File No. 812-7669]

Templeton Funds Annuity Company, et al.

March 13, 1991

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Templeton Funds Annuity Company (the "Company"), Templeton Funds Retirement Annuity Separate Account ("Separate Account").

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) of the 1940 Act from sections 26(a)(2)(C) and 27(c)(2).

SUMMARY OF APPLICATION: Applicants seek an order to permit the assessment of a 0.8% charge from the assets of the Separate Account for mortality and expense risks.

FILING DATE: Applicants filed an application on January 8, 1991 and amended the application on February 4 and March 5, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC no later than 5:30 p.m. on April 8, 1991. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicants with the request, either personally or by mail, and also send a copy to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the

date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, Templeton Funds Annuity Company, 700 Central Avenue, P.O. Box 33030, St. Petersburg, Florida 33701–3628.

FOR FURTHER INFORMATION CONTACT: Thomas E. Bisset, Staff Attorney, at (202) 272–2058, or Barry Miller, Senior Attorney, at (202) 272–3012, Office of Insurance Products and Legal Compliance (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

APPLICANTS' REPRESENTATIONS: 1. The Company is a Florida insurance company organized on January 25, 1984. The Company is wholly owned by Templeton Funds Management, Inc. which, in turn, is an indirect wholly owned subsidiary of Templeton, Galbraith & Hansberger Ltd., a publicly-traded registered investment adviser. Templeton, Galbraith & Hansberger Ltd. is controlled by its majority stockholder, John M. Templeton.

2. The Separate Account was established by the Company pursuant to Florida law to fund group annuity or individual annuity contracts (collectively the "Contracts"). The Separate Account is registered as a unit investment trust.

3. The Separate Account presently invests solely in the shares of the Templeton Variable Annuity Fund (the "Fund"). The Fund is a diversified open-end management investment company.

4. The Company and the Separate Account previously received an order to permit the assessment of a charge from the assets of the Separate Account for mortality and expense risks (Investment Company Act Release No. 16222). The present request for exemptive relief was filed to separate the administrative charge from the mortality and expense risk charges and to permit the deduction of the mortality and expense risk charges from the assets of the Separate Account in connection with the issuance and maintenance of the individual annuity contracts.

5. The Contracts are sold without distribution or sales expense charges.

6. The Company will deduct an administrative charge against the Separate Account at an annualized rate of 0.3% of the average daily net asset value of the Separate Account. The Company represents that the administrative charge will not be increased for Contracts once issued.

7. The Company assesses a monthly charge against the Separate Account, equal on an annual basis to 0.8% of the Separate Account assets for assuming mortality and expense risks. Of that amount, approximately 0.5% is attributable to mortality risks, and approximately 0.3% is attributable to expense risks. Applicants represent that the mortality and expense risk charges will not be increased with respect to Contracts once they are issued. If the mortality and expense risk charge is insufficient to cover actual costs and assumed risks, the loss will fall on the Company. Conversely, if the charge is more than sufficient to cover costs, any excess will be profit to the Company. The Company currently anticipates that it will not profit from this charge. Applicants represent that annuity payments will not be affected by the mortality experience of persons receiving annuity payments or of the general population. For assuming this risk, the Company imposes the mortality risk charge. The expense risk borne by the Company results from its guarantee that ordinary expenses borne directly by the Separate Account will not exceed the explicit expense charges.

8. Applicants represent that the expense risk and mortality risk charges are reasonable in relation to the risks assumed by the Company under the Contracts, are consistent with the protection of investors insofar as they are designed to be competitive while not exposing the Company to undue risk or loss, and fall within the range of similar charges imposed under competitive variable annuity products.

9. Applicants represent that the level of expense risk and mortality risk charges are reasonable in amount as determined by industry practice with respect to comparable annuity contracts. This representation is based upon the Company's analysis of publicly available information about such similar industry practices, taking into consideration such factors as current charge levels and the existence of expense charge guarantees and guaranteed annuity rates.

10. The Company will maintain at its home office and make available to the Commission a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, the Company's comparative survey of competitive annuity products.

11. The Company will maintain and make available to the Commission upon request a memorandum setting forth the basis for its conclusion that the Separate Account's distribution financing arrangement will benefit the Separate Account and investors.

12. The Separate Account will only invest in open-end management investment companies which have undertaken to have a board of directors, a majority of whom are not interested persons of the open-end management company, formulate and approve any plan pursuant to Rule 12b–1 under the 1940 Act to finance distribution expense.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–6464 Filed 3–18–91; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program for Buchanan Field, Concord, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by County of Contra Costa for the City of Concord, California under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On August 21, 1989, the FAA determined that the noise exposure maps submitted by the County of Contra Costa for the City of Concord, California under part 150 were in compliance with applicable requirements. On January 30, 1991, the Administrator approved the Buchanan Field noise compatibility program. Twenty-three of the thirty-six recommendations of the noise abatement program were approved. Thirteen noise abatement measures were disapproved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Buchanan Field noise compatibility program is January 30, 1991.

FOR FURTHER INFORMATION CONTACT: William T. Johnstone, Airport Planner, Western-Pacific Region, Airports Division, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles,

CA 90009, Telephone: (213) 297–1621. Street Address: 15000 Aviation Blvd., room 6E25. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION:
This notice announces that the FAA has given its overall approval to the noise compatibility program for Buchanan Field, effective January 30, 1991.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in San Franscisco, CA.

The County of Contra Costa for the City of Concord submitted to the FAA on June 14, 1989, the noise exposure maps, descriptions, and other documentation produced during the noise compatability planning study conducted from January 1987 through June 1989. The Buchanan Field noise exposure maps were determined by FAA to be in compliance with applicable requirements on August 21, 1990. Notice of this determination was published in the **Federal Register** on Friday, September 15, 1989.

The Buchanan Field study contains a proposed noise compatability program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1992. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on August 3, 1990, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day shall be deemed to be an approval of such program.

The submitted program contained thirty-six proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective January 30, 1991.

Outright approval was granted for twenty-three of the thirty-six specific program elements. Approved program measures include: Maintenance of local traffic patterns; preferential use of runways; restriction of intersection departures; informational signage; distribution of noise abatement advisories; conduct written compliance; continue noise abatement education in flight schools; conduct noise monitoring; establish interagency coordination procedures; maintain the public information program; install a noise management system; retain noise control officer; increase pilot noise awareness; conduct noise modelling; adopt standardized land use and planning guidelines; amend local general plans and subdivision ordinances; require navigation easements; update airport land use plans; establish development controls, and approved as a voluntary measure; modification of aircraft departures.

These determination are set forth in detail in a Record of Approval endorsed by the Administrator on January 30, 1991. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the County of Contra Costa, California.

Issued in Hawthorne, California on March 7, 1991.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 91–6433 Filed 3–18–91; 8:45 am]

BILLING CODE 4910–13–M

[Ref. Summary Notice No. PE–91–11]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: In notice document 91–5784 appearing on page 10457 in the issue of Tuesday, March 12, 1991, the Federal Aviation Administration published the summary of a petition for exemption from the Regional Airline Association (Docket No. 26467). On that page in column 1, under "Description of Relief Sought," an incorrect date was cited.

The date "May 1, 1991," should read "May 1, 1993."

Issued in Washington, DC, on March 13, 1991.

Deborah Swank,

Acting Manager, Program Management Staff, Office of the Chief Counsel.

[FR Doc. 91–6432 Filed 3–18–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service; Meeting

AGENCY: Department Offices, Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date of the next meeting and the agenda for consideration by the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service.

DATES: The next meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service will be held on Friday, April 5, 1991 at 9:30 a.m. in room 4121 of the Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Director, Office of Tariff and Trade Affairs, Office of the Assistant Secretary (Enforcement), room 4004, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Tel.: (202) 566–8435.

SUPPLEMENTARY INFORMATION: The Secretary of the Treasury has renewed the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service. The Committee is chaired by the Assistant Secretary of the Treasury (Enforcement) and is composed of the following twenty private sector representatives appointed by the Secretary of the Treasury.

Mr. William R. Casey, The Myers Group, Inc.
Mr. Aaron Cross, IBM
Ms. Jane A. Beseda, Toyota Motor Sales, U.S.A., Inc.
Mr. Seth M. Bodner, National Knitwear and Sportswear Association
Mr. Fermin Cuza, Mattel
Mr. David W. Danjczek, Litton
Mr. Alfred De Angelus, De Angelus & Schaffner
Mr. Moshe J. Genauer, Genauer Clothiers, Inc.
Ms. Gail W. Lewis, Aircraft Owners & Pilots Association
Ms. Lillian C. Liburdi, The Port Authority of NY and NJ
Mr. Arthur L. Litman, Castelazo & Associates
Mr. Michael M. Miles, Rudolph Miles & Sons Inc.
Mr. Eugene J. Milosh, American Assoc. of Exporters and Importers
Mr. Stanley Nehmer, Economic Consulting Services, Inc.
Mr. Richard E. Norton, Air Transport Association of America
Mr. Daniel O. Pegg, San Diego Economic Development Corporation
Mr. David H. Phelps, American Iron and Steel Institute
Ms. Penny Somerset, Watkins-Johnson International
Mr. Thomas G. Travis, Sandler, Travis & Rosenberg, P.A.
Mr. Peter M. Zubrin, General Motors Corporation

Agenda items for the first meeting of the renewed Treasury Advisory Committee on April 5, 1991 will include:

I. Old Business

1. Annual report to Congress for second year of operations of original Advisory Committee.

II. New Business

1. The level of commercial operations staffing and funding and the Merchandise Processing Fee.
2. The Harbor Maintenance Fee.
3. Update on the Customs Modernization Act.
4. Possible development of a system of consolidated periodic or annual filings of entries by importers in lieu of individual entries.
5. Other new business.

The meeting is open to the public. Owing to the security procedures in place at the Treasury Building, it is necessary for any person other than an Advisory Committee member who wishes to attend the meeting to give advance notice. In order to be admitted to the building to attend the meeting, contact Dennis M. O'Connell at (202) 566–8435, no later than Friday, March 29, 1991.

Dated: March 13, 1991.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 91–6407 Filed 3–18–91; 8:45 am]

BILLING CODE 4810–25–M

Office of Thrift Supervision

Alexander Hamilton Federal Savings and Loan Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Alexander Hamilton Federal Savings and Loan Association, Paterson, New Jersey, on March 7, 1991.

Dated: March 13, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–6448 Filed 3–18–91; 8:45 am]

BILLING CODE 6720–01–M

Beacon Federal Savings Association, Baldwin, NY; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Beacon Federal Savings Association, Baldwin, New York, on March 8, 1991.

Dated: March 13, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–6449 Filed 3–18–91; 8:45 am]

BILLING CODE 6720–01–M

First Citizens Savings and Loan Association, F.A.; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in Section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for First Citizens Savings and Loan Association, F.A., Fort Pierce, Florida, on March 7, 1991.

Dated: March 13, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–6450 Filed 3–18–91; 8:45 am]

BILLING CODE 6720–01–M

First Federal Savings Bank, Huron, SD; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for First Federal Savings Bank, Huron, South Dakota, on March 8, 1991.

Dated: March 13, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-6451 Filed 3-18-91; 8:45 am]

BILLING CODE 6720-01-M

First Federal Savings Association of Wewoka; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for First Federal Savings Association of Wewoka, Wewoka, Oklahoma, on March 7, 1991.

Dated: March 13, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-6452 Filed 3-18-91; 8:45 am]

BILLING CODE 6720-01-M

Jefferson Federal Savings Association, F.A.: Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Jefferson Federal Savings Association, F.A., Birmingham, Alabama, on March 7, 1991.

Dated: March 13, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-6453 Filed 3-18-91; 8:45 am]

BILLING CODE 6720-01-M

Preferred Savings Bank, F.S.B.; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Preferred Savings Bank, F.S.B., High Point, North Carolina, on March 7, 1991.

Dated: March 13, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-6454 Filed 3-18-91; 8:45 am]

BILLING CODE 6720-01-M

Alexander Hamilton Savings and Loan Association of Paterson; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(C) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Alexander Hamilton Savings and Loan Association of Paterson, Paterson, New Jersey (OTS No. 4826), on March 7, 1991.

Dated: March 13, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-6438 Filed 3-18-91; 8:45 am]

BILLING CODE 6720-01-M

Beacon Federal Savings Bank, Baldwin, NY; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Beacon Federal Savings Bank, Baldwin, New York, OTS Number 2810, on March 8, 1991.

Dated: March 13, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-6439 Filed 3-18-91; 8:45 am]

BILLING CODE 6720-01-M

Commonwealth Federal Savings and Loan Association; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Commonwealth Federal Savings and Loan Association, Fort Lauderdale, Florida, ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on March 7, 1991.

Dated: March 13, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-6445 Filed 3-18-91; 8:45 am]

BILLING CODE 6720-01-M

First Citizens Federal Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First Citizens Federal Savings and Loan Association, Forst Pierce, Florida, OTS No. 6996, on March 7, 1991.

Dated: March 13, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-6440 Filed 3-18-91; 8:45 am]

BILLING CODE 6720-01-M

First Federal Bank, F.S.B., Huron, SD; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First Federal Bank, F.S.B., Huron, South Dakota, OTS No. 6178, on March 8, 1991.

Dated: March 13, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-6441 Filed 3-18-91; 8:45 am]

BILLING CODE 6720-01-M

First Federal Savings and Loan Association of Wewoka; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First Federal Savings and Loan Association of Wewoka, Wewoka, Oklahoma, OTS No. 2773, on March 7, 1991.

Dated: March 13, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-6442 Filed 3-18-91; 8:45 am]

BILLING CODE 6720-01-M

Horizon Savings Bank, F.S.B., Wilmette, IL; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision

(F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Horizon Savings Bank, F.S.B., Wilmette, Illinois ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on March 7, 1991.

Dated: March 13, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-6446 Filed 3-18-91; 8:45 am]

BILLING CODE 6720-01-M

Jefferson Savings and Loan Association of Birmingham; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Jefferson Savings and Loan Association of Birmingham, Birmingham, Alabama, OTS No. 2439, on March 7, 1991.

Dated: March 13, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-6443 Filed 3-18-91; 8:45 am]

BILLING CODE 6720-01-M

Lincoln Savings and Loan Association F.A.; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Lincoln Savings and Loan Association, F.A., Irvine, California ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on March 7, 1991.

Dated: March 13, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-6447 Filed 3-18-91; 8:45 am]

BILLING CODE 6720-01-M

Preferred Savings Bank, Inc.; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(C) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Preferred Savings Bank, Inc., High Point, North Carolina, OTS No. 8162, on March 8, 1991.

Dated: March 13, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-6444 Filed 3-18-91; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (20A5A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316. Please do not send applications for benefits to the above addresses.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before April 18, 1991.

Dated: March 12, 1991.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Revision

1. Veterans Benefits Administration.

2. Application for Educational Assistance Test Program Benefits (section 901, Pub. L. 96-342).

3. VA Form 22-8889.

4. The form is used by individuals under the Educational Assistance Test Program to apply for educational benefits.

5. One time.

6. Individuals or households.

7. 500 responses.

8. 30 minutes.

9. Not applicable.

[FR Doc. 91-6400 Filed 3-18-91; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) the agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Ann Bickoff, Veterans Health Services and Research Administration (161B3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 535-7407.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503 (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk on or before April 18, 1991.

Dated: March 12, 1991.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Reinstatement

1. Veterans Health Services and Research Administration.

2. Non Federal Health Care Provider and Reimbursement Forms.

3. Department Form Numbers:

a. VA Form 10–1170, Application for Furnishing Nursing Home Care to Beneficiaries of Veterans Affairs.

b. VA Form 10–5588, State Home Report and Statement of Federal Aid Claimed.

c. VA Form 10–2407, Residential Care Home Program—Sponsor Application.

4. The information collection is necessary for non Federal nursing homes or residential care homes to qualify to provide care to veteran patients.

a. VA Form 10–1170 is used as the application to become approved as a non Federal nursing home provider of care for veteran patients.

b. VA Form 10–5588 is used for reporting claims for reimbursement for care provided to veteran patients.

c. VA Form 10–2407 is used as the application to become approved as a provider of residential care for veteran patients.

5. On occasion.

6. Individuals or households; State or local governments; Businesses or other for-profit.

7. 1,480 responses.

8. Estimate of Total Hours:

a. VA Form 10–1170—20 minutes.

b. VA Form 10–5588—30 minutes.

c. VA Form 10–2407—5 minutes.

9. Not applicable.

[FR Doc. 91–6401 Filed 3–18–91; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 53
Tuesday, March 19, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 12 noon, Monday, March 25, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: March 15, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-6634 Filed 3-15-91; 2:51 pm]

BILLING CODE 6210-01-M

INTERSTATE COMMERCE COMMISSION

Commission Conference

TIME AND DATE: 10 a.m., Tuesday, March 26, 1991.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th and Constitution Avenue, N.W., Washington, D.C. 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Ex Parte No. 395 (Sub-No. 2), *Revision of Feeder Railroad Development Rules.*

Docket No. AB-301 (Sub-No. 6), *SouthRail Corporation—Abandonment—Between Whistler Station, AL and Waynesboro, MS.*

Docket No. AB-32 (Sub-No. 43), *Boston and Maine Corporation and Springfield Terminal Railway Corporation—Abandonment and Discontinuance of Service in Hartford County, CT.*

Section 5a No. 106, *Household Goods Freight Forwarded Bureau.*

CONTACT PERSON FOR MORE INFORMATION:

A. Dennis Watson, Office of External Affairs, Telephone: (202) 275-7252. TDD: (202) 275-1721.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-6585 Filed 3-15-91; 11:37 am]

BILLING CODE 7035-01-M

LEGAL SERVICES CORPORATION

Board of Directors; Audit and Appropriations Committee Meeting; Notice

TIME AND DATE: A meeting of the Board of Directors Audit and Appropriations Committee will be held on March 24, 1991. The meeting will commence at 8 p.m.

PLACE: The Madison Hotel, 15th and "M" Streets, N.W., Drawing Rooms 1 & 2, Washington, D.C. 20005, 202/862-1600.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes.
3. Consideration of Revised Fiscal Year 1991 Consolidated Operating Budget.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office (202) 863-1839.

Dated Issued: March 15, 1991.

Patricia D. Batie,

Corporation Secretary.

[FR Doc. 91-6660 Filed 3-15-91; 3:59 pm]

BILLING CODE 7050-01-M

LEGAL SERVICES CORPORATION:

Board of Directors Meeting; Notice

TIME AND DATE: A meeting of the Board of Directors will be held on March 25, 1991. The meeting will commence at 10:00 a.m.

PLACE: The Madison Hotel 15th and "M" Streets, N.W., Mount Vernon Salon, Washington, D.C. 20005, 202/862-1600.

STATUS OF MEETING: Open [A portion of the meeting may be closed, suject to a vote by a majority of the Board of Directors, to discuss personnel, privileged or confidential, personal, investigatory and litigation matters under the Government in the Sunshine Act [5 U.S.C. 552b (c) (2), (4), (5), (7), and (10) and 45 CFR Sections 1622.5 (a), (c), (d), (e), (f), and (h)].

MATTERS TO BE CONSIDERED:

1. Aproval of Agenda.
2. Approval of Minutes.
3. Chairman's Report.
4. President's Report.
   a. Competition of Migrant Funds—Status Report.
   b. Availability of Native American One-Time-Grants—Status Report.
   c. House Appropriation Addition to Fiscal Year 1991 Budget.
5. Legislative Report.
6. Report of Special Reauthorization Committee.
7. Consideration of Audit and Appropriations Committee's Recommendation on Revised Fiscal Year 1991 Consolidated Operating Budget.
8. Consideration of Audit and Appropriations Committee's Recommendation Concerning Board Member Compensation.
9. Consideration of Competition Study.
10. Presetation by Mr. William Fry, of the National Public Law Training Center, on Self-Help Legal Assistance.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 863-1839.

Date Issued: March 15, 1991.

Patricia D. Batie,

Corporation Secretary.

[FR Doc. 91-6661 Filed 3-15-91; 3:59 pm]

BILLING CODE 7050-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Previously Held Emergency Meeting

TIME AND DATE: 12:03 p.m., Wednesday, March 13, 1991.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, N.W., Washington, D.C. 20456.

STATUS: Closed.

MATTER CONSIDERED:

1. Administrative Action under Section 120 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

The Board voted unanimously that Agency business required that a meeting be held with less than the usual seven days advance notice.

The Board voted unanimously to close the meeting under the exemptions listed above. General Counsel Robert Fenner certified that the meeting could be closed under those exemptions.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682–9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 91–6627 Filed 3–15–91; 1:58 am]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of March 18, 25, April 1, and 8, 1991.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of March 18

Friday, March 22

2:00 p.m.
Periodic Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 25—Tentative

Thursday, March 28

10:00 a.m.
Periodic Briefing on Definitions of Releases Into Containment and Policy on the Use of the Updated TID–14844 by Existing Plants (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Appeal from a Licensing Board Order LBP–91–1 in the Shoreham Proceeding

Week of April 1—Tentative

Wednesday, April 3

10:00 a.m.
Periodic Briefing on Progress of Resolution of Generic Safety Issues (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of April 8—Tentative

Friday, April 12

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specified items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: March 14, 1991.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 91–6593 Filed 3–15–91; 11:37 am]

BILLING CODE 7590–01–M

Corrections

Federal Register
Vol. 56, No. 53
Tuesday, March 19, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FARM CREDIT ADMINISTRATION

12 CFR Part 611

RIN 3052-AB12

Organization; Reorganization Authorities for System Institutions

Corrections

In rule document 91-2030 beginning on page 3397, in the issue of Wednesday, January 30, 1991, make the following corrections:

1. On page 3397, in the second column, in the first full paragraph, in the third line, "§ " should read "section", in the eighth line "§ § " should read "sections", and in the fourth line from the bottom of the page, "§ " should read "section".

2. On page 3402, in the 1st column, in the 2d full paragraph, in the 7th line, "condition" should read "conditions", and in the 23d line, "above" should read "above,".

3. On page 3404, in the second column, in the first full paragraph, in the third line, "§ " should read "section".

4. On the same page, in the 3d column, in the 1st full paragraph, in the 11th line, "§ " should read "section", in the 16th line, "§ " should read "section"; in the 2d full paragraph, in the 11th line, "§ " should read "section", in 14th line, "§ " should read "section", in the 16th line, "§ " should read "section", in the 17th line, "§ " should read "section", and in the 26th line "§ " should read "section".

5. On page 3406, in the 2d column, in the 2d full paragraph, in the 17th line, "Section" should read "§ ", and in the 18th line, "Section" should read "§ ".

§ 611.1205 [Corrected]

16. On page 3408, in the first column, in § 611.1205(g), in the first line, "*Terminating*" should read "*Termination*".

§ 611.1210 [Corrected]

7. On page 3408, in the first column, in § 611.1210(b)(2), in the first line, "annoucement" should read "announcement".

§ 611.1212 [Corrected]

8. On page 3409, in the first column, in § 611.1212(c), in the fourth line, "lest" should read "least".

§ 611.1215 [Corrected]

9. On page 3409, in the second column, in § 611.1215(d), in the second line, "propose" should read "proposed"; in the ninth line, "result" should read "results".

§ 611.1225 [Corrected]

10. On page 3410, in the third column, in § 611.1225(k), in the second line, "exist" should read "exit".

11. On page 3411:

a. In the first column, in § 611.1225(p), in the third line, "immediatiey" should read "immediately".

b. In the second column, in § 611.1225(t)(3)(ii), in the eighth line, "audition" should read "auditing".

c. In the second column, in § 611.1225(u), in the first line, "discription" should read "description".

d. In the second column, in § 611.1225(v), in the first line, "discription" should read "description".

§ 611.1255 [Corrected]

12. On page 3413, in the 1st column, in § 611.1255(a), in the 11th line, "on" should read "of".

§ 611.1260 [Corrected]

13. On page 3414, in the first column, in § 611.1260(h), in the fourth line, "owing" should read "owning".

§ 611.1270 [Corrected]

14. On page 3414, in the second column, in § 611.1270, in the third line "Bank" should read "bank".

BILLING CODE 1505-01-D

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances

Corrections

In rule document 91-5158 beginning on page 9123, in the issue of March 5, 1991, make the following corrections:

§ 305.9 [Corrected]

1. On page 9124:

a. In Footnote 7, "1.138,690" should read "138,690".

b. In Footnote 9, "136,000" should read "135,000".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 575

[Docket No. 90-04; Notice 2]

RIN 2127-AD21

Federal Motor Vehicle Safety Standards: New Pneumatic Tires for Passenger Cars—CT Tires

Correction

In rule document 90-27489 beginning on page 49619 in the issue of Friday, November 30, 1990, make the following corrections:

§ 571.109 [Corrected]

1. On page 49622, in § 571.109, in Table II, in the seventh column (300), the second entry now reading "270" should read "220".

§ 575.104 [Corrected]

2. On the same page, in § 575.104, in Table 1, the vertical lines between "40" and "60" and between "300" and "340" should be between "60" and "240" and "340" and "290" respectively.

§ 575.104 [Corrected]

3. On page 49623, in § 575.104, in Table 2, in the second column, the entry for 340 kPa now reading ".904" should read ".804".

BILLING CODE 1505-01-D

federal register

Tuesday
March 19, 1991

Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 92

Home Investment in Affordable Housing; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 92

[Docket No. R-91-1518; FR-2937-P-01]

RIN 2501-AB12

Home Investment in Affordable Housing

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This part provided the implementing regulations for the recently-enacted HOME Program. In general, under the HOME Program, HUD allocates funds by formula among eligible States and local governments to provide more affordable housing. HOME funds must be matched by non-Federal resources. State and local governments that become participating jurisdictions may use HOME funds to provide rental and homeownership housing through acquisition, rehabilitation, and new construction of housing, and tenant-based rental assistance, and new construction of housing, and tenant-based rental assistance. Participating jurisdictions are able to provide assistance in a number of eligible forms, including loans, advances, equity investments, interest subsidies and other forms of investment that HUD approves.

HUD may reallocate funds competitively to jurisdictions and to community housing development organizations to provide affordable housing. HUD will also develop model programs for use by participating jurisdictions in establishing their HOME programs.

DATES: Comments must be received by April 18, 1991. The Department has limited the comment period to 30 days in order to publish an effective rule within the period specified in section 206 of the Cranston-Gonzalez National Affordable Housing Act (i.e., by May 28, 1991) and to allow for full implementation of the HOME Program in this fiscal year. To assist meeting these objectives, the Department requests that responses to this request for public comment be limited to substantial areas of concern and to ways in which the collection of information recordkeeping and reporting burdens may be reduced. The Department, when it publishes the rule for effect, will publish an interim rule seeking further comment and will provide an extended comment period so that the commenters may raise issues based on program experience. It is the Department's intention to publish a final effective rule within a year after the initial formula allocation notice is published in the **Federal Register.**

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of the General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Wasington, DC 20410-0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection between 7:30 a.m. and 5:30 p.m at the above address.

As a convenience to commenters, the Rules Docket Clerk will accept brief public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 708-4337. Only public comments of six or fewer total pages will be accepted via FAX transmittal. This limitation is necessary in order to assure reasonable access to the equipment. Comments sent by FAX in excess of six pages will not be accepted. Receipt of FAX transmittals will not be acknowledged, except that the sender may call the Rules Docket Clerk at (202) 708-2084, TDD (202) 708-3259 to confirm receipt. (These are not toll-free numbers).

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Office of Urban Rehabilitation, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-2470, TDD (202) 708-2565. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Information Collections

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980.

The annual public reporting burden of these requirements, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, is stated in the chart below. Send comments regarding burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to the Department of Housing and Urban Development Rules Docket Clerk, at the address stated above, and to the Office of Information and Regulatory Affairs, room 3001, Office of Management and Budget, Washington, DC 20503, Attention: Wendy Sherwin, Desk Officer for HUD. The Department may amend the information collection requirements set out in this rule to reflect public comments or OMB comments received concerning the information collections.

ANNUAL REPORTING AND RECORDKEEPING BURDEN

Reg. section	Paperwork requirement	Record-keeping hours	Reporting hours	No. of juris.	Total hours
92.3	Application for Indian Program Set-Aside		5	50	250
92.51	Production Set-Aside Appeal		5	10	50
92.101	Consortia Designation		5	20	100
92.103	Notice of Intent		.5	260	130
92.104	Submission of Strategy (Information on this information collection requirement was included in the interim rule regarding Comprehensive Housing Affordability Strategies published on February 4, 1991, at 56 FR 4480.)				
92.150	Program Description, including certifications		10	260	2,600
92.200	Private-Public Partnership	2		360	720
92.201	Distribution of Assistance	2		360	720
92.202	Site and Neighborhood Standards	2		150	300
92.203	Income Determination	2		810	1,620
92.206, 216, 217, 218, 250, 252, 254, 255, 256.	Documentation required by HUD to be included in project file to determine project eligibility (i.e. eligible uses, eligible costs, income eligibility, costs limits, mixed-projects and value and type of matching contribution).	5		810	4,050
92.207	Preference to Rehab. Determination	2		50	100
92.209, 210	New Construction Determination	2		50	100
92.221	Reduction of Match Requirement		5	260	1,300

ANNUAL REPORTING AND RECORDKEEPING BURDEN—Continued

Reg. section	Paperwork requirement	Record-keeping hours	Reporting hours	No. of juris.	Total hours
92.251	Written Property Standards	1		760	760
92.253	Tenant Protections (including lease requirements)	5		760	3,800
92.300	CHDO Identification	2		260	520
92.301	CHDO Project Assistance	2		260	520
92.303	Tenant Participation Plan	10		50	500
	OTHER FEDERAL REQUIREMENTS				
92.350	Equal Opportunity (including nondiscrimination, and minority and women business enterprise and minority outreach efforts).	5		760	3,800
92.351	Affirmative Marketing	10		760	7,600
92.352	Displacement, relocation and acquisition (including tenant assistance policy and C/MI System documentation.	5		760	3,800
92.354	Labor	2.5		760	1,900
92.355	Lead-based paint	.5		760	380
92.357	Debarment and Suspension	1		760	760
92.453	Application for Direct Reallocations		3	100	300
92.501	Investment Partnership Agreement	1		300	300
92.502	Cash Management System	10	40	810	40,500
92.504	Participating Jurisdiction's Written Agreements	10		260	2,600
92.507	Closeout Report	5	5	410	4,100
92.509	Annual Performance Report		5	410	2,050
	Total Recipient Burden Hours				86,230

Total Participant Costs:
Recordkeeping Hours: 45,000×$15=$675,000
Reporting Hours: 41,230×$15=$618,450
Total: 86,230×$15=$1,293,450

II. Background

Subpart A—Overview and Purpose

The Cranston-Gonzalez National Affordable Housing Act (the Act) was signed into law on November 28, 1990. Title II of the Act (which may be cited as the HOME Investment Partnerships Act), creates the Home Investment in Affordable Housing (or HOME) Program that provides funds to States and local governments for acquisition, rehabilitation, and new construction of affordable housing and tenant-based rental assistance. HOME's general purposes include an expansion of the supply of decent, safe, and sanitary housing, especially rental housing, for low-income Americans by strengthening the abilities of States and local governments to design and implement affordable housing strategies. To receive funds under the HOME and other programs, title I requires the preparation of a single planning document: the comprehensive housing affordability strategy. (See 24 CFR part 91, published at 56 FR 4480, on February 4, 1991, effective date March 6, 1991.) The comprehensive housing affordability strategy (referred to in this rule as "housing strategy") encompasses a State or local government's housing needs, with a focus on affordable housing for low-income families.

Definitions are found in this subpart. A discussion of "nonprofit organization" and "community housing development organization" is found in the explanation of Subpart G below.

The statute requires that one percent of HOME appropriations be awarded to Indian tribes. The Department will award the funds by competitions in accordance with the selection criteria in the regulations. The Department will publish a notice of the availability of the funds. The regulation also sets forth requirements applicable to Indian tribes.

The President's Budget for fiscal year 1992 proposes appropriations for the HOME program of $500 million and $1 billion for fiscal years 1991 and 1992, respectively, and to increase the Indian set-aside in fiscal year 1992 to $125 million. The Budget proposes several technical amendments to the program authorizing statute. See, *Budget of the United States Government,* Fiscal Year 1992, part 4, pp 710 and 1208–1210: see also pp 1219–1220.

Subpart B—Allocation Formula

Basic Formula

The Act requires HUD to establish by regulation an allocation formula that provides funds to eligible States and local governments based on the need for an increased supply of affordable housing for very low-income and low-income families, as identified by objective measures of inadequate housing supply, substandard housing, the number of low-income families in housing units likely to be in need of rehabilitation, the costs of producing housing, poverty, and the relative fiscal incapacity of the State or local government to carry out housing activities eligible to be funded in the HOME Program without Federal assistance. Allocations are computed for metropolitan cities and urban counties as defined in sections 102(a)(4) and 102(a)(6), respectively, of the Housing and Community Development Act of 1974 (42 U.S.C. 5302), and for approved consortia of local governments and for States. The process for establishing consortia participation in this program is described at § 92.101.

Sixty percent of the funds available for allocation are to be allocated by formula to metropolitan cities, urban counties and consortia and 40 percent are to be allocated to States. Local governments must receive at least $500,000 to receive a formula allocation. However, a total amount of $750,000 (the formula allocation plus State or local funds) is required for a local government to participate for the first time in the HOME Program. A local government that receives an allocation between $500,000 and $750,000 may be designated as a participating jurisdiction if other funds are contributed by the local government or the State to make up the difference in the local government's formula allocation and $750,000. For instance, a State may authorize HUD to transfer to the local government a portion of the State's allocation that may be less than, equal to, or greater than the difference between the local government's allocation and $750,000, or the State or local government may provide other funds to make up the difference.

In subsequent years, if a local government's formula allocation (plus State or local funds) falls below $750,000 for three consecutive years, below

$625,000 for two consecutive years or the local government does not receive a formula allocation, the Department may revoke the local government's designation as a participating jurisdiction. Otherwise, once a State or unit of general local government is designated a participating jurisdiction, it will remain a participating jurisdiction for subsequent years.

Each State will receive an allocation of at least $3,000,000. If any State's allocation is less than $3,000,000, the State would have its allocation increased to $3,000,000 by a pro rata reduction to all other States. States that have no local governments which receive allocations will have their allocation increased by $500,000 with the increase in funds derived by a pro rata reduction from the allocations to all local governments.

The Department believes the six factors described in § 92.50(c) reflect the statutory provisions and the problem that the program is designed to address—an inadequate supply of affordable housing for low-income and very low-income families. However, when the 1990 Census data become available, HUD plans to evaluate these factors and may propose changes if new factors or refined data better represent the legislative criteria.

In developing the formula, the Department consulted with the Subcommittee on Housing and Urban Affairs of the Committee on Banking, Housing and Urban Affairs of the Senate and the Subcommittee on Housing and Community Development of the Committee on Banking, Finance and Urban Affairs of the House of Representatives and organizations representing States and local governments. If the Department proposes new factors based on the 1990 Census data, it is our intent to consult with these Congressional committees and subcommittees, as well as with organizations representing States and local governments.

Estimated Formula Results—FY 1991 Authorized Funding Level

The Department estimated the effects of the proposed formula with available data for metropolitan cities and urban counties that existed in FY 1990. Consortia were not considered in the estimates. At the $1 billion funding level authorized for FY 1991, 295 local governments would receive an allocation of $500,000 or more. Of these local governments, 196 with allocations over the $750,000 threshold would receive about 87 percent of the local government funding (60 percent of the amount available for allocation). There are 51 local governments that would receive over $2 million in funding; these local governments would receive about 59 percent of the funds for local governments.

There are eight states that would have no local governments with an allocation of at least $500,000. These States are: Idaho, Montana, North Dakota, South Dakota, Vermont, West Virginia, Wyoming and the District of Columbia (which is defined as a State for purposes of the HOME Program).

Fifteen States would receive less than $3,000,000. These States are: Alaska, Delaware, Hawaii, Idaho, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Dakota, Rhode Island, South Dakota, Utah, Vermont and Wyoming. In order to provide each of these States an allocation of $3,000,000, funding for other States would be reduced by 4.8 percent.

Estimated Formula Results—FY 1992 Authorized Funding Level

The Department estimated the effects of the proposed formula with the same formula data and the same set of metropolitan cities and urban counties as used for the FY 1991 estimates. At the $2,086,000,000 funding level authorized for FY 1992, 509 local governments would receive an allocation of at least $500,000. Of these local governments, 369 with allocations of $750,000 or more would receive about 93 percent of the funds available for local governments. There would be 119 local governments with over $2,000,000 in funding; these local governments would receive about 68 percent of local government funding.

There would be two States (Wyoming and the District of Columbia) that would have no local governments with an allocation of at least $500,000. Allocations for local governments would be reduced by less than 0.1 percent to provide an additional $500,000 to each of these States.

There would be five States that would receive less than $3,000,000. These States are: Alaska, Delaware, Hawaii, Nevada, and Wyoming. All other State amounts would be reduced by 0.58 percent, so that each of these States would receive at least $3,000,000.

Rental Housing Production Formula

Section 217(b)(1)(A) of the Act requires HUD to allocate 10 percent of the formula funds for rental housing production (i.e., substantial rehabilitation or new construction of rental housing) in FY 1991 and 15 percent in FY 1992.

The statute requires HUD to identify areas that have an inadequate supply of housing at rentals below the fair market rent established for the area under Section 8 of the United States Housing Act of 1937 and a severe shortage of substandard residential structures that are suitable for rehabilitation as affordable rental housing. Such areas are determined to have a housing supply sufficiently inadequate to permit new construction. Funds for rental housing production are to be allocated by a formula which reflects each eligible jurisdiction's share of the total need among all eligible jurisdictions for rental housing production, as identified by objective measures of inadequate housing supply, including low vacancy rates, low turnover of units with rents below fair market rents, a high proportion of substandard housing, and other measures that HUD determines are appropriate.

No additional funds are allocated under the rental housing production formula. The rental housing production formula determines a minimum set-aside of funds already allocated under the basic formula. Rental housing production funds allocated to a participating jurisdiction cannot exceed funds allocated under the basic formula. Funds not committed for substantial rehabilitation or new construction by the end of 2 years are available for funding other eligible activities under the HOME program for an additional 12 months.

Five eligibility factors and a composite of these factors are used to determine eligibility for a rental housing production set-aside. The composite factor is an average of the five factors. In determining the composite factor, component factors are capped at the highest and lowest 5 percent of values for metropolitan cities and urban counties. Each component factor for a local government is expressed as a ratio that compares the local government's data to the national average. The data for the local government are either in the numerator or the denominator for this ratio so that above average need is always expressed as a value greater than 1. The five factors are:

Low vacancy—The national rental vacancy rate for 1980 (7.1 percent) divided by the 1980 vacancy rate for a local government.

Low turnover—The national rate at which renter families moved in 1979 and the 3 months preceding the 1980 census (47.38 percent) divided by the corresponding turnover rate for a local government.

High proportion of substandard housing—The percent of rental units with at least one of four problem conditions as of 1980 divided by the corresponding national rate (41.61

percent). The four problem conditions are: Lacking plumbing, lacking kitchen facilities, overcrowding, and rent burden exceeding 30 percent of income.

High fair market rent—The most recently available two bedroom Section 8 Existing Housing fair market rent for a local jurisdiction divided by the national two bedroom Section 8 Existing Housing fair market rent ($518).

High population growth—The population growth rate from 1980 to 1988 for a local government divided by the corresponding national rate (108.36 percent).

A local government would be eligible in Fiscal Years 1991 and 1992 if it is above average on at least 3 of the 5 factors and if it is more than 10 percent above the national average on the composite factor. Based on currently available data, these criteria allow eligibility for 32 percent of the participating jurisdictions in both years. In future years, the required percent above average may change.

Funds are allocated based on the share of need in a State or local government. The local government set-aside is computed by multiplying the composite factor (minus 1) by the HOME formula amount of the local government. The State set-aside is computed by multiplying the composite factor (minus 1) by the population of areas within the State.

Determinations are made for metropolitan cities and urban counties that receive a formula allocation and for the following areas of the States: All other metropolitan cities and urban counties, the balance of counties containing metropolitan cities and urban counties, and other counties. HUD will not make determinations for any area with a population less than 25,000.

Eighty percent of the rental housing production set-aside amounts are proposed to be distributed to metropolitan cities and urban counties, while 20 percent will be distributed to States. This 80/20 proportional split approximates the relative share of need for new construction as measured by the rental housing production formula factors when applied to all jurisdictions eligible for funding under the basic HOME formula.

Estimated Formula Results

HUD estimates that of the local governments that would receive a formula allocation of at least $500,000, there are 95 local governments which would have rental housing production set-asides in FY 1991. There would be 164 local governments in FY 1992. These local governments comprise about 32 percent of the 295 local governments that receive allocations of at least $500,000 in FY 1991 and the same percent of the 509 local governments receiving allocations above $500,000 in FY 1992.

There are 28 States that would receive rental housing production set-asides in both FY 1991 and FY 1992. For FY 1991, these States contain 222 other eligible areas. For FY 1992, because there are a greater number of local governments receiving allocations, there would be only 148 other eligible areas within the States.

The rental housing production allocations to States would be a substantial part of the HOME allocations in relatively few States. Only four of the 28 States would be required to spend more than 10 percent of their HOME funds for rental housing production in FY 1991. In FY 1992, the number of such States would increase to nine.

The distribution of local governments and areas within States for the rental housing production allocation would be concentrated in suburban and urban areas in the Far West and in the corridor between Boston and DC. In both FY 1991 and FY 1992, the 9 States referred to above would account for about 90 percent of the rental housing production allocation.

The percent that each participating jurisdiction must set aside for rental housing production varies with the composite indicator used to compute each jurisdiction's rental housing production amounts and with the overall percent of HOME funds designated for new construction. In FY 1991, with 10 percent of the HOME funds designated for rental housing production, the percent set aside for eligible jurisdictions ranges from about 10 percent to 50 percent. In FY 1992, with 15 percent designated for rental housing production, the percent set aside ranges from about 15 percent to 75 percent.

The Department used the factors to determine the rental housing production set-aside to develop a list, in accordance with section 212(a)(3)(B) of the statute, of local governments and areas in States within which HOME funds may be used for new construction.

Local governments and States may request a review of their exclusion from the list based on evidence of an administrative error by the Census Bureau or HUD. These requests would be sent to HUD Headquarters. States may request an eligibility determination for areas with populations less than 25,000. The HUD field offices would make determinations for any such small area based on current information submitted by the State about the area.

Subpart C—Participating Jurisdictions—Designation and Revocation of Designation—Consortia

The regulation allows for the formation of consortia, beginning in fiscal year 1992, to participate in the program, under the conditions that HUD is notified in advance of its intent, the State is satisfied that its function will address housing problems that exist, and HUD determines that there is sufficient capacity within the consortium to perform this function. Consortia may be formed by metropolitan cities, urban counties, or other units of general local government. Local governments that are part of an urban county for the Community Development Block Grant Program may not join a consortium, unless the urban county joins the consortium.

The regulation establishes that a jurisdiction can be designated as a participating jurisdiction if it receives a formula allocation of $750,000 or more. In addition, a local jurisdiction that receives a formula allocation between $500,000 (the minimum allocation) and $750,000 can be designated as a participating jurisdiction if the State agrees to transfer a portion of its allocated funds to the local jurisdiction, or the State or jurisdiction provides funds to make up the difference between the allocation and $750,000.

A jurisdiction meeting the above requirements must notify the Department of its intention to participate and must submit a housing strategy (in accordance with 24 CFR part 91, see 24 CFR part 91, published at 56 FR 4480, on February 4, 1991, effective date March 6, 1991). If the local jurisdiction's formula allocation is less than $750,000, the notification must include the State's authorization to transfer a portion of its funds or a statement from the State or the local jurisdiction that the funds have been approved and budgeted.

After the jurisdiction has submitted the notice and the Department has approved its housing strategy, the Department will designate the jurisdiction as a participating jurisdiction. The designation remains in effect unless specifically revoked by HUD. The designation may be revoked if HUD determines that the jurisdiction can not or will not comply with the provisions of this part, or if a participating jurisdiction's allocation plus funds transferred by the State or otherwise provided by the State or local government falls below $750,000 for 3 consecutive years, or $625,000 for two

consecutive years, or the jurisdiction does not receive a formula allocation.

In the event of revocation of designation, any balance of uncommitted funds in the jurisdiction's HOME Investment Trust Fund will be recaptured and reallocated.

Subpart D—Program Description

A participating jurisdiction will be required to submit a program description for HOME funds annually to the responsible Field Office. Participating jurisdictions should submit the program description within 45 days after the date of publication of the formula allocation notice, predicated upon having an approved housing strategy or annual update. A brief program description is being requested for HOME funds in lieu of more specific information being requested in the housing strategy submission. The program description is also an opportunity for the participating jurisdictions to describe how HOME funds meet housing strategy needs and supply necessary program information and certifications.

The program description should include a Standard Form 424 and the elements and certifications outlined in § 92.150.

One of the certifications to be submitted with the program description would implement section 212(e) of the Act, which requires the participating jurisdiction to certify that the combination of Federal assistance provided to any housing project shall not be any more than is necessary to provide affordable housing. Title IV of the Act established the Homeownership and Opportunity for People Everywhere Programs (HOPE). HOPE program guidelines were published in the **Federal Register** on February 4, 1991. Two of the HOPE programs, namely, HOPE for Homeownership of Multifamily Units (HOPE 2) (56 FR 4436) and HOPE for Homeownership of Single Family Units (HOPE 3) (56 FR 4458) are Federal programs that could be used in combination with the HOME Program, and, if so used, would trigger the requirement that the assistance provided to any housing project not be any more than is necessary to provide affordable housing. The Department expects that participating jurisdictions, if they use the HOPE Programs or other federally assisted housing programs in combination with the HOME Program, will seek to maximize the number of families that are thereby assisted rather than deepening the subsidy for relatively few families.

Key among the elements required in the program description is a description of the estimated use of HOME funds for each of the eligible activities. Those participating jurisdictions, which are not on the list to do new construction but wish to do new construction, must make the necessary determination required under § 92.208.

A number of items included in the program description are similar to items that jurisdictions have developed under other HUD programs, such as the affirmative marketing plan. These items should be readily adaptable to the HOME Program.

The HUD Field Office will make a good faith effort to notify a participating jurisdiction if its program description is not consistent with its housing strategy or sufficient to allow the Secretarial determinations required by § 92.150(b)(5) and (7) within 30 days after receipt, providing the participating jurisdiction with additional time to submit missing information. The Field Office will then advise the participating jurisdiction whether its program description is approved or conditionally approved whereby certain activities are restricted until the Department makes the required determinations.

As the HOME Program begins, it is clearly the Department's intent to approve program descriptions based on a participating jurisdiction's information and certifications. HUD will only look beyond the annual submission when the proposed activities appear to be inconsistent with the approved housing strategy or when conditions or production in subsequent years do not clearly match the participating jurisdiction's assertions.

Subpart E—Program Requirements

In keeping with the broad goals and objectives of the statute, participating jurisdictions are to maximize the participation by the private sector including both nonprofit and for-profit entities in the implementation of their housing strategies. They are also supposed to distribute funds geographically and among different categories of need based on the priorities identified in their housing strategies. States may use funds, subject to the limitations on new construction, anywhere within the State and may distribute funds among jurisdictions or administer the funds directly. Urban counties may only use their funds within the urban county.

Participating jurisdictions shall administer HOME funds in a manner to facilitate fair housing and equal opportunity requirements contained in § 92.202. With regard to new construction, participating jurisdictions must follow the site and neighborhood standards contained in § 882.708 (new construction site and neighborhood standards).

With regard to making a determination based on family income or adjusted family income, participating jurisdictions must follow the definitions "annual income," "adjusted income," "monthly income," and "monthly adjusted income," as contained in part 813 of this title.

Eligible Activities and Ineligible Activities

HOME funds can be used for a variety of activities to develop and support both affordable rental, including tenant-based rental assistance, and homeowner housing. Eligible activities include tenant assistance, acquisition, new construction, reconstruction, or moderate or substantial rehabilitation, site improvements, demolition, relocation expenses and other expenses related to development of nonluxury housing with suitable amenities under this part. Acquisition and demolition can only be undertaken with respect to a project being done as affordable housing under § 92.252 and § 92.254. The statute has identified a variety of ways a participating jurisdiction may invest funds and the Department has added a few more subsidy techniques based on past experience with rehabilitation efforts of States and local governments.

The Department has included, in the list of prohibited activities under § 92.214, providing an operating reserve to subsidize rents. This prohibition is intended to encourage lower loan-to-value ratios than would occur if HOME funds were used to provide an operating subsidy, rather than being available to amortize mortgages. This prohibition should facilitate the use of FHA mortgage insurance with HOME assisted projects.

Eligible Costs

Eligible costs are listed in § 92.206 and include items such as hard costs associated with construction or rehabilitation, demolition, and site improvements. Soft costs, such as architectural and engineering fees, costs of financing, title reports and permit fees, are also eligible as well as acquisition of real property and relocation costs. Both acquisition and demolition costs must be project specific and will be categorized as costs related to the kind of project undertaken, new construction, substantial rehabilitation, or moderate rehabilitation. Projects which solely involve acquisition will be distinguished between new construction and existing housing by whether or not

the unit being acquired has received a certificate of occupancy within the last year.

Preference for Rehabilitation

The statute expresses a clear preference, in undertaking housing construction, as opposed to tenant-based rental assistance or acquisition of existing standard housing, that participating jurisdictions use HOME funds for rehabilitation over new construction. Exceptions to this preference are jurisdictions who are identified on the list as eligible to do new construction and those who choose to use funds for tenant-based rental assistance or acquisition without construction. Participating jurisdictions on the new construction list are not subject to a maximum amount to be used for new construction. The rental housing production set-aside must be used for rental production through new construction or substantial rehabilitation, but the participating jurisdictions may also do new construction with the balance of their HOME funds, whether for rental or homeownership.

Jurisdictions not on the new construction list that choose to do new construction must make and document a two-part determination that: (1) Rehabilitation is not the most cost effective way to meet the jurisdiction's need to expand the supply of affordable housing and (2) the jurisdiction's housing needs cannot be met through rehabilitation of the available stock. A determination on cost effectiveness should take into consideration the level and length of low-income benefit achieved. The Department plans to provide further guidance on determining cost effectiveness for participating jurisdictions.

Once a participating jurisdiction has made the two-part determination required under § 92.208, it may undertake new construction under the provisions of neighborhood revitalization or special needs. It must certify that it has met the provisions of whatever option is chosen. If a participating jurisdiction chooses to do new construction under neighborhood revitalization, it must document that its neighborhood revitalization plan emphasizes rehabilitation of substandard housing. It may demonstrate the emphasis on rehabilitation by documenting that at least 51 percent of all funds spent on the neighborhood revitalization program within a 1-year period (or longer at local discretion) have been spent for rehabilitation of substandard units.

Tenant-Based Rental Assistance

Participating jurisdictions may operate a tenant-based rental assistance program consistent with the requirements described in § 92.211. They may administer the program themselves or contract with Public Housing Agencies or other entities with capacity to run rental assistance programs. The requirements cover the term of assistance, a determination of rent reasonableness, a maximum subsidy amount that does not exceed the difference between a rent standard for the unit size and 30 percent of the family's adjusted income, and housing quality standards. The jurisdiction's rent standard may not be less than 80 percent of the published Section 8 Existing Housing fair market rent nor more than the fair market rent or HUD-approved community-wide exception rent for the unit size. In addition, the tenant-based assistance must be provided to families from a waiting list of a PHA operating within the jurisdiction of the participating jurisdiction, in accordance with the PHA's preferences established under § 882.219.

The Department is interested in public comment on whether local privacy acts may pose an obstacle to the flow of information between PHAs and participating jurisdictions concerning waiting list information, including whether there may be a need for Federal preemption. Participating jurisdictions may provide tenant-based rental assistance to families residing in HOME-assisted housing without these families being placed on a waiting list. The Department believes that by allowing HOME-tenant based assistance to be used for qualified existing tenants in HOME-assisted units costly relocation expenses can be avoided and deeper targeting to very low-income families can be achieved. However, it must be noted that the family receiving the assistance is free to use it in place or to use the assistance in other qualified housing of the family's choice.

Prohibited Costs

HOME funds can not be used to cover a participating jurisdiction's administrative costs, which include costs equivalent to the costs described in § 570.202(b)(9) (rehabilitation services) and § 570.206 (program administration costs) for the CDBG program. The cost of an operating reserve for rental housing under HOME is also prohibited. Other prohibited costs are listed in this section and include providing a non-Federal match required for another Federal program and the use of tenant-based rental assistance for the special uses allowed under the existing section 8 program.

Income Targeting

HOME funds are specifically targeted so that no funds may be spent on housing occupied by families above 80 percent of median income. Deeper targeting is also required for rental housing and expenditures will be tracked by fiscal year allocation to determine compliance.

Matching Requirements

Matching requirements are contained in § 92.218 to § 92.221. HUD recognizes the potential burden that matching requirements place on State and local governments. As a result, an effort has been made to interpret the statutory requirements in a way which will reduce the potential burden to the highest degree possible, yet still conform to requirements clearly stated in the Act.

Matching requirements will only be applied to the expenditure of appropriated funds provided to participating jurisdictions (i.e., all funds in the Treasury account of the participating jurisdiction's HOME Investment Trust Fund). This includes allocations (including transfers from a State to a local jurisdiction to permit a local jurisdiction to meet the threshold amount necessary for designation as a participating jurisdiction) and reallocations. Matching requirements will not be imposed on amounts which a local jurisdiction itself has contributed in order to make up the short fall between its formula allocation amount and the amount necessary to be designated a participating jurisdiction.

Jurisdictions not designated as participating jurisdictions or community housing development organizations which directly receive a reallocation of HOME funds from HUD are not subject to matching requirements.

Required matching amounts are contained in § 92.218. The total match required will vary among participating jurisdictions based on the type and funding level of eligible activities undertaken. HUD will calculate each participating jurisdiction's matching requirement based on individual project or activity expenditures. However, a match will not be required on an individual project or activity basis, but rather on the basis of all funds. An example of how a participating jurisdiction's matching requirement will be calculated by HUD is provided at the end of this section.

For purposes of calculating match amounts and reporting program activity through HUD's Cash and Management Information System, specific projects involving new construction, substantial rehabilitation, or moderate rehabilitation will be designated as "new construction projects," "substantial rehabilitation projects," or "moderate rehabilitation projects."

For purposes of distinguishing between substantial rehabilitation and moderate rehabilitation projects, the average per unit (total) rehabilitation cost of all units in the project will be calculated. Where the average per unit cost exceeds $25,000 the project will be designated a substantial rehabilitation project.

Example: A project contains 40 units. 25 units in the project qualify as affordable housing as defined at § 92.252. The total rehabilitation cost (not just the HOME subsidy amount) attributable to all 40 units is $1,200,000. The average per unit cost is $30,000 ($1,200,000/40 units=$30,000) and, thus, this project would be designated a substantial rehabilitation project.

In rare cases where both new construction and rehabilitation will occur on one parcel of land (e.g., one structure is rehabilitated, another is demolished and a new structure constructed), the structures will be administratively split into separate projects for project designation purposes.

Projects consisting of one structure which combine new construction and rehabilitation activities (e.g., adding units outside of the existing walls of a structure) will be designated as new construction projects, irrespective of costs attributable to each activity. For purposes of project designation, the following types of projects will be considered rehabilitation projects: The reconfiguration of a structure to reduce the number of total units in order to increase the number of large family units; the adding of a room (e.g., bedroom or bathroom) outside of the existing walls for purposes of meeting occupancy or code standards; the adding of a unit or units within the existing structure, such as in an existing basement.

Tenant-based rental assistance will not be viewed in a project context, but rather will be considered for the program as a whole.

All eligible activities carried out with respect to projects designated as new construction projects, or substantial rehabilitation projects, or moderate rehabilitation projects will carry with them the matching requirements associated with the project designation.

Example: HOME funds are used to acquire a parcel of land, demolish an existing abandoned warehouse, make site improvements, and newly construct an apartment building. The project would be designated as a new construction project and all of the activities for which HOME funds are expended would be subject to the new construction matching requirement (i.e., 50 percent match).

Where rental housing production set-aside funds are used for substantial rehabilitation projects, the matching requirement will be that associated with substantial rehabilitation (33 percent). Matching contributions invested in qualified affordable housing projects (defined at § 92.252) will be recognized even where those contributions are not directly attributable to affordable housing units (e.g., mixed income projects).

Matching requirements will be calculated based on project/activity reports submitted in conjunction with funds to be drawn from the Treasury account of the participating jurisdiction's HOME Investment Trust Fund. Matching requirements will be calculated on actual expenditures of HOME funds. Participating jurisdictions will need to satisfy all matching requirements by the end of each fiscal year for HOME funds drawn down in that fiscal year.

Section 92.220 of the regulation specifies the eligible forms of matching contributions. The eligible forms of matching contributions are those specified in the Act, and no other forms can be recognized. Matching contributions must be from non-Federal sources, whether the contributions are in the form of cash or are donated land or infrastructure improvements. For purposes of the matching requirements, CDBG funds are considered Federal resources. Program income from a Federal grant earned after the end of the award period (e.g., after closeout of the grant) is a non-Federal source if the program income is not subject to Federal requirements. Repayments from closed out Urban Development Action Grants or Housing Development Grants are examples of program income that is non-Federal source and thus an eligible source of matching funds.

While the Act prohibits the use of HOME funds to pay any costs of administering the HOME program, it permits, as counting toward meeting the match requirement, contributions toward the payment of administrative funds (including CDBG funds) up to 7 percent of a participating jurisdiction's HOME investment amounts. HUD believes it is very reasonable to assume that administration will cost more than 7 percent of HOME investment amounts. Therefore, in order to avoid the staff time and expense that would otherwise be required to document administrative expenditures, HUD will automatically credit participating jurisdictions with having contributed 7 percent of HOME amount made available each year in the participating jurisdiction's Treasury account of its HOME Investment Trust Fund as matching funds.

To be a cash contribution, the funds must be contributed permanently to the HOME program, regardless of the form of investment the participating jurisdiction makes to a project. This means all repayments of principal and interest or other return of investment on the matching funds goes to the HOME program to be used for additional eligible activities.

Funds that are loaned to a project may qualify as a matching contribution in an amount equal to the full face value of a loan only if all repayments of principal and interest are deposited in the participating jurisdiction's local HOME Investment Trust Account to be used in accordance with the requirements of the HOME program.

If funds are loaned to a project, but the funds are not permanently contributed to the HOME program because the loan must be repaid to the lender, then only the amount permanently contributed to the HOME program, i.e., the grant equivalent of a below market interest rate loan, may be counted as a match. The amount of the matching contribution is the amount which reflects the yield foregone were the loan a market interest rate loan. The methods to be used for determining market interest rates are specified at § 92.220. The measures to be used include the prevailing FHA section 235 interest rate found at 24 CFR 235.9. This interest rate is subject to change with changing market conditions. Current section 235 interest rates may be obtained from HUD Field Offices. The two other measures, the one-year and the ten-year Treasury bill rates are published in the financial section of most daily newspapers.

Section 92.220 of the regulation provides examples of contributions or financing that will not be recognized as eligible matching investment.

HUD, in response to questions posed on whether a specific non-Federal investment will be recognized as an eligible match, will examine the investment to see if it meets two threshold tests: Does the investment constitute a true contribution, as envisioned in the Act; and does the form

of the contribution fit within the parameters of the forms authorized in the Act? Proposed contributions that do not pass those two threshold tests will be determined by HUD to be ineligible. HUD will make every effort to issue frequent guidance on program matching requirements.

Example of How Matching Requirements Would Be Calculated

A participating jurisdiction draws down HOME funds in a fiscal year of $1.2 million. It expends these funds on: two "New Construction Projects;" one "Substantial Rehabilitation Project"; three "Moderate Rehabilitation Projects."

Additionally, the participating jurisdiction provided tenant-based rental assistance to 20 families. The funds expended for each activity:

New construction	Sub rehab	Moderate rehab	Tenant-based asst
		$ 50,000	
$175,000		$ 75,000	
$183,000	$300,000	$250,000	$167,000
$358,000	$300,000	$375,000	$167,000
× 50%	× 33%	× 25%	× 25%
$179,000	$ 99,000	$ 93,750	$ 41,750

Total Matching Requirement = $413,500 for the fiscal year.

$179,000	(New Construction Projects)
99,000	(Substantial Rehabilitation Projects)
93,750	(Moderate Rehabilitation Projects)
41,750	(Tenant-Based Assistance Program)
$413,500	

No one project, no one class of projects, and no one activity would require a specific match. The match requirement would be based on the overall totals as derived above.

Subpart F—Project Requirements

Maximum Subsidy Amount

In setting per unit subsidy limits, the goal was to provide sufficient funds for participating jurisdictions to build or rehabilitate units to expand their supply of decent, safe and sanitary housing affordable to lower-income families. The housing funded with HOME funds is nonluxury housing with suitable amenities.

In developing per unit subsidy limits for HOME funds, the Department was instructed to consider the actual cost of new construction and rehabilitation on a market-by-market basis as well as adjustments by bedroom size. The subsidy amounts were to reflect the cost of land and necessary site improvements as well as consider the levels of matching funds required by the type of activity.

The Department has chosen the section 221(d)(3) statutory mortgage limits, as they apply to nonprofits, for elevator buildings (non-luxury units) indexed by the Annual Base City High Cost Percentages (market by market adjustments). This figure would be multiplied by 67 percent to reflect the maximum amount to be paid by HOME funds since the matching amounts may range from 25 percent to 50 percent of HOME funds. An example would as follows for a three-bedroom unit in Washington, DC: $53,195 × 169 percent = $89,900 × .67 percent = $60,233. This would be the amount of HOME funds that could be invested per unit regardless of the type of activity undertaken.

The Department believes that the per unit subsidy limits are adequate to allow for the whole range of eligible activities, utilize a recognized basis to produce nonluxury units and are market sensitive when adjusted by the index. Both the mortgage limits and the Annual Base City High Cost Percentages are available from the Housing Development Division of the responsible HUD Field Office. For projects using a combination of HOME and the tax credit, the proceeds from the sale of the credit will be subtracted from the cost limits based on the section 221(d)(3) mortgage limits and the HOME subsidy limit will be .67 times the remainder. Comment is especially invited as to the suitability of the per unit subsidy design being proposed.

The statute requires each participating jurisdiction to certify for each project that the combination of Federal assistance will not be any more than is necessary to provide affordable housing. Documentation of the participating jurisdiction's determination must be maintained by each participating jurisdiction. The determination would apply to the combination of HOME funds and any other Federal assistance, including tax credit.

Property Standards

Housing assisted with HOME funds must, at minimum, meet the housing quality standards (HQS) in § 882.109. Housing which is substantially rehabilitated or newly constructed must also meet all applicable local codes, written rehabilitation standards, ordinances and zoning requirements. If units are newly constructed, they must also meet the energy efficiency standards promulgated by HUD in accordance with section 109 of the Act. Public comment is invited on whether, beyond meeting housing quality standards, local codes should apply immediately to units sold to first-time homebuyers or at a subsequent period (2 years) after conveyance to allow the homebuyers to work on their properties. If the property contains rental units in addition to the owner-occupied unit, the rental units must meet housing quality standards before they are rented. The Act speaks only to new construction with respect to energy efficiency standards. The Department, however, is considering adding a requirement that housing that is being rehabilitated must meet the energy efficiency standards in 24 CFR part 39, and is interested in public comment on this issue.

Qualification as Affordable Housing and Income Targeting: Rental Housing

To qualify as affordable housing, rental housing must meet the following rent levels and occupancy restrictions.

Rental housing must bear rents which are at the lesser of the existing fair market rent for comparable units in the area as established by HUD under § 888.111 or a rent which does not exceed 30 percent of the adjusted income of a family whose income equals 65 percent of the median income for the area. Not less than 20 percent of the units in each project must be occupied by very low-income families who pay no more than 30 percent of the family's monthly adjusted income for rent or rents consistent with those for rent-restricted units under tax credit projects.

All units assisted with HOME funds must be occupied by families that qualify as low-income families and owners must not discriminate against families who are receiving Section 8 rental vouchers or rental certificates or HOME tenant-based rental assistance.

Rental units are to remain affordable, according to binding commitments satisfactory to the Department, for a specific period of time outlined in this section. The Department was provided discretion to establish the term of affordability consistent with sound economics and is proposing that the period of affordability be tied to the level of HOME funds used per unit with the exception that new construction units must be affordable for a period of 20 years. Public comment is specifically requested on this period of affordability proposal.

Tenant and participant protections are set forth in § 92.253.

Qualification as Affordable Housing: Homeownership

HOME funds may be used to assist existing homeowners and first time homebuyers. The statute specifically sets forth the maximum purchase price for units for first time homebuyers and requires resale arrangements that allow for a reasonable return on investment as well as availability for subsequent low-income homebuyers. With regard to the purchase price, the rule requires that the appraised value after rehabilitation not exceed the FHA single family mortgage limits in keeping with the Act's intent to produce nonluxury units.

There are many ways in which the participating jurisdiction can devise price guidelines in order to meet the provisions of § 92.254(a)(4). HUD has identified following guidelines that meet the provisions and encourages participating jurisdictions to use them. When offered for HUD review, these guidelines will be found to be acceptable. However, participating jurisdictions may revise these guidelines or develop other guidelines, which HUD will review for acceptability.

1. *Shared Appreciation*—Any arrangement with the owner in which any appreciation realized during the term of homeownership is shared between the participating jurisdiction that subsidized the initial purchase and the homeowner. For example, if an assisted homeowner wishes to sell the property and the market price is no longer affordable to a homebuyer earning 75 percent of median income, the participating jurisdiction may apply the rate of appreciation to the homeowner's investment, calculated by adding his down payment, the portion of his monthly payments which were applied to principal, and the cost of any major improvements which increased the value of the property. This amount when added to the homeowner's investment represents his share of the appreciation of the value of his property. The participating jurisdiction would recapture its subsidy and possibly some appreciation depending upon how low the sales price had to be reduced to maintain affordability for the subsequent buyer.

2. *Diminishing Subsidy*—An arrangement in which the public subsidy is forgiven over the required period of affordability, i.e., no less than 15 years for existing housing and no less than 20 years for newly constructed housing. For example, if an assisted homeowner wishes to sell his new home in the 12th year of occupancy, ⅗ths (1⅗oths) of the subsidy is forgiven and ⅖ths is due upon sale. If the sales price is still not affordable to a low income family, the participating jurisdiction may choose to reduce what it is due under the sale, reduce the return to the original homebuyer, or subsidize the subsequent sale(s) until the 15 or 20 year period of affordability is met. Obviously, the second choice requires a finding that "a fair return" was realized by the original homebuyer.

Mixed-Income and Mixed-Use Projects

HOME funds may be used for both mixed-income and mixed-use projects under certain circumstances. For a mixed-income project, HOME funds may only be used in affordable units and funds used for the remaining units may not count as matching funds unless 50 percent of the total units qualify as affordable. For mixed-use projects, HOME funds can only be used for the residential living space which must represent at least 51 percent of the square footage in the building. Each building within the project must contain residential living space. Matching funds may be used in the commercial portion of the building.

Limitation on the Use of HOME Funds with FHA Mortgage Insurance

The Department is proposing to limit the term FHA mortgage insurance in housing assisted with HOME funds to the period that the housing must remain affordable housing. The Department believes that it furthers the purposes of the Act to require owners that seek additional Federal assistance in the form of FHA mortgage insurance to accept a mortgage term that coincides with the period for which the housing must remain affordable housing. The affordable housing requirements are set out in § 92.252 for rental housing and under § 92.254 for homeownership.

Subpart G—Community Housing Development Organizations

Subtitle B of the Act directs each participating jurisdiction to invest no less than 15 percent of its HOME allocation into housing to be developed, sponsored or owned by community housing development organizations. The HOME funds may be used for activities that are eligible generally under the HOME program—including acquiring, constructing, and rehabilitating affordable housing—as well as for project-specific technical assistance and site control loans and project-specific seed money loans.

Community housing development organizations (defined in subpart A of the rule) are a special type of nonprofit organizations.

Consistent with Congressional intent expressed in the conference report that nonprofit organizations not be controlled or affiliated with for-profit entities in such a way that the nonprofit's public purpose is not furthered, the definition of nonprofit organization set limits on the control that a for-profit entity may have over a nonprofit organization. All for-profit sponsors of a nonprofit organization cannot have the right to appoint more than one-third of the nonprofit's governing board members and there may be no barriers for the nonprofit organization in contracting for goods and services from any vendor of its choosing.

A nonprofit organization may be created by the participating jurisdiction or other public body provided that the nonprofit is not controlled by the public body. Therefore, the nonprofit organization must have a governing body two-thirds of which are individuals who are acting in a private capacity. "Private capacity" is further defined in the rule.

A community housing development organization must be a nonprofit organization and meet the additional following test. The community housing development organization must have in its charter, resolutions or by-laws, a statement that among its purposes is the provision of decent housing that is affordable to low-income and moderate-income persons. The community housing development organization must be community based and have "significant representation" of low-income community residents on the community housing development organization's governing board. The regulation requires at least one-third of the governing board's membership be low-income residents of the community served by the community housing development organization. In urban areas, the community may be the city, county or metropolitan area; in rural areas, the community may be the town, village, county, or multi-county areas, but the community cannot be the entire area of the State. If the community is multicounty, there must be low-income representatives on the governing board from each county.

In addition, a community housing development organization must meet the definitional requirement to maintain "accountability to low income community residents." This may be done through involvement of local residents or neighborhood organizations in the development of the housing project or the community housing development organization may solicit

local resident input project-by-project or in its general planning, project selection and development activities.

A community housing development organization must have a "demonstrated capacity for carrying out activities under this Act." This requirement is met if the organization has completed a similar type project or by hiring accomplished key staff members who have successfully completed similar type projects or a consultant with the same type of experience and a plan to train appropriate, key staff members of the organization.

The community housing development organization must have a "history of serving the local community." This provision ties in with the one above. One year of serving the local community before the date the participating jurisdiction awards funds is the minimum standard; however, the standard can be met by a new organization formed by local churches, service organizations or neighborhood organizations that themselves have at least a year of serving the local community.

A participating jurisdiction has 18 months from the date the Department signs the HOME investment partnership agreement to reserve the set-aside by means of a written agreement with the community housing development organization.

Project-Specific Assistance

The project-specific assistance to community housing development organizations in § 92.301 allows participating jurisdictions to make project-specific technical assistance and site control loans to community housing development organizations to assist them in the very early stages of development of a housing project. Loans under this section may total up to the greater of: (1) 10 percent of the mandatory 15 percent set-aside of HOME funds; or (2) 10 percent of the actual amount of HOME funds committed for community housing development organizations by the participating jurisdiction.

It is important to note that § 92.301 funds are loans to a community housing development organization from a participating jurisdiction for a specific eligible project or projects. They may cover operational costs only insofar as they relate to specific projects. For example, "consulting fees" are limited to discrete tasks related to specific project(s) performed by nonemployees. "Engagement of a development team" means staff and/or consultants hired by the community housing development organization for a specific project; this would include, for example, hiring a project manager. Costs in securing site control are specifically authorized and include down payments, earnest money and other costs to reserve a specific property for acquisition at a later date.

The participating jurisdiction may waive repayment of the loan, in whole or in part, if there are "impediments to project development" that the participating jurisdiction determines are reasonably beyond the control of the borrower. Two examples of impediments are: If the project is reviewed and costs are incurred and the determination is made that the project is infeasible and terminated or, second, the project proceeds and project costs escalate as a result of factors beyond the control of the community housing development organization (e.g., clearing a property title) that threaten its feasibility.

Seed money loans from participating jurisdictions are for serious projects that have made it through the preliminary reviews and clearances and for which the community housing development organization has site control, preliminary financial commitment(s) and a capable development team.

Several terms in the rule bear further explanation. "Architectural plans and specifications" include working drawings ready for construction. "Engineering studies" include such items as environmental clearances and soil borings. "Legal fees" are fees associated with establishing the borrower and the project ownership entity, if appropriate. These are not general legal fees for organizing the community housing development organization. "A capable development team" is a group possessing the necessary skills and qualifications to successfully complete the project.

Housing Education and Organizational Support

Realizing that there may be many nonprofit organizations needing technical advice and assistance in developing affordable housing, the Act authorized up to $14 million in Fiscal Years 1991 and 1992 for housing education and organizational support assistance. Information necessary to compete for these funds will be contained in notices of funding availability which will be published in the **Federal Register.**

The Department is considering conducting two national competitions: The first for non-profit intermediary organizations that meet the requirements in § 92.300. For the second competition, the Department will notify participating jurisdictions of the size and scope of the "national" technical assistance effort and permit them to nominate other qualified technical assistance providers for the balance of the technical assistance funds. This nomination will be in the form of an application which certifies that the technical assistance activities are necessary to implement the participating jurisdiction's housing strategy.

The statute limits the amount of assistance to a community housing development organization under the HOME program for any fiscal year to an amount that, together with other Federal assistance, provides no more than 50 percent of the organization's total operating budget in the fiscal year. This limitation only applies to funds provided to a community housing development organization pursuant to § 92.302 (c)(1) and (c)(2)—organizational support and housing education. The term, "other Federal assistance" includes not only funds the community housing development organization receives directly from the Federal government, but also Federal funds that a local government provides to a community housing development organization as a subgrantee (e.g., Community Development Block Grant Funds). Further, the term "operating budget", is used in an accounting sense, that is, it includes salaries, direct costs (utilities, insurance, equipment and furniture, autos, etc.) and indirect costs (accounting and legal fees, etc.). It does not include funds which a community housing development organization administers on behalf of a local government. Funds provided to the community housing development organization to administer such programs are part of the community housing development organization's annual operating budget.

In summary, a community housing development organization may not receive HOME assistance for "organizational support" and "housing education" for any fiscal year in an amount that, together with other Federal assistance for operating expenses, provides more than 50 percent of the community housing development organization's total operating budget (as defined above) in the fiscal year.

A community housing development organization receiving HOME funds must have a tenant participation plan, acceptable to the participating jurisdiction, which may be either an established organizational mechanism for including tenants in the management decisions of the community housing development organization or a project-specific plan whereby tenants of a

specific project have an opportunity to participate in the management decisions of a building. The participating jurisdiction determines the content of, and procedures for, reviewing the tenant participation plan, including the frequency of submission.

Subpart H—Other Federal Requirements

Equal Opportunity and Fair Housing

HOME funds must be made available in conformity with the non-discrimination and equal opportunity requirements set out in the regulations at § 92.350.

Requirements include:

1. The requirements of the Fair Housing Act, 42 CFR 3601–20, and implementing regulations at 24 CFR part 100; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR 107; and title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and implementing regulations at 24 CFR part 1;

2. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07 and the regulations at 24 CFR 146;

3. The prohibitions against discrimination on the basis of handicap under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;

4. The requirements of Executive Order 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR chapter 60; and

5. The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (Employment Opportunities for Businesses and Lower Income Persons in Connection with Assisted Projects); and

6. The requirements of Executive Orders 11625 and 12432 regarding Minority Business Enterprise, and 12138 regarding Women's Business Enterprise, and regulations at § 85.36(e) and of section 281 of the Act.

Affirmative Marketing

Participating jurisdictions are required to adopt appropriate procedures and requirements for affirmatively marketing units in HOME Program projects, when that HOME assisted housing contains 5 or more units, by providing information about the availability of HOME-assisted units that are vacant at the time of completion or that later become vacant. Participating jurisdictions must make good faith efforts to provide information and to otherwise attract eligible persons from all racial, ethnic and gender groups in the housing market area to the available housing. These procedures and requirements are not applicable when units are occupied by families referred from a Public Housing Authority's (PHA) waiting list, or to families receiving tenant-based rental assistance provided from HOME funds.

The procedures developed should describe the owner's (including the participating jurisdiction if it is the owner) responsibilities to advertise vacant units. It should also detail the reporting requirements that will verify that appropriate steps have been taken, and a description of how an affirmative marketing assessment will be performed, and what corrective actions will be taken if affirmative marketing requirements are not followed.

States that distribute HOME funds to local governments shall be responsible for assuring that the local governments establish affirmative marketing policies, and meet all applicable criteria established in the regulation.

Environmental Review

Section 288 of the Act provides that, in lieu of the environmental protection procedures otherwise applicable, HUD may provide for the release of funds for particular projects to participating jurisdictions who assume all the responsibilities for environmental review, decisionmaking, and action under the National Environmental Policy Act of 1969 (42 U.S.C. 4321) (NEPA), and the other provisions of law that would apply to HUD were HUD to undertake such projects as Federal projects. The procedures of section 288 are virtually identical to the provisions for carrying out environmental responsibilities set out in section 104(g) of the Housing and Community Development Act of 1974. HUD has implemented the provisions of section 104(g) in 24 CFR part 58. Accordingly, § 92.352 provides that participating jurisdictions must carry out their environmental responsibilities in accordance with 24 CFR part 58. The Department intends to amend part 58 to incorporate references to the HOME program.

The Department views section 288 as authorizing HUD to require participating jurisdictions to assume the responsibility for assessing the environmental effects of each assisted project in accordance with the procedural provisions of NEPA, the related environmental laws and authorities, and HUD's implementing regulations in 24 CFR part 58. The proposed rule does not apply in this policy to reallocations of HOME funds competitively awarded to entities other than participating jurisdictions, and HUD will exercise the environmental review responsibilities for their assisted projects, in accordance with 24 CFR part 50.

The intent of NEPA and related authorities, listed at 24 CFR 58.5, is that the environmental effects of project activities be taken into account before the commitment of funds and commencement of activities. However, certain activities are categorically excluded from NEPA requirements and may be exempt from § 58.5 authorities. Part 58, subpart J, sets out procedures under which participating jurisdictions indicate their completion of applicable review requirements by submitting to HUD an environmental certification and Request for Release of Funds.

Jurisdictions are cautioned that under § 92.352, HOME funds may not be released if the participating jurisdiction or any other party commits HOME funds (e.g., executes a contract that may require any costs or expenditures to be paid or reimbursed with such funds) before the participating jurisdiction's Request for Release of Funds (when required) is submitted and approved.

Uniform Relocation Act

Section 92.353 (Displacement, relocation and acquisition) contains policies necessary to conform the HOME Rule to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) and the governmentwide implementing regulations at 49 CFR part 24.

Paragraph § 92.353 contains standard HUD policy directing participating jurisdictions to take all reasonable steps to minimize displacement. Where rehabilitation is necessary, participating jurisdictions should, to the extent practical, permit the tenants to remain in the property.

The URA and the regulations at 49 CFR part 24, however, do not directly create eligibility for relocation assistance (as a "displaced person") for a tenant-occupant who is permitted to remain in the property but who moves from the property rather than pay an "excessive" rent upon completion of a project (economic displacement); who is required to relocate temporarily, but not permanently, while the project is underway; or who must move permanently to other space in the building/complex.

Therefore, to protect such tenant-occupants, § 92.353 would, by regulation, provide that a tenant, who moves permanently because the terms and conditions of continued occupancy, temporary relocation, or relocation

within the building/complex are unreasonable, will qualify as a "displaced person" who is entitled to relocation assistance at levels identical to those required in 49 CFR part 24.

For purposes of determining whether the economic displacement of a lower income tenant has occurred, § 92.353(c)(2)(i)(C) would establish as "reasonable" a rent/utility charge that does not exceed the greater of: (1) The total tenant payment as described in 24 CFR 813.107, or (2) the tenant's monthly rent and estimated average monthly utility costs before execution of the agreement covering the rehabilitation. A tenant who is required to pay a higher cost during the year following project completion, may elect to remain in the project or move permanently and obtain relocation assistance at URA levels.

Residential Antidisplacement and Relocation Assistance Plan

Section 105(b) (14) of the Act requires participating jurisdictions to include in their housing strategy a "certification that the jurisdiction is in compliance with a residential antidisplacement and relocation assistance plan under section 104(d) of the Housing and Community Development Act of 1974 (to the extent that such a plan applies to the jurisdiction)." Section 104(d) requires the replacement of low- and moderate-income housing units that are demolished or converted to another use in connection with a community development block grant (CDBG) activity and the provision of certain relocation assistance to lower income persons displaced by such conversion or by any CDBG-assisted demolition.

Section 104(d) does not apply to the HOME Program. If the Federal financial assistance to a project is provided solely through HOME funds, the project is not covered by section 104(d). However, if CDBG funds are used to pay any part of the cost of acquisition, demolition, construction, or "rehabilitation activities" as described in 24 CFR 570.202(b), the project is subject to the section 104(d) requirements as described at 24 CFR 570.606(c) (Entitlement Program and HUD-administered Small Cities Program) and 24 CFR 570.496a(c) (State CDBG Program).

In addition to repair work, alterations and additions to structures, § 570.202(b) describes the term "rehabilitation activities" as including rehabilitation services, such as rehabilitation counseling, energy auditing, preparation of work specifications, loan processing, and property inspections.

Many participating jurisdictions are expected to use CDBG assistance to pay the cost of some rehabilitation services for HOME projects, thereby triggering the section 104(d) requirements for such HOME projects. To ensure consistency within the HOME Program, and to prevent the use of HOME assistance for projects that result in a net loss of low- and moderate-income housing, the Department is giving consideration to extending the section 104(d) policies, by regulation, to all HOME-assisted projects. The Department invites public comment on this issue.

Labor

Participating jurisdictions are required to obtain certification of compliance with the requirements relating to payment of prevailing wages determined pursuant to the Davis-Bacon Act (40 U.S.C. 276a–276a–5).

The regulation requires that Davis-Bacon wage rates must be paid to laborers and mechanics employed under a contract for construction (new construction or rehabilitation) of affordable housing with 12 or more units assisted with HOME funds. Contracts must stipulate this, and participating jurisdictions must require certification of compliance before releasing payments under these contracts. Payment of Davis-Bacon wages is not required in instances where volunteer labor is provided by an individual not otherwise employed in the construction work and that individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee; or where members of an eligible family provide sweat equity (i.e., provide labor in exchange for acquisition of a property for homeownership or provide labor in lieu of or as a supplement to rent payments).

Consistent with usage of the term under other Federal assistance statutes requiring Davis-Bacon wages, the reference to contracts for "construction" in the HOME legislation is construed to include rehabilitation of housing under the Program.

Additionally, the overtime requirements of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333) (CWHSSA), and regulations issued under CWHSSA and the Davis-Bacon Act are applicable to the HOME program. HUD Handbook 1344.1 REV–1, entitled "Federal Labor Standards Compliance in Housing and Community Development Programs," details the responsibilities for carrying out specific labor standards duties. Additionally, details of labor requirements may be found in form HUD–4010, Federal labor standards provisions, which must be incorporated into any contract to which Federal labor standards are applicable.

Debarment and Suspension

HOME program assistance shall not be provided to any individual or entity that has been debarred, suspended, or placed in ineligibility status under the provisions of 24 CFR part 24, Governmentwide Debarment and Suspension.

Under this rule participating individuals and entities receiving HOME funds (e.g., prospective project owners, contractors, homeowners, subrecipients) are required to submit certifications that they have not been debarred or suspended from participation in government programs; and those certifications may be relied upon by the participating jurisdiction unless it is known that the certification is erroneous.

The General Services Administration (GSA) maintains and distributes a list of persons and organizations that have been debarred, suspended or voluntarily excluded under 24 CFR 24. Participants are encouraged, but not required, to consult this list before awarding HOME assistance.

Flood Insurance

Under the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128), except for funds provided to States, HOME funds provided to participating jurisdictions may not be used for the acquisition, new construction or rehabilitation of properties located in areas having special flood hazards, as identified by the Federal Emergency Management Agency (FEMA), unless:

(1) The community is participating in the National Flood Insurance Program; or less than a year has passed since the community was notified that such hazards exist;

(2) Flood insurance is obtained as a condition of approval; and

(3) It is the responsibility of the participating jurisdiction, when required, to ensure that flood insurance is obtained and properly maintained.

Subpart I—Technical Assistance

The Department is authorized to provide technical assistance to develop the capacity of participating jurisdictions, State and local housing finance agencies, nonprofit and for-profit corporations working in partnership, to identify and meet the needs for more affordable housing.

The technical assistance will be designed to increase the capacity of State and local officials to effectively carry out the purposes of this Part as well as design, plan and implement their housing strategies under part 91.

Section 92.400 lists eligible organizations and general contract terms. The Department will publish a notice in the **Federal Register** announcing the availability of funding under this section, as appropriate.

Subpart J—Reallocations

Subpart J specifies the conditions under which HUD will reallocate HOME funds. The statute sets forth many schemes for reallocation.

One circumstance which triggers reallocation is the failure of a local jurisdiction to receive its allocation, either by declining HOME program participation or failing to meet the requirements for receiving its allocation. Whenever such a reallocation is triggered, the funds reserved for the local jurisdiction will be reallocated to the State, provided the State itself is a participating jurisdiction. All other reallocations will be made either through a competition for the funds ("competitive reallocation") or through formula distribution of the funds ("formula reallocation").

Competitive reallocations will be triggered whenever a State fails to receive its allocation or has its funds revoked, or whenever an eligible jurisdiction fails to receive its allocation or has its funds revoked and is located in a State which is not a participating jurisdiction. In these cases, the competition will be limited to applicants within the State from which the funds were made available for reallocation. In the case of reallocated funds initially earmarked for the State, the competition for those funds will be limited to local governments. In the case of reallocated funds initially earmarked for a local government, in a State which is not itself a participating jurisdiction, the competition for funds is open to local governments and community housing development organizations.

Competitive reallocations will also be triggered whenever a participating jurisdiction fails to reserve the required funds for investment with community development housing organizations within eighteen months of deposit in its HOME Investment Trust Fund. In such cases, the competition for the recaptured funds will be a national competition. The Act provides that the competitions may be held among participating jurisdictions submitting applications for affordable housing developed, sponsored or owned by community housing development organizations, or to nonprofit intermediary organizations to carry out activities that develop the capacity of community housing development organizations. HUD is proposing to exercise its discretion to limit the competition to applications from participating jurisdictions, and not invite applications from intermediary organizations for capacity building activities. By exercising this limitation, HUD assures that funds awarded through this competitive process will be expended to increase the supply of affordable housing units. Moreover, capacity building activities to be carried out by intermediary organizations will be funded through a special set-aside of appropriated amounts authorized by the Act.

HUD will announce, through notices published in the **Federal Register**, the availability of funds to be competitively reallocated, the application requirements, and the deadlines for submission and review of applications. To the maximum extent feasible, the three competitive reallocation processes will have uniform application requirements, although there will be identified funding preferences for each type of reallocation. Where a State fails to become a participating jurisdiction, or has its funds revoked, a preference will be given to local governments which are not already HOME participating jurisdictions. Where an eligible local jurisdiction fails to receive its allocation, or has its funds revoked, and the State is not a participating jurisdiction, applications for affordable housing within the non-participating jurisdiction's boundaries will receive a preference for funding. Finally, where funds earmarked for community housing development organizations are made available for competitive reallocation, a preference will be given to applications from participating jurisdictions for affordable housing developed, sponsored or owned by community housing development organizations. Preferences may be absolute (all acceptable applications meeting the expressed preference would be funded first), or expressed in the form of bonus points for applications meeting the expressed preference and will be explained in the notice.

All State and local government applicants for any competitive reallocation will have to meet two threshold application requirements in order to be considered for funding. These applicants will need to demonstrate to the Department that they are engaged, or have made good faith efforts to engage in cooperative efforts between State and local governments to coordinate and implement housing strategies under the HOME program. Additionally, these applicants will need to demonstrate that they are implementing, or have plans to implement, strategies to remove or ameliorate negative effects of existing public policies which raise the cost of housing or constrain incentives to develop, maintain, or improve affordable housing.

The Act provides that under certain circumstances reallocated funds are to be distributed by formula. Funds (other than the rental housing production set-aside) will be reallocated by formula if the funds are not committed within 24 months. Funds set aside for rental housing production must be committed within 36 months.

In addition to reallocating HOME funds not committed within certain time limits, the regulations provide that HOME funds not expended within 5 years will be deobligated. Unlike commitment deadlines, the 5-year time limit for expenditure applies to all funds irrespective of any set-asides for specific purposes.

In determining formula reallocation amounts to be distributed, the HOME basic formula will be used. Appropriated funds from different Federal fiscal years will be separately reallocated by formula to participating jurisdictions which received a formula allocation in the corresponding fiscal year. For example, funds appropriated for Fiscal Year 1992 will be reallocated only to Fiscal Year 1992 participating jurisdictions based on Fiscal Year 1992 formula shares. HUD will reallocate formula amounts only in increments of $1,000. Any participating jurisdiction which fails to achieve a formula amount of at least $1,000 will not receive a formula reallocation. HUD also reserves the right to exclude from a formula reallocation any participating jurisdiction which had funds recaptured if funds being reallocated will include the recaptured funds from participating jurisdiction.

With the exception of amounts competitively reallocated to participating jurisdictions for affordable housing developed, sponsored, or owned by community housing development organizations, amounts reallocated by competition or through formula distribution may be used for any eligible activity and will not be subject to restrictions (e.g., rental housing production) which those funds may have initially carried with them.

HUD will review on a quarterly basis the amounts of money available for reallocation and make a determination as to whether the amounts available warrant distribution, consistent with orderly and cost-effective administration of the program. At a minimum, HUD will reallocate all available funds in the prescribed

manner at least once each Federal fiscal year.

Subpart K—Program Administration

The regulation describes the HOME Investment Trust Funds as consisting of the account in the United States Treasury and of an account established by the participating jurisdiction. The Treasury account consists of allocated and reallocated funds and the local account consists of repayments, interest, and other return of investment of HOME funds and matching funds. The Department is requiring the establishment of the local account to ensure that repayments, interest, and other return on investment of HOME funds are immediately available to the participating jurisdictions to use for additional investment in affordable housing. Funds in both accounts may only be used for investment in affordable housing in accordance with the requirements in the regulations. Funds will be deposited in the Treasury account, after the Department signs the HOME Investment Partnership Agreement.

Funds in the Treasury account will be managed and disbursed through the Cash and Management Information System. Information concerning each project to be assisted with HOME funds must be provided to the Department before HUD will disburse HOME funds from the Treasury account. Unlike other Federal programs, the participating jurisdiction is permitted to have use of the funds for 15 days before it disburses the funds for eligible costs. Interest earned during this period constitutes additional HOME funds. If a participating jurisdiction fails to disburse the funds after 15 days, any interest earned belongs to the United States Treasury (except as provided in the Intergovernmental Cooperation Act and the Indian Self-Determination Act). HOME funds in the local account must be disbursed before additional funds can be requested from the Treasury account.

HOME funds that are invested in housing that does not meet the affordability requirements for the required period of time must be repaid to the HOME program. The participating jurisdiction may keep these and other repayments, interest and other return of investment of HOME funds as long as the jurisdiction is a participating jurisdiction; otherwise, the funds are required to be remitted to HUD.

The regulation makes clear that the participating jurisdiction is responsible for the use of HOME funds even if it uses State recipients (in the case of States), subrecipients, or contractors to administer all or part of its HOME program. The participating jurisdiction may only disburse HOME funds pursuant to a written agreement that spells out the responsibilities of the entity receiving HOME funds. The participating jurisdiction is required to monitor itself and all entities receiving HOME funds for compliance with the regulations.

The regulations makes applicable various requirements found in 24 CFR part 85—Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments. Not all requirements of part 85 have been applicable, generally because the provisions of part 85 are inconsistent with the HOME statute.

The following provisions are not being cited as applicable to the HOME program because they are covered in this subpart of the HOME rule and modified to reflect the requirements and terminology of the HOME program: § 85.1 Purpose and scope; § 85.2 Scope of subpart; § 85.3 Definitions; § 85.4 Applicability; § 85.5 Effect on other issuances; § 85.10 Forms for applying for grants; § 85.11 State plans; § 85.21 Payment; § 85.23 Period of availability of funds; § 85.24 Matching or cost sharing; § 85.25 Program income; § 85.31 Real property; § 85.37 Subgrants; § 85.40 Monitoring and reporting program performance; § 85.41 Financial reporting; § 85.42 Retention and access requirements for records; § 85.43 Enforcement; and § 85.50 Closeout.

The following provisions are not being cited as applicable to the HOME rule because they are not applicable to the HOME program: § 85.30 Changes; § 85.32 Equipment; § 85.33 Supplies; and § 85.34 Copyrights.

The following provisions are being cited as applicable to the HOME rule: § 85.6 Additions & exceptions; § 85.12 Special grant or subgrant conditions for "high-risk" grantees; § 85.20 Standards for financial management systems; § 85.22 Allowable costs; § 85.26 Non-Federal audit; § 85.35 Subawards to debarred and suspended parties; § 85.36 Procurement; § 85.44 Termination for convenience; § 85.51 Later disallowance and adjustments; and § 85.52 Collection of amounts due.

Corresponding provisions of OMB Circular A–110 have been made applicable or inapplicable for the same reasons.

Audits are required in accordance with part 44 (implementing OMB Circular A–128) and part 45 (implementing OMB Circular A–133).

The regulation sets forth the closeout procedures and recordkeeping requirements. Annual performance reports are required.

Subpart L—Performance Reviews and Sanctions

The regulation describes how the Department will monitor the performance of participating jurisdictions in carrying out the HOME requirements. Where the Department determines that a participating jurisdiction fails to meet a requirement, the Department will give the participating jurisdiction notice of the determination and an opportunity to demonstrate that the requirement has been met. If the participating jurisdiction fails to demonstrate compliance with the requirement, the Department will take corrective or remedial action.

Section 92.551 lists actions that the Department may take without providing the participating jurisdiction with an opportunity for a hearing. Generally, the actions in § 92.551 are voluntary actions by the participating jurisdiction.

Where the Department proposes to take funds away from the participating jurisdiction for failure to comply with a requirement, the Department will provide the participating jurisdiction with notice of the proposed action and an opportunity for a hearing.

III. Findings and Certifications

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 pm. weekdays in the Office of the Rules Docket Clerk at the above address.

Impact on the Economy

This rule constitutes a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it would, as defined by that order, have an annual effect on the economy of $100 million or more. Accordingly, a preliminary regulatory impact analysis has been prepared and is available for review and inspection in room 10276, Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, 451 7th St., SW., Washington, DC 20410.

Impact on Small Entities

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the

undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because jurisdictions that are statutorily eligible to receive formula allocations are relatively larger cities, urban counties, or States.

Regulatory Agenda

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 29, 1990 (55 FR 44530) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Federalism Impact

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that this proposed rule has Federalism implications concerning the division of local, State, and Federal responsibilities. Certain provisions of the rule have a direct impact on States, on the relationship of the Federal Government and the States, and on the distribution of power and responsibility among the various levels of government. For this proposed rule, the Department has placed on file a table identifying provisions that go beyond the Act with a brief explanation of each provision. The Department will prepare and submit to OMB a Federalism Assessment with the interim rule the Department expects to publish for effect on or before May 28, 1991. The Federalism Assessment will contain a certification that the policies in this rulemaking have been assessed in light of the Executive Order's fundamental federalism principles. Among other matters, the Federalism Assessment will identify any provision in the rule that is inconsistent with the principles, criteria, and requirements of the Executive Order and will identify the extent to which the provisions of the rule impose costs or burdens on the States, including the likely source of funding for the States, and the ability of the states to fulfill the purposes of the policy. To assist in preparing the Federalism Assessment, the Department invites public comment on ways to increase the regulatory flexibility for States and local governments and reducing paperwork burden, taking into consideration the requirements of the Act and the other statutory requirements identified in subpart H of this rule.

Impact on the Family

The General Counsel, as the designated official under Executive Order 12606, *The Family*, has determined that this rule would not have significant impact on family formation, maintenance, and general well-being. Assistance provided under the rule can be expected to support family values, by helping families achieve security and independence; by enabling them to live in decent, safe, and sanitary housing; and by giving them the means to live independently in mainstream American society. The rule would not, however, affect the institution of the family, which is requisite to coverage by the Order. Even if the rule had the necessary family impact, it would not be subject to further review under the Order, since the provision of assistance under the rule is required by statute, and is not subject to agency discretion.

List of Subjects in 24 CFR Part 92

Grant programs—housing and community development, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, a new part 92 would be added to title 24 of the Code of Federal Regulations, to read as follows:

PART 92—HOME INVESTMENT IN AFFORDABLE HOUSING PROGRAM

Subpart A—General

Sec.

Subpart B—Allocation Formula

Subpart C—Participating Jurisdiction: Designation and Revocation of Designation—Consortia

Subpart D—Program Description

Subpart E—Program Requirements

Eligible and Prohibited Activities

Income Targeting

Matching Funds Requirement

Subpart F—Project Requirements

Subpart G—Community Housing Development Organizations

Subpart H—Other Federal Requirements

Authority: Title II, Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General

§ 92.1 Overview and purpose.

(a) *Overview.* This part implements the HOME Investment Partnerships Act, which is title II of the Cranston-Gonzalez National Affordable Housing Act (the HOME Program). In general, under the HOME Program, HUD allocates funds by formula among eligible State and local governments to strengthen public-private partnerships to provide more affordable housing. Generally, HOME funds must be matched by non-Federal resources. State and local governments that become participating jurisdictions may use HOME funds to carry out multiyear housing strategies through acquisition, rehabilitation, and new construction of housing, and tenant-based rental assistance. Participating jurisdictions are able to provide assistance in a number of eligible forms, including loans, advances, equity investments, interest subsidies and other forms of investment that HUD approves.

(b) *Purpose.* The purposes of the HOME Program are:

(1) To expand the supply of decent, safe, sanitary, and affordable housing, with primary attention to rental housing, for very low-income and low-income Americans;

(2) To mobilize and strengthen the abilities of States and units of general local government throughout the United States to design and implement strategies for achieving an adequate supply of decent, safe, sanitary, and affordable housing;

(3) To provide participating jurisdictions, on a coordinated basis, with the various forms of Federal housing assistance, including capital investment, mortgage insurance, rental assistance, and other Federal assistance, needed—

(i) To expand the supply of decent, safe, sanitary, and affordable housing;

(ii) To make new construction, rehabilitation, substantial rehabilitation, and acquisition of such housing feasible; and

(iii) To promote the development of partnerships among the Federal Government, States and units of general local government, private industry, and nonprofit organizations able to utilize effectively all available resources to provide more of such housing;

(iv) To make housing more affordable for very low-income and low-income families through the use of tenant-based rental assistance;

(v) To develop and refine, on an ongoing basis, a selection of model programs incorporating the most effective methods for providing decent, safe, sanitary, and affordable housing, and accelerate the application of such methods where appropriate throughout the United States to achieve the prudent and efficient use of HOME funds;

(vi) To expand the capacity of nonprofit community housing development organizations to develop and manage decent, safe, sanitary, and affordable housing;

(vii) To ensure that Federal investment produces housing stock that is available and affordable to low-income families for the property's remaining useful life, is appropriate to the neighborhood surroundings, and, wherever appropriate, is mixed income housing;

(viii) To increase the investment of private capital and the use of private sector resources in the provision of decent, safe, sanitary, and affordable housing;

(ix) To allocate Federal funds for investment in affordable housing among participating jurisdictions by formula allocation;

(x) To leverage HOME funds insofar as practicable with State and local matching contributions and private investment;

(xi) To establish for each participating jurisdiction a HOME Investment Trust Fund with a line of credit for investment in affordable housing, with repayments back to its HOME Investment Trust Fund being made available for reinvestment by the jurisdiction;

(xii) To provide credit enhancement for affordable housing by utilizing the capacities of existing agencies and mortgage finance institutions when most efficient and supplementing their activities when appropriate; and

(xiii) To assist very low-income and low-income families to obtain the skills and knowledge necessary to become responsible homeowners and tenants.

§ 92.2 Definitions.

Administrative costs means reasonable and necessary costs, as described in MOB Circular A–87, incurred by the participating jurisdiction in carrying out its eligible program activities in accordance with prescribed regulations. Administrative costs include any cost equivalent to the costs described in § 570.206 of this title (program administration costs for the CDBG Program) and project delivery costs, such as new construction and rehabilitation counseling, preparing work specifications, loan processing, inspections, and other services related to assisting owners, tenants, contractors, and other entities applying for or receiving HOME funds. Administrative costs do not include eligible project-related costs that are incurred by and charged to project owners.

Certification means a written assertion, based on supporting evidence, which must be kept available for inspection by HUD, the Inspector General and the public, which assertion is deemed to be accurate for purposes of this part, unless HUD determines otherwise after inspecting the evidence and providing due notice and opportunity for comment.

Commit to a specific local project or *commitment* means:

(1) For a project which is privately owned when the commitment is made:

(i) If the project is for rehabilitation or new construction, a written legally binding agreement between the participating jurisdiction and the project owner under which the participating jurisdiction, other participating entity, or State recipient agrees to provide HOME assistance to the owner for an identifiable project as defined in this regulation that can reasonably be expected to start construction within 90

days of the agreement and in which the owner agrees to start construction within that period.

(ii) If funds are used for tenant-based rental assistance, the participating jurisdiction has entered into a rental assistance contract with the owner or the tenant in accordance with the provisions of § 92.211 of this regulation.

(iii) If the project is for acquisition, a written legally binding agreement, i.e., contract for sale, between the participating jurisdiction and the project owner under which the participating jurisdiction, other participating entity, or State recipient agrees to provide HOME assistance to the owner for purchase of the project that can reasonably be expected to be accomplished within 90 days of the agreement and in which the owner agrees to transfer title within that period.

(2) For a project that is publicly owned when the commitment is made, the Project Set-Up Report submitted under the Cash and Management Information System which identifies a specific project that will start construction within 90 days of receipt of the Project Set-Up Report. Under both paragraphs (1) and (2) of this definition, the date HUD enters into the Cash and Management Information System (§ 92.502) an acceptable Project Set-Up Report for a project is deemed to be the date of project commitment.

Community housing development organization means a nonprofit organization (as defined in this section), that—

(1) Has among its purposes the provision of decent housing that is affordable to low-income and moderate-income persons, as evidenced in its charter, articles of incorporation, resolutions or by-laws;

(2) Maintains accountability to low-income community residents by—

(i) Maintaining at least one-third of its governing board's membership for low-income community residents. For urban areas, "community" may be the city, county, or metropolitan area; for rural areas, it may be a town, village, county, or multi-county area (but not the entire State), provided the governing board contains low-income residents from each county of the multi-county area; and

(ii) Providing a formal process for low-income, program beneficiaries to advise the organization in its decisions regarding the design, siting, development, and management of affordable housing.

(3) Has a demonstrated capacity for carrying out activities assisted with HOME funds. An organization may satisfy this requirement by hiring experienced accomplished key staff members who have successfully completed similar projects, or a consultant with the same type of experience and a plan to train appropriate key staff members of the organization; and

(4) Has a history of serving the community within which housing to be assisted with HOME funds is to be located. In general, an organization must be able to show one year of serving the community (from the date the participating jurisdiction provides HOME funds to the organization). However, a newly created organization formed by local churches, service organizations or neighborhood organizations may meet this requirement by demonstrating that its parent organization has at least a year of serving the community.

Displaced homemaker means an individual who—

(1) Is an adult;

(2) Has not worked full-time, full-year in the labor force for a number of years but has, during such years, worked primarily without remuneration to care for the home and family; and

(3) Is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

Family has the same meaning given that term by part 812 of this title.

First-time homebuyer means an individual and his or her spouse who have not owned a home during the 3-year period before the purchase of a home with HOME funds, except that—

(1) Any individual who is a displaced homemaker (as defined in this section) may not be excluded from consideration as a first-time home buyer under this paragraph on the basis that the individual, while a homemaker, owned a home with his or her spouse or resided in a home owned by the spouse; and

(2) Any individual who is a single parent (as defined in this section) may not be excluded from consideration as a first-time home buyer under this paragraph on the basis that the individual, while married, owned a home with his or her spouse or resided in a home owned by the spouse.

Government-sponsored mortgage finance corporations means the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Agricultural Mortgage Corporation.

HOME funds means funds made available under this part through allocations and reallocations, plus all repayments and interest or other return on the investment of these funds.

Homeownership means fee simple title in a one- to four-unit dwelling or in a condominium unit, ownership or membership in a cooperative. The ownership interest may be subject only to the restrictions on resale required under § 92.254(a); mortgages, deeds of trust, or other liens or instruments securing debt on the property as approved by the participating jurisdiction; or any other restrictions or encumbrances that do not impair the good and marketable nature of title to the ownership interest.

Household means a family that occupied, a housing unit.

Housing includes manufactured housing and manufactured housing lots.

Housing strategy means a comprehensive housing affordability strategy prepared in accordance with part 91 of this chapter, consisting of either a complete submission or an annual update.

Approved housing strategy means a housing strategy that has been approved by HUD in accordance with part 91 of this chapter.

HUD means the United States Department of Housing and Urban Development.

Indian tribe means any Indian Tribe, band, group, or nation, including Alaskan Indians, Aleuts, and Eskimos, and any Alaskan Native Village of the United States that is considered an eligible recipient under title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) or was considered an eligible recipient under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221) before repeal of that Act. Eligible recipients under the Indian Self-Determination and Education Assistance Act are determined by the Bureau of Indian Affairs.

Jurisdiction means a State or unit of general local government.

Low-income families means families whose incomes do not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

Metropolitan city has the meaning given the term in § 570.3(v) of this title.

Nonprofit organization means any private, nonprofit organization (including a State or locally chartered, nonprofit organization) that—

(1) Is organized under State or local laws;

(2) Has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;

(3) Is neither controlled by, nor under the direction of, individuals or entities seeking to derive profit or gain from the organization. A nonprofit organization may be sponsored in part by a for-profit entity, but the for-profit entity may not have the right to appoint more than one-third of the membership of the organization's governing body, and the organization must be free to contract for goods and services from vendors of its own choosing;

(4) Has a tax exemption ruling from the Internal Revenue Service under section 501(c) of the Internal Revenue Code of 1986;

(5) Does not include a public body (including the participating jurisdiction) or an instrumentality of a public body. However, an organization that is State or locally chartered may qualify as a nonprofit organization, if at least two thirds of its governing body is controlled by private individuals who are acting in a private capacity. For purposes of this definition, an individual is deemed to be acting in a private capacity, if he or she is not legally bound to act on behalf of a public body, and is not being paid by a public body while performing functions in connection with the nonprofit organization;

(6) Has standards of financial accountability that conform to Attachment F of OMB Circular No. A–110 (Rev.) "Standards for Financial Management Systems"; and

(7) Has among its purposes, in its charter or by-laws, significant activities related to the provision of decent housing that is affordable to low-income and moderate-income persons.

Participating jurisdiction means any jurisdiction (as defined in this section) that has been so designated by HUD in accordance with § 92.105.

Person with disabilities means a household composed of one or more persons, at least one of whom is an adult, who has a disability.

(1) A person is considered to have a disability if the person has a physical, mental, or emotional impairment that—

(i) Is expected to be of long-continued and indefinite duration;

(ii) Substantially impedes his or her ability to live independently; and

(iii) Is of such a nature that such ability could be improved by more suitable housing conditions.

(2) A person will also be considered to have a disability if he or she has a developmental disability, which is a severe, chronic disability that—

(i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) Is manifested before the person attains age 22;

(iii) Is likely to continue indefinitely;

(iv) Results in substantial functional limitations in three or more of the following areas of major life activity: self care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency; and

(v) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated. Notwithstanding the preceding provisions of this definition, the term "person with disabilities" includes two or more persons with disabilities living together, one or more such persons living with another person who is determined to be important to their care or well-being, and the surviving member or members of any household described in the first sentence of this definition who were living, in a unit assisted with HOME funds, with the deceased member of the household at the time of his or her death.

Project means a site or an entire building (including a manufactured housing unit), or two or more contiguous buildings under common ownership and management, to be assisted with HOME funds or matching funds, under a commitment by the owner, as a single undertaking under this part.

Project completion means that all necessary construction work or title transfer requirements have been performed and the project in HUD's judgment complies with the requirements of this part (including the property standards adopted under § 92.251); the final draw down has been disbursed for the project; and a Project Completion Report has been submitted and processed in the Cash and Management Information System (§ 92.502) as prescribed by HUD. For tenant-based rental assistance, the final draw down has been disbursed for the project and the final payment certification has been submitted and processed in the Cash and Management Information System as prescribed by HUD.

Public housing agency (PHA) means any State, county, municipality or other governmental entity or public body (or its agency or instrumentality) that is authorized to engage in or assist in the development or operation of low-income housing.

Reconstruction means the rebuilding of housing on the same foundation. Reconstruction is rehabilitation for purposes of this part.

Secretary means the Secretary of Housing and Urban Development.

Single parent means an individual who—

(1) Is unmarried or legally separated from a spouse; and

(2)(i) Has one or more minor children for whom the individual has custody or joint custody; or

(ii) Is pregnant.

Single room occupancy (SRO) means a dwelling unit consisting of a single room, with occupancy limited to one person only. The unit may contain either a kitchen or a bathroom, but not both.

State means any State of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

State recipient. See § 92.201(b)(2).

Subrecipient means a public agency or nonprofit organization selected by the participating jurisdiction to administer all or a portion of the participating jurisdiction's HOME program. A public agency or nonprofit organization that receives HOME funds solely as a developer or owner of housing is not a subrecipient. The participating jurisdiction's selection of a sub recipient is not subject to the procurement procedures and requirements.

Substantial rehabilitation means the rehabilitation of residential property at an average cost for the project in excess of $25,000 per dwelling unit.

Tenant-based rental assistance is a form of rental assistance in which the assisted tenant may move from a dwelling unit with a right to continued assistance.

Unit of general local government means a city, town, township, county, parish, village, or other general purpose political subdivision of a State; Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, the Federated States of Micronesia and Palau, the Marshall Islands, or a general purpose political subdivision thereof; a consortium of such political subdivisions recognized by HUD in accordance with § 92.101; and any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive to act on behalf of the jurisdiction with regard to provisions of this part. When a county is an urban county, the urban county is the unit of general local government for purposes of the HOME Program.

Urban county has the meaning given the term in § 570.3 (ee) of this title.

Very low-income families means low-income families whose incomes do not exceed 50 percent of the median family income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

§ 92.3 Home funds for Indian tribes.

(a) *General.* For each fiscal year, HUD will provide funds to Indian tribes, totaling one percent (or such other percentage or amount as authorized by Congress) of the amount appropriated for the HOME program to expand the supply of affordable housing. The funds will be awarded competitively by HUD Field Offices that have responsibility for the HOME Indian program and will be made available each fiscal year pursuant to a notice of funding availability (NOAA) published in the **Federal Register**, in accordance with the requirements of this section.

(b) *Regional allocation of funds.* HOME funds will be allocated to the HUD Field Offices responsible for the HOME Indian program on the following basis:

(1) Each Field Office will be allocated a minimum of $250,000 as a base amount.

(2) HOME funds remaining after the base amount is subtracted will be allocated to each Field Office as follows:

(i) Forty percent of the funds will be allocated based upon each Field Office's share of the total eligible Indian population;

(ii) Forty percent of the funds will be allocated based upon each Field Office's share of the total extent of poverty among the eligible Indian population; and

(iii) Twenty percent of the funds will be allocated based upon each Field Office's share of the total extent of overcrowded housing among the eligible population.

(3) Data used for allocation of funds will be based upon the eligible Indian population of Indian tribes that are determined to be eligible 90 days before the beginning of each fiscal year. The data must be the most recent data available from sources referable to the same point or period in time.

(c) *Competition.* The selection of projects for funding will be based on the relative adequacy of applications in addressing locally determined need. Applicants must have the administrative capacity to undertake the project proposed, including systems of internal control necessary to administer these projects effectively. The requirements applicable to HOME funds awarded to Indian tribes are identified below. It is HUD's intent to coordinate the timing of the competition with the competition for Community Development Block Grants for Indian Tribes and Alaskan Native Villages and the allocation of assistance to Indian Housing Authorities under the Public and Indian Housing Program, so that HOME funds may be integrated into the planning and implementation of a comprehensive program of housing assistance.

(d) *Housing strategy.* Indian tribes are not required to submit a housing strategy to receive HOME funds. However, the application must demonstrate how the proposed project(s) will contribute to a comprehensive approach for expanding the supply of affordable housing for members of the Indian tribe.

(e) *Criteria for Selection.* There are four categories of projects that may be funded under the HOME Indian program: housing rehabilitation (moderate and substantial), acquisition of housing, new housing construction, and tenant-based rental assistance. Each project must be evaluated using the following three criteria:

(1) *Project need and design.* The degree to which the proposed project addresses the housing need(s) of the Indian tribe as identified in the application and through other information available to HUD, and the degree to which the proposed project is feasible while maximizing benefits to low-income members of the Indian tribe.

(2) *Planning and implementation.* The degree to which the financial, administrative, and legal actions necessary to undertake the proposed project have been considered and addressed in the application, and the degree to which the Indian tribe has the administrative staff to successfully carry out the project.

(3) *Leveraging.* The degree to which other sources of assistance, including mortgage insurance, State funds, and private contributions, are used in conjunction with HOME funds to carry out the proposed project.

(f) *Deadline and other information.* The NOFA will describe the maximum points for each of the selection criteria and any special factors to be evaluated in awarding points under the selection factors. The NOFA will also state the deadline for the submission of applications, the total funding available for the competition and any maximum amount of individual awards.

(g) *Eligible activities and affordability.* Eligible activities are those set forth in §§ 92.205 (Eligible activities: General), 92.206 (Eligible cost), and 92.211 (Tenant-based rental assistance). Section 92.203 (Income determinations) applies. The requirements of §§ 92.252 (Qualifications as affordable housing and income targeting: Rental housing) and 92.254 (Qualification as affordable housing: Homeownership) apply.

(h) *Project requirements.* The requirements of Subpart F of this part apply.

(i) *Other Federal requirements.* The requirements of Subpart H of this part apply, except § 92.350 (Equal opportunity and fair housing), §§ 92 351 (Affirmative marketing), and 92.359, (Executive Order 12372). Indian tribes are subject to the Indian Civil Rights Act (24 U.S.C. 1301) and section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)), which requires that to the greatest extent feasible preference and opportunities for training and employment must be given to Indians and preferences in the award of contracts and subcontracts must be given to Indian organizations and Indian-owned economic enterprises.

(j) *Program administration.* The requirements of Subpart K of this part apply, with the following modifications.

(1) Section 92.500 (The HOME Investment Trust Fund) does not apply. HUD will establish a HOME account in the United States Treasury and the HOME funds must be used for approved activities. The Indian tribe must establish a local account for repayment, interest and other return of investment of HOME funds. HUD will recapture HOME funds in the HOME account by the amount of:

(i) Any funds that are not committed within 24 months after the last day of the month in which the funds were deposited in the account;

(ii) Any funds that are not expended within five years after the last day of the month in which the funds were deposited in the account; and

(iii) Any penalties assessed by HUD under § 92.552.

(2) Section 92.502 (Cash and Management Information System) applies except that references to the HOME Investment Trust Fund mean the HOME account. In addition to the requirements in § 92.502(c), an Indian tribe must comply with Treasury Circular No. 1075 (31 CFR part 105).

(3) Section 92.503 (Repayment of investment) applies, except that an Indian tribe may retain repayments,

interest, and other return on investment of HOME funds if the Indian tribe agrees to use the funds for eligible activities in accordance with the requirements of this section.

(4) Section 92.504 (Participating jurisdiction responsibilities; written agreements; monitoring) applies, except that the written agreement must ensure compliance with this section.

(5) Section 92.508 (Recordkeeping) applies with respect to the records that relate to the requirements of this section.

(6) Section 92.509 (Performance reports) applies, except that a performance report is required only after completion of the approved projects.

(k) *Performance reviews and sanctions.* The requirements of subpart L of this part apply.

§ 92.4 Waivers.

Upon determination of good cause, the Secretary may waive any provision of this part not required by statute. Each waiver must be in writing and must be supported by documentation of the pertinent facts and grounds.

Subpart B—Allocation Formula

§ 92.50 Formula allocation.

(a) *Jurisdictions eligible for a formula allocation.* HUD will provide allocations of funds in amounts determined by the formula described in this section to—

(1) Units of general local governments that, as of the end of the previous fiscal year, are metropolitan cities, urban counties, or consortia approved under § 92.101; and

(2) States.

(b) *Amounts available for allocation; State and local share.* The amount of funds that are available for allocation by the formula under this section is equal to the balance of funds remaining after reserving for grants to Indian tribes one percent (or such other percentage or amount, as authorized by Congress) of the total funds appropriated and after reserving up to such amounts as may be authorized by law for housing education and organization support and for coordinated Federal support activities.

(c) *Formula factors.* The formula for determining allocations uses the following factors. The first and sixth factors are weighted 0.1; the other four factors are weighted 0.2.

(1) Vacancy-adjusted rental units where the household head is at or below the poverty level. These rental units are multiplied by the ratio of the national rental vacancy rate over a jurisdiction's rental vacancy rate.

(2) Occupied rental units with at least one of four problems (overcrowding, incomplete kitchen facilities, incomplete plumbing, or high rent costs). *Overcrowding* is a condition that exists if there is more than one person per room occupying the unit. *Incomplete kitchen facilities* means the unit lacks a sink with running water, a range, or a refrigerator. *Incomplete plumbing* means the unit lacks hot and cold piped water, a flush toilet, or a bathtub or shower inside the unit for the exclusive use of the occupants of the unit. *High rent costs* occur when more than 30 percent of household income is used for rent.

(3) Rental units built before 1940 occupied by poor persons.

(4) Rental units described in paragraph (c)(2) multiplied by the ratio of the cost of producing housing for a jurisdiction divided by the national cost.

(5) Number of families at or below the poverty level.

(6) Population of a jurisdiction multiplied by a net per capita income (pci). To compute net pci for a jurisdiction or for the nation, the pci of a three person family at the poverty threshold is subtracted from the pci of the jurisdiction or of the nation. The index is constructed by dividing the national net pci by the net pci of a jurisdiction.

(d) *Calculating formula allocations for units of general local government.* (1) Initial allocation amounts for units of general local government described in paragraph (a)(1) of this section are determined by multiplying the sum of the shares of the six factors in paragraph (c) of this section by 60 percent of the amount available under paragraph (b) of this section for formula allocation. The shares are the ratio of the weighted factor for each jurisdiction over the corresponding factor for the total for all of these units of general local government.

(2) If any of the initial amounts for such units of general local government in Puerto Rico exceeds twice the national average, on a per rental unit basis, that amount is capped at twice the national average.

(3) The initial amounts are revised by taking amounts of less than $250,000 that were initially distributed to units of general local government and redistributing these amounts to units of general local government that had initial distribution amounts of $250,000 or more. This redistribution calculation is repeated until 95 percent of the funds have been distributed among units of general local government in amounts of $500,000 or more. On each repetition of the calculation, the threshold, which initially was $250,000, is raised by half the difference between the previous threshold and $500,000. Any amounts under $500,000 that, on the last recalculation, were distributed to units of general local government are redistributed to units of general local government that have distribution amounts of $500,000 or more.

(4) The allocation amounts determined under paragraph (d)(3) of this section are reduced by any amounts that are necessary to provide increased allocations to States that have no unit of general local government receiving a formula allocation (see paragraph (e)(4) of this section). These reductions are made on a pro rata basis, except that no unit of general local government allocation is reduced below $500,000.

(e) *Calculating formula allocations for States.* (1) Forty percent of the funds available for allocation under paragraph (b) of this section are allocated to States. The allocation amounts for States are calculated by determining initial amounts for each State, based on the sum of the shares of the six factors. For 20 percent of the funds to be allocated to States, the shares are the ratio of the weighted factor for the entire State over the corresponding factor for the total for all States. For 80 percent of the funds to be allocated to States, the shares are the ratio of the weighted factor for all units of general local government within the State that do not receive a formula allocation over the corresponding factor for the total for all States.

(2) If the initial amounts for Puerto Rico (based on either or both the 80 percent of funds or 20 percent of funds calculation) exceed twice the national average, on a per rental unit basis, each amount that exceeds the national average is capped at twice the national average, and the resultant funds are reallocated to other States on a pro rata basis.

(3) If the initial amounts when combined for any State are less than the $3,000,000, the allocation to that State is increased to the $3,000,000 and all other State allocations are reduced by an equal amount on a pro rata basis, except that no State allocation is reduced below $3,000,000.

(4) The allocation amount for each State that has no unit of general local government within the State receiving an allocation under paragraph (d) of this section is increased by $500,000. Funds for this increase are derived from the funds available for units of general local government, in accordance with paragraph (d)(4) of this section.

§ 92.51 Establishing list of participating jurisdictions that may use funds for new construction and rental housing production set-aside.

(a) *General.* HUD will identify each jurisdiction receiving a formula allocation under § 92.50 that is authorized by HUD to use its formula allocation for new construction, without the jurisdiction having to make a determination overriding the preference for rehabilitation (§ 92.207). HUD will also identify areas not receiving a formula allocation, as areas in which HOME funds may be used for new construction. Areas which the Department reviews for eligibility for new construction are metropolitan cities, urban counties, consortia, counties not containing these three groups, and the balance of counties after having excluded these three groups. The list of areas eligible for new construction does not include areas with populations under 25,000. A State that is authorized by HUD to use its HOME funds for new construction may do so only within the boundaries of an area that HUD has identified as an area where new construction is authorized.

(b) *Eligibility criteria.* (1) HUD determines the local jurisdictions in which new construction is authorized based on the following factors:

(i) *Low vacancy.* The national rental vacancy rate divided by the corresponding vacancy rate for a local community.

(ii) *Low turnover.* The national rate at which renter families moved in year and months preceding the decennial census divided by the corresponding turnover rate for a local jurisdiction.

(iii) *High proportion of substandard housing.* The percent of rental units with at least one of four problem conditions as of the most recent decennial census divided by the corresponding national rate. The four problem conditions are: lack of plumbing, lack of kitchen facilities, overcrowding, and 30 percent rent burden, as described in § 92.50(c)(2).

(iv) *High fair market rent.* The most recently available two-bedroom Section 8 Existing Housing fair market rent for a local jurisdiction divided by the national two-bedroom Section 8 Existing Housing fair market rent.

(v) *High population growth.* The population growth rate from 1980 to the latest population estimate or count for a local jurisdiction divided by the corresponding national rate.

(2) An area is placed on the list of areas where new construction is authorized if it has above-average values for at least three of the five eligibility factors and more than a specified value on a composite of the five factors. The ratio for each of the five factors is set up so that above-average need is always expressed as a value greater than one. The composite factor is an average of the five factors. In computing the composite factor, component factors are capped for the most extreme high and low of values for metropolitan cities and urban counties.

(c) *Data used to identify eligible jurisdictions.* Jurisdictions are identified as eligible based on the latest data available 90 days before the beginning of a fiscal year. The data are derived for each jurisdiction, by comparable methods and for the same period of time.

(d) *Requests for review of eligibility determinations.* A unit of general local government receiving a formula allocation under § 92.50 but is not on the list of jurisdictions in which new construction is authorized may request HUD to reconsider its eligibility, based on evidence of an error in census data or in HUD's computation. A State may request HUD to consider its eligibility to use HOME funds for new construction with respect to a jurisdiction that does not receive a formula allocation and has a population of 25,000 or more, based on evidence of an error in census data or in HUD's computation. A State also may request HUD to consider its eligibility to use HOME funds for new construction in an area with a population less than 25,000. The State must submit sufficient objective data on local rental housing market conditions for HUD to make an eligibility determination based on the criteria set forth below. HUD will evaluate the information submitted and, based on a decision that it is reasonably accurate and representative of local market conditions, will make the eligibility determination. An area will be determined eligible if the information shows that: The current vacant rental housing available in the area is at a low level relative to the amount of rental housing required for a balanced market; the amount of rental housing produced annually in recent years (i.e., the last five years) is less than needed to meet household growth and turnover requirements; and there have been moderate to high rates of increase in renter households (or total population if data on the change in households are not available). A decision by HUD, under this paragraph (d), to authorize the use of HOME funds for new construction in an area does not alter the rental housing production set-asides that HUD has made under paragraph (e) of this section.

(e) *Formula for determining the rental housing production set-aside.* (1) For each jurisdiction receiving a formula allocation that HUD identifies, under paragraph (a) of this section, as being authorized to use HOME funds for new construction, HUD, to the extent required by statute, will also specify the amount of the jurisdiction's respective formula allocation that it must use, for a period ending 24 months after the allocation amounts are made available, only to produce affordable rental housing through new construction or substantial rehabilitation (rental housing production set-aside). Any of these funds that the jurisdiction does not so commit within the 24-month period after HUD makes them available remains available for an additional 12-month period for commitment to any eligible activity permitted by subpart E of this part.

(2) If there is a statutory directive to set aside a specified percentage of the total formula allocation to be used for new construction or substantial rehabilitation, HUD determines the amount of each jurisdiction's rental housing production set-aside as follows. Of the amount that must be set aside, 80 percent is allocated to units of general local government and 20 percent is allocated to States. A State or local jurisdiction's share of the amount set aside is based on the share of its need relative to the need in all such jurisdictions. The need in a local jurisdiction is determined by subtracting one from the jurisdictions's composite factor and multiplying the difference by the jurisdiction's formula allocation. A State's need is determined by summing the need as calculated for all areas within the State. Each area's need is calculated by subtracting one from the area's composite factor and multiplying the difference by the area's population.

§ 92.52 Publishing formula allocation, rental housing production set-aside and list of new construction-eligible participating jurisdictions.

Not later than 20 days after funds become available to HUD, HUD will publish a **Federal Register** notice listing all jurisdictions receiving a formula allocation and the amount of each jurisdiction's formula allocation, all jurisdictions determined by HUD to be authorized to use their formula allocation for new construction and the amount of each such jurisdiction's rental housing production set-aside, and all other areas in which HUD has determined HOME funds may be used for new construction.

Subpart C—Participating Jurisdiction: Designation and Revocation of Designation—Consortia

§ 92.100 General.

This subpart C sets out the requirements for a jurisdiction to be designated a participating jurisdiction, including the requirements for local jurisdictions to form consortia. It also sets out the conditions and procedures under which HUD may revoke a jurisdiction's designation as a participating jurisdiction.

§ 92.101 Consortia.

(a)(1) Beginning in fiscal year 1992, a consortium of geographically contiguous units of general local government is a unit of general local government for purposes of this part if—

(i) At least 60 days before the start of the fiscal year, the consortium:

(A) Notifies HUD of its intention to be considered a consortium for purposes of this section;

(B) Submits a written certification by the State that the consortium will direct its activities to alleviation of housing problems within the State; and

(C) Advises HUD that the consortium has executed a legally binding cooperation agreement among its members authorizing one member unit of general local government to act in a representative capacity for all member units of general local government for the purposes of this part and providing that the representative member assumes overall responsibility for ensuring that the consortium's HOME program is carried out in compliance with the requirements of this part.

(2) A metropolitan city or an urban county may be part of a consortium. A unit of general local government that is included in an urban county may be part of a consortium, only through the urban county, regardless of whether the urban county receives a formula allocation.

(b) Before the end of the fiscal year in which the notice is submitted, HUD determines that the consortium has sufficient authority and administrative capability to carry out the purposes of this part on behalf of its member jurisdictions. HUD will endeavor to make this determination as quickly as practicable after receiving the consortium's notice in order to provide the consortium an opportunity to correct its submission, if necessary. If the submission is deficient, HUD will work with the consortium to resolve the issue, but will not delay the formula allocations.

(c) The consortium's status as a unit of general local government continues until the consortium notifies HUD that it is dissolving the consortium or HUD revokes its designation as a participating jurisdiction.

§ 92.102 Participation threshold amount.

(a) A unit of general local government must have a formula allocation under § 92.50 that is equal to or greater than $750,000; or

(b) If a unit of general local government's formula allocation is less than $750,000:

(1) HUD finds that the unit of general local government has a local PHA and has demonstrated a capacity to carry out the provisions of this part, as evidenced by satisfactory performance under one or more HUD-administered programs that provide assistance comparable to the eligible activities under this part; and

(2) The State has authorized HUD to transfer to the unit of general local government a portion of the State's allocation or the State, the unit of general local government, or both, has made available its own resources such that the sum of the amounts transferred or made available are equal to or greater than the difference between the unit of general local government's formula allocation and $750,000. A State, subject to the distribution of assistance requirements in § 92.201, may authorize such a transfer even if the State is not designated a participating jurisdiction. When a State that has received a rental housing production set-aside under § 92.51 transfers a portion of its allocation to a unit of general local government, the State may specify that the transfer includes a part of the State's set-aside; however, only a unit of general local government that is on the list of jurisdictions authorized by HUD under § 92.52 to use funds for new construction may use the transferred funds for new construction.

§ 92.103 Notification of intent to participate.

(a) A jurisdiction must notify HUD in writing, not later than 30 days after publication of the formula allocation notice under § 92.52, of its intention to become a participating jurisdiction.

(b) A unit of general local government that has a formula allocation of less than $750,000 must submit, with its notice, one or more of the following, as appropriate, as evidence that it has met the threshold allocation requirements in § 92.102(b):

(1) Authorization from the State to transfer a portion of its allocation to the unit of general local government;

(2) A letter from the governor or designee indicating that the required funds have been approved and budgeted for the unit of general local government;

(3) A letter from the chief executive officer of the unit of general local government indicating that the required funds have been approved and budgeted.

§ 92.104 Submission of housing strategy.

A jurisdiction that has not submitted a housing strategy to HUD or has submitted an abbreviated housing strategy (as provided for in § 91.25 of this chapter) must submit to HUD, not later than 90 days after providing notification under § 92.103, a housing strategy in accordance with part 91 of this chapter.

§ 92.105 Designation as a participating jurisdiction.

When a jurisdiction has complied with the requirements of §§ 92.102 through 92.104 and HUD has approved the jurisdiction's housing strategy in accordance with part 91 of this chapter, HUD will designate the jurisdiction as a participating jurisdiction.

§ 92.106 Continuous designation as a participating jurisdiction.

Once a State or unit of general local government is designated a participating jurisdiction, it remains a participating jurisdiction for subsequent fiscal years and the requirements of §§ 92.102 through 92.105 do not apply, unless HUD revokes the designation in accordance with § 92.107.

§ 92.107 Revocation of designation as a participating jurisdiction.

HUD may revoke a jurisdiction's designation as a participating jurisdiction if—

(a) HUD finds, after reasonable notice and opportunity for hearing as provided in § 92.552(b) that the jurisdiction is unwilling or unable to carry out the provisions of this part; or

(b) The jurisdiction's formula allocation, plus funds provided under § 92.102(b), falls below $750,000 for three consecutive years, below $625,000 for two consecutive years, or the jurisdiction does not receive a formula allocation in any one year.

(c) When HUD revokes a participating jurisdiction's designation as a participating jurisdiction, HUD will reallocate any remaining funds in the jurisdiction's HOME Investment Trust Fund established under § 92.500 in accordance with § 92.451.

Subpart D—Program Description

§ 92.150 Submission of program description and certifications.

(a) *Submitting a program description.* A participating jurisdiction must submit a program description each fiscal year within 45 days of the date of publication of the formula allocation under § 92.52. A jurisdiction that has not yet been designated as a participating jurisdiction must submit a program description within 45 days of designation.

(b) *Content of program description.* The program description must provide the following information:

(1) An executed Standard Form 424;

(2) For a local participating jurisdiction, the estimated use of HOME funds and of matching funds (consistent with needs identified in its approved housing strategy) for each of the following categories of eligible activities: New construction, substantial rehabilitation, other rehabilitation, acquisition (not involving new construction or rehabilitation), tenant-based rental assistance and an estimate of whether units assisted will be rental or owner-occupied;

(3) For a State, a description of how the State will distribute funds (consistent with needs identified in its approved housing strategy) i.e., transferring funds to other participating jurisdictions that do not meet the participation threshold allocation level in § 92.102, administering a competitive process, or directly administering HOME funds. To the extent known, States should identify the areas in which HOME funds will be used.

(4) The amount of HOME funds that the participating jurisdiction is reserving for community housing development organizations. An explanation of how the participating jurisdiction will work with community housing development organizations and a description of the activities (type of activity and level of funds) that community housing development organizations will be undertaking for the participating jurisdiction;

(5) If the participating jurisdiction intends to use HOME funds for first-time homebuyers, the guidelines for resale should be described as required in § 92.254(a)(4);

(6) If the participating jurisdiction intends to use HOME funds for tenant-based rental assistance, a description of how the program will be administered consistent with the minimum guidelines described in § 92.211.

(7) If a participating jurisdiction intends to use other forms of investment not described in § 92.205(b), a description of the other forms of investment.

(8) A statement of the policy and procedures to be followed by the participating jurisdiction to meet the requirements for affirmative marketing, and establishing and overseeing a minority and women business outreach program under §§ 92.350 and 92.351, respectively.

(c) The following certifications must accompany the program description:

(1) For a participating jurisdiction that is not on the new construction formula list but intends to do new construction, a certification that it has made a determination that rehabilitation is not the most cost effective way to meet its need to expand the supply of affordable housing and that its housing needs can not be met through the rehabilitation of existing stock;

(2) A certification that, before committing funds to any project, the participating jurisdiction will evaluate each project and not invest any more HOME funds in combination with other Federal assistance than is necessary to provide affordable housing.

(3) If applicable, the certification required, by § 92.209 for a participating jurisdiction that is not on the list published under § 92.51, to do new construction to facilitate a neighborhood revitalization program.

(4) If applicable, the certification required, by § 92.210 for a participating jurisdiction that is not on the list published under § 92.51, to do new construction on the basis of special needs.

(5) If the participating jurisdiction intends to provide tenant-based assistance, the certification required by § 92.211.

(6) A certification that the submission of the program description is authorized under State and local law (as applicable), and the participating jurisdiction possesses the legal authority to carry out the HOME Program, in accordance with the HOME regulations;

(7) A certification that it will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, implementing regulations at 49 CFR part 24 and the requirements of § 92.353;

(8) A certification that the participating jurisdiction and, if applicable, State recipients, will use HOME funds pursuant to the participating jurisdiction's approved housing strategy and in compliance with all requirements of this part;

(9) The certification with regard to the drug-free workplace required by 24 CFR part 24, subpart F.

(10) The certification required with regard to lobbying required by 24 CFR part 87, together with disclosure forms, if required by part 87.

§ 92.151 Review of program description and certifications.

(a) *Review of program description.* The responsible HUD Field Office will review a participating jurisdiction's program description and will approve the description unless it is not consistent with its approved housing strategy or if the participating jurisdiction has failed to submit information sufficient to allow HUD to make the necessary determinations required by § 92.150 (b)(5) and (b)(7), if applicable. If the information submitted is not consistent with the approved housing strategy and the participating jurisdiction has not submitted information on § 92.150 (b)(5) and (b)(7), if applicable, the participating jurisdiction may be required to furnish such further information or assurances as HUD may consider necessary to find the program description and certifications satisfactory.

(b) *Review period.* The HUD Field Office will notify the participating jurisdiction if its program description is not consistent with its approved housing strategy or determinations cannot be made under § 92.150(b)(5) or (b)(7) within 30 days of receipt and the participating jurisdictions will have a reasonable period of time, agreed upon mutually, to submit the necessary supporting information to show it is consistent or to revise the activities in its program description.

(c) *Conditional approval of program description.* If the participating jurisdiction does not submit the supporting information under § 92.150 (b)(5) or (b)(7) sufficient to show consistency with its approved housing strategy or to allow the required HUD determinations or HUD disapproves the guidelines under § 92.150(b)(5) or the form of investment under § 92.150(b)(7), the Field Office may approve the program description conditionally excepting those activities covered by those sections until such time as the necessary information is submitted.

(d) *HOME investment partnership agreement.* After Field Office approval under this section, a HOME funds allocation is made by HUD execution of the agreement, subject to execution by the participating jurisdiction. The funds are obligated on the date HUD notifies the participating jurisdiction of HUD's

execution of the agreement in accordance with this section and § 92.501.

Subpart E—Program Requirements

§ 92.200 Private-public partnership.

Each participating jurisdiction must make all reasonable efforts, consistent with the purposes of this part, to maximize participation by the private sector, including nonprofit organizations and for-profit entities, in the implementation of the jurisdiction's approved housing strategy, including participation in the financing, development, rehabilitation and management of affordable housing. Nothing in the previous sentence shall preclude public housing authorities from fully participating in the implementation of a jurisdiction's approved housing strategy.

§ 92.201 Distribution of assistance.

(a) *Local.* Each participating jurisdiction must, insofar as is feasible, distribute HOME funds geographically within its boundaries and among different categories of housing need, according to the priorities of housing need identified in its approved housing strategy.

(b) *State.* (1) Each participating State is responsible for distributing HOME funds throughout the State according to the State's assessment of the geographical distribution of the housing need within the State, as identified in the State's approved housing strategy. The State must distribute HOME funds to rural areas in amounts that take into account the nonmetropolitan share of the State's total population and objective measures of rural housing need, such as poverty and substandard housing, as set forth in the State's approved housing strategy. To the extent the need is within the boundaries of a participating unit of general local government, the State and the unit of general local government shall coordinate activities to address that need.

(2) A State may carry out its own HOME program without active participation of units of general local government or may distribute HOME funds to units of general local government to carry out HOME programs in which both the State and all or some of the units of general local government perform specified program functions. A unit of general local government designated by a State to receive HOME funds from a State is a *State recipient.*

§ 92.202 Site and neighborhood standards.

A participating jurisdiction must administer its HOME program in a manner that provides housing that:

(a) Is suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of title VI of the Civil Rights Act of 1964, the Fair Housing Act, E.O. 11063, and HUD regulations issued pursuant thereto; and

(b) Promotes greater choice of housing opportunities.

(c) In carrying out these requirements with respect to new construction, a participating jurisdiction must follow § 882.708 of the title.

§ 92.203 Income determinations.

Whenever a participating jurisdiction makes a determination under this part based on family income or adjusted family income, it must use the definitions of *annual income, adjusted income, monthly income,* and *monthly adjusted income,* as those terms are defined in part 813 of this title.

§ 92.204 Applicability of requirements to entities that receive a reallocation of HOME funds, other than participating jurisdictions.

(a) Jurisdictions that are not participating jurisdictions and community housing development organizations receiving competitive reallocations from HUD are subject to the same requirements in subpart E (Program Requirements), subpart F (Project Requirements), subpart K (Program Administration), and subpart L (Performance Reviews and Sanctions) of this part as participating jurisdictions, except for the following.

(1) Subpart E (Program Requirements): Sections 92.207 through 210 do not apply. The matching funds requirements in §§ 92.218 through 92.221 do not apply.

(2) Subpart K (Program Administration):

(i) Section 92.500 (The HOME Investment Trust Fund) does not apply. HUD will establish a HOME account in the United States Treasury and the HOME funds must be used for approved activities. A local account must be established for repayment, interest and other return of investment of HOME funds. HUD will recapture HOME funds in the HOME Treasury account by the amount of:

(A) Any funds that are not committed within 24 months after the last day of the month in which the funds were deposited in the account;

(B) Any funds that are not expended within five years after the last day of the month in which the funds were deposited in the account; and

(C) Any penalties assessed by HUD under § 92.552.

(ii) Section 92.502 (Cash and Management Information System) applies, except that references to the HOME Investment Trust Fund mean HOME account. In addition to the requirements in § 92.502(c) compliance with Treasury Circular No. 1075 (31 CFR part 105) is required.

(iii) Section 92.503 (Repayment of investment) applies, except that repayments, interest and other return on investment of HOME funds may be retained provided the funds are used for eligible activities in accordance with the requirements of this section.

(3) Section 92.504 (Participating jurisdiction responsibilities; written agreements; monitoring) applies, except that the written agreement must ensure compliance with this section.

(4) Section 92.508 (Recordkeeping) applies with respect to the records that relate to the requirements of this section.

(5) Section 92.509 (Performance reports) applies, except that a performance report is required only after completion of the approved projects.

(b) The requirements in subpart H (Other Federal Requirements) of this part apply, except that jurisdictions and community housing development organizations receiving reallocations from HUD must comply with affirmative marketing requirements and with the flood insurance requirements, applicable to participating jurisdictions.

(c) Subpart (Allocation Formula), subpart C (Participating Jurisdiction: Designation and Revocation of Designation—Consortia), subpart D (Program Description), and subpart G (Community Housing Development Organizations) of this part do not apply.

Eligible and Prohibited Activities

§ 92.205 Eligible activities: General.

(a) *Eligible activities.* (1) HOME funds may be used by a participating jurisdiction to provide incentives to develop and support affordable rental housing and homeownership affordability through the acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of nonluxury housing with suitable amenities, including real property acquisition, site improvement, conversion, demolition, and other expenses, including financing costs, relocation expenses of any displaced persons, families, businesses, or organizations; and to provide tenant-based rental assistance. The specific

eligible costs for these activities are set forth in § 92.206.

(2) Acquisition of vacant land or demolition must be undertaken only with respect to a particular housing project intended to provide affordable housing, and for which funds for construction have been committed.

(3) Housing that has received an initial certificate of occupancy within a one-year period before a participating jurisdiction commits HOME funds to the project is new construction for purposes of this part.

(b) *Forms of assistance.* A participating jurisdiction may invest HOME funds as equity investments, interest-bearing loans or advances, noninterest-bearing loans or advances, interest subsidies consistent with the purposes of this part, deferred payment loans, grants, or other forms of assistance that HUD determines to be consistent with the purposes of this part. Each participating jurisdiction has the right to establish the terms of assistance, subject to the requirements of this part.

(c) If the participating jurisdiction spends HOME funds on a project that is terminated before completion, the funds must be repaid to the participating jurisdiction's HOME Investment Trust Fund.

§ 92.206 Eligible costs.

HOME funds may be used to pay the following eligible costs:

(a) *Development hard costs.* The actual cost of constructing or rehabilitating housing. These costs include the following:

(1) For new construction, costs to meet the applicable new construction standards of the participating jurisdiction and the energy efficiency standards as developed by HUD pursuant to section 109 of Cranston-Gonzalez National Affordable Housing Act;

(2) For rehabilitation, costs to meet the applicable rehabilitation standards of the participating jurisdiction or correcting substandard conditions (minimally the housing quality standards at § 882.109 of this title), to make essential improvements including energy-related repairs, improvements necessary to permit the use by handicapped persons, and the abatement of lead-based paint hazards, as required by § 92.355, and to repair or replace major housing systems in danger of failure; and

(3) For both new construction and rehabilitation, costs to demolish existing structures and for improvements to the project site that are in keeping with improvements of surrounding, standard projects.

(b) *Development soft costs.* Other reasonable and necessary costs associated with the financing and development of new construction, rehabilitation or acquisition of housing assisted with HOME funds. These costs include, but are not limited to:

(1) Architectural, engineering or related professional services required to prepare plans, drawings, specifications, or work-write-ups;

(2) Costs to process and settle the financing for a project, such as private lender origination fees, credit reports, fees for title evidence, fees for recordation and filing of legal documents, building permits, attorneys' fees, private appraisal fees and fees for an independent cost estimate, builders or developers fees; and

(3) Costs to provide information services such as affirmative marketing and fair housing information to prospective homeowners and tenants as required by § 92.351.

(c) *Acquisition costs.* Costs of acquiring improved or unimproved real property.

(d) *Relocation costs.* Costs of relocation payments and other relocation assistance for permanently and temporarily relocated individuals, families, businesses, nonprofit organizations, and farm operations where assistance is required under § 92.353 (b) or (c) or determined by the participating jurisdiction to be appropriate under § 92.353(d).

(e) *Costs related to tenant-based rental assistance.* Eligible costs are the rental assistance payments made to provide tenant-based rental assistance for a family.

§ 92.207 Preference for rehabilitation.

(a) Subject to the limitations in paragraph (b) of this section, a participating jurisdiction, in using its HOME funds to expand the supply of affordable housing, must give preference to rehabilitation of substandard housing by using 100 percent of its HOME funds for rehabilitation, unless the jurisdiction determines that—

(1) Such rehabilitation is not the most cost-effective way to meet the participating jurisdiction's need to expand the supply of affordable housing; and

(2) The participating jurisdiction's housing needs cannot be met through rehabilitation of the available housing stock.

(b) The requirements of paragraph (a) of this section do not apply to a participating jurisdiction's use of HOME funds for—

(1) Acquisition of standard housing;

(2) Tenant-based rental assistance; or

(3) New construction, as authorized under § 92.208(a).

§ 92.208 New construction: General.

A participating jurisdiction may use HOME funds for new construction of affordable housing only on the following conditions:

(a) *Jurisdiction authorized by HUD to do new construction.* The participating jurisdiction is on the list of jurisdictions authorized to use HOME funds for new construction published by HUD under § 92.52 or successfully appeals its omission from that list. A State participating jurisdiction that is authorized by HUD to use HOME funds for new construction may use HOME funds for new construction only in those areas of the State that are on the list published by HUD under § 92.52.

(b) *Jurisdiction not authorized by HUD to do new construction.* If the participating jurisdiction is not on the list of jurisdictions authorized to use HOME funds for new construction published by HUD under § 92.52 and does not successfully appeal its omission from that list, the participating jurisdiction may use HOME funds for new construction only if it has made the determination required under § 92.207 and has made the certification required under § 92.209 (neighborhood revitalization) or § 92.210 (special needs), or both.

§ 92.209 New construction: Neighborhood revitalization.

In order to qualify under § 92.208(b) to use HOME funds for new construction of affordable housing on the basis of a neighborhood revitalization program, a participating jurisdiction must certify that—

(a) The program of new construction is needed to facilitate a neighborhood revitalization program that emphasizes rehabilitation of substandard housing for rental or homeownership opportunities by low-income and moderate-income families in an area designated by the jurisdiction. The participating jurisdiction must document this element of its certification with quantitative evidence demonstrating that the neighborhood revitalization program has emphasized the rehabilitation of substandard housing. Evidence that at least 51 percent of all funds spent by the participating jurisdiction on the neighborhood revitalization program (within at least a one-year period before the certification is made) was spent for rehabilitation of substandard housing will meet this test;

(b) The housing is to be located in a neighborhood that has at least 51 percent of its households at or below 80 percent of median income for the area;

(c) The housing is to be produced by a community housing development organization or a public agency; and

(d)(1) The number of housing units to be constructed with HOME funds does not exceed 20 percent of the total number of housing units in the neighborhood revitalization program that are assisted with HOME funds; or

(2)(i) The housing is to be located in a severely distressed area within the neighborhood with large tracts of vacant land and abandoned buildings;

(ii) The housing is to be located in an area within the neighborhood with an inadequate supply of existing housing that can economically be rehabilitated to meet identified housing needs; or

(iii) The new construction is required to accomplish the neighborhood revitalization program.

(e) For purposes of this section, a *neighborhood* means: a geographic location within the boundary (but not encompassing the entire area) of a unit of general local government with a population of 25,000 or more designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographical designation, or the entire area of a unit of general local government with a population under 25,000.

§ 92.210 New construction: Special needs.

In order to qualify under § 92.208(b) to use HOME funds for new construction of affordable housing on the basis of special needs:

(a) The HOME funds must be used for new construction of one or more of the following:

(1) Housing for families of five or more persons;

(2) Housing for persons with disabilities;

(3) Single room occupancy housing;

(4) Housing that is necessary to further the desegregation or racial deconcentration of housing within the jurisdiction pursuant to a court-approved settlement agreement, compliance agreement, or voluntary plan approved by HUD if tenant-based assistance is not sufficient to meet the specified need within a reasonable time.

(b) The participating jurisdiction must certify on the basis of objective data in its annual approved housing strategy: that a high priority need for such housing exists in the jurisdiction; and that there is not a supply of vacant, habitable, public housing units in excess of normal vacancies resulting from turnovers that could meet the specified need;

§ 92.211 Tenant-based rental assistance.

(a) *General.* A participating jurisdiction may use HOME funds for tenant-based rental assistance only if—

(1) The participating jurisdiction certifies that the use of HOME funds for tenant-based rental assistance is an essential element of the participating jurisdiction's annual approved housing strategy for expanding the supply, affordability, and availability of decent, safe, sanitary, and affordable housing, and specifies the local market conditions that lead to the choice of this option; and

(2) The participating jurisdiction selects families from the waiting list of a PHA operating within the jurisdiction of the participating jurisdiction, in accordance with the PHA's preferences established under § 882.219. The participating jurisdiction may select eligible families currently residing in units that are designated for rehabilitation under the participating jurisdiction's HOME program without requiring that the family be placed on the waiting list. Families so selected may use the tenant-based assistance in the rehabilitated unit or in other qualified housing.

(b) *Program operation.* A tenant-based rental assistance program must be operated consistently with the requirements of this section. The participating jurisdiction may operate the program, itself, or may contract with a PHA or other entity with the capacity to operate a rental assistance program. The tenant-based rental assistance may be provided through an assistance contract to an owner that leases a unit to an assisted family or directly to the family.

(c) *Term of rental assistance contract.* The term of the rental assistance contract providing assistance with HOME funds may not exceed 24 months, but may be renewed, subject to the availability of HOME funds. The term of the rental assistance contract must begin on the first day of the term of the lease. For a rental assistance contract between a participating jurisdiction and an owner, the term of the contract must terminate on termination of the lease. For a rental assistance contract between a participating jurisdiction and a family, the term of the contract need not end on termination of the lease, but no payments may be made after termination of the lease until a family enters into a new lease.

(d) *Rent reasonableness.* The participating jurisdiction must disapprove a lease if the rent is not reasonable, based on rents that are charged for comparable unassisted rental units.

(e) *Lease requirements.* The lease must comply with the requirements in § 92.253 (a) and (b) of this part.

(f) *Maximum subsidy.* (1) The amount of the monthly assistance that a participating jurisdiction may pay to, or on behalf of, a family may not exceed the difference between a rent standard for the unit size established by the participating jurisdiction and 30 percent of the family's monthly adjusted income.

(2) The participating jurisdiction must establish a minimum tenant contribution to rent.

(3) The participating jurisdiction's rent standard for a unit size may not be less than 80 percent of the published Section 8 Existing Housing fair market rent (in effect when the payment standard amount is adopted) for the unit size, nor more than the fair market rent or HUD-approved community-wide exception rent (in effect when the participating jurisdiction adopts its rent standard amount) for the unit size. (Community-wide exception rents are maximum gross rents approved by HUD for the Rental Certificate Program under § 882.106(a)(3) of this title for a designated municipality, county, or similar locality, which apply to the whole PHA jurisdiction.) A participating jurisdiction may approve on a unit-by-unit basis a subsidy based on a rent standard that exceeds the applicable fair market rent by up to 10 percent for 20 percent of units assisted.

(g) *Housing quality standards.* Housing occupied by a family receiving tenant-based assistance under this section must meet the performance requirements set forth in § 882.109 of this title. In addition, the housing must meet the acceptability criteria set forth in § 882.109, except for such variations, as are proposed by the participating jurisdiction and approved by HUD. Local climatic or geological conditions or local codes are examples which may justify such variations.

(h) *Use of Section 8 assistance.* In any case where assistance under section 8 of the United States Housing Act of 1937 becomes available to a participating jurisdiction, recipients of tenant-based rental assistance under this part will qualify for tenant selection preferences to the same extent as when they received the tenant-based rental assistance under this part.

§ 92.212 REACH: Asset recycling information dissemination.

(a) *General.* HUD will make available upon request by any participating

jurisdiction a list of eligible properties that are located within the jurisdiction and that are owned or controlled by HUD to facilitate their purchase, development, or rehabilitation with HOME funds.

(b) *Eligible properties.* An eligible property under this section must:

(1) Be an unoccupied single-family or multifamily dwelling, such that acquisition and rehabilitation of the dwelling would not result in the displacement of any residents of the dwelling; and

(2) Have an appraised value that does not exceed:

(i) In the case of a 1- to 4-family dwelling, the mortgage limit for the type of single family housing (1- to 4-family residence, condominium unit, combination manufactured home and lot, or manufactured home lot) for the area (including any applicable high-cost mortgage limit published by HUD in the **Federal Register**) under HUD's single family insuring authority under the National Housing Act. For a cooperative unit, the appraised value for a cooperative share may not exceed the balance remaining after subtracting from the 1-family mortgage limit an amount equal to the blanket mortgage covering the cooperative development which is attributable to this cooperative unit: or

(ii) In the case of a dwelling with more than 4 units, the applicable maximum dollar amount limitation, as determined under §§ 221.514 (b)(1) and (c) of this title that would apply to a mortgage insured under section 221(d)(3)(ii) of the National Housing Act for elevator-type structures, involving a nonprofit mortgagor.

§ 92.213 Development of model programs.

HUD will develop and make available from time to time model programs that have been developed in cooperation with participating jurisdictions, government-sponsored mortgage finance corporations, nonprofit organizations, the private sector, and other appropriate parties and that are designed to carry out the purposes of this part.

§ 92.214 Prohibited activities.

HOME funds may not be used to—

(a) Defray any administrative cost of a participating jurisdiction. Administrative costs include any cost equivalent to the costs described in § 570.206 of this title (program administration costs for the CDBG Program) and project delivery costs, such as new construction and rehabilitation counseling, preparing work specifications, loan processing, inspections, and other services related to assisting owners, tenants, contractors, and other entities applying for or receiving HOME funds;

(b) Provide an operating reserve to subsidize rents;

(c) Provide tenant-based rental assistance for the special purposes of the existing section 8 program, including the activities specified in § 791.403(b)(1) of this title, or preventing displacement from projects assisted with rental rehabilitation grants under part 511 of this title.

(d) Provide non-Federal matching contributions required under any other Federal program;

(e) Provide assistance authorized under part 965 (PHA-Owned or Leased Projects Maintenance and Operation) of this title;

(f) Carry out activities authorized under part 968 (Public Housing Modernization) of this title; or

(g) Provide assistance to eligible low-income housing under part 248 (Prepayment of Low Income Housing Mortgages) of this title.

§ 92.215 Limitation on jurisdictions under court order.

(a) HOME funds may not be used to carry out housing remedies or to pay fines, penalties, or costs associated with an action in which a participating jurisdiction has been adjudicated, by a Federal, State, or local court, to be in violation of title VI of the Civil Rights Act of 1964, the Fair Housing Act, or any other Federal, State, or local law promoting fair housing or prohibiting discrimination.

(b) HOME funds may be used in connection with a settlement that has been entered into in any case where claims of violations described in paragraph (a) of this section have been asserted against a participating jurisdiction only to carry out housing remedies with eligible activities.

Income Targeting

§ 92.216 Income targeting: Tenant-based rental assistance and rental units—Initial eligibility determination and reexamination.

(a) Each participating jurisdiction must invest HOME funds made available during a fiscal year so that, with respect to tenant-based rental assistance and rental units:

(1) Not less than 90 percent of such funds are invested with respect to dwelling units that are occupied by families whose incomes do not exceed 60 percent of the median family income for the area, as determined and made available by HUD with adjustments for smaller and larger families (except that HUD may establish income ceilings higher or lower than 60 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction cost or fair market rent, or unusually high or low family income) at the time of occupancy or at the time funds are invested, whichever is later; and

(2) The remainder of these funds are invested with respect to dwelling units that are occupied by households that qualify as low-income families (other than families described in paragraph (a)(1) of this section) at the time of occupancy or at the time funds are invested, whichever is later.

(b) The participating jurisdiction must determine an applicant's income eligibility and eligibility as a family at the time the applicant receives assistance, and must reexamine family income and family size and composition, at least annually.

§ 92.217 Income targeting: Homeownership.

Each participating jurisdiction must invest HOME funds made available during a fiscal year so that with respect to homeownership assistance, 100 percent of these funds are invested with respect to dwelling units that are occupied by households that qualify as low-income families at the time of occupancy or at the time funds are invested, whichever is later.

Matching Funds Requirement

§ 92.218 Amount of matching contribution.

(a) Each participating jurisdiction must make contributions to affordable housing assisted with HOME funds, throughout a fiscal year, that total not less than an amount equal to a percentage of the total funds drawn from the participating jurisdiction's Treasury account HOME Investment Trust Fund. The percentage is the average of the following:

(1) Fifty percent of the total funds drawn from the jurisdiction's Treasury account HOME Investment Trust Fund in that fiscal year for new construction projects.

(2) Thirty-three percent of the total funds drawn from the jurisdiction's Treasury account HOME Investment Trust Fund in that fiscal year for substantial rehabilitation projects; and

(3) Twenty-five percent of the total funds drawn from the jurisdiction's Treasury account HOME Investment Trust Fund in that fiscal year for tenant-based rental assistance, housing rehabilitation projects other than substantial rehabilitation projects, and any other eligible activity not associated

with a project involving substantial rehabilitation or new construction;

(b) Amounts made available under § 92.102(b)(2) from the resources of a State (other than a transfer of the State's formula allocation), the local participating jurisdiction, or both, to enable the local participating jurisdiction to meet the participation threshold amount are not required to be matched.

(c) All eligible activities carried out with respect to projects designated as new construction projects or as substantial rehabilitation projects carry with them the matching requirements associated with the project designation.

§ 92.219 Recognition of matching contribution.

(a) *General.* A contribution is recognized as a matching contribution only if it:

(1) Is made with respect to housing that qualifies as affordable housing under § 92.252 or § 92.254; or

(2) Is made with respect to any portion of a project (including a mixed-use project under § 92.256) not less than 50 percent of the dwelling units of which qualify as affordable housing under § 92.252 or § 92.254.

(b) *Administrative expenses.* A participating jurisdiction may claim as a matching contribution for administrative expenses an amount equal to 7 percent of the HOME allocation and reallocated funds provided to the participating jurisdiction during the fiscal year.

§ 92.220 Form of matching contribution.

(a) *Eligible forms.* Matching contributions must be made from non-Federal resources and may be in the form of one or more of the following:

(1) Cash contributions from non-Federal resources. To be a cash contribution, funds must be contributed permanently to the HOME program, regardless of the form of investment the jurisdiction provides to a project. Therefore all repayment, interest, or other return on investment of the contribution must be deposited in the local account of the participating jurisdiction's HOME Investment Trust Fund to be used for eligible HOME activities in accordance with the requirements of this part.

(i) A cash contribution may be made by the participating jurisdiction, non-Federal public entities, private entities, or individuals. A cash contribution may be made from program income (as defined by § 85.25(b) of this title) from a Federal grant earned after the end of the award period if no Federal requirements govern the disposition of the program income. Included in this category are repayments from closed out grants under the Urban Development Action Grant Program (24 CFR part 570, subpart G), and the Housing Development Grant Program (24 CFR part 850).

(ii) The grant equivalent of a Federally taxable, below-market interest rate loan that is not repayable to the participating jurisdiction's HOME Investment Trust Fund may be counted as a cash contribution. The contribution is the present discounted cash value of the yield foregone. In determining the yield foregone, the participating jurisdiction must use as a measure of a market rate yield one of the following, as appropriate:

(A) With respect to one- to four-unit housing financed with a fixed interest rate mortgage, the currently effective maximum interest rate established under § 235.9 of this title;

(B) With respect to one- to four-unit housing financed with an adjustable interest rate mortgage, a rate equal to 200 basis points above the one-year Treasury bill rate;

(C) With respect to a multifamily project, a rate equal to the 10-year Treasury note rate plus 150 basis points;

(2) The value, based on customary and reasonable means for establishing value, of State or local taxes, fees, or other charges that are normally and customarily imposed but are waived, foregone, or deferred (including State low-income housing tax credits) in a manner that achieves affordability of housing assisted with HOME funds. The amount of any such real estate taxes may be based on post-improvement property value, using customary and reasonable means of establishing value;

(3) The value of land or other real property, not acquired with Federal resources, as appraised in conformance with established and generally recognized appraisal practice and procedures in common use by professional appraisers. Opinions of value must be based on the best available data properly analyzed and interpreted. The appraisal of land and structures must be performed by an independent, certified appraiser; and

(4) The cost of investment, not made with Federal resources, in on-site and off-site infrastructure that the participating jurisdiction documents are directly required for affordable housing assisted with HOME funds. The infrastructure investment must have been completed no earlier than 12 months before HOME funds are committed to such affordable housing.

(b) *Ineligible forms.* The following are examples of forms of contributions that do not meet the requirements of paragraph (a) of this section and do not count toward meeting a participating jurisdiction's matching funds requirement:

(1) Contributions made with or derived from Federal funds, regardless of when the Federal funds were received or expended. *CDBG funds* (defined in § 570.3 of this title) are Federal funds for this purpose;

(2) The value attributable to Federal tax credits or to federally tax-exempt financing;

(3) Owner equity or investment in a project; and

(4) Sweat equity.

§ 92.221 Reduction of matching contribution requirement.

If a participating jurisdiction demonstrates to the satisfaction of HUD that a reduction of the matching requirement specified in § 92.218 is necessary to permit the jurisdiction to carry out the purposes of this part, HUD may reduce the matching requirement during a period not to exceed three years after the jurisdiction is first designated as a participating jurisdiction. The reduction may not be more than 75 percent in the first year, not more than 50 percent in the second year, and not more than 25 percent in the third year.

Subpart F—Project Requirements

§ 92.250 Maximum per-unit subsidy amount.

The amount of HOME funds that a participating jurisdiction may invest on a per-unit basis in affordable housing may not exceed 67 percent of the per-unit dollar limits established by HUD under § 221.514 (b)(1) and (c) of this title for elevator-type projects, involving nonprofit mortgagors, insured under section 221(d)(3) of the National Housing Act that apply to the area in which the housing is located. These limits are available from HUD. For a project using a combination of HOME and the Federal low-income tax credit, the applicable section 221(d)(3) per unit dollar limits are reduced by the per unit proceeds from the sale of the tax credit.

§ 92.251 Property standards.

Housing that is assisted with HOME funds, at a minimum, must meet the housing quality standards in § 882.109 of this title. In addition, housing that is newly constructed or substantially rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances. The participating jurisdiction must have written standards for rehabilitation. Newly constructed housing must meet

the energy efficiency standards as developed by HUD pursuant to section 109 of Cranston-Gonzalez National Affordable Housing Act. Housing that is to be rehabilitated after transfer of an ownership interest must be free from any defects that pose a danger to health or safety before transfer of an ownership interest, and must meet the applicable property standards not later than 2 years after the transfer.

§ 92.252 Qualification as affordable housing and income targeting: Rental housing.

(a) A rental housing project (including the non-owner-occupied units in housing purchased with HOME funds in accordance with § 92.254) qualifies as affordable housing under this part only if the project:

(1) Bears rents not greater than the lesser of—

(i) The fair market rent for existing housing for comparable units in the area as established by HUD under § 888.111 of this title; or

(ii) A rent that does not exceed 30 percent of the adjusted income of a family whose income equals 65 percent of the median income for the area, as determined by HUD, with adjustment for smaller and larger families, except that HUD may establish income ceilings higher or lower than 65 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes;

(2) Has not less than 20 percent of the units—

(i) Occupied by very low-income families who pay as a contribution toward rent (excluding any Federal or State rental subsidy provided on behalf of the family) not more than 30 percent of the family's monthly adjusted income as determined by HUD, or

(ii) Occupied by very low-income families and bearing rents not greater than 30 percent of the gross income of a family whose income equals 60 percent of the median income for the area, as determined by HUD, with adjustment for smaller and larger families;

(3) Is occupied only by households that qualify as low-income families;

(4) Is not refused for leasing to a holder of a certificate of family participation under 24 CFR part 882 (Rental Certificate Program) or a rental voucher under 24 CFR part 887 (Rental Voucher Program) or to the holder of a comparable document evidencing participation in a HOME tenant-based assistance program because of the status of the prospective tenant as a holder of such certificate of family participation, rental voucher, or comparable HOME tenant-based assistance document; and

(5) Will remain affordable, according to binding commitments satisfactory to HUD, for the appropriate period as specified in the following table, without regard to the term of the mortgage or to transfer of ownership:

Activity	Period of affordability
Rehabilitation or Acquisition of Existing Housing Per Unit Amount of HOME Funds:	
Under $15,000	5 years.
$15,000 to $40,000	10 years.
Over $40,000	15 years.
New Construction or Acquisition of Newly Constructed Housing.	20 years.

(b) *Adjustment of qualifying rent.* HUD may adjust the qualifying rent established for a project under paragraph (a)(1) of this section, only if HUD finds that an adjustment is necessary to support the continued financial viability of the project and only by an amount that HUD determines is necessary to maintain continued financial viability of the project. HUD expects that this authority will be used sparingly. Adjustments in fair market rents and in median income over time should help maintain the financial viability of a project within the qualifying rent standard in paragraph (a)(1) of this section.

(c) *Increases in tenant income.* Rental housing qualifies as affordable housing despite a temporary noncompliance with paragraph (a)(2) or (a)(3) of this section, if the noncompliance is caused by increases in the incomes of existing tenants and if actions satisfactory to HUD are being taken to ensure that all vacancies are filled in accordance with this section until the noncompliance is corrected. Tenants who no longer qualify as low-income families must pay as rent not less than 30 percent of the family's adjusted monthly income, as recertified annually.

§ 92.253 Tenant and participant protections.

(a) *Lease.* The lease between a tenant and an owner of rental housing assisted with HOME funds must be for not less than one year, unless by mutual agreement between the tenant and the owner.

(b) *Prohibited lease terms.* The lease may not contain any of the following provisions:

(1) *Agreement to be sued.* Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease;

(2) *Treatment of property.* Agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with State law;

(3) *Excusing owner from responsibility.* Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent;

(4) *Waiver of notice.* Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant;

(5) *Waiver of legal proceedings.* Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;

(6) *Waiver of a jury trial.* Agreement by the tenant to waive any right to a trial by jury;

(7) *Waiver of right to appeal court decision.* Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and

(8) *Tenant chargeable with cost of legal actions regardless of outcome.* Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

(c) *Termination of tenancy.* An owner may not terminate the tenancy or refuse to renew the lease of a tenant of rental housing assisted with HOME funds except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable Federal, State, or local law; or for other good cause. Any termination or refusal to renew must be preceded by not less than 30 days by the owner's service upon the tenant of a written notice specifying the grounds for the action.

(d) *Maintenance and replacement.* An owner of rental housing assisted with HOME funds must maintain the premises in compliance with all applicable housing quality standards and local code requirements.

(e) *Tenant selection.* An owner of rental housing assisted with HOME funds must adopt written tenant selection policies and criteria that—

(1) Are consistent with the purpose of providing housing for very low-income and low-income families,

(2) Are reasonably related to program eligibility and the applicant's ability to perform the obligations of the lease,

(3) Give reasonable consideration to the housing needs of families that would have a preference under § 960.211 (Federal selection preferences for admission to Public Housing) of this title; and

(4) Provide for—

(i) The selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and

(ii) The prompt written notification to any rejected applicant of the grounds for any rejection.

§ 92.254 Qualification as affordable housing: Homeownership.

(a) *Purchase with or without rehabilitation.* Housing that is for purchase by a family qualifies as affordable housing only if the housing:

(1)(i) Has an initial purchase price that does not exceed the mortgage limit for the type of single family housing (1- to 4-family residence, condominium unit, combination manufactured home and lot, or manufactured home lot) for the area (including any applicable high-cost mortgage limit published by HUD in the **Federal Register**) under HUD's single family insuring authority under the National Housing Act. For a cooperative unit, the purchase price for a cooperative share may not exceed the balance remaining after subtracting from the 1-family mortgage limit an amount equal to the blanket mortgage covering the cooperative development which is attributable to this cooperative unit; and

(ii) Has an estimated appraised value after repair needed to meet property standards in § 92.251 that does not exceed the appropriate mortgage limit described in paragraph (a)(1)(i) of this section;

(2) Is the principal residence of an owner whose family qualifies as a low-income family at the time of purchase;

(3) Is made available for initial purchase only to first-time homebuyers; and

(4) Is made available for subsequent purchase only—

(i) To a low-income family that will use the property as its principal residence; and

(ii) At a price consistent with guidelines that are established by the participating jurisdiction and determined by HUD to be appropriate—

(A) To provide the owner with a fair return on investment, including any improvements, and

(B) To ensure that the housing will remain affordable to a reasonable range of low-income homebuyers for a period of 20 years for newly constructed housing or otherwise for 15 years. Housing remains affordable if the subsequent purchase price is not greater than an amount that would permit monthly payments of principal, interest, taxes, and insurance to be no more than 30 percent of the gross income of a family with an income equal to 75 percent of median income for the area, as determined by HUD with adjustments for smaller and larger families.

(b) *Rehabilitation not involving purchase.* Housing that is currently owned by a family qualifies as affordable housing only if—

(1) The value of the property, after rehabilitation, does not exceed the mortgage limit for the type of single family housing (1- to 4-family residence, condominium unit, combination manufactured home and lot, or manufactured home lot) for the area (including any applicable high-cost mortgage limit published by HUD in the **Federal Register**) under HUD's single family insuring authority under the National Housing Act (see 24 CFR 201.10, 203.18, 203.18a, 203.18b, and 234.27); and

(2) The housing is the principal residence of an owner whose family qualifies as a low-income family at the time HOME funds are committed to the housing.

§ 92.255 Mixed-income project.

Housing that accounts for less than 100 percent of the dwelling units in a project qualifies as affordable housing if the housing meets the criteria of § 92.252 or § 92.254. See § 92.219 for matching funds requirements concerning mixed-income projects.

§ 92.256 Mixed-use project.

Housing in a project that is designed in part for uses other than residential use qualifies as affordable housing if such housing meets the criteria of § 92.252 or § 92.254. Residential living space must constitute at least 51 percent of the project space. Each building within the project must contain residential living space.

§ 92.257 Religious organizations.

HOME funds may not be provided to primarily religious organizations, such as churches, for any activity including secular activities. In addition, HOME funds may not be used to acquire, rehabilitate, or construct housing owned by primarily religious organizations. However, a primarily religious entity may transfer title to property to a wholly secular entity and the entity may participate in the HOME program in accordance with the requirements of this part. The entity may be an existing or newly established entity (which may be an entity established, but not controlled, by the religious organization). The completed housing project must be used exclusively by the owner entity for secular purposes, available to all persons regardless of religion. In particular, there must be no religious or membership criteria for tenants of the property.

§ 92.258 Limitation on the use of HOME funds with FHA mortgage insurance.

When HOME funds are to be used in connection with housing in which acquisition, new construction, or rehabilitation is financed with a mortgage insured by HUD under chapter II of this title, the term of the HUD-insured mortgage may not exceed, for rental housing, the period that the project must remain affordable as provided in binding commitments meeting the requirements of by § 92.252(a)(5) or, for homeownership, the applicable period specified in the participating jurisdiction's guidelines established under § 92.254(a)(4)(ii).

Subpart G—Community Housing Development Organizations

§ 92.300 Set-aside for community housing development organizations.

(a) For a period of 18 months after the allocation (including, for a State, funds reallocated under § 92.451(c)(2)(i) and, for a unit of general local government, an allocation transferred from a State under § 92.302(b)) is made available to a participating jurisdiction, the participating jurisdiction must reserve not less than 15 percent of these funds for investment only in housing to be developed, sponsored, or owned by community housing development organizations. Funds are reserved when a participating jurisdiction enters into a written agreement with a community housing development organization. If a community housing development organization's involvement in a project is as an owner it must have control of the project, as evidenced by legal title or a valid contract of sale. If it owns the project in partnership, it must be the managing general partner. In acting in any of the capacities specified, the community housing development

organization must have effective management control.

(b) Each participating jurisdiction must make reasonable efforts to identify community housing development organizations that are capable, or can reasonably be expected to become capable, of carrying out elements of the jurisdiction's approved housing strategy and to encourage such community housing development organizations to do so.

(c) HOME funds reserved under paragraph (a) of this section may be used for activities eligible under § 92.205. Up to 10 percent of the HOME funds so reserved may be used for activities specified under § 92.301.

(d) These HOME funds are subject to reduction, as provided in § 92.500(d).

§ 92.301 Project-specific assistance to community housing development organizations.

(a) *Project-specific technical assistance and site control loans*—(1) *General.* Within the percentage specified in § 92.300(c), HOME funds may be used by a participating jurisdiction to provide technical assistance and site control loans to community housing development organizations in the early stages of site development for an eligible project. These loans may not exceed amounts that the participating jurisdiction determines to be customary and reasonable project preparation costs allowable under paragraph (a)(2) of this section. All costs must be related to a specific eligible project or projects.

(2) *Allowable expenses.* A loan under this paragraph (a) may be provided to cover project expenses necessary to determine project feasibility (including costs of an initial feasibility study), consulting fees, costs of preliminary financial applications, legal fees, architectural fees, engineering fees, engagement of a development team, site control and title clearance. General operational expenses of the community housing development organization are not allowable expenses.

(3) *Repayment.* A community housing development organization that receives a loan under this paragraph (a) must repay the loan to the participating jurisdiction from construction loan proceeds or other project income. The participating jurisdiction may waive repayment of the loan, in part or in whole, if there are impediments to project development that the participating jurisdiction determines are reasonably beyond the control of the borrower.

(b) *Project-specific seed money loans*—(1) *General.* Within the limit specified in paragraph (a) of this section, HOME funds may be used to provide loans to community housing development organizations to cover preconstruction project costs that the participating jurisdiction determines to be customary and reasonable, including, but not limited to the costs of obtaining firm construction loan commitments, architectural plans and specifications, zoning approvals, engineering studies, and legal fees.

(2) *Eligible Sponsors.* A loan under this paragraph (b) may be provided only to a community housing development organization that has, with respect to the project concerned, site control (evidenced by a deed, a sales contract, or an option contract to buy the property), a preliminary financial commitment, and a capable development team.

(3) *Repayment.* A community housing development organization that receives a loan under this paragraph (b) must repay the loan to the participating jurisdiction from construction loan proceeds or other project income. The participating jurisdiction may waive repayment of the loan, in whole or in part, if there are impediments to project development that the participating jurisdiction determines are reasonably beyond the control of the community housing development organization.

§ 92.302 Housing education and organizational support.

(a) *General.* HUD is authorized to provide education and organizational support assistance, in conjunction with HOME funds made available to community housing development organizations:

(1) To facilitate the education of low-income homeowners and tenants; and

(2) To promote the ability of community housing development organizations to maintain, rehabilitate and construct housing for low-income and moderate-income families in conformance with the requirements of this part.

(b) *Delivery of assistance.* HUD will provide assistance under this section only through contract—

(1) With a nonprofit intermediary organization that, in the determination of HUD—

(i) Customarily provides, in more than one community, services related to the provision of decent housing that is affordable to low-income and moderate-income persons or the revitalization of deteriorating neighborhoods;

(ii) Has demonstrated experience in providing a range of assistance (such as financing, technical assistance, construction and property management assistance, capacity building, and training) to community housing development organizations or similar organizations that engage in community revitalization;

(iii) Has demonstrated the ability to provide technical assistance and training for community-based developers of affordable housing; and

(iv) Has described the uses to which such assistance will be put and the intended beneficiaries of the assistance; or

(2) With another organization, if a participating jurisdiction demonstrates that the organization is qualified to carry out eligible activities and that the jurisdiction would not be served in a timely manner by intermediaries specified under paragraph (b)(1) of this section. Contracts under this paragraph (b)(2) must be for activities specified in an application from the participating jurisdiction. The application must include a certification that the activities are necessary to the effective implementation of the participating jurisdiction's approved housing strategy.

(c) *Eligible activities.* Assistance under this section may be used only for the following eligible activities:

(1) *Organizational support.* Organizational support assistance may be made available to community housing development organizations to cover operational expenses and to cover expenses for training and technical, legal, engineering and other assistance to the board of directors, staff, and members of the community housing development organization.

(2) *Housing education.* Housing education assistance may be made available to community housing development organizations to cover expenses for providing or administering programs for educating, counseling, or organizing homeowners and tenants who are eligible to receive assistance under other provisions of this part.

(3) *Program-wide support of nonprofit development and management.* Technical assistance, training, and continuing support may be made available to eligible community housing development organizations for managing and conserving properties developed under this part.

(4) *Benevolent loan funds.* Technical assistance may be made available to increase the investment of private capital in housing for very low-income families, particularly by encouraging the establishment of benevolent loan funds through which private financial institutions will accept deposits at below-market interest rates and make those funds available at favorable rates

to developers of low-income housing and to low-income homebuyers.

(5) *Community development banks and credit unions.* Technical assistance may be made available to establish privately owned, local community development banks and credit unions to finance affordable housing.

(d) *Limitations.* (1) A community housing development organization may not receive assistance under paragraphs (c)(1) (organizational support) and (c)(2) (housing education) of this section for any fiscal year in an amount that, together with other Federal assistance, provides more than 50 percent of the organization's total operating budget in the fiscal year.

(2) Contracts under this section with any one contractor for a fiscal year may not—

(i) Exceed 20 percent of the amount appropriated for this section for such fiscal year; or

(ii) Provide more than 20 percent of the operating budget (which may not include funds that are passed through to community housing development organizations) of the contracting organization for any one year.

(e) *Single-State contractors.* Not less than 40 percent of the funds made available for this section in an appropriations Act in any fiscal year must be made available for eligible contractors that have worked primarily in one State.

(f) *Notice of funding.* HUD will publish a notice in the Federal Register announcing the availability of funding under this section, as appropriate.

§ 92.303 Tenant participation plan.

A community housing development organization that receives assistance under this part must provide a plan for and follow a program of tenant participation in management decisions and must adhere to a fair lease and grievance procedure approved by the participating jurisdiction.

Subpart H—Other Federal Requirements

§ 92.350 Equal opportunity and fair housing.

(a) *Equal opportunity.* HOME funds must be made available in accordance with the following:

(1) The requirements of the Fair Housing Act (42 U.S.C. 3601–20) and implementing regulations at 24 CFR part 100; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(2) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;

(3) The requirements of Executive Order 11246 (Equal Employment Opportunity) and the implementing regulations issued at 41 CFR chapter 60;

(4) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) that—

(i) To the greatest extent feasible, opportunities for training and employment arising in connection with the planning and carrying out of any project assisted with HOME funds be given to low-income persons residing within the unit of general local government or the metropolitan area (or nonmetropolitan county) as determined by HUD, in which the project is located; and

(ii) To the greatest extent feasible, contracts for work to be performed in connection with any such project be awarded to business concerns, including but not limited to individuals or firms doing business in the field of planning, consulting, design, architecture, building construction, rehabilitation, maintenance, or repair, which are located in or owned in substantial part by persons residing in the same metropolitan area (or nonmetropolitan county) as the project; and

(5) The requirements of Executive Orders 11625 and 12432 (concerning Minority Business Enterprise), and 12138 (concerning Women's Business Enterprise). Consistent with HUD's responsibilities under these Orders, each participating jurisdiction must make efforts to encourage the use of minority and women's business enterprises in connection with HOME-funded activities. A participating jurisdiction must prescribe procedures acceptable to HUD to establish and oversee a minority outreach program within its jurisdiction to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, including, without limitation, real estate firms, construction firms, appraisal firms, management firms, financial institutions, investment banking firms, underwriters, accountants, and providers of legal services, in all contracts entered into by the participating jurisdiction with such persons or entities, public and private, in order to facilitate the activities of the participating jurisdiction to provide affordable housing authorized under this Act or any other Federal housing law applicable to such jurisdiction. Section 85.36(e) of this title describes actions to be taken by a participating jurisdiction to assure that minority business enterprises and women business enterprises are used when possible in the procurement of property and services.

(b) *Fair housing.* In accordance with the certification made with its housing strategy, each participating jurisdiction must affirmatively further fair housing. Actions described in § 570.904(c) of this title will satisfy this requirement.

§ 92.351 Affirmative marketing.

(a) Each participating jurisdiction must adopt affirmative marketing procedures and requirements for HOME-assisted housing containing 5 or more housing units. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons from all racial, ethnic, and gender groups in the housing market area to the available housing. (The affirmative marketing procedures do not apply to families with housing assistance provided by the PHA or families with tenant-based rental assistance provided with HOME funds.) The participating jurisdiction must annually assess the affirmative marketing program to determine the success of affirmative marketing actions and any necessary corrective actions. (These requirements and procedures are comparable to the affirmative marketing requirements and procedures for the Rental Rehabilitation Program (24 CFR part 511), and jurisdictions that have participated in that program should consider basing their requirements and procedures on their existing Rental Rehabilitation Program requirements and procedures.)

(b) The affirmative marketing requirements and procedures adopted must include:

(1) Methods for informing the public, owners, and potential tenants about Federal fair housing laws and the participating jurisdiction's affirmative marketing policy (e.g., the use of the Equal Housing Opportunity logo type or slogan in press releases and solicitations for owners, and written communication to fair housing and other groups);

(2) Requirements and practices each owner must adhere to in order to carry out the participating jurisdiction's affirmative marketing procedures and

requirements (e.g., use of commercial media, use of community contacts, use of the Equal Housing Opportunity logo type or slogan, and display of fair housing poster);

(3) Procedures to be used by owners to inform and solicit applications from persons in the housing market area who are not likely to apply for the housing without special outreach (e.g., use of community organizations, places of worship, employment centers, fair housing groups, or housing counseling agencies);

(4) Records that will be kept describing actions taken by the participating jurisdiction and by owners to affirmatively market units and records to assess the results of these actions; and

(5) A description of how the participating jurisdiction will assess the success of affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.

(c) A State that distributes HOME funds to units of general local government must require each unit of general local government to adopt affirmative marketing procedures and requirements that meet the requirement in paragraphs (a) and (b) of this section.

§ 92.352 Environmental review.

(a) *General.* The environmental effects of each activity carried out with HOME funds must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) and the related authorities listed in HUD's implementing regulations at 24 CFR parts 50 and 58.

(b) *Responsibility for review.* (1) A participating jurisdiction must assume responsibility for environmental review, decisionmaking, and action for each activity that it carries out with HOME funds, in accordance with the requirements imposed on a *recipient* under 24 CFR part 58. In accordance with part 58, the participating jurisdiction must carry out the environmental review of an activity and obtain approval of its request for release of funds before HOME funds are committed for the activity.

(2) A State participating jurisdiction must also assume responsibility for approval of requests for release of its HOME funds.

(3) HUD will perform the environmental review, in accordance with 24 CFR part 50, for a competitively awarded application for HOME funds submitted by an entity (including an Indian tribe) that is not a participating jurisdiction.

§ 92.353 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, the participating jurisdiction must ensure that it has taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted with HOME funds. To the extent feasible, residential tenants must be provided a reasonable opportunity to lease or purchase and occupy a suitable, decent, safe, sanitary, and affordable dwelling unit in the building/complex upon completion of the project.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent/utility costs.

(2) Appropriate advisory services, including reasonable advance written notice of—

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex upon completion of the project; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* (1) *General.* A displaced person (defined in paragraph (c)(2) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, 49 CFR part 24, which contains the government-wide regulations implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201–4655). A displaced person must be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601–19) and, if the comparable replacement dwellings are located in areas of minority concentration, minority persons also must be given, if possible, referrals to suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

(2) *Displaced Person.* (i) For purposes of this paragraph (c), the term *displaced person* means a person (family individual, business, nonprofit organization, or farm, including any corporation, partnership or association) that moves from real property or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted with HOME funds. This includes any permanent, involuntary move for an assisted project, including any permanent move from the real property that is made:

(A) After notice by the owner to move permanently from the property, if the move occurs on or after:

(*1*) The date of the submission of an application to the participating jurisdiction or HUD, if the applicant has site control and the application is later approved; or

(*2*) The date the jurisdiction approves the applicable site, if the applicant does not have site control at the time of the application.

(B) Before the date described in paragraph (c)(2)(i)(A) of this section, if the jurisdiction or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project; or

(C) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:

(*1*) The tenant moves after execution of the agreement covering the acquisition, rehabilitation, or demolition without receiving prior written notice offering the tenant the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex upon completion of the project under reasonable terms and conditions. Such reasonable terms and conditions include a term of at least one year at a monthly rent and estimated average utility costs that do not exceed the greater of—

(*i*) The tenant's monthly rent and estimated average monthly utility costs before such agreement; or

(*ii*) The total tenant payment, as determined under 24 CFR 813.107, if the tenant is low-income, or 30 percent of gross household income, if the tenant is not low-income; or

(*2*) The tenant is required to relocate temporarily, does not return to the building/complex, and either—

(*i*) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation; or

(*ii*) Other conditions of the temporary relocation are not reasonable.

(3) The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(ii) A person does not qualify as a *displaced person*, however, if:

(A) The person has been evicted for cause based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local loaw, or other good cuase, and the participating jurisdiction determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance. The effective date of any termination or refusal to renew must be preceded by at least 30 days advance written notice to the tenant specifying the grounds for the action.

(B) The person moved into the property after the submission of the application but, before signing a lease and commencing occupancy, the person received written notice of the project and its possible impact (e.g., a displacement or a rent increase);

(C) The person is ineligible under 49 CFR 24.2(g) (2); or

(D) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project;

(iii) The jurisdiction may, at any time, request HUD to determine whether a displacement is or would be covered by this rule.

(3) *Initiation of negotiations.* For purposes of determining the formula for computing replacement housing assistance to be provided under this paragraph (c) to a tenant displaced from a dwelling as a direct result of private-owner rehabilitation, demolition or acquisition of the real property, the term *initiation of negotiations* means the execution of the agreement covering the acquisition, rehabilitation, or demolition.

(d) *Optional relocation assistance.* The participating jurisdiction may provide relocation payments and other relocation assistance to families, individuals, businesses, nonprofit organizations, and farms displaced by a project assisted with HOME funds where the displacement is not subject to paragraph (c) of this section. The jurisdiction may also provide relocation assistance to persons covered under paragraph (c) of this section beyond that required. For any such assistance that is not required by State or local law, the jurisdiction must adopt a written policy available to the public that describes the optional relocation assistance that it has elected to furnish and provides for equal relocation assistance within each class of displaced persons.

(e) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements of 49 CFR part 24, subpart B.

(f) *Appeals.* A person who disagrees with the participating jurisdiction's determination concerning whether the person qualifies as a *displaced person*, or the amount of relocation assistance for which the person may be eligible, may file a written appeal of that determination with the jurisdiction. A low-income person who is dissatisfied with the jurisdiction's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(g) *Responsibility of participating jurisdiction.* (1) The jurisdiction must certify that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and must ensure such compliance notwithstanding any third party's contractual obligation to the jurisdiction to comply.

(2) The cost of required assistance may be paid from State or local funds, HOME funds, or funds available from other sources.

§ 92.354 Labor.

(a) *General.* Any contract for the construction (rehabilitation or new construction) of affordable housing with 12 or more units assisted with funds made available under this part must contain a provision requiring that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a–276a–5), will be paid to all laborers and mechanics employed in the development of affordable housing involved, and such contracts must also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (42 CFR 327–333). Participating jurisdictions, contractors, subcontractors, and other participants must comply with regulations issued under these Acts and with other Federal laws and regulations pertaining to labor standards and HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs), as applicable. Participating jurisdictions must require certification as to compliance with the provisions of this section before making any payment under such contract.

(b) *Volunteers.* The prevailing wage provisions of paragraph (a) of this section do not apply to an individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work.

(c) *Sweat equity.* The prevailing wage provisions of paragraph (a) of this section do not apply to members of an eligible family who provide labor in exchange for acquisition of a property for homeownership or provide labor in lieu of, or as a supplement to, rent payments.

§ 92.355 Lead-based paint.

Housing assisted with HOME funds constitutes HUD-associated housing for the purpose of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, *et. seq.*.) and is, therefore, subject to 24 CFR part 35. Unless otherwise provided, participating jurisdictions are responsible for testing and abatement activities.

§ 92.356 Conflict of interest.

(a) *Applicability.* (1) In the procurement of property and services by participating jurisdictions, State recipients, and subrecipients, the conflict of interest provisions in 24 CFR 85.36 and OMB Circular A–110, respectively, apply.

(2) In all cases not governed by 24 CFR 85.36 and OMB Circular A–110, the provisions of this section applies. These cases include the acquisition and disposition of real property and the provision of assistance by the participating jurisdiction, by the State recipient, by subrecipients, or to individuals, housing developers, and other private entities under eligible activities which authorize such assistance (e.g., rehabilitation of housing).

(b) *Conflicts prohibited.* No persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decisionmaking process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a HOME assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

(c) *Persons covered.* The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official

of the participating jurisdiction, State recipient, or subrecipient which are receiving HOME funds.

(d) *Exceptions: Threshold requirements.* Upon the written request of the participating jurisdiction, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME Program and the effective and efficient administration of the participating jurisdiction's program or project. An exception may be considered only after the participating jurisdiction has provided the following:

(1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(2) An opinion of the participating jurisdiction's attorney that the interest for which the exception is sought would not violate State or local law.

(e) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the participating jurisdiction has satisfactorily met the requirements of paragraph (d) of this section, HUD will consider the cumulative effect of the following factors, where applicable:

(1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;

(2) Whether the person affected is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(3) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted activity in question;

(4) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (c) of this section;

(5) Whether undue hardship will result either to the participating jurisdiction or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(6) Any other relevant considerations.

§ 92.357 Debarment and suspension.

As required by 24 CFR part 24, each participating jurisdiction must require participants in lower tier covered transactions to include the certification in appendix B of part 24 (that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation from the covered transaction) in any proposal submitted in connection with the lower tier transactions. A participating jurisdiction may rely on the certification, unless it knows the certification is erroneous.

§ 92.358 Flood insurance.

(a) Under the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128), HOME funds may not be used with respect to the acquisition, new construction, or rehabilitation of a project located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(1) The community in which the area is situated is participating in the National Flood Insurance Program (see 44 CFR parts 59 through 79), or less than a year has passed since FEMA notification regarding such hazards; and

(2) Flood insurance is obtained as a condition of approval of the commitment.

(b) Participating jurisdictions located in an area identified by FEMA as having special flood hazards are responsible for assuring that flood insurance under the National Flood Insurance Program is obtained and maintained.

(c) This section does not apply to HOME funds provided to a State.

§ 92.359 Executive Order 12372.

(a) *General.* Executive Order 12372, Intergovernmental Review of Federal Programs, and the Department's implementing regulations at 24 CFR part 52, allow each State to establish its own process for review and comment on proposed Federal financial assistance programs.

(b) *Applicability.* Executive Order 12372 applies to applications submitted with respect to HOME funds being competitively reallocated under subpart J of this part to units of general local government.

Subpart I—Technical Assistance

§ 92.400 Coordinated Federal support for housing strategies.

(a) *General.* HUD will provide assistance under this subpart I to—

(1) Facilitate the exchange of information that would help participating jurisdictions carry out the purposes of this part, including information on program design, housing finance, land use controls, and building construction techniques;

(2) Improve the ability of States and units of general local government to design and implement housing strategies, particularly those States and units of general local government that are relatively inexperienced in the development of affordable housing;

(3) Encourage private lenders and for-profit developers of low-income housing to participate in public-private partnerships to achieve the purposes of this part;

(4) Improve the ability of States and units of general local government, community housing development organizations, private lenders, and for-profit developers of low-income housing to incorporate energy efficiency into the planning, design, financing, construction, and operation of affordable housing; and

(5) Facilitate the establishment and efficient operation of employer-assisted housing programs through research, technical assistance, and demonstration projects.

(b) *Conditions of contracts.* (1) *Eligible organizations.* HUD will carry out this subpart I insofar as is practicable through contract with—

(i) A participating jurisdiction or agency thereof;

(ii) A public purpose organization established pursuant to State or local legislation and responsible to the chief elected official of a participating jurisdiction;

(iii) An agency or authority established by two or more participating jurisdictions to carry out activities consistent with the purposes of this part;

(iv) A national or regional nonprofit organization that has a membership comprised predominantly of entities or officials of entities that qualify under paragraph (b)(1)(i), (b)(1)(ii), or (b)(1)(iii) of this section; or

(v) A professional and technical services company or firm that has demonstrated capacity to provide services under this subpart I.

(2) *Contract terms.* Contracts under this subpart I must be for not more than 3 years and must not provide more than 20 percent of the operating budget of the contracting organization in any one year. Within any fiscal year, contracts with any one organization may not be entered into for a total of more than 20 percent of the funds available under this subpart I in that fiscal year.

(c) *Notice of funding.* HUD will publish a notice in the Federal Register announcing the availability of funding under this section as appropriate.

Subpart J—Reallocations

§ 92.450 General.

(a) This subpart J sets out the conditions under which HUD reallocates HOME funds that have been allocated, reserved, or placed in a HOME Investment Trust Fund.

(b) A jurisdiction that is not a participating jurisdiction but is meeting the requirements of §§ 92.102, 92.103, and 92.104 (participation threshold, notice of intent, and submission of housing strategy) is treated as a participating jurisdiction for purposes of receiving a reallocation under this subpart J.

§ 92.451 Reallocation of HOME funds from a jurisdiction that is not designated a participating jurisdiction or has its designation revoked.

(a) *Failure to be designated a participating jurisdiction.* HUD will reallocate, under this section, any HOME funds allocated to or reserved for a jurisdiction that is not a participating jurisdiction if—

(1) HUD determines that the jurisdiction has failed to:

(i) Meet the participation threshold amount in § 92.102;

(ii) Provide notice of its intent to become a participating jurisdiction in accordance with § 92.103; or

(iii) Submit its housing strategy in accordance with § 92.104; or

(2) HUD after providing for amendments and resubmissions in accordance with § 91.70, disapproves the jurisdiction's housing strategy.

(b) *Designation revoked.* HUD will reallocate, under this section, any funds remaining in a jurisdiction's HOME Investment Trust Fund after HUD has revoked the jurisdiction's designation as a participating jurisdiction under § 92.107.

(c) *Manner of reallocation.* HUD will reallocate funds that are subject to reallocation under this section in the following manner:

(1) If the funds to be reallocated under this section are from a State, HUD will:

(i) Make the funds available by competition in accordance with criteria in § 92.453 among applications submitted by units of general local government within the State and with preference being given to applications from units of general local government that are not participating jurisdictions, and

(ii) Reallocate the remainder by formula in accordance with § 92.454.

(2) If the funds to be reallocated are from a unit of general local government:

(i) Located in a State that is a participating jurisdiction, HUD will reallocate the funds to that State. The State, in distributing these funds, must give preference to the provision of affordable housing within the unit of general local government; or

(ii) Located in a State that is a not a participating jurisdiction, HUD will:

(A) Reallocate the funds by competition among units of general local government and community housing development organizations within the State, with priority going to applications for affordable housing within the unit of general local government; and

(B) Reallocate the remainder by formula in accordance with § 92.454.

§ 92.452 Reallocation of community housing development organization set-aside.

(a) HUD will reallocate, under this section, any HOME funds reduced or recaptured by HUD from a participating jurisdiction's HOME Investment Trust Fund under § 92.300(d).

(b) HUD will reallocate these funds by competition in accordance with criteria in § 92.453 to other participating jurisdictions for affordable housing developed, sponsored, or owned by community housing development organizations.

§ 92.453 Criteria for competitive reallocations.

(a) *General.* HUD will invite applications through Federal Register notice for HOME funds that become available for competitive reallocation under § 92.451 or § 92.452, or both. HUD will publish one or more such notices throughout a fiscal year, as warranted by the source and amount of the HOME funds available for competitive reallocation. The notice will describe the application requirements and procedures, including the deadline for the submission of applications of at least 30 days, the total funding available for the competition and any maximum amount of individual awards. The notice will describe the selection criteria and any special factors to be evaluated in awarding points under the selection criteria. The selection criteria are those set forth in this section and any additional requirements in §§ 92.451 and 452. The notice will also state whether HUD will make selections based on the application for a project or activities.

(b) *Threshold factors.* To be considered for a competitive reallocation, an application submitted by a jurisdiction must demonstrate to the satisfaction of HUD that—

(1) *Cooperative efforts.* The jurisdiction is engaged, or has made good faith efforts to engage, in cooperative efforts between the State and appropriate participating jurisdictions within the State to develop, coordinate, and implement housing strategies under the HOME Investment Partnerships Act; and

(2) *Barrier removal.* (i) The jurisdiction is implementing, or has plans to implement, a strategy to remove or ameliorate negative effects of public policies which raise the cost of housing or constrain incentives to develop, maintain, or improve affordable housing; or demonstrate the absence of these policies.

(ii) A local jurisdiction must provide a satisfactory explanation—based on its approved housing strategy, or based on the State's approved housing strategy, if the jurisdiction is not required to submit a housing strategy—of whether the cost of housing or the incentives to develop, maintain, or improve affordable housing in the jurisdiction are affected by State and local policies, statutes, ordinances, regulations, and administrative procedures and processes. Of particular concern are policies such as tax policies affecting land and other property, land use controls, zoning ordinances, building codes, fees and charges, growth limits, and policies that affect the return on residential investment. The jurisdiction must also provide a satisfactory description of its strategy to remove or ameliorate negative effects, if any, of such policies.

(iii) A State must provide a satisfactory explanation of whether the cost of housing or the incentives to develop, maintain, or improve affordable housing in the State are affected by State, as well as local policies, statutes, ordinances, regulations, and administrative procedures and processes. Of particular concern are policies such as tax policies affecting land and other property, land use controls, zoning ordinances, building codes, fees and charges, growth limits, and policies that affect the return on residential investment. A State must also provide a satisfactory description of its strategy to remove or ameliorate directly any negative effects. as well as to work with units of general local government involved to remove or ameliorate such negative effects of such policies. The strategy should propose, as appropriate, a program of State enabling reforms, direct State action as well as model codes, standards, and technical assistance for local governments.

(c) *Evaluation criteria.* Each applicant jurisdiction meeting the threshold factors in paragraph (b) of this section and each applicant that is not a jurisdiction will be evaluated and ranked in accordance with criteria

contained in the notice that are consistent with the following factors and take into account selection preferences and other requirements in §§ 92.450 through 92.452 that may apply, based on the source of the HOME funds being competitively reallocated.

(1) *Policies (25 points).* The degree to which the applicant is pursuing policies that:

(i) Make existing housing more affordable;

(ii) Preserve the affordability of privately owned housing that is vulnerable to conversion, demolition, disinvestment, or abandonment;

(iii) Increase the supply of housing that is affordable to very low-income and low-income persons, particularly in areas that are accessible to expanding job opportunities; and,

(iv) Remedy the effects of discrimination and improve the housing opportunities for disadvantaged minorities.

(2) *Actions (50 points).* The applicant's actions that—

(i) Direct HOME funds to benefit very low-income families, to a greater extent than required by § 92.252(a). Extra consideration will be given for activities that expand the supply of affordable housing for very low-income families whose incomes do not exceed 30 percent of the median family income for the area;

(ii) Apply the tenant selection preference categories applicable under section 8 of the United States Housing Act of 1937 to the selection of tenants for housing assisted with HOME funds;

(iii) Provide matching resources in excess of funds required under § 92.218; and

(iv) Stimulate a high degree of investment and participation by the private sector, including nonprofit organizations.

(3) *Commitment (25 points).* The applicant's demonstrated commitment to expand the supply of affordable rental housing, including units developed by public housing agencies, as indicated by the additional number of units of affordable housing made available through the new construction or rehabilitation within the previous two years, making adjustments for regional variations in construction and rehabilitation costs and giving special consideration to the number of additional units made available under this part through new construction or rehabilitation, including units developed by public housing agencies, in relation to the amounts made available under this program.

§ 92.454 Reallocations by formula.

(a) HUD will reallocate under this section:

(1) Any HOME funds remaining available for reallocation after HUD has made competitive reallocations under §§ 92.451 and 92.452;

(2) Any HOME funds available for reallocation because HUD reduced or recaptured funds from participating jurisdiction under § 92.500(d) for failure to commit the funds within the time specified;

(3) Any HOME funds withdrawn by HUD from a participating jurisdiction under § 91.75(c)(2) of this chapter for failure to submit in a timely manner a performance report required by § 91.75 that is satisfactory to HUD; and

(4) Any HOME funds remitted to HUD under § 92.503(b) when a jurisdiction ceases to be a participating jurisdiction.

(b) Any reallocation of funds from a State must be made only among all participating States, and any reallocation of funds from units of general local government must be made only among all participating units of general local government, except those participating jurisdictions that HUD has removed from participating in reallocations under § 92.552.

(c) A local participating jurisdiction's share of a reallocation is calculated by multiplying the amount available for reallocation to units of general local government by a factor that is that ratio of the participating jurisdiction's formula allocation provided under § 92.50 to the total of the formula allocations provided for all local participating jurisdictions sharing in the reallocation. A State participating jurisdiction's share is comparably determined using the amount available for reallocation to States.

(d) HUD will make reallocations under this section quarterly, unless the amount available for such reallocation is insufficient to warrant making a reallocation. In any event, HUD will make a reallocation under this section at least once a year. The minimum amount of a reallocation is $1,000.

Subpart K—Program Administration

§ 92.500 The HOME Investment Trust Fund.

(a) *General.* (1) A HOME Investment Trust Fund consists of two accounts solely for investment in eligible activities within the participating jurisdiction's boundaries in accordance with the provisions of this part. HUD will establish a HOME Investment Trust Fund account in the United States Treasury for each participating jurisdiction. Each participating jurisdiction must establish a local HOME Investment Trust Fund account.

(b) *Treasury Account.* The United States Treasury account of the HOME Investment Trust Fund includes funds allocated to the participating jurisdiction under § 92.50 (including for a local participating jurisdiction, any transfer of the State's allocation pursuant to § 92.102(b)(2)) and funds reallocated to the participating jurisdiction, either by formula or by competition, under subpart J of this part; and

(c) *Local Account.* The local account of the HOME Investment Trust Fund includes repayments of HOME funds and matching contributions and any payment of interest or other return on the investment of HOME funds and matching contributions.

(d) *Reductions.* HUD will reduce or recapture HOME funds in the HOME Investment Trust Fund *by the amount of*—

(1) Any funds in the U.S. Treasury account reserved by a participating jurisdiction under § 92.300 that are not awarded to a community housing development organization pursuant to a written agreement within 18 months after the funds were deposited in the U.S. Treasury account;

(2) Any funds in the U.S. Treasury account (except rental housing production set-aside funds under § 92.51) that are not committed within 24 months after the last day of the month in which the funds were deposited in the U.S. Treasury account;

(3) Any rental housing production set-aside funds under § 92.51 that are not committed within 36 months after the last day of the month in which the funds were deposited in the U.S. Treasury account;

(4) Any funds in the U.S. Treasury account that are not expended within five years after the last day of the month in which the funds were deposited in the U.S. Treasury account; and

(5) Any penalties assessed by HUD under § 92.551.

§ 92.501 HOME Investment Partnership Agreement.

Allocated and reallocated funds will be made available pursuant to a HOME Investment Partnership Agreement. The agreement must ensure that HOME funds invested in affordable housing are repayable when the housing no longer qualifies as affordable housing.

§ 92.502 Cash and Management Information System; disbursement of HOME funds.

(a) *General.* The Home Investment Trust Fund account established in the

United States Treasury is managed through HUD's Cash and Management Information (C/MI) System for the HOME Program. The C/MI System is a computerized system which manages, disburses, collects, and reports information on the use of HOME funds in the U.S. Treasury account.

(b) *Project set-up.* (1) After the participating jurisdiction executes the HOME Investment Partnership Agreement, complies with the environmental requirements under part 58 of this title for release of funds, and submits the appropriate banking and security documents, the participating jurisdiction may identify (set up) specific investments in the C/MI System. Investments that require the set-up of projects in the C/MI System are the acquisition, new construction, or moderate or substantial rehabilitation of real property, and investments of HOME funds to provide tenant-based rental assistance. Within 12 calendar days of project set-up, the participating jurisdiction is required to submit a Project Set-Up Report to HUD for each project set up in the C/MI System. Until an acceptable Project Set-Up Report is received and entered in the C/MI System, HOME funds for the project are not considered *committed* (as defined in § 92.2), and, therefore, are subject to recapture and reallocation to the extent authorized by 24 CFR 92.500.

(2) If the Project Set-Up Report is not received within 20 days of the project set-up call, the project will be cancelled automatically by the C/MI System. In addition, a project which has been committed in the C/MI System for 6 months without an initial disbursement of funds will be automatically cancelled by the C/MI System.

(c) *Disbursement of HOME funds.* (1) After information from an acceptable Project Set-Up report is entered into the C/MI System, HOME funds may be drawn down from the US Treasury account for the project by the participating jurisdiction by electronic funds transfer. The funds will be deposited in the local account of the HOME Investment Trust Fund of the participating jurisdiction within 48 to 72 hours of the disbursement request. Any drawdown of HOME funds from the US Treasury account is conditioned upon the submission of satisfactory information by the participating jurisdiction about the project or tenant-based rental assistance and compliance with other procedures specified by HUD in HUD's forms and issuances concerning the Cash and Management Information System. Copies of these forms and issuances may be obtained from HUD Field Offices.

(2) HOME funds drawn from the US Treasury account must be expended for eligible costs within 15 days. Any interest earned within the 15 day period may be retained by the participating jurisdiction as HOME funds. Any funds that are drawn down and not expended for eligible costs within 15 days of the disbursement must be returned to the C/MI System for deposit by HUD in the participating jurisdiction's US Treasury account of the Home Investment Trust Fund. Except for States and Indian tribes as provided by the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C. 450), interest earned after 15 days belongs to the United States and must be remitted promptly, but at least quarterly, to HUD, except that the participating jurisdiction may retain interest amounts up to $100 per year for administrative expenses.

(3) HOME funds in the local account of the HOME Investment Trust Fund must be disbursed before requests are made for HOME funds in the US Treasury account.

(4) A participating jurisdiction will be paid on an advance basis provided it complies with the requirements of this part.

(5) If a project is terminated before its completion, whether voluntarily by the participating jurisdiction or otherwise, an amount equal to the HOME funds disbursed for the project must be paid by the participating jurisdiction to its HOME Investment Trust Fund. If the HOME funds were disbursed from the Treasury account, the amount must be paid to the Treasury account; if the HOME funds were disbursed from the local account, the amount must be paid to the local account. If the amount is not repaid, the participating jurisdiction will be subject to actions under subpart L of this part.

(d) *Payment certification.* As post-documentation of each drawdown of funds from the US Treasury account, a participating jurisdiction must submit to HUD a payment certification, for each drawdown, in the form required by HUD. If the drawdown was for eligible project or tenant-based rental assistance costs and the payment certification is not received within 10 calendar days of the drawdown, the participating jurisdiction will be suspended from setting up new projects until the payment certification is received by HUD.

(e) *Submission of project completion reports.* After the final draw for a project, a Project Completion Report must be submitted to HUD within 120 days of the drawdown request. If a satisfactory Project Completion Report is not submitted by the due date, HUD will suspend further project set-ups for the participating jurisdiction. Project set-ups will remain suspended until a satisfactory Project Completion Report is received and entered into the C/MI System.

(f) *State recipients.* State recipients are also given access to the C/MI System for investment of HOME funds upon designation by the State and submission of the appropriate banking and security documents.

§ 92.503 Repayment of investment.

(a) Housing assisted with HOME funds that does not meet the affordability requirements for the period specified in § 92.252 or § 92.254, as applicable, must be repaid in accordance with paragraph (b) of this section.

(b) Any repayment of HOME funds (including repayment required if the housing no longer qualifies as affordable housing), and any payment of interest or other return on the investment of HOME funds, must be deposited in the jurisdiction's HOME Investment Trust Fund local account, except that if the jurisdiction is not a participating jurisdiction when the payment or repayment is made, the funds must be remitted to HUD and reallocated in accordance with § 92.454.

§ 92.504 Participating jurisdiction responsibilities; written agreements; monitoring.

(a) *Responsibilities.* The participating jurisdiction is responsible for ensuring that HOME funds are used in accordance with all program requirements. The use of State recipients, subrecipients, or contractors does not relieve the participating jurisdiction of this responsibility.

(b) *Executing a written agreement.* Before disbursing any HOME funds to any entity (e.g., for-profit housing developer, nonprofit organization, homeowner, contractor, community housing development organization, or PHA) the participating jurisdiction must sign a written agreement with the entity ensuring compliance with the requirements of this part. The agreement remains in effect during the period for affordability under §§ 92.252 or 92.254, as applicable, or if the entity is a subrecipient, during any period that the entity has control over HOME funds.

(c) *Provisions in written agreement.* At a minimum, the written agreement

must include provisions concerning the following items:

(1) *Use of the HOME funds.* The agreement must describe the use of the HOME funds, including the tasks to be performed, a schedule for completing the tasks, and a budget. These items must be in sufficient detail to provide a sound basis for the participating jurisdiction effectively to monitor performance under the agreement.

(2) *Affordability.* The agreement must require housing assisted with HOME funds to meet the affordability requirements of §§ 92.252 or 92.254, as applicable, and must require repayment of the funds if the housing does not meet the affordability requirements for the specified time period.

(3) *Repayments.* If the entity is a contractor or subrecipient, the agreement must state if repayment, interest, and other return on the investment of HOME funds are to be remitted to the participating jurisdiction or are to be retained for additional eligible activities by the entity.

(4) *Uniform administrative requirements.* If the entity is a subrecipient, the agreement must require the entity to comply with applicable uniform administrative requirements, as described in § 92.505.

(5) *Project requirement.* The agreement must require compliance with project requirements in subpart F of this part, as applicable in accordance with the type of project assisted.

(6) *Housing quality standard.* The agreement must require owners of rental housing assisted with HOME funds to maintain the housing in compliance with applicable Housing Quality Standards and local housing code requirements for the duration of the agreement.

(7) *Other program requirements.* The agreement must require the entity to carry out each activity in compliance with all Federal laws and regulations described in subpart H of this part, except that the entity does not assume the participating jurisdiction's responsibilities for environmental review in § 92.352 or the intergovernmental review process in § 92.359.

(8) *Affirmative marketing.* The agreement must specify the entity's affirmative marketing responsibilities in accordance with § 92.351.

(9) *Conditions for religious organizations.* Where applicable, the agreement must include the conditions prescribed in § 92.257 for the use of HOME funds by religious organizations.

(10) *Requests for disbursements of funds.* The agreement must specify that the entity may not request disbursement of funds under the agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed.

(11) *Reversion of assets.* If the entity is a subrecipient, the agreement must specify that upon expiration of the agreement, the entity must transfer to the participating jurisdiction any HOME funds on hand at the time of expiration and any accounts receivable attributable to the use of HOME funds.

(12) *Records and reports.* The agreement must specify the particular records that must be maintained and any information or reports that must be submitted in order to assist the participating jurisdiction in meeting its recordkeeping and reporting requirements.

(13) *Enforcement of the agreement.* The agreement must specify remedies for breach of the provisions of the agreement. If the entity is a subrecipient, the agreement must specify that, in accordance with 24 CFR 85.43, suspension or termination may occur if the entity materially fails to comply with any term of the agreement, and that the agreement may be terminated for convenience in accordance with 24 CFR 85.44.

(14) *Duration of the agreement.* The agreement must specify that the agreement is in effect for the period of affordability required under §§ 92.252 or 92.254.

(d) *Monitoring.* The participating jurisdiction is responsible for managing the day-to-day operations of its HOME program, for monitoring the performance of all entities receiving HOME funds to assure compliance with the requirements of this part, and for taking appropriate action when performance problems arise.

(1) Not less than annually, the participating jurisdiction must review the activities of owners of rental housing assisted with HOME funds to assess compliance with the requirement of this part, as set forth in the written agreement under paragraphs (b) and (c) of this section. The review must include on-site inspection to determine compliance with housing codes and the requirements of this part. The results of each review must be included in the participating jurisdiction's performance report required by part 91 of this title and must be made available to the public. Housing containing one- to four-dwelling units must be reviewed on-site once within each two-year period.

(2) Not less than annually, the participating jurisdiction must review the performance of each contractor and subrecipient.

§ 92.505 Applicability of uniform administrative requirements.

(a) *Governmental entities.* The requirements of OMB Circular No. A–87 and the following requirements of 24 CFR part 85 apply to the participating jurisdiction, State recipients, and any governmental subrecipient receiving HOME funds: §§ 85.6, 85.12, 85.20, 85.22, 85.26, 85.35, 85.36, 85.44, 85.51, and 85.52.

(b) *Non-profit organizations.* The requirements of OMB Circular No. A–122 and the following requirements of OMB Circular No. A–110 apply to subrecipients receiving HOME funds that are private nonprofit organizations: Attachment B; Attachment F; Attachment H, paragraph 2; and Attachment O.

§ 92.506 Audit.

Audits must be conducted in accordance with 24 CFR part 44 and 24 CFR part 45.

§ 92.507 Closeout.

(a) HOME funds from each individual Federal fiscal year (i.e., the allocation and any reallocated funds from the particular Federal fiscal year appropriation) will be closed out when all the following criteria have been met:

(1) All funds to be closed out have been drawn down and expended for completed project costs, or funds not drawn down and expended have been deobligated by HUD;

(2) The matching funds requirements in § 92.218 have been met;

(3) Project Completion Reports for all projects using funds to be closed out have been submitted and entered into the C/MI System. (Based on the data in the C/MI System, HUD will prepare the Closeout Report.);

(4) The participating jurisdiction has been reviewed and audited and HUD has determined that all requirements, except for affordability, have been met or all monitoring and audit findings have been resolved.

(i) The participating jurisdiction's most recent audit report and audit reports of State recipients, where applicable, must be received by HUD. If the audit does not cover all funds to be closed out, the closeout may proceed, provided the participating jurisdiction agrees in the Closeout Report that any costs paid with the funds that were not audited must be subject to the participating jurisdiction's next single audit and that the participating jurisdiction may be required to repay to HUD any disallowed costs based on the results of the audit.

(ii) The on-site monitoring of the participating jurisdiction by the HUD

Field Office must include verification of C/MI System data reflected in the Closeout Report and reconciliation of any discrepancies which may exist between C/MI System data and participating jurisdiction or State recipient records.

(b) The Closeout Report contains the final data on the funds and must be signed by the participating jurisdiction and HUD. In addition, the report must contain:

(1) A provision regarding unaudited funds, required by paragraph (a)(4)(i) of this section; and

(2) A provision requiring the participating jurisdiction to continue to meet the requirements applicable to housing projects for the period of affordability specified in §§ 92.252 or 92.254, to keep records demonstrating that the requirements have been met and to repay the HOME funds, as required by § 92.503, if the housing fails to remain affordable for the required period.

§ 92.508 Recordkeeping.

(a) *General.* Each participating jurisdiction must establish and maintain sufficient records to enable HUD to determine whether the participating jurisdiction has met the requirements of this part. Records must be kept in a manner that identifies the source of funds of each project (e.g., allocation and reallocation identified by Federal fiscal year appropriation and funds in the local account of the HOME Investment Trust Fund and State or local funds provided under § 92.102(b)). At a minimum, the following records are needed:

(1) Requirements for designation as a participating jurisdiction:

(i) Records for a consortium of the agreement among the participating member units of general local government required by § 92.101.

(ii) Records for a unit of general local government receiving a formula allocation of less than $750,000 that demonstrate that funds have been made available (either by the State or the unit of general local government, or both) equal to or greater than the difference between its formula allocation and $750,000 as required by § 92.102.

(2) Program requirements:

(i) Records of the efforts to maximize participation by the private sector as required by § 92.200.

(ii) Records providing a full description of each activity assisted with HOME funds, including its census tract location (if the activity has a geographical locus), the amount of HOME funds budgeted, committed, and expended for the activity.

(iii) Records setting forth the participating jurisdiction's determination required by § 92.207 for acquisition or new construction (other than new construction by a participating jurisdiction meeting the requirements of § 92.208(a)).

(iv) Records supporting the participating jurisdiction's certification under § 92.209 (new construction: neighborhood revitalization), including a description of how the neighborhood revitalization program emphasizes rehabilitation and the time period of the neighborhood revitalization program; a description of the neighborhood and percentage of households at or below 80 percent of median income.

(v) Records supporting the participating jurisdiction's certification under § 92.210 (new construction: special needs).

(vi) Records supporting the participating jurisdiction's certification under § 92.211 (tenant-based rental assistance; the waiting list; determinations of rent reasonableness; calculations of HOME subsidy for each tenant assisted).

(vii) Records for income targeting required by § 92.216 and § 92.217.

(viii) Records demonstrating compliance with the matching funds requirements in §§ 92.218 through 92.221 including the type and amount of contributions by project.

(3) Project records:

(i) Records that demonstrate that each project meets the property standards in § 92.251.

(ii) Records that demonstrate that each rental housing project meets the requirements of § 92.252 for the required period of affordability. Records must be kept for each family assisted.

(iii) Records that demonstrate compliance with the requirements of § 92.253 for tenant and participant protections.

(iv) Records that demonstrate compliance with the requirements in § 92.254 for affordable housing: homeownership, including the initial purchase price and appraised value (after rehabilitation, if required) of the property. Records must be kept for each family assisted.

(v) Records that indicate whether the project is mixed-income, mixed-use, or both, in accordance with § 92.255 or § 92.256.

(vi) Records supporting the certification for each housing project that the combination of Federal assistance to the project is not any more than is necessary to provide affordable housing, as required by § 92.150(c)(2).

(4) Community Housing Development Organization set-aside records:

(i) Records indicating the name and qualifications of each community housing development organization and amount of HOME funds awarded.

(ii) Records setting forth the efforts made to identify and encourage community housing development organizations, as required by § 92.300.

(iii) Records supporting project-specific assistance to community housing development organizations under § 92.301, including the impediments to repayment, if repayment is waived.

(5) Other federal requirements records:

(i) Equal opportunity and fair housing records containing:

(A) Data on the extent to which each racial and ethnic group and single-headed households (by gender of household head) have applied for, participated in, or benefited from, any program or activity funded in whole or in part with HOME funds.

(B) Documentation of actions undertaken to meet the requirements of § 92.350, which implements section 3 of the Housing Development Act of 1968, as amended (12 U.S.C. 1701u).

(C) Documentation and data on the steps taken to implement the jurisdiction's outreach programs to minority-owned and female-owned businesses including data indicating the racial/ethnic or gender character of each business entity receiving a contract or subcontract of $25,000 or more paid, or to be paid, with HOME funds; the amount of the contract or subcontract, and documentation of participating jurisdiction's affirmative steps to assure that minority business and women's business enterprises have an equal opportunity to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction, and services.

(D) Documentation of the actions the participating jurisdiction has taken to affirmatively further fair housing;

(ii) Records indicating the affirmative marketing procedures and requirements under § 92.351.

(iii) Records that demonstrate compliance with environmental review requirements in § 92.352 (and part 58 of this title).

(iv) Records which demonstrate compliance with the requirements in § 92.353 regarding displacement, relocation, and real property acquisition, including project occupancy lists identifying the name and address of all persons occupying the real property on the date described in § 92.353(c)(2)(i)(A), moving into the property on or after the date described in § 92.353(c)(2)(i)(A),

and occupying the property upon completion of the project.

(v) Records demonstrating compliance with labor requirements in § 92.354, including contract provisions and payroll records.

(vi) Records concerning lead-based paint under § 92.355.

(vii) Records supporting requests for waivers of the conflict of interest prohibition in § 92.356.

(viii) Records of certifications concerning debarment and suspension required by § 92.357 (and 24 CFR part 24).

(ix) Records demonstrating compliance with flood insurance requirements under § 92.358.

(x) Records concerning intergovernmental review, as required by § 92.359.

(6) Program administration records:

(i) Records concerning the local account of the HOME Investment Trust Fund, required to be established and maintained by § 92.500, including deposits, disbursements, and balances.

(ii) Records supporting requests for disbursements of HOME funds from the Treasury account and the local account, and other information required for the C/MI System under § 92.502.

(iii) Records indicating source and amounts of repayments, interest, and other return of investment of HOME funds.

(iv) Records of written agreements and monitoring required by § 92.504.

(v) Financial and related records required by § 92.505.

(vi) Records of audits and resolution of audit findings.

(b) *Period of record retention.* (1) Except as provided in paragraph (b)(2), (b)(3), or (b)(4) of this section, records must be retained for three years after closeout of the funds.

(2) If any litigation, claim, negotiation, audit, or other action has been started before the expiration of the regular period specified in paragraph (b)(2) of this section, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular period, whichever is later.

(3) Records regarding project and other federal requirements applicable to housing assisted with HOME funds must be retained for three years after the required period of affordability specified in § 92.252 or § 92.254, as applicable.

(4) Records covering displacements and acquisition must be retained for at least three years after the date by which all persons displaced from the property and all persons whose property is acquired for the project have received the final payment to which they are entitled in accordance with § 92.353.

(c) *Access to record.* (1) The participating jurisdiction must provide citizens, public agencies, and other interested parties with reasonable access to records, consistent with applicable State and local laws regarding privacy and obligations of confidentiality.

(2) HUD and the Comptroller General of the United States, or any of their representatives, have the right of access to any pertinent books, documents, papers or other records of the participating jurisdiction, State recipients, and subrecipients, in order to make audits, examinations, excerpts, and transcripts.

§ 92.509 Performance reports.

(a) *Management reports.* Each participating jurisdiction must submit management reports on its HOME Program in such format and at such time as HUD may prescribe.

(b) *Annual performance report*—(1) *Submission.* A participating jurisdiction must submit an annual performance report on its HOME activities to the responsible HUD Field Office at such time as HUD may prescribe. Single copies of the report must be provided to the public upon request at no charge.

(2) *Elements of the annual performance report.* The report must contain such information and be in such form as HUD may prescribe, and must include at least the following:

(i) An assessment by the participating jurisdiction of the relationship of the activities carried out under its HOME Program to the objectives in its approved housing strategy;

(ii) An analysis of the participating jurisdiction's efforts to maximize participation by the private sector;

(iii) An analysis of the extent to which HOME funds were distributed among different categories of housing needs identified in its approved housing strategy;

(iv) An assessment of the participating jurisdiction's efforts to identify community development housing organizations for participation in its HOME program;

(v) An assessment of the effectiveness of the affirmative marketing actions prescribed in § 92.351;

(vi) An assessment of the effectiveness of the participating juriadiction's minority outreach program, including an analysis of participation by minorities and women and entities owned by minorities and women in its HOME program and, where appropriate, a statement of additional actions planned to improve performance in the use of minority- and women-owned businesses;

(vii) Data on the total number of households (families and individuals) and business and nonprofit organizations displaced as a result of investments of HOME funds, including the cost of relocation payments (moving expenses and replacement housing), and the number and cost of real property acquisitions; and

(viii) Data on the amount of repayments, interest, and other return on investment of HOME funds and State or local funds provided under § 92.102(b) and the use of the funds for projects, including number of projects assisted, and characteristics of tenants and owners.

Subpart L—Performance Reviews and Sanctions

§ 92.550 Performance reviews.

(a) *General.* HUD will review the performance of each participating jurisdiction in carrying out its responsibilities under this part whenever determined necessary by HUD, but at least annually. In conducting performance reviews, HUD will rely primarily on information obtained from the participating jurisdiction's and, as appropriate, the State recipient's records and reports, findings from on-site monitoring, audit reports, and information generated from the C/MI System. Where applicable, HUD may also consider relevant information pertaining to a participating jurisdiction's or State recipient's performance gained from other sources, including citizen comments, complaint determinations, and litigation. Reviews to determine compliance with specific requirements of this part will be conducted as necessary, with or without prior notice to the participating jurisdiction or State recipient. Comprehensive performance reviews under the standards in paragraph (b) of this section will be conducted after prior notice to the participating jurisdiction.

(b) *Standards for comprehensive performance review.* A participating jurisdiction's performance will be comprehensively reviewed periodically, as prescribed by HUD, to determine:

(1) For local participating jurisdictions and State participating jurisdictions administering their own HOME programs, whether the participating jurisdiction:

(i) Has committed the HOME funds in the US Treasury account as required by § 92.500 and expended the funds in the US Treasury account as required by § 92.500, and

(ii) Has met the requirements of this part, particularly eligible activities, income targeting, affordability, and matching funds requirement; or

(2) For State participating jurisdictions distributing HOME funds to State recipients, whether the State:

(i) Has distributed the funds in accordance with the requirements of this part; and

(ii) Has made such reviews and audits of its recipients as may be appropriate to determine whether they have satisfied the requirements of paragraph (b)(1)(i) and (b)(1)(ii) of this section.

§ 92.551 Corrective and remedial actions.

(a) *General.* HUD will use the procedures in this section in conducting the performance review as provided in § 92.550 and in taking corrective and remedial actions.

(b) *Performance review.* (1) If HUD determines preliminarily that the participating jurisdiction has not met a requirement of this part, the participating jurisdiction will be given notice of this determination and an opportunity to demonstrate, within the time prescribed by HUD (not to exceed 30 days) and on the basis of substantial facts and data, that it has done so.

(2) If the participating jurisdiction fails to demonstrate to HUD's satisfaction that it has met the requirement, HUD will take corrective or remedial action in accordance with this section or § 92.552.

(c) *Corrective and remedial actions.* Corrective or remedial actions for a performance deficiency (failure to meet a provision of this part) will be designed to prevent a continuation of the deficiency; mitigate, to the extent possible, its adverse effects or consequences; and prevent its recurrence.

(1) HUD may request the participating jurisdiction to submit and comply with proposals for action to correct, mitigate and prevent a performance deficiency, including:

(i) Preparing and following a schedule of actions for carrying out the affected activities, consisting of schedules, timetables, and milestones necessary to implement the affected activities;

(ii) Establishing and following a management plan that assigns responsibilities for carrying out the remedial actions;

(iii) Cancelling or revising activities likely to be affected by the performance deficiency, before expending HOME funds for the activities;

(iv) Reprogramming HOME funds that have not yet been expended from affected activities to other eligible activities;

(v) Reimbursing its HOME Investment Trust Fund in any amount not used in accordance with the requirements of this part; and

(vi) Suspending disbursement of HOME funds for affected activities.

(2) HUD may also—

(i) Change the method of payment from an advance to reimbursement basis; and

(ii) Take other remedies that may be legally available.

§ 92.552 Notice and opportunity for hearing; sanctions.

(a) If HUD finds after reasonable notice and opportunity for hearing that a participating jurisdiction has failed to comply with any provision of this part and until HUD is satisfied that there is no longer any such failure to comply:

(1) HUD shall reduce the funds in the participating jurisdiction's HOME Investment Trust Fund by the amount of any expenditures that were not in accordance with the requirements of this part; and

(2) HUD may—

(i) Prevent withdrawals from the participating jurisdiction's HOME Investment Trust Fund for activities affected by the failure to comply;

(ii) Restrict the participating jurisdiction's activities under this part to activities that conform to one or more model programs made available § 92.213; or

(iii) Remove the participating jurisdiction from participation in allocations or reallocations of funds made available under subpart A or J of this part. *Provided, however,* that HUD may on due notice suspend payments at any time after the issuance of a notice of opportunity for hearing pursuant to paragraph (b)(1) of this section, pending such hearing and a final decision, to the extent HUD determines such action necessary to preclude the further expenditure of funds for activities affected by the failure to comply.

(b) *Proceedings.* When HUD proposes to take action pursuant to this section, the respondent in the proceedings will be the participating jurisdiction, or at HUD's option, the State recipient.

(1) *Notice of opportunity for hearing.* HUD shall notify the respondent in writing of the proposed action and of the opportunity for a hearing. The notice shall be sent by first class mail. The notice shall specify:

(i) In a manner which is adequate to allow the respondent to prepare its response, the basis upon which HUD determined that the respondent failed to comply with a provision of this part;

(ii) That the hearing procedures are governed by these rules;

(iii) That the respondent has 14 days from receipt of the notice within which to provide a written request for a hearing to the Chief Docket Clerk, Office of Administrative Law Judges, and the address and telephone number of the Chief Docket Clerk;

(iv) The action HUD proposes to take and that the authority for this action is § 92.552; and

(v) That if the respondent fails to request a hearing within the time specified, HUD's determination that the respondent failed to comply with a provision of this part shall be final and HUD may proceed to take the proposed action.

(2) *Initiation of hearing.* The respondent shall be allowed 14 days from receipt of the notice within which to notify the Chief Docket Clerk, Office of Administrative Law Judges, of its request for a hearing. If no request is received within the time specified, HUD's determination that the respondent failed to comply with a provision of this part shall be final and HUD may proceed to take the proposed action.

(3) *Administrative Law Judge.* Proceedings conducted under these rules shall be presided over by an Administrative Law Judge (ALJ), appointed as provided by section 11 of the Administrative Procedures Act (5 U.S.C. 3105). The case shall be referred to the ALJ at the time a hearing is requested. The ALJ shall promptly notify the parties of the time and place at which the hearing will be held. The ALJ shall conduct a fair and impartial hearing and take all action necessary to avoid delay in the disposition of proceedings and to maintain order. The ALJ shall have all powers necessary to those ends, including but not limited to the power to:

(i) Administer oaths and affirmations;

(ii) Issue subpoenas as authorized by law;

(iii) Rule upon offers of proof and receive relevant evidence;

(iv) Order or limit discovery before the hearing as the interests of justice may require;

(v) Regulate the course of the hearing and the conduct of the parties and their counsel;

(vi) Hold conferences for the settlement or simplification of the issues by consent of the parties;

(vii) Consider and rule upon all procedural and other motions appropriate in adjudicative proceedings; and

(viii) Make and file initial determinations.

(4) *Ex parte communications.* An *ex parte* communication is any communication with an ALJ, direct or indirect, oral or written, concerning the merits or procedures of any pending proceeding which is made by a party in the absence of any other party. *Ex parte* communications are prohibited except where the purpose and content of the communication have been disclosed in advance or simultaneously to all parties, or the communication is a request for information concerning the status of the case. Any ALJ who receives an *ex parte* communication which the ALJ knows or has reason to believe is unauthorized shall promptly place the communication, or its substance, in all files and shall furnish copies to all parties. Unauthorized *ex parte* communications shall not be taken into consideration in deciding any matter in issue.

(5) *The hearing.* All parties shall have the right to be represented at the hearing by counsel. The ALJ shall conduct the proceedings in an expeditious manner while allowing the parties to present all oral and written evidence which tends to support their respective positions, but the ALJ shall exclude irrelevant, immaterial or unduly repetitious evidence. HUD has the burden of proof in showing by a preponderance of the evidence that the respondent failed to comply with a provision of this part. Each party shall be allowed to cross-examine adverse witnesses and to rebut and comment upon evidence presented by the other party. Hearings shall be open to the public. So far as the orderly conduct of the hearing permits, interested persons other than the parties may appear and participate in the hearing.

(6) *Transcripts.* Hearings shall be recorded and transcribed only by a reporter under the supervision of the ALJ. The original transcript shall be a part of the record and shall constitute the sole official transcript. Respondents and the public, at their own expense, may obtain copies of the transcript.

(7) *The ALJ's decision.* At the conclusion of the hearing, the ALJ shall give the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor. Generally within 60 days after the conclusion of the hearing, the ALJ shall prepare a written decision which includes a statement of findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law or discretion presented on the record and the appropriate sanction or denial thereof. The decision shall be based on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. A copy of the decision shall be furnished to the parties immediately by first class mail and shall include a notice that any requests for review by the Secretary must be made in writing to the Secretary within 30 days of the receipt of the decision.

(8) *The record.* The transcript of testimony and exhibits, together with the decision of the ALJ and all papers and requests filed in the proceeding, constitutes the exclusive record for decision and, on payment of its reasonable cost, shall be made available to the parties. After reaching the initial decision, the ALJ shall certify to the complete record and forward the record to the Secretary.

(9) *Review by the Secretary.* The decision by the ALJ shall constitute the final decision of the Secretary unless, within 30 days after the receipt of the decision, either the respondent or the Assistant Secretary files an exception and request for review by the Secretary. The excepting party must transmit simultaneously to the Secretary and the other party the request for review and the basis of the party's exceptions to the findings of the ALJ. The other party shall be allowed 30 days from receipt of the exception to provide the Secretary and the excepting party with a written reply. The Secretary shall then review the record of the case, including the exceptions and the reply. On the basis of such review, the Secretary shall issue a written determination, including a statement of the rationale therefor, affirming, modifying or revoking the decision of the ALJ. The Secretary's decision shall be made and transmitted to the parties within 60 days after the decision of the ALJ was furnished to the parties.

Dated: February 27, 1991.

Jack Kemp,

Secretary.

[FR Doc. 91-6291 Filed 3-18-91; 8:45 am]

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federal register

Tuesday
March 19, 1991

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

Settlement Agreement Concerning Exxon Valdez Oil Spill and Memorandum of Agreement Between the United States and the State of Alaska and Exxon Corp., et al.; Notice of 30 Day Comment Period

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Settlement Agreement Concerning the Exxon Valdez Oil Spill Between the United States, the State of Alaska and the Exxon Corp., Exxon Shipping Co. and Exxon Pipeline Co.

AGENCIES: National Oceanic and Atmospheric Administration, Department of Agriculture, Department of the Interior, Department of Justice, Department of Transportation, the Environmental Protection Agency and the Department of Law, State of Alaska.

ACTION: Notice of 30 day comment period.

SUMMARY: Notice is given that officials representing the State of Alaska and the United States reached agreement on March 12, 1991, with Exxon Corporation, Exxon Shipping Company and Exxon Pipeline Company (Exxon) on a settlement resolving all civil claims of the respective governments arising from the March 24, 1989 *Exxon Valdez* oil spill. Comment is sought concerning the proposed civil settlement, which is published together with this Notice. Comments must be received no later than April 18, 1991.

ADDRESSES: Written comments concerning the proposed Settlement Agreement are to be submitted to Thomas A. Campbell, General Counsel of NOAA, U.S. Department of Commerce, room 5813, 14th Street and Constitution Avenue, NW., Washington, DC, 20230, who is receiving comments on behalf of the Administrator of NOAA, the Secretary of Agriculture, the Secretary of the Interior, the Secretary of Transportation, the Administrator of the Environmental Protection Agency and the United States Attorney General. A copy of the comments must also be sent to Barbara Herman, Attorney General's Office, State of Alaska, 1031 West 4th Avenue, suite 200, Anchorage, Alaska 99501, who is receiving the comments on behalf of the State of Alaska.

FOR FURTHER INFORMATION CONTACT: Daniel Addison, Office of General Counsel, NOAA, Department of Commerce, Washington, DC 20230, telephone (202) 377-1400.

SUPPLEMENTARY INFORMATION: The grounding on the night of March 23-24, 1989 of the tanker *Exxon Valdez* resulted in the discharge of approximately 11 million gallons of North Slope crude oil into Alaska's Prince William Sound. The *Exxon Valdez* Oil Spill affected the environment and natural resources in the Sound and along the coasts of Kodiak Island, Lower Cook Inlet, the Kenai Peninsula and the Alaska Peninsula.

The State of Alaska has filed an action, *State of Alaska* v. *Exxon Corporation, et al.*, Civil No. 3AN-89-6852, and Exxon has asserted counterclaims against the State. The U.S. Government filed a civil claim against Exxon on March 13, 1991 and at the same time, together with the state, lodged an Agreement and Consent Decree resolving both the U.S. and Alaska civil claims. This agreement represents the largest natural resource damage settlement in U.S. history and is designed to provide for the restoration of the natural resources affected by the spill. The Agreement also addresses full recovery of past and necessary future costs incurred by the State of Alaska and the United States to complete the clean-up activities and to determine the breadth of injury, loss or destruction of natural resources. When completed, the restoration of areas affected by the spill will be the largest commitment of resources to restore the environment in U.S. history.

The Settlement Agreement provides that $900 million will be paid to the United States and the State over an 11 year period. These funds will be used to design, implement and monitor restoration activities; to continue the necessary scientific studies deemed necessary to determine the full extent of natural resource injury, loss or destruction due to the spill; to conduct any further cleanup activities deemed necessary by the United States Coast Guard or by the State; and to recover past costs incurred during the natural resource damage assessment process. To address the possibility of currently unknown injuries to the environment, the Settlement Agreement also contains a reopener clause committing Exxon to pay up to an additional $100 million for restoration projects for natural resources and habitats that are later discovered to be injured as a result of the spill.

A separate Memorandum of Agreement (MOA) between Alaska and the Federal Government was also executed at the same time. The MOA will govern the relationship between the governments in administering the fund created with this settlement. This MOA also provides that the public will be given meaningful opportunities to participate in the restoration process. This State/Federal MOA will be published in a separate Federal Register notice.

Comment is sought from the public concerning the proposed Settlement Agreement. The Agreement provides that the governments can withdraw from the Settlement Agreement within 15 days of the close of the comment period if the comments received disclose facts or considerations which show that the Agreement is inappropriate, improper or inadequate, or if, before the end of the 15th day following the close of the comment period, the Alaska State Legislature has not approved the Agreement as written.

Dated: March 14, 1991.

Grayson R. Cecil,

Special Counsel for Natural Resources.

Proposed Consent Decree and Settlement Agreement

Richard B. Stewart, Assistant Attorney General, Environment & Natural Resources Division.

Stuart M. Gerson, Assistant Attorney General, Civil Division, U.S. Department of Justice, Washington, DC 20530—Attorneys for Plaintiff, United States of America.

Charles E. Cole, Attorney General, State of Alaska, Pouch K, Juneau, Alaska 99811—Attorney for Plaintiff, State of Alaska.

United States District Court, District of Alaska

United States of America, Plaintiff, v. *Exxon Corporation, Exxon Shipping Company, and Exxon Pipeline Company, in personam, and the T/V Exxon Valdez, in rem*, Defendants. Civil Action No.

The State of Alaska, Plaintiff, v. *Exxon Corporation, Exxon Shipping Company, and Exxon Pipeline Company, in personam, and the T/V Exxon Valdez, in rem*, Defendants. Civil Action No.

Agreement and Consent Decree

This agreement and Consent Decree (the "Agreement") is made and entered into by the United States of America and the State of Alaska ("State") (collectively referred to as the "Governments"), Exxon Corporation and Exxon Shipping Company ("Exxon Shipping") (collectively referred to, together with the T/V Exxon Valdez, as "Exxon"), and Exxon Pipeline Company ("Exxon Pipeline").

Introduction

On the night of March 23-24, 1989, the T/V Exxon Valdez, owned by Exxon Shipping, went aground on Bligh Reef in Prince William Sound, Alaska. As a result of the grounding, several of the vessel's cargo tanks ruptured and approximately 11 million gallons of crude oil owned by Exxon Corporation

spilled into Prince William Sound (the "Oil Spill").

The State has filed an action in the Superior Court for the State of Alaska, Third Judicial District, arising from the Oil Spill, identified as *State of Alaska* v. *Exxon Corporation, et al.*, Civil No. 3AN–89–6852 ("State Court Action"), and Exxon has asserted counterclaims against the State in that action.

On or before the lodging of this Agreement with the Court, the United States and the State will each have filed a complaint in this Court against Exxon and Exxon Pipeline, asserting civil claims relating to or arising from the Oil Spill ("Federal Court Complaints"). Exxon and Exxon Pipeline have asserted or will assert counterclaims against the United States and the State in their responses to the Federal Court Complaints. Exxon Corporation and Exxon Shipping Company have also filed administrative demands against the United States Coast Guard, with the U.S. Coast Guard, Coast Guard Maintenance & Logistics Command—Pacific at Alameda, California under date of September 21, 1990.

The United States and the State represent that it is their legal position that only officials of the United States designated by the President and state officials designated by the Governors of the respective states are entitled to act on behalf of the public as trustees of Natural Resources to recover damages for injury to Natural Resources arising from the Oil Spill under section 311(f) of the Clean Water Act, 33 U.S.C. 1321(f).

Exxon represents that, during the period from the Oil Spill through the end of 1990, it expended in excess of $2 billion for clean-up activities and reimbursements to the Federal, State, and local governments for their expenses of response to the Oil Spill.

The Parties recognize that the payments called for in this Agreement are in addition to those described above, are compensatory and remedial in nature, and are made to the Governments in response to their pending or potential civil claims for damages or other civil relief against Exxon and Exxon Pipeline arising from the Oil Spill.

Now, Therefore, The Parties agree, and it is hereby *Ordered, adjudged, and decreed* As follows:

Jurisdiction

1. The Court has jurisdiction over the subject matter of the claims set forth in the Federal Court Complaints and over the parties to this Agreement pursuant to, among other authorities, 28 U.S.C. 1331, 1333 and 1345, and section 311(f) of the Clean Water Act, 33 U.S.C. 1321(f). This Court also has personal jurisdiction over Exxon and Exxon Pipeline, which, solely for the purposes of this Agreement, waive all objections and defenses that they may have to the jurisdiction of the Court or to venue in this District.

Parties

2. "United States" means the United States of America, in all its capacities, including all departments, divisions, independent boards, administrations, natural resource trustees, and agencies of the federal government.

3. "State" means the State of Alaska, in all its capacities, including all departments, divisions, independent boards, administrations, natural resource trustees, and agencies of the state government.

4. "Exxon" means Exxon Corporation, a New Jersey corporation, Exxon Shipping Company, a Delaware corporation, and the T/V Exxon Valdez, Official Number 692966 (now the T/V Exxon Mediterranean).

5. "Exxon Pipeline" means Exxon Pipeline Company, a Delaware corporation.

Definitions

6. Whenever the following capitalized terms are used in this Agreement, they shall have the following meanings:

(a) *Alyeska* mens Alyeska Pipeline Service Company, a Delaware corporation, its shareholders and owner companies, and its present and former shareholder representatives.

(b) The *TAPL Fund* means the Trans-Alaska Pipeline Liability Fund, a federally chartered corporation organized and existing under the laws of the State of Alaska.

(c) *Natural Resources* means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801 *et seq.*) and/or the State.

(d) *Natural Resource Damages* means compensatory and remedial relief recoverable by the Governments in their capacity as trustees of Natural Resources for injury to, destruction of, or loss of any and all Natural Resources resulting from the Oil Spill, whether under the Clean Water Act, 33 U.S.C. 1251, *et seq.*, the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. 1651, *et seq.*, or any federal or state statute or maritime or common law relating to the environment, including (1) costs of damage assessment, (2) compensation for loss, injury, impairment, damage or destruction of Natural Resources, whether temporary or permanent, or for loss of use value, non-use value, option value, amenity value, bequest value, existence value, consumer surplus, economic rent, or any similar value of Natural Resources, and (3) costs of restoration, rehabilitation or replacement of injured Natural Resources or the acquisition of equivalent resources.

(e) *Party* or *Parties* means Exxon, Exxon Pipeline, the United States, and the state, or any of them.

(f) *Trustees* means the Secretaries of the U.S. Departments of Agriculture and Interior, the Administrator of the National Oceanic and Atmospheric Administration, U.S. Department of Commerce, and the Alaska Attorney General

(g) The *Oil Spill* means the occurrence described in the first paragraph of the Introduction above, and all consequences proximately caused by or arising from the Oil Spill, including, without limitation, response, cleanup, damage assessment and restoration activities.

(h) *Effective Date* shall mean the earliest date on which all Parties have signed this Agreement.

(i) *Final Approval* shall mean the earliest date on which all of the following have occurred: (1) the Agreement has been lodged with the Court and noticed in the Federal Register, and the period for submission of public comments has expired; (2) the period for withdrawal of consent by the Governments under Paragraph 37 has expired; (3) the Court has approved and entered the Agreement as a judgment, without modification and without interpreting a material term of the Agreement, prior to or at the time of approval, in a manner inconsistent with the Parties' intentions; and (4) the time for appeal from that judgment has expired without the filing of an appeal, or the judgment has been upheld on appeal and either the time for further appeal has expired without the filing of a further appeal or no further appeal is allowed.

Effect of Entry of Decree by Court

7. Upon approval and entry of this Agreement by the District Court, this Agreement and Consent Decree shall constitute a final judgment between the Governments and Exxon and Exxon Pipeline in accordance with its terms.

Payment Terms

8. Exxon shall pay to the Governments pursuant to this Agreement a total of $900 million, discharged as follows:

(a) Exxon shall pay, within 10 days after the Effective Date, $90,000,000.

(b) Exxon shall pay on September 1, 1992 the amount determined by the following formula:

amount payable = $150,000,000 minus X, where "X" equals Exxon's expenditures for work done from January 1, 1991 to the Effective Date, in preparation for and conduct of clean-up of the Oil Spill in accordance with directions of the Federal On-Scene Coordinator, up to a maximum of $4,000,000, plus Expenditures made by Exxon for clean-up work after the Effective Date in accordance with Paragraph 11.

(c) Exxon shall pay each of the amounts specified in the following schedule by the dates set forth in that schedule:

September 1, 1993 $100,000,000
September 1, 1994 $70,000,000
September 1, 1995 $70,000,000
September 1, 1996 $70,000,000
September 1, 1997 $70,000,000
September 1, 1998 $70,000,000
September 1, 1999 $70,000,000
September 1, 2000 $70,000,000
September 1, 2001 $70,000,000

(d) The payments required by this paragraph shall be made as directed jointly in writing, not less than 5 business days before the due date, by the Assistant Attorney General, Environment & Natural Resources Division, United States Department of Justice, and the Attorney General, State of Alaska.

9. If Final Approval has not occurred by the date a payment required under Paragraph 8 is due, Exxon shall, on or before that date, deposit the amount of the payment into an interest-bearing trust account (the "Escrow") in a federally chartered bank ("Escrow Agent)". The Escrow agreement between Exxon and the Escrow Agent shall provide that the Escrow Agent shall submit to the jurisdiction and venue of the United States District Court for the District of Alaska in connection with any litigation arising out of that Escrow agreement. Exxon shall notify the Governments promptly in writing of any deposit of a payment due under this Agreement into the Escrow. Upon Final Approval and within five (5) business days of receipt of written instructions as to payment signed jointly by the Assistant Attorney General, Environment & Natural Resources Division, United States Department of Justice, and the Attorney General, State of Alaska, Exxon shall require that a sum be paid to the Governments equal to all amounts required to be paid into the Escrow pursuant to this paragraph together with an amount calculated by applying to each deposit a rate equal to the average daily yield on three-month Treasury Bills in effect while the funds are on deposit. "The average daily yield on three-month Treasury Bills" means the arithmetic mean of the three-month Treasury Bill rates, as quoted in the H.15 (519) weekly release published by the Board of Governors of the Federal Reserve System under the caption "U.S. Government Securities/Treasury Bills/ Secondary Market," multiplied by the actual number of days of such deposit divided by 360. For the purposes of calculating such arithmetic mean, each Saturday, Sunday and holiday shall be deemed to have a rate equal to the rate for the immediately preceding business day. If the earnings accrued on the Escrow are insufficient to make the payment to Governments required by this paragraph and to pay the reasonable fees and expenses of the Escrow Agent, Exxon shall pay the difference so that such amounts will be paid in full. No amount shall be disbursed from the Escrow for any reason, except to make the payment required by this paragraph or to pay reasonable fees and expenses of the Escrow Agent and, after the foregoing payments, to close out the Escrow, unless one of the following events occurs: (1) The United States or the State withdraws its consent to entry of the Agreement pursuant to Paragraph 37; or (2) any Party terminates the Agreement pursuant to Paragraph 38. If one of these events occurs, all sums in the Escrow shall be returned to Exxon.

10. As agreed to between the Governments, without any consultation with or participation by Exxon or Exxon Pipeline, the amounts paid under Paragraphs 8 or 9 shall be applied by the Governments solely for the following purposes: (1) to reimburse the United States and the State for response and clean-up costs incurred by either of them on or before December 31, 1990 in connection with the Oil Spill; (2) to reimburse the United States and the State for natural resource damages assessment costs (including costs of injury studies, economic damages studies, and restoration planning) incurred by either of them prior to the Effective Date in connection with the Oil Spill; (3) to reimburse the State for attorneys fees, experts' fees, and other costs (collectively, "Litigation Costs") incurred by it prior to the Effective Date in connection with litigation arising from the Oil Spill; (4) to reimburse the United States and the State for response and clean-up costs incurred by either of them after December 31, 1990 in connection with the Oil Spill; and (5) after the Effective Date, to assess injury resulting from the Oil Spill and to plan, implement, and monitor the restoration, rehabilitation, or replacement of Natural Resources or natural resource services injured, lost, or destroyed as a result of the Oil Spill, or the acquisition of equivalent resources or services; provided, however, that the aggregate amount allocated for United States past response and clean-up costs and damage assessment costs (under items 1 and 2 above) shall not exceed $62 million, and the aggregate amount allocated for State past response and clean-up costs, damage assessment costs, and Litigation Costs (under items 1–3 above) shall not exceed $72 million. The Governments represent that the monies paid by Exxon to the Governments pursuant to this Agreement will be allocated, received, held, and used in accordance with the Memorandum of Agreement and Consent Decree between the United States and the State of Alaska ("MOA"), which the Governments have submitted or will submit to this Court to resolve claims of the Governments against one another with respect to their respective shares in recoveries for Natural Resource Damages resulting from the Oil Spill. This paragraph and the MOA do not create any rights in, or impose any obligations on, Exxon, Exxon Pipeline, Alyeska, or any other person or entity except the Governments.

Commitment by Exxon to Continue Clean-up

11. (a) Exxon shall continue clean-up work relating to the Oil Spill after the Effective Date, as directed by and in accordance with the directions of the Federal On-Scene Coordinator ("FOSC"), subject to prior approval by the FOSC of the costs of work directed by the FOSC. After the Effective Date, Exxon shall also perform any additional clean-up work directed by the State On-Scene Coordinator ("State OSC") that does not interfere or affirmatively conflict with work directed by the FOSC or with federal law, in accordance with the directions of, and subject to prior approval of costs by, the State OSC. If Exxon concludes that work directed by the State OSC would interfere or affirmatively conflict with work directed by the FOSC, or with federal law, it shall promptly notify the State OSC and the FOSC of the potential conflict and shall not be required to proceed with the work directed by the State OSC until the FOSC or the Court determines that there is no conflict or that any potential

conflict has been eliminated, and directs Exxon how to proceed. Exxon should have no liability to any person or entity, including the Governments, by reason of undertaking clean-up work performed in accordance with directions of the FOSC or the State OSC.

(b) Upon Final Approval, Exxon shall have no further obligations with respect to clean-up of the Oil Spill except as set forth in this Agreement and in addition Exxon shall be entitled to a credit, to be applied to the next payment due from Exxon to the Governments, as provided in subparagraph 8(b), for all Expenditures incurred by Exxon for clean-up work pursuant to directions of the FOSC or the State OSC in accordance with subparagraph 11(a). As used in this paragraph, and in subparagraph 8(b) and Paragraph 12, "Expenditures" shall include, without limitation, costs and obligations incurred for salary, wages, benefits, and expenses of Exxon employees, for contractors, for equipment purchase and rental, for office and warehouse space, and for insurance, accounting, and other professional services.

12. If this Agreement is terminated pursuant to Paragraphs 37 or 38 below, or if a final judicial determination is made that this Agreement will not be approved and entered, Exxon shall be entitled to set off against any liability it may have to either Government arising from the Oil Spill the amount of any Expenditures made by Exxon for clean-up work directed by the FOSC or the State OSC under Paragraph 11(a), if the work meets the following criteria:

(a) If total Expenditures incurred by Exxon for clean-up after the Effective Date are $35 million or less, Expenditures for work shall be set-off if Exxon shows both—

(1) That based on the information available at the time to the FOSC or State OSC who directed the work, the anticipated cost of the work was grossly disproportionate to the net environmental benefits reasonably anticipated from the work, or the work could not reasonably have been expected to result in a net environmental benefit; and

(2) That a reasonable time before beginning to perform the work, Exxon submitted a written objection to the work to the FOSC or State OSC who directed the work, requesting reconsideration of the work directions on one of the grounds set forth in subparagraph 12(a)(1) above; or

(b) If total Expenditures by Exxon for clean-up after the Effective Date exceed $35 million, Expenditures for work shall be set-off unless the Government or Governments against which Exxon is seeking to assert the set-off provided by this paragraph show that, based on the information available at the time to the FOSC or State OSC who directed the work, the work was reasonably expected to result in a net environmental benefit, and the anticipated cost of the work was not substantially out of proportion to the net environmental benefit reasonably anticipated from the work.

Releases and Covenants Not to Sue by the Governments

13. Effective upon Final Approval, the Governments release and covenant not to sue or to file any administrative claim against Exxon with respect to any and all civil claims, including claims for Natural Resource Damages, or other civil relief of a compensatory and remedial nature which have been or may be asserted by the Governments, including without limitation any and all civil claims under all federal or state statutes and implementing regulations, common law or maritime law, that arise from, relate to, or are based on, or could in the future arise from, relate to, or be based on: (1) any of the civil claims alleged in the pending action against Exxon by the State in the State Court Action, (2) any of the civil claims asserted in the Federal Court Complaints, or (3) any other civil claims that could be asserted by either or both of the Governments against Exxon relating to or arising from the Oil Spill; provided, however, that nothing in this Agreement shall affect or impair the following:

(a) Claims by either Government to enforce this Agreement, including without limitation Exxon's agreement to make additional payments as set forth in Paragraphs 17–19;

(b) The rights and obligations, if any, of Alaska Native villages to act as trustees for the purposes of asserting and compromising claims for injury to, destruction of, or loss of natural resources, if any, belonging to, managed by, controlled by or appertaining to such villages;

(c) The rights and obligations, if any, of legal entities or persons other than the Governments who are holders of any present right, title, or interest in land or other property interest affected by the Oil Spill;

(d) Claims by the State for tax revenues which would have been or would be collected under existing AS 43.75 (Fisheries Business Tax) but for the Oil Spill, provided that, if the State obtains a judgment for such a claim against Exxon or Exxon Pipeline, the State will enforce against Exxon or Exxon Pipeline only that part of the judgment that would be refunded to local governments under AS 43.75.130 had the amount recovered been paid as taxes under AS 43.75.

14. Effective upon Final Approval, except insofar as Exxon Pipeline is liable to the Governments, or either of them, for claims relating to or arising from the Oil Spill as a result of its ownership interest in, participation in, or responsibility for Alyeska, each of the Governments provides to Exxon Pipeline convenants not to sue identical to the covenants not to sue provided to Exxon in Paragraph 13. This paragraph shall not be construed as a release or covenant not to sue given by either Government to Alyeska.

15. Effective upon the Effective Date, each of the Governments convenants not to sue any present or former director, officer, or employee of Exxon or Exxon Pipeline with respect to any and all civil claims, including Natural Resource Damages, or other civil remedies of a compensatory or remedial nature which have been or may be asserted by the Governments, including without limitation any and all civil claims under all federal or state statutes and implementing regulations, common law or maritime law, that arise from, relate to, or are based on, or could in the future arise from, relate to, or be based on the Oil Spill; provided, however, that if any such present or former director, officer, or employee brings any action against the Governments, or either of them, for any claim whatsoever arising from or relating to the Oil Spill (or if an action against the Governments is pending at the time of Final Approval, and the director, officer, or employee fails to dismiss the action within 15 days of Final Approval), this covenant not to sues hall be null and void with respect to the director, officer, or employee bringing such action. In the event either Government obtains a judgment against any present or former director, officer, or employee of Exxon or Exxon Pipeline for liability relating to or arising from the Oil Spill, the Governments shall enforce the judgment only to the extent that the individual or individuals against whom the judgment was obtained are able to satisfy the judgment, without indemnification by Exxon or Exxon Pipeline, personally or through insurance policies purchased by the individual or individuals.

16. Not later than 15 days after Final Approval, each of the claims asserted by the State against Exxon and Exxon Pipeline, except for the claim described in Paragraph 13(d) of this Agreement, and each of the claims asserted by Exxon or Exxon Pipeline against the

State, in the State Court Action will be dismissed with prejudice and without an award of costs or attorneys fees to any Party. Exxon, Exxon Pipeline, and the State shall enter into and execute all Stipulations of Dismissal, with prejudice, necessary to implement this paragraph.

Reopener For Unknown Injury

17. Notwithstanding any other provision of this Agreement, between September 1, 2002, and September 1, 2006, Exxon shall pay to the Governments such additional sums as are required for the performance of restoration projects in Prince William Sound and other areas affected by the Oil Spill to restore one or more populations, habitats, or species which, as a result of the Oil Spill, have suffered a substantial loss or substantial decline in the areas affected by the Oil Spill; provided, however, that for a restoration project to qualify for payment under this paragraph the project must meet the following requirements:

(a) The cost of a restoration project must not be grossly disproportionate to the magnitude of the benefits anticipated from the remediation; and

(b) The injury to the affected population, habitat, or species could not reasonably have been known nor could it reasonably have been anticipated by any Trustee from any information in the possession of or reasonably available to any Trustee on the Effective Date.

18. The amount to be paid by Exxon for the restoration projects referred to in Paragraph 17 shall not exceed $100,000,000.

19. The Governments shall file with Exxon, 90 days before demanding any payment pursuant to Paragraph 17, detailed plans for all such restoration projects, together with a statement of all amounts they claim should be paid under Paragraph 17 and all information upon which they relied in the preparation of the restoration plan and the accompanying cost statement.

Releases and Covenants Not To Sue by Exxon and Exxon Pipeline

20. Effective upon Final Approval, Exxon and Exxon Pipeline release, and convenant not to sue or to file any administrative claim against, each of the Governments and their employees with respect to any and all claims, including without limitation claims for Natural Resource Damages and cleanup costs, under federal or state statutes and implementing regulations, common law, or maritime law, that arise from, relate to, or are based on or could in the future arise from, relate to, or be based on: (1) any of the civil claims asserted by either of them against the State in the State Court Action, (2) any civil claims asserted by Exxon or Exxon Pipeline against either Government in their responses to the Federal Court Complaints, or (3) any other civil claims that have been or could be asserted by Exxon or Exxon Pipeline against either of the Governments relating to or arising from the Oil Spill, except that nothing in this Agreement shall affect or impair the rights of Exxon and Exxon Pipeline to enforce this Agreement. This paragraph shall not be construed as a release or covenant not to sue given by Alyeska (including its shareholders and owner companies other than Exxon Pipeline) to the Governments.

Trans-Alaska Pipeline Liability Fund

21. The release in Paragraph 20 shall not be construed to bar any claim by Exxon against the TAPL Fund relating to or arising from the Oil Spill. If the TAPL Fund asserts any claims against the Governments that are based upon subrogation rights arising from any monies paid to Exxon or Exxon Pipeline by the TAPL Fund, Exxon agrees to indemnify and hold the Governments harmless from any liability that they have to the TAPL Fund based on such claims. If the TAPL Fund asserts any claims against the Governments that are based upon subrogation rights arising from any monies paid to Alyeska by the TAPL Fund, Exxon agrees to indemnify the Governments for 20.34% of any such liability that either Government has to the TAPL Fund based on such claims.

Provisions Pertaining to Alyeska

22. Effective upon Final Approval, the Governments release and covenant not to use Alyeska with respect to all claims for Natural Resource Damages and with respect to all other claims for damages for injury to Natural Resources, whether asserted or not, that either may have against Alyeska relating to or arising from the Oil Spill. If Alyeska asserts claims against the Governments, or either of them, that are based upon third party contribution or subrogation rights, or any other theory of recovery over against the Governments, or either of them, arising from any liability of or settlement payment by Alyeska to Exxon or Exxon Pipeline for any claims, including without limitation Natural Resource Damages and cleanup costs, relating to or arising from the Oil Spill, Exxon shall indemnify and hold the Governments harmless from any liability that the Governments have to Alyeska based on such claims.

23. In order to resolve as completely as practicable all civil claims of the Governments arising from the Oil Spill against all Exxon Defendants, including Exxon Pipeline (which has a 20.34% participation in Alyeska), and in consideration of Exxon's obligations hereunder, the Governments agree that if either recovers any amount from Alyeska for any claim of any kind relating to or arising from the Oil Spill (such as asserted in the State Court Action against Alyeska), each Government so recovering shall instruct Alyeska to pay to Exxon, and shall take other reasonable steps to ensure that Exxon receives, 20.34% of the amount due to that Government from Alyeska.

24. Exxon and Exxon Pipeline agree that, if Alyeska receives any amount from the Governments for any claim of any kind relating to or arising from the Oil Spill, except for an amount indemnified by Exxon under Paragraph 22 or 25, Exxon and/or Exxon Pipeline shall promptly pay to the Government against which judgment is entered 20.34% of such amount.

25. If Alyeska successfully asserts claims, if any, against the Governments, or either of them, that are based upon Alyeska's own damages or losses, or upon third party contribution or subrogation rights, or other theories of recovery over, arising from Alyeska's liability to persons other than Exxon or Exxon Pipeline relating to the Oil Spill, Exxon shall indemnify the Governments for any sums paid by either of them to Alyeska based on such claims; provided that the Governments shall assert in good faith all defenses the Governments may have to such claims by Alyeska, and provided further that no indemnity shall be provided under this paragraph if the Governments refuse a good faith proposal for a monetary settlement of such claims agreed to by Exxon and Alyeska, under which Alyeska shall fully release the Governments in exchange for a payment by or other consideration from Exxon, on behalf of the Governments, to Alyeska.

Third Party Litigation

26. If any person or entity not a party to this Agreement ("Third Party") asserts a claim relating to or arising from the Oil Spill in any present or future litigation against Exxon or Exxon Pipeline and the Governments, or against Exxon or Exxon Pipeline and either the United States or the State, each of the sued Parties ("Sued Parties") shall be responsible for and will pay its share of liability, if any, as determined by the proportional allocation of liability contained in any final judgment in favor of such Third Party, and no Sued Party shall assert a right of contribution or indemnity against any other Sued Party.

However, notwithstanding any other provision of this Agreement, the Sued Parties may assert any claim or defense against each other necessary as a matter of law to obtain an allocation of liability among the Sued Parties in a case under this paragraph. Any such actions between the Sued Parties shall be solely for the purpose of allocating liability, if any. The Sued Parties shall not enforce any judgment against each other in such cases.

27. Neither Exxon nor Exxon Pipeline shall assert any right of contribution or indemnity against either Government in any action relating to or arising from the Oil Spill where that respective Government is not a party. Neither Government shall assert any right of contribution or indemnity against Exxon or Exxon Pipeline in any action relating to or arising from the Oil Spill where Exxon and Exxon Pipeline, respectively, are not parties, except that either Government may assert against Exxon the rights to indemnification as expressly provided in Paragraphs 21, 22, and 25.

28. Any liability which Exxon incurs as a result of a suit by a Third Party, as described in Paragraphs 26 or 27, shall not be attributable to or serve to reduce the payments required to be paid by Exxon pursuant to Paragraph 8 or any additional payment required under Paragraph 17.

29. The Parties agree that they will not tender each other to any Third Party as direct defendants in any action pursuant to Rule 14(c) of the Federal Rules of Civil Procedure.

30. If a Third Party, which has previously reached or thereafter reaches a settlement with Exxon, brings an action against the Governments, or either of them, the sued Government(s) shall undertake to apportion liability, if any, according to principles of comparative fault without the joinder of Exxon, and shall assert that joinder of Exxon is unnecessary to obtain the benefits of allocation of fault. Notwithstanding any other provision of this Agreement, if the court rejects the sued Government(s)' efforts to obtain a proportional allocation of fault without Exxon's joinder, the sued Government(s) may institute third-party actions against Exxon solely for the purpose of obtaining allocation of fault. The Governments in such third-party actions shall not enforce any judgment against Exxon.

Interest for Late Payments

31. If any payment required by Paragraphs 8 or 9 of this Agreement is not made by the date specified in those Paragraphs, Exxon shall be liable to the Governments for interest on the overdue amount(s), from the time payment was due until full payment is made, at the rate established by the Department of the Treasury under 31 U.S.C. 3717(a) (1) & (2). Interest on an overdue payment shall be paid in the same manner as the payment on which it accrued.

Reservations of Rights

32. This Agreement does not constitute an admission of fact or law, or of any liability, by any Party to this Agreement. Except as expressly stated in this Agreement, each Party reserves against all persons or entities all rights, claims, or defenses available to it relating to or arising from the Oil Spill. Nothing in this Agreement, however, is intended to affect legally the claims, if any, of any person or entity not a Party to this Agreement.

33. Nothing in this Agreement creates, nor shall it be construed as creating, any claim in favor of any person not a Party to this Agreement.

34. Nothing in this Agreement shall prevent or impair the Governments from providing program assistance or funding to those not signatories to this Agreement under the programs of their agencies pursuant to legislative authorization or appropriation.

35. Nothing in this Agreement shall affect or impair any existing contract between Exxon or Exxon Pipeline and any entity of either Government, including without limitation the agreement between Exxon and the Environmental Protection Agency dated December 21, 1990, relating to joint conduct of bioremediation studies.

Notices and Submittals

36. Whenever, under the terms of this Consent Decree, written notice is required to be given by one Party to another, it shall be directed to the individuals and addresses specified below, unless those individuals or their successors give notice of changes to the other Parties in writing.

As to the United States:

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. Attn. DOJ #90–5–1–1–3343.

Chief, Admiralty and Aviation Branch, Civil Division, U.S. Department of Justice, 601 D Street, NW., Washington, DC 20530.

General Counsel, National Oceanic and Atmospheric Administration, Department of Commerce, 14th & Constitution Avenue, NW., Washington, DC 20230.

As to the State of Alaska:

Attorney General, State of Alaska, Pouch K, Juneau, Alaska 99811.

Supervising Attorney, Oil Spill Litigation Section, Department of Law, 1031 W. Fourth Street, Suite 200, Anchorage, Alaska 99501.

As to Exxon:

Office of the Secretary, Exxon Corporation, 225 E. John W. Carpenter Fwy, Irving, Texas 75062–2298.

General Counsel, Exxon Corporation, 225 E. John W. Carpenter Fwy, Irving, Texas 75062–2298.

Mr. A. Elmer, President, Exxon Shipping Company, P.O. Box 1512, Houston, Texas 77251–1512.

As to Exxon Pipeline:

Mr. D. G. Warner, President, Exxon Pipeline Company, P.O. Box 2220, Houston, Texas 77252–2220.

Process for Entry of Agreement

37. Notice of this Agreement shall be published in the **Federal Register**, and the Agreement shall be subject to public comment for a period of thirty (30) days after such publication. Each Government reserves the right to withdraw its consent to the Agreement, within fifteen (15) days following the close of the public comment period, if comments received disclose facts or considerations which show that the Agreement is inappropriate, improper or inadequate or if, before the end of that 15 day period, the Alaska State Legislature has not approved the Agreement as written. If the United States or the State withdraws its consent to the Agreement in accordance with this Paragraph, the Agreement shall be deemed terminated as of the date of the notice of withdrawal of consent.

38. Any Party may elect to terminate this Agreement if: (1) any court of competent jurisdiction disapproves or overturns any plea agreement entered into between the United States and Exxon in *United States* v. *Exxon Shipping Co.*, No. A90–015 CR (D. Alaska); (2) a final judicial determination is made by such court that this Agreement will not be approved and entered without modification; or (3) such court modifies this Agreement in a manner materially adverse to that Party, or interprets a material provision of this Agreement in a manner inconsistent with the Parties' intentions, prior to or contemporaneously with a final judicial determination approving the Agreement as modified. A Party electing to terminate this Agreement pursuant to this paragraph must do so within 10 days after an event specified in the

preceding sentence, and shall immediately notify the other Parties of such election in writing by hand delivery, facsimile, or overnight mail. Termination of this Agreement by one Party shall effect termination as to all Parties. For purposes of this paragraph and Paragraph 37, "termination" and "terminate" shall mean the cessation, as of the date of notice of such termination, of any and all rights, obligations, releases, covenants, and indemnities under this Agreement, provided, that termination shall not affect or impair Exxon's rights to obtain return of any deposits made into the Escrow pursuant to the final sentence of Paragraph 9, and provided further, that the provisions of Paragraphs 11 and 12, relating to clean-up, shall continue in effect notwithstanding any termination.

Retention of Jurisdiction

39. The Court shall retain jurisdiction of this matter for the purpose of entering such further orders, direction, or relief as may be appropriate for the construction, implementation, or enforcement of this Agreement.

Miscellaneous

40. This Agreement can be modified only with the express written consent of the Parties to the Agreement and the approval of the Court.

41. Each undersigned representative of the Parties to this Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such Party to this Agreement.

The foregoing Agreement and Consent Decree among plaintiffs the United States of America and the State of Alaska and defendants Exxon Corporation, Exxon Shipping Company, Exxon Pipeline Company, and the T/V EXXON VALDEZ, is hereby *approved and entered* this ____ day of _____, 1991.

Honorable H. Russel Holland,
United States District Judge, District of Alaska.

[FR Doc. 91-6614 Filed 3-15-91; 1:17 pm]
BILLING CODE 3510-12-M

DEPARTMENT OF COMMERCE

Memorandum of Agreement Between the United States and the State of Alaska Concerning the Exxon Valdez Oil Spill

AGENCIES: National Oceanic and Atmospheric Administration, Department of Agriculture, Department of the Interior, the Environmental Protection Agency and the Department of Law, State of Alaska.

ACTION: Notice of 30 day comment period.

SUMMARY: Notice is given that officials representing the State of Alaska, the United States and Exxon Corporation have reached agreement on a settlement resolving all civil and criminal claims of the respective governments arising from the March 24, 1989 *Exxon Valdez* oil spill. In addition the United States and the State of Alaska have entered into a Memorandum of Agreement (MOA) implementing certain terms of the settlement agreement. Comment is sought concerning the MOA, which is published together with this Notice. Comments must be received no later than [April 18, 1991.]

ADDRESSES: Written comments concerning the proposed Settlement Agreement are to be submitted to Thomas A. Campbell, General Counsel of NOAA, U.S. Department of Commerce, room 5816, 14th Street and Constitution Avenue, NW., Washington, DC 20230, who is receiving comments on behalf of the Administrator of NOAA, the Secretary of Agriculture, the Secretary of the Interior, the Secretary of Transportation, the Administrator of the Environmental Protection Agency and the United States Attorney General. A copy of the comments must also be sent to Barbara Herman, Attorney General's Office, State of Alaska, 1031 West 4th Avenue, suite 200, Anchorage, Alaska 99501, who is receiving the comments on behalf of the State of Alaska.

FOR FURTHER INFORMATION CONTACT: Daniel Addison, Office of General Counsel, NOAA, Department of Commerce, Washington, DC 20230, telephone (202) 377-1400.

SUPPLEMENTARY INFORMATION: The March 23-24, 1989, grounding of the tanker *Exxon Valdez* resulted in the discharge of approximately 11 million gallons of North Slope crude oil into Alaska's Prince William Sound. The *Exxon Valdez* Oil Spill affected the environment and natural resources in the Sound and along the coasts of Kodiak, Kenai Peninsula and the Alaska Peninsula.

As indicated in a separate FR notice, representatives of the State of Alaska, United States and Exxon Corporation have entered into a settlement agreement resolving all civil claims between the parties. The settlement provided for Exxon to provide funds to be used to conduct response actions, scientific studies and implement restoration activities for the restoration of the environment. This proposed MOA resolves claims of the State of Alaska and the United States concerning natural resource recoveries regarding the oil spill and outlines how certain terms of the Settlement Agreement will be implemented by the State of Alaska and the United States. This MOA also provides that the public will be given meaningful opportunities to participate in the restoration process. Public comment is invited regarding the nature and extent of appropriate public involvement in the restoration process.

In summary, the MOA establishes that all monies received through the proposed Settlement Agreement and Consent Decree will be managed jointly by Federal and State natural resource trustees except for certain allowed expenses identified in the MOA. The Federal and State natural resource trustees shall act as cotrustees of the affected environment. As such, all decisions concerning the use of damage recoveries will be made by unanimous agreement of the State and Federal natural resource trustees.

The MOA is not intended to affect or impair the rights and obligations of persons or entities not parties to the MOA.

Dated: March 14, 1991.

Grayson R. Cecil

Proposed MOA Between State of Alaska and the United States

Richard B. Stewart, Assistant Attorney General, Environment & Natural Resources, Division.

Stuart M. Gerson, Assistant Attorney General, Civil Division, U.S. Department of Justice, Washington, DC 20530.

Attorneys for Plaintiff United States of America

Charles E. Cole, Attorney General, State of Alaska, Pouch K, State Capitol, Juneau, Alaska 99811.

Attorney for Plaintiff State of Alaska

United States District Court District of Alaska

United States of America, Plaintiff v. *State of Alaska,* Defendant.

Civil Action No.

The State of Alaska, Plaintiff v. *United States of America,* Defendant,

Civil Action No.

Memorandum of Agreement and Consent Decree

This Memorandum of Agreement and Consent Decree (the MOA) is made and entered into by the United States of America (United States) and the State of

Alaska (State) (collectively referred to as the Governments).

Introduction

Whereas, Section 311 of the Clean Water Act, 33 U.S.C. 1321, establishes liability to the United States and to States for injury, loss or destruction to natural resources resulting from the discharge of oil or the release of hazardous substances or both;

Whereas, The United States and the State are trustees and/or co-trustees for natural resources injured, lost or destroyed as a result of the Exxon Valdez Oil Spill;

Whereas, Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9607, the National Contingency Plan, 40 CFR 300.615(a), and the Natural Resource Damage Assessment Regulations, 43 CFR 11.32(a)(1)(ii), provide a framework for and encourage the state and federal trustees to cooperate with each other in carrying out their responsibilities for natural resources;

Whereas, The Secretaries of the United States Departments of the Interior and Agriculture and the Administrator of the National Oceanic and Atmospheric Administration (NOAA), a bureau of the United States Department of Commerce, have been designated trustees for purposes of the Clean Water Act, 33 U.S.C. 1321, and CERCLA, 42 U.S.C. 9607, and otherwise have statutory responsibilities related to the natural resources injured, lost or destroyed as a result of the Oil Spill, and the United States Environmental Protection Agency (EPA) has been designated by the President of the United States to coordinate restoration activities on behalf of the United States;

Whereas, The Commissioners of the State Departments of Fish and Game and Environmental Conservation and the Attorney General of the State of Alaska have been designated trustees for purposes of the Clean Water Act, 33 U.S.C. 1321, and CERCLA, 42 U.S.C. 9607, and otherwise have statutory responsibilities relating to the natural resources injured, lost or destroyed as a result of the Oil Spill;

Whereas, The United States Coast Guard, an agency of the United States Department of Transportation, is the predesignated Federal On-Scene Coordinator (FOSC) to direct response efforts and to coordinate all other efforts at the scene of the Oil Spill, pursuant to the Clean Water Act, 33 U.S.C. 1321, and the National Contingency Plan, 40 CFR 300, and is coordinating its efforts with the Federal Trustees in accordance with the National Contingency Plan;

Whereas, The State Department of Environmental Conservation is the State On-Scene Coordinator (SOSC) to direct containment and cleanup of discharged oil pursuant to AS 46.04.020;

Whereas, The United States Department of Justice (Justice) and the Department of Law for the State of Alaska (Law) have constitutional and statutory responsibilities for litigation management and specifically for prosecuting claims for damages for injury, loss or destruction to the natural resources affected by the Oil Spill;

Whereas, All of the above state and federal entities have determined that it is in furtherance of their statutory and trust responsibilities to assure that all injuries, loss or destruction to state and federal natural resources are fully compensated and to assure that such compensation is used in accordance with law;

Whereas, The United States and the State have entered into an Agreement and Consent Decree ("Agreement and Consent Decree") with Exxon Corporation, Exxon Shipping Company, and Exxon Pipeline Company (collectively referred to as Exxon) which provides for the recovery of compensation for damages resulting from the Oil Spill, including natural resource damages;

Whereas, The United States and the State have claims against one another with respect to their respective shares in recoveries from Exxon for compensation for damages resulting from the Oil Spill, including natural resource damages, and have determined that entering into this MOA is the most effective means of resolving those claims and will best allow them to fulfill their duties as Trustees;

Whereas, On or before the lodging of this MOA with the Court, the United States and the State will each have filed a complaint in this Court against the other Government asserting civil claims relating to their respective shares in recoveries from Exxon for compensation for damages arising from the Oil Spill (Governments' Complaints);

Whereas, All of these state and federal entities have determined that the procedures set forth in this Memorandum of Agreement (MOA) will best enable them to fulfill their duties as trustees to assess injuries and to restore, replace, rehabilitate, enhance or otherwise acquire the equivalent of the natural resources injured, lost or destroyed as a result of the Oil Spill;

Now Therefore, In consideration of their mutual promises, the United States, acting through the United States Departments of the Interior, Agriculture, Transportation, and Justice, NOAA, and EPA, and the State of Alaska, acting through the State Departments of Fish and Game, Environmental Conservation, and Law (together "the Governments") have agreed to the following terms and conditions, which shall be binding on both Governments, it is hereby *Ordered, Adjudged, and Decreed* as follows:

I.—Jurisdiction

The Court has jurisdiction over the subject matter of the claims set forth in the Governments' Complaints and over the parties of this MOA pursuant to, among other authorities, 28 U.S.C. 1331, 1333 and 1345, and section 311(f) of the Clean Water Act, 33 U.S.C. 1321(f).

II.—Definitions

For purposes of this MOA,

A. *Allowed Expenses* means reasonable, unreimbursed costs obligated on or before the effective date of the Agreement and Consent Decree for the planning, conduct, evaluation and coordination of natural resource damage assessment and restoration pursued by the Governments with respect to the Oil Spill or by the State for experts and counsel in connection with the preparation of the Oil Spill Litigation and the unreimbursed response and cleanup costs incurred by the Governments on or before December 31, 1990.

B. *CERCLA* means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601 *et seq.* as amended.

C. *Clean Water Act* means Federal Water Pollution Control Act, 33 U.S.C. 1251–1376, as amended.

D. *Joint use* means use of natural resource damage recoveries by the Governments in such a manner as is agreed upon by the Governments in accordance with Article V of this MOA.

E. *National Contingency Plan* means the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR part 300.

F. *Natural resources* means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson Fishery Conservation and Management Act of 1976) and/or the State.

G. *Natural resource damage recovery* means those monies paid to the Governments by Exxon which are received in settlement of natural resource damage claims arising from the Oil Spill and consists of the settlement

monies not reimbursed to the Governments either as (1) allowed expenses or (2) in the case of response and cleanup costs, those unreimbursed costs incurred by either Government after December 31, 1990 and certified by the FOSC with respect to the FOSC directed costs and by the SOSC with respect to SOSC directed costs. The term includes all interest accrued on any such recoveries.

H. *Oil Spill* means the grounding of the T/V Exxon Valdez on Bligh Reef in Prince William Sound, Alaska on the night of March 23–24, 1989 and the resulting oil spill.

I. *Oil Spill Litigation* means any past, present or future civil judicial or administrative proceeding by the Governments against Exxon or by Exxon against the Governments relating to or arising out of the Oil Spill.

J. *Restore* or *Restoration* means any action, in addition to response and cleanup activities required or authorized by state or federal law, which endeavors to restore to their pre-spill condition any natural resource injured, lost, or destroyed as a result of the Oil Spill and the services provided by that resource or which replaces or substitutes for the injured, lost or destroyed resource and affected services. Restoration includes, injury assessment, restoration, replacement and enhancement of resources and acquisition of equivalent resources and services.

K. *Settlement monies* means all monies received from Exxon under the Agreement and Consent Decree between the Governments and Exxon in settlement of the Oil Spill Litigation, exclusive of amounts credited to Exxon for cleanup costs incurred after December 31, 1990.

L. *Trustees* means the officials now or hereafter designated by the President of the United States and the Governor of the State of Alaska to act as trustees, for purposes of CERCLA and the Clean Water Act, of natural resources injured, lost or destroyed as a result of the Oil Spill.

III.—Co-Trusteeship

A. The Governments shall act as co-trustees in the collection and joint use of all natural resource damage recoveries from Exxon for the benefit of natural resources injured, lost or destroyed as a result of the Oil Spill.

B. Nothing in this MOA shall be deemed an admission of law or fact by either Government concerning ownership, right, title, or interest in or management or control authority over natural resources or the right to recover for injury to such resources. Except in matters concerning or relating to enforcement of this MOA and the settlement of the Oil Spill Litigation, the Goverments agree that this MOA may not be used by one Government against the other for any reason.

C. Nothing in this MOA shall be construed to affect or impair in any manner the rights and obligations, if any, of any entities or persons not parties to this MOA, including without limitation:

1. The rights and obligations, if any, of Alaska Native villages to act as trustees for the purposes of asserting and compromising claims for injury to, destruction of, or loss of natural resources affected by the Oil Spill and expending any proceeds derived therefrom;

2. The rights and obligations, if any, of legal entities or persons other than the United States and the State who are holders of any present right, title, or interest in land or other property interest affected by the Oil Spill;

3. The rights and obligations, if any, of the United States or the State or both relating to such Alaska Native villages and the entities or persons referred to in subparagraph 2 above.

IV.—Organization

A. General Provisions

1. All decisions relating to injury assessment, restoration activities, or other use of the natural resource damage recoveries obtained by the Governments, including all decisions regarding the planning, evaluation, and allocation of available funds, the planning, evaluation, and conduct of injury assessments, the planning, evaluation and conduct of restoration activities, and the coordination thereof, shall be made by the unanimous agreement of the Trustees. Such decisions, on the part of the Federal Trustees, shall be made in consultation with EPA.

2. The Governments shall cooperate in good faith to establish a joint trust fund for purposes of receiving, depositing, holding, disbursing and managing all natural resource damage recoveries obtained or received by the Governments in connection with settlement of the Oil Spill Litigation in accordance with paragraph V.A. The joint trust fund shall be established in the Registry of the United States District Court for the District of Alaska or as otherwise determined by stipulation of the Governments and order of the court.

3. If the Trustees cannot reach unanimous agreement on a decision pursuant to paragraph A.1. of this Article, and either Government so certifies, either Government may resort to litigation in the United States District Court for the District of Alaska with respect to any such matter or dispute. At any time, the Governments may, by mutual agreement, submit any such matter or dispute to non-binding mediation or other means of conflict resolution.

4. The Trustees shall establish procedures providing for meaningful public participation in the injury assessment and restoration process, which may include establishment of a public advisory group to advise the Trustees with respect to the matters described in paragraph IV.A.1.

5. The Trustees shall agree to an organizational structure for decisionmaking under this MOA within 90 days from the date the Agreement and Consent Decree has been approved and entered as a judgment of the Court.

B. Injury Assessment and Restoration Process

1. Nothing in this MOA limits or affects the right of each Government unilaterally to perform any natural resource injury assessment or restoration activity, in addition to the cooperative injury assessment and restoration process contemplated in this MOA, from funds other than natural resource damage recoveries as defined in paragraph G of Article II.

2. Nothing in this MOA constitutes an election on the part of either Government to adhere to or be bound by the Natural Resource Damage Assessment Regulations codified at 43 CFR Part 11.

3. Nothing in this MOA shall prevent the President of the United States or the Governor of the State of Alaska from designating, pursuant to applicable law, an official or officials to exercise any or all rights or obligations of their respective Governments under this MOA. Neither Government shall object to any designation of such officials, or to any transfer of Trustee status from one official to another, by the other Government; provided that, in no event shall either Government designate more than three Trustees for the purposes of carrying out the provisions of this MOA. The designation of such officials or of successor Trustees by either Government shall not affect the enforceability of this MOA.

C. Role of the Environmental Protection Agency

The Governments acknowledge that the President has assigned to EPA the role of advising the Federal Trustees and coordinating, on behalf of the

Federal Government, the long-term restoration of natural resources injured, lost or destroyed as a result of the Oil Spill.

V.—Distribution of Settlement Monies

A. Joint Use of Natural Resource Damage Recoveries

The Governments shall jointly use all natural resource damage recoveries for purposes of restoring, replacing, enhancing, rehabilitating or otherwise acquiring the equivalent of natural resources injured as a result of the Oil Spill and the reduced or lost services provided by such resources. The Governments shall establish standards and procedures governing the joint use and administration of all such natural resource damage recoveries. All natural resource damage recoveries shall be placed in the joint trust fund for use in accordance with the terms and conditions of this MOA.

B. Reimbursement of Allowed Expenses and Response Costs

Up to 72 million dollars for the State and up to 62 million dollars for the United States shall be available from the settlement monies, at the election of each Government, for reimbursement of allowed expenses. In addition, all of the Governments' unreimbursed response and cleanup costs incurred after December 31, 1990 and certified by either the FOSC or SOSC shall be reimbursed out of the settlement monies. Reimbursements of allowed expenses described in this paragraph shall be paid directly to the Governments by Exxon over a period of 5 years.

C. Except as otherwise provided in this MOA, the Governments agree that all natural resource damage recoveries will be expended on restoration of natural resources in Alaska unless the Trustees determine, in accordance with Article IV, paragraph A.1. hereof, that spending funds outside of the State of Alaska is necessary for the effective restoration, replacement or acquisition of equivalent natural resources injured in Alaska and services provided by such resources.

D. Nothing in this MOA shall be construed as obligating the Governments to expend any monies except to the extent funds are appropriated or are otherwise lawfully available.

VI.—Science Studies

The Governments shall continue to work cooperatively to conduct all appropriate scientific studies relating to the Oil Spill, including specifically the scientific studies approved by the Trustees for the 1991 field season.

VII.—Convenants Not To Sue

A. Each Government covenants not to sue or to take other legal action against the other Government with respect to the following matters:

1. The authority of either Government to enter into and comply with the terms of this MOA.

2. The respective rights of either Government to engage in cleanup, damage assessment or restoration activities with respect to the Oil Spill in accordance with this MOA.

3. Any and all civil claims (including, but not limited to, cross-claims, counter-claims, and third party-claims) it may have against the other Government arising from any activities, actions, or omissions by that other Government relating to or in response to the Oil Spill which occurred prior to the execution of this MOA, other than claims to enforce this MOA.

B. Solely for purposes of the Oil Spill Litigation and any other proceedings relating to the determination, recovery, or use of natural resource damages resulting from the Oil Spill, each Government shall be entitled to assert in any such proceeding, without contradiction by the other Government, that it is a co-Trustee with the other Government over any or all of the natural resources injured, lost or destroyed as a result of the Oil Spill, and each Government covenants not to sue the other with respect to, or to take any other legal action to determine, the scope or proportionate share of either Government's ownership, rights, title or interest in or management, control, or trusteeship authority over any of the natural resources injured, lost or destroyed as a result of the Oil Spill.

C. Notwithstanding anything in this Article, each Government reserves the right to intervene or otherwise to participate in any legal proceeding concerning the claims of a third party with respect to the scope of either Government's Trusteeship and waives any objection to such intervention or participation by the other Government.

D. If the Governments become adverse to each other in the course of the Oil Spill Litigation, this MOA shall remain in effect.

E. Notwithstanding the covenants contained in paragraph VII.A. and notwithstanding any provisions of the Agreement and Consent Decree between the Governments and Exxon, if both Governments are sued by a Third Party on a claim relating to or arising out of the Oil Spill, the Governments agree to cooperate fully in the defense of such action, and to not assert cross-claims against each other or take positions adverse to each other. Each shall pay its percentage of liability, if any, as determined in a final judgment.

F. Notwithstanding the covenants contained in paragraph VII.A. and notwithstanding any provisions of the Agreement and Consent Decree between the Governments and Exxon, if one of the Governments is sued by a Third Party on a claim relating to or arising out of the Oil Spill, the Governments agree the non-sued Government shall cooperate fully in the defense of the sued Government, including intervening as a party defendant or consenting to its being impleaded, if necessary. If the non-sued Government thereby becomes a party to the action, the Governments agree not to assert cross-claims against each other, to cooperate fully in the defense of such action, and not to take positions adverse to each other. Each shall pay its percentage of liability, if any, as determined in a final judgment.

VIII.—Enforcement of Agreement and Governing Law and Venue

A. This MOA shall be enforceable by the United States District Court for the District of Alaska, which Court shall retain jurisdiction of this matter for the purpose of entering such further orders, directions, or relief as may be appropriate for the construction, implementation, or enforcement of this MOA.

B. If this MOA is subsequently and finally determined to be invalid, this MOA shall terminate and the disposition to the Governments of any remaining natural resource damage recoveries shall be determined by further agreement of the Governments or by an allocation of such recoveries by the United States District Court for the District of Alaska, subject to appellate review in accordance with applicable law.

IX.—Multiple Copies and Effective Date

This MOA may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. Except for the provisions contained in Article VI, which shall be effective as of the date this MOA is signed by all the signatories hereto, this MOA shall be effective as of the date the Agreement and Consent Decree has been approved and entered as a judgment of the Court.

X.—Integration and Merger

A. This MOA and the Agreement and Consent Decree between the

Governments and Exxon constitute the entire agreement between the United States and the State as to the matters addressed herein, and there exists no other agreement of any kind which is inconsistent with this MOA with respect to the subjects addressed in this MOA; provided, that the agreement reached among the Trustees as to disbursements of the original $15 million paid by Exxon in April, 1989 shall remain in full force and effect.

XI.—Termination

The obligations of the parties under this MOA shall terminate sixteen years from the effective date of this MOA, or upon termination of the Agreement and Consent Decree, unless otherwise agreed by the Parties.

XII.—Judicial Review

This MOA creates no rights of action on the part of any persons not signatory to this MOA and shall not, except as provided in Article VII, be subject to judicial review.

This MOA is executed at the time and on the dates set forth below.

XIII.—Miscellaneous

A. This MOA can be modified only with the express written consent of the Parties to the MOA and the approval of the Court.

B. Each undersigned representative of the Parties to this MOA certifies that he or she is fully authorized to enter into the terms and conditions of this MOA and to execute and legally bind such Party to this MOA.

The Foregoing Memorandum of Agreement and Consent Decree among the United States of America and the State of Alaska is hereby Approved and Entered this ____ day of _____, 1991.

Honorable H. Russel Holland,

United States District Judge, District of Alaska.

[Memorandum of Agreement and Consent Decree in *United States* v. *State of Alaska.* (D. Alaska)]

For the United States of America

Date: _____

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530.

Stuart M. Gerson,

Assistant Attorney General, Civil Division, U.S. Department of Justice. Washington, DC 20530.

Thomas L. Sansonetti,

Solicitor, U.S. Department of the Interior.

Alan Charles Raul,

General Counsel, U.S. Department of Agriculture.

Samuel K. Skinner,

Secretary, U.S. Department of Transportation.

John A. Knauss,

Under secretary for Oceans and Administrator, National Oceanic and Atmospheric Administration, United States Department of Commerce.

William K. Reilly,

Administrator, U.S. Environmental Protection Agency.

Date: _____

For the State of Alaska

Walter J. Hickel,

Governor, State of Alaska.

Charles E. Cole,

Attorney General, State of Alaska, Pouch K, Juneau, Alaska 99811.

Carl Rosier,

Commissioner, Department of Fish and Game.

John A. Sandor,

Commissioner, Department of Environmental Conservation.

[FR Doc. 91-6815 Filed 3-15-91; 1:17 pm]

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Federal Register

Tuesday
March 19, 1991

Part IV

The President

Proclamation 6260—National Employ the Older Worker Week, 1991

Presidential Documents

Federal Register
Vol. 56, No. 53
Tuesday, March 19, 1991

Presidential Documents

Title 3—

The President

Proclamation 6260 of March 15, 1991

National Employ the Older Worker Week, 1991

By the President of the United States of America

A Proclamation

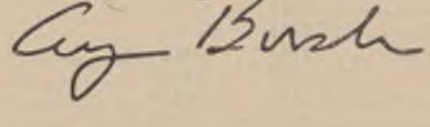
Millions of older Americans are both willing and able to put their knowledge and experience to work for our country. Providing greater opportunities for them to do so is not only a wonderful way to demonstrate appreciation for these valued members of our society, it is also a sound investment in America's future. By helping senior citizens to remain in the work force or to pursue second careers after retirement, we can enhance America's competitive edge in the global economy. By encouraging older Americans to share their wisdom and skills as volunteers, we can strengthen and enrich our communities.

Numerous employers already recognize the potential contributions of older men and women, and, today, programs for their hiring, retraining, and job retention are well established across the country. Through a variety of programs—including programs launched as a result of the Older Americans Act of 1965—the Federal Government, State and local agencies, and members of the private sector are promoting meaningful opportunities for older workers. These various public and private efforts not only enable senior citizens to remain active, independent, and productive members of society but also allow our country to benefit from their insight and resourcefulness. Recognizing all of these benefits, I have proposed a liberalization of the Social Security earnings test in the Fiscal Year 1992 budget. If enacted, this proposal would allow older workers to continue to earn more income after age 65 before having their Social Security benefits reduced.

To focus public attention on the accomplishments and the potential of older workers, the Congress, by House Joint Resolution 133, has designated the week of March 10 through March 16, 1991, as "National Employ the Older Worker Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby designate the week of March 10 through March 16, 1991, as National Employ the Older Worker Week. I urge the Nation's public officials, leaders in business and labor, and voluntary organizations to provide meaningful opportunities for older workers. I also encourage all Americans to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of March, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.



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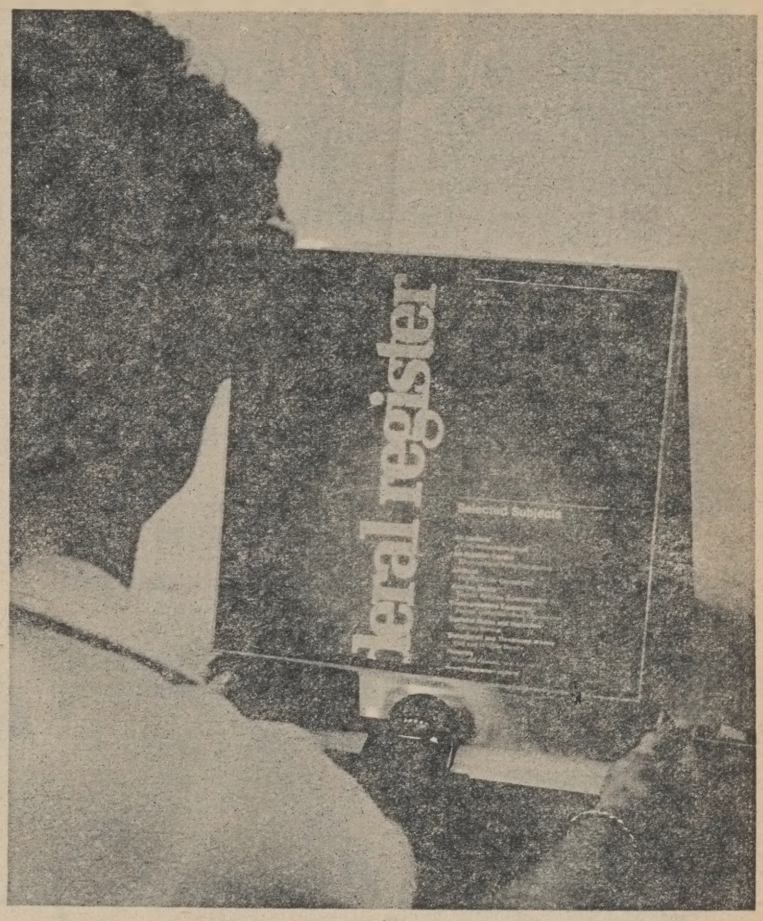

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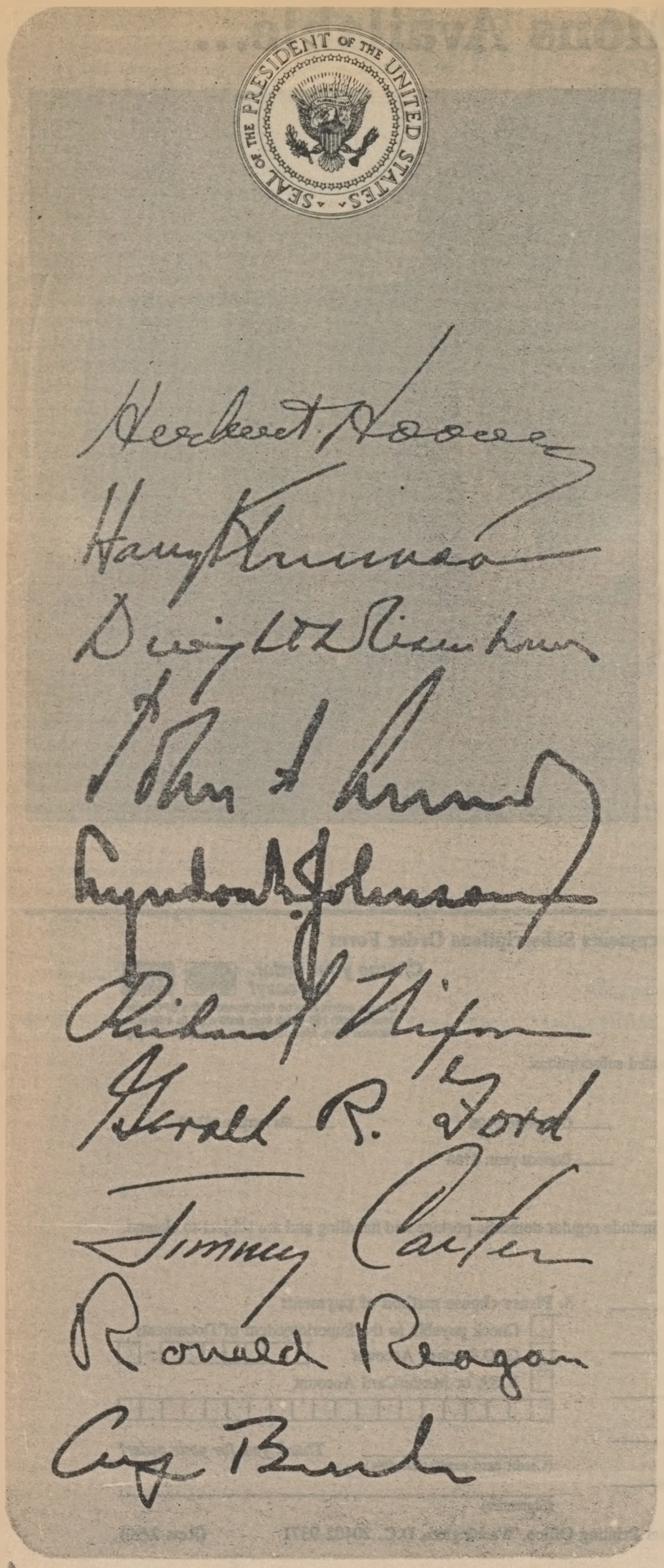

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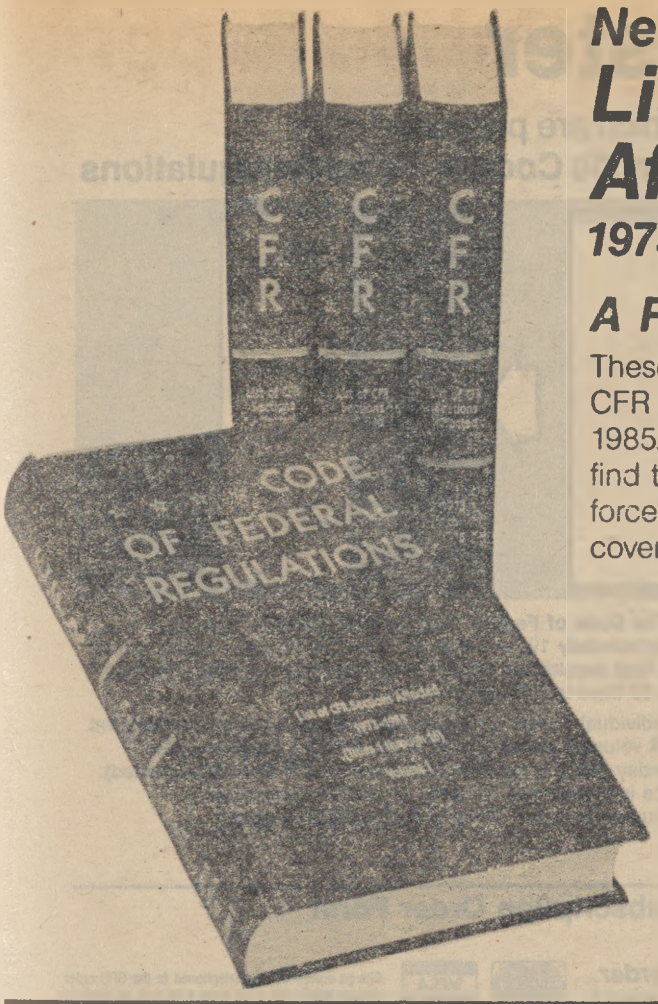

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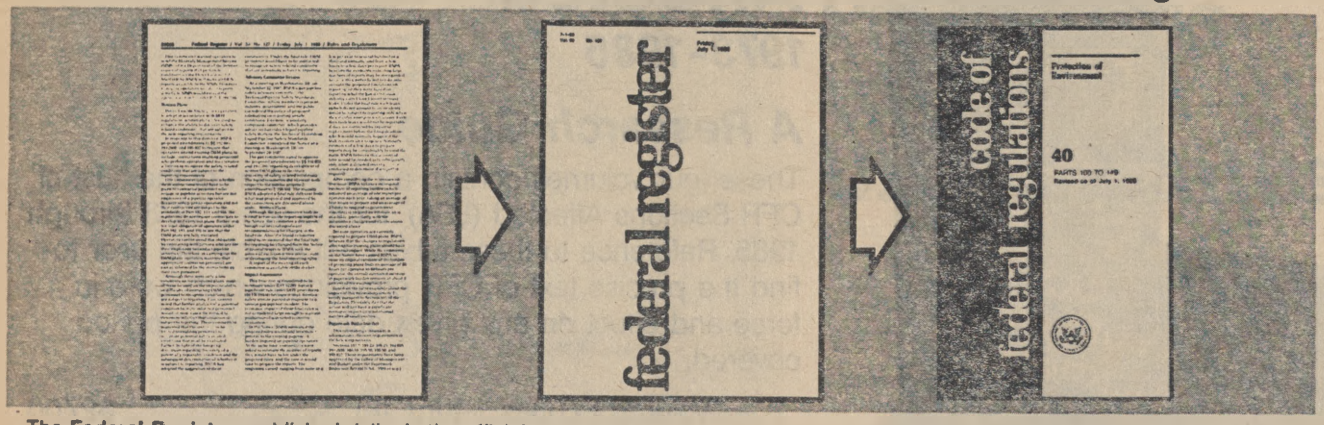

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