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Tuesday
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Briefing on How To Use the Federal Register
For information on the briefing in St. Louis, MO, see announcement on the inside cover of this issue.

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

ST. LOUIS, MO

WHEN: April 23; at 9:00 a.m.
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Presidential Documents

Title 3—

The President

Executive Order 12797 of April 3, 1992

Review of Increases in Rates of Basic Pay for Certain Employees of the Department of Veterans Affairs and Other Agencies

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 7455(d)(2)–(3) of title 38, United States Code, in order to establish procedures for review of proposed increases in the rates of basic pay of certain employees of the Department of Veterans Affairs and of other agencies, it is hereby ordered as follows:

Section 1. The Director of the Office of Personnel Management is designated to exercise the authority vested in the President by section 7455(d)(2)–(3) of title 38, United States Code, to review and approve or disapprove the increases in rates of basic pay proposed by the Secretary of Veterans Affairs and to provide the appropriate committees of the Congress with a written statement of the reasons for any such disapproval.

Sec. 2. In exercising this authority, the Director of the Office of Personnel Management shall assure that any increases in basic pay proposed by the Secretary of Veterans Affairs are in the best interest of the Federal Government, do not exceed the amounts authorized by section 7455, and are made only to:

(1) Provide pay in an amount competitive with, but not exceeding, the amount of the same type of pay paid to the same category of health-care personnel at non-Federal health-care facilities in the same labor market;

(2) Achieve adequate staffing at particular facilities; or

(3) Recruit personnel with specialized skills, especially those with skills which are especially difficult or demanding.

Sec. 3. The Secretary of Veterans Affairs shall provide to the Director of the Office of Personnel Management such information as the Director may request in order to carry out the responsibilities delegated by this order.

Sec. 4. The Director of the Office of Personnel Management shall provide the Secretary of Veterans Affairs with a copy of any written statement provided to the appropriate committees of the Congress that sets forth the reasons for disapproval of any proposed increase in rates of basic pay under this order.

Sec. 5. In the case of any other law authorizing another agency to use the authority provided by section 7455 of title 38, United States Code, the Director of the Office of Personnel Management shall exercise the same authority in the same manner as provided for with respect to section 7455 under sections 1 through 4 of this order, and the head of such other agency shall provide information requested by the Director as provided for in section 3 of this order.

Sec. 6. Executive Order No. 12438 of August 23, 1983, is revoked.

Sec. 7. This order shall be effective upon publication in the **Federal Register.**

THE WHITE HOUSE,
April 3, 1992.

[FR Doc. 92–8133
Filed 4–3–92; 3:54 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2641

RIN 3209-AA14

Post-Employment Conflict of Interest; Designation of Additional Agency Component for the Executive Branch

AGENCY: Office of Government Ethics.

ACTION: Final rule.

SUMMARY: The Office of Government Ethics is issuing this rule to designate the U.S. Savings Bonds Division as an additional separate component within the Department of the Treasury, as authorized by 18 U.S.C. 207(h). This designation will have the effect of limiting the scope of the one-year post-employment restriction set forth in 18 U.S.C. 207(c) in the case of certain former senior employees of that Department.

EFFECTIVE DATE: April 7, 1992.

FOR FURTHER INFORMATION CONTACT: Julia S. Loring, Office of Government Ethics, telephone (202/FTS) 523-5757, FAX (202/FTS) 523-6325.

SUPPLEMENTARY INFORMATION:

A. Substantive Discussion

The Director of OGE is authorized by 18 U.S.C. 207(h) to designate separate departmental and agency components in the executive branch for purposes of 18 U.S.C. 207(c), the one-year post-employment restriction applicable to "senior" employees. The representational bar of 18 U.S.C. 207(c) usually extends to any department or agency in which a former senior employee served in any capacity during the year prior to termination from senior service. However, eligible senior employees may be permitted to communicate to or appear before components of their former department or agency if those components have been designated as separate agencies or bureaus by OGE.

By letter dated January 3, 1992 and pursuant to procedures prescribed in 5 CFR 2641.201(e), the Designated Agency Ethics Official at the Department of the Treasury requested designation of the United States Savings Bonds Division as an additional distinct and separate component of that Department. After carefully reviewing Treasury's request in light of the criteria set forth in 5 CFR 2641.201(e)(6), the Director of OGE has determined to designate that Division as a distinct and separate Treasury component. As indicated in 5 CFR 2641.201(e)(4), a designation "shall be effective as of the effective date of the rule that creates the designation, but shall not be effective as to employees who terminated senior service prior to that date." The effective date of the designation of the United States Savings Bonds Division as a distinct and separate component is indicated in Appendix B of this part.

B. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553, the Director of the Office of Government Ethics finds that good cause exists for waiving the general notice of proposed rulemaking and 30-day delayed effective date. It is important that the designation by OGE of separate agency components be published in the **Federal Register** as promptly as possible. Furthermore, since this rule is interpretive in nature, it is exempt from the notice and delayed effectiveness requirements of 5 U.S.C. 553.

EO 12291, Federal Regulation

As Director of the Office of Government Ethics, I have determined that this is not a major rule as defined under section 1(b) of Executive Order 12291.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects current and former Federal employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this rule does not contain an information collection requirement that requires the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2641

Conflict of interests, Government employees.

Approved: March 10, 1992.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending part 2641 of subchapter B of chapter XVI of title 5 of the Code of Federal Regulations as follows:

PART 2641—[AMENDED]

1. The authority citation for part 2641 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978, secs. 402 and 404); 18 U.S.C. 207; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

2. In Appendix B is amended to revise the listing for the Department of the Treasury as follows:

Appendix B to 5 CFR Part 2641—Agency Components for Purposes of 18 U.S.C. 207(c)

* * * * *

Parent: Department of the Treasury

Components:
Bureau of Alcohol, Tobacco and Firearms
Bureau of Engraving and Printing
Bureau of the Mint
Bureau of the Public Debt
Comptroller of the Currency
Federal Law Enforcement Training Center
Financial Management Center
Internal Revenue Service
Office of Thrift Supervision
United States Customs Service
United States Savings Bonds Division (effective April 7, 1992)
United States Secret Service

* * * * *

[FR Doc. 92-7943 Filed 4-6-92; 8:45 am]
BILLING CODE 6345-01-M

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Part 305

[Docket No. 920358-2058]

Public Works and Development Facilities Program—Specific Types of Projects—Skill Training Center Facilities

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: The purpose of this amendment to EDA's rule at 13 CFR 305.45 is to clarify EDA's policies on skill training programs and sheltered workshops. Projects involving bona fide training are to be encouraged when they provide education for workers who can then move into the private sector. Projects involving sheltered workshops should also be encouraged, because they provide jobs, often to long-term unemployed, which are comparable to those in the private sector.

DATES: *Effective Date:* April 7, 1992. Submit comments by June 8, 1992.

ADDRESSES: Send comments to Joseph M. Levine, Chief Counsel, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., room 7001, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Joseph M. Levine, (202) 377–4687.

SUPPLEMENTARY INFORMATION: EDA is amending 13 CFR 305.45 to delete paragraphs (a)(9) and (b)(6) so that sheltered workshops are not treated as skill training center facilities. Language at 13 CFR 305.45 paragraphs (a)(4) and (c)(4) and (c)(8) referring to "CETA", the Comprehensive Employment and Training Act, has been deleted, since CETA has been repealed. Reference has instead been made to other Federal vocational education programs. Paragraph (b)(1) of § 305.45 is amended to delete "Comprehensive Economic Development Strategies (CEDS)," since this program is no longer in existence.

Under Executive Order 12291, the Department must judge whether a regulation is "major" within the meaning of section 1 of the order and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. This regulation is not major because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or 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.

Accordingly, neither a preliminary nor final Regulatory Impact Analysis has been or will be prepared.

This rule is exempt from all requirements of 5 U.S.C. 553 including notice and opportunity to comment and delayed effective date, because it relates to public property, loans, grants, benefits and contracts.

No other law requires that notice and opportunity for comment be given for this rule.

However, because the Department is interested in receiving comments from those who will benefit from the amendment, this rule is being issued as interim final. Public comments on the interim rule are invited and should be sent to the address listed in the "**ADDRESSES**" section above.

Comments received by June 8, 1992 will be considered in promulgating a final rule.

Since a notice and an opportunity for comment are not required to be given for the rule under section 553 of the APA (5 U.S.C. 553) or any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a), 604(a)), no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act (Pub. L. 96–511).

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

List of Subjects in 13 CFR Part 305

Community development, community facilities, Grant programs, Indians, Loan programs.

PART 305—PUBLIC WORKS AND DEVELOPMENT FACILITIES PROGRAM

1. **Authority:** Sec. 701, Pub. L. 89–136; 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10–4, as amended (40 FR 56702, as amended).

2. Section 305.45 is amended by revising paragraphs (a), (b), (c)(4), and (c)(8) to read as follows:

§ 305.45 Skill training center facilities.

(a) General policies. EDA may consider projects to provide for the construction or renovation of skill training centers only if:

(1) The skill center will improve the linkages between economic development activities and employment and training opportunities for the unemployed and underemployed.

(2) The skill center is an integral part of the local economic development strategy.

(3) The skill center program is designed in such a way that a major part of the program is focused on training unemployed and underemployed adults and out-of-school youths (the "target population").

(4) The skill center provides a direct linkage with other Federal, state or local vocational education programs, and there is assurance of long-term operational support for the center from any of these programs.

(5) The skill center proposal will provide funds for developing skill center facilities by rehabilitating existing structures. Proposals for constructing new buildings will be considered only where there are no appropriate existing buildings or where it is more cost-effective than rehabilitating existing structures.

(6) The proposal does not involve secondary or post-secondary vocational schools or junior or community colleges, unless such institutions are the only ones available to provide training for the target population and the proposal otherwise meets the requirements of this section.

(7) The skill center facilities will be used for direct training purposes, including supporting offices. Unrelated facilities such as recreation buildings and office space for non-related purposes will not be funded as part of EDA's support for skill training centers.

(8) The skill center proposal is cost-effective, as determined by amount of EDA funds requested per annual training slots created.

(b) Additional project requirements. In addition to the general requirements set forth in paragraph (a) of this section, a skill center project (or the component thereof funded by EDA) must:

(1) Be a top priority of the area's Overall Economic Development Plan (OEDP).

(2) Provide more than 50 percent of its hours of training to the EDA skill training target population (i.e., unemployed and underemployed adults and out-of-school youths).

(3) Provide training in needed skills that have been determined to be in short supply in the center's labor market area.

(4) Be included in the State vocational education plan, and, in the case of public institutions, be approved by the State Advisory Council or director for vocational education.

(5) Be located in an area which is easily accessible to the target population.

(c) * * *

(4) Provide signed statements of intent for long-term support for the operation and administration of the Center from the existing Federal, State or local vocational education programs.

* * * * *

(8) For a skill center already in existence, describe its past performance record including the number of trainees, the proportion of the trainees which were trainees under other Federal programs, the completion rate and the placement rate.

* * * * *

Dated: March 31, 1992.

L. Joyce Hampers,

Assistant Secretary for Economic Development.

[FR Doc. 92-7902 Filed 4-6-92; 8:45 am]

BILLING CODE 3510-24-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91-ANE-31]

Amendment to Control Zone; Stratford, CT

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule.

SUMMARY: This final rule establishes the Stratford, Connecticut (CT) Control Zone surrounding the Sikorsky Heliport, Stratford, CT. This action is the result of a review of the airspace surrounding the Sikorsky Heliport, and will provide increased separation for those aircraft executing instrument approaches to the Sikorsky Heliport during poor weather conditions. The airspace affected by this action is a circular area within a five statute mile radius of the Sikorsky Heliport, extending upward from the surface to the base of the Continental Control Area. The hours of operation are from 0800 local time to sunset, Monday through Saturday.

EFFECTIVE DATE: May 28, 1992.

FOR FURTHER INFORMATION CONTACT: Charles Taylor, System Management Branch, ANE-530, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803-5299, Telephone: (617) 270-2428.

SUPPLEMENTARY INFORMATION:

History

On August 28, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to designate a Control Zone at Stratford, Connecticut (56 FR 45906). The proposed action would allow positive control of aircraft operations in the vicinity of Sikorsky Heliport as well as during instrument meteorological conditions. After publication of the NPRM, the National Flight Data Center (NFDC) conducted a geographic survey of the area, including Sikorsky Heliport. Based on that survey the FAA has determined that the latitude and longitude references for Sikorsky Airport must be updated. Therefore, to keep the description of the new Sikorsky Control Zone operationally current, the new longitude and latitude references are used in the final rule.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments on the proposal were received. Except for the change to the latitude and longitude references, this amendment is the same as that proposed in the notice. A description of the Control Zone will be published in § 71.171 of FAA Handbook 7400.7, effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes the Stratford, Connecticut (CT) Control Zone surrounding the Sikorsky Heliport, Stratford, CT. This action is the result of a review of the airspace surrounding the Sikorsky Heliport, and will provide increased separation for those aircraft executing instrument approaches to the Sikorsky Heliport during poor weather conditions. The airspace affected by this action is a circular area within a five statute mile radius of the Sikorsky Heliport, extending upward from the surface to the base of the Continental Control Area. The hours of operation are from 0800 local time to sunset, Monday through Saturday.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will not only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963, Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, effective November 1, 1991, is amended as follows:

Section 71.171 Control Zones

* * * * *

ANE CT CZ Stratford, CT

Within a 5-mile radius of the Sikorsky Heliport (lat. 41°14'57"N., long .73°05'50"W.), excluding the portion that coincides with the Bridgeport, CT Control Zone. This control zone is effective from 0800 hours local time to sunset, Monday through Saturday, or during the specific dates and times established in advance by a Notice to Airmen which thereafter will be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Burlington, Massachusetts on March 27, 1992.

Francis J. Johns,

Manager, Air Traffic Division, New England Region.

[FR Doc. 92-7912 Filed 4-6-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 26823; Amdt. No. 1486]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of th SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procidure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the US Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC on March 27, 1992.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 U.T.C. on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

NFDC TRANSMITTAL LETTER

Effective	State	City	Airport	FDC No.	SIAP
02/14/91	MO	St Louis	Weiss	FDC 2/0921	VOR-C AMDT4...
03/10/92	AR	Siloam Springs	Smith Field	FDC 2/1423	VOR-A AMDT 7...
03/16/92	LA	New Orleans	New Orleans Intl/ Moisant Fld.	FDC 2/1549	ILS RWY 1 AMDT 14...
03/16/92	PA	Philadelphia	Philadelphia Intl	FDC 2/1561	ILS RWY 9L ORIG...
03/17/92	DC	Washington	Washington Dulles Intl	FDC 2/1573	ILS RWY 1R AMDT 21...
03/17/92	MO	St Louis	Arrowhead	FDC 2/1592	VOR RWY 2 AMDT 4...
03/17/92	OH	Salem	Salem Airpark Inc	FDC 2/1591	VOR-A ORIG...
03/18/92	DC	Washington	Washington Dulles Intl	FDC 2/1598	ILS RWY 19R AMDT 21...
03/18/92	NY	New York	La Guardia	FDC 2/1600	LDA-A ORIG...
03/19/92	WY	Cheyenne	Cheyenne	FDC 2/1647	VOR OR TACAN-A, AMDT 8. Delete note...
03/19/92	WY	Sheridan	Sheridan County	FDC 2/1644	VOR/DME RWY 31 AMDT 5...
03/20/92	WY	Cheyenne	Cheyenne	FDC 2/1652	NDB RWY 26, AMDT 12. Delete note...
03/20/92	WY	Cheyenne	Cheyenne	FDC 2/1653	ILS RWY 26, AMDT 32. Delete Note...
03/23/92	MO	Sedalia	Sedalia Memorial	FDC 2/1697	NDB RWY 36 AMDT 7...
03/23/92	MO	Sedalia	Sedalia Memorial	FDC 2/1698	NDB RWY 18 AMDT 7...

NFDC Transmittal Letter Attachment

Siloam Springs

Smith Field
Arkansas
VOR-A AMDT 7 . . .
Effective: 03/10/92

FDC 2/1423/SLG/ FI/P Smith Field, Siloam Springs, AR. VOR-A AMDT 7 . . . Change note to read . . . if LCL ALSTG not received, use Fayetteville ALSTG. MSA 25 NM from Razorback/ RZC/VOR-TAC 270-090 3100 ft. This becomes VOR.A AMDT 7A.

Washington

Washington Dulles Intl
D.C.
ILS RWY 1R AMDT 21 . . .
Effective: 03/17/92

FDC 2/1573/IAD/ FI/P Washington Dulles Intl, Washington, D.C. ILS RWY 1R AMDT 21 . . . S-ILS-1R CAT D RVR 1800. This becomes ILS RWY 1R AMDT 21A.

Washington

Washington Dulles Intl
D.C.
ILS RWY 19R AMDT 21 . . .
Effective: 03/18/92

FDC 2/1598/IAD/ FI/P Washington Dulles Intl, Washington, D.C. ILS RWY 19R AMDT 21 . . . S-ILS-19R CAT D RVR 1800. This becomes ILS RWY 19R AMDT 21A.

New Orleans

New Orleans Intl/Moisant Fld
Louisiana
ILS RWY 1 AMDT 14 . . .
Effective: 03/16/92

FDC 2/1549/MSY/ FI/P New Orleans Intl/Moisant Fld, New Orleans, LA. ILS RWY 1 AMDT 14 . . . Change Minima to read . . . S-ILS-1 DH 312/RVR 50, HAT 308 ALL CATS. S-LOC-1 MDA 420/RVR 50, HAT 416 CATS A/B/C; MDA 420/RVR 60, HAT 416 CAT D. Delete . . . Approach Minima when control tower reports tall vessels in approach area. This becomes ILS RWY 1 AMDT 14A.

St Louis

Weiss
Missouri
VOR-C AMDT 4 . . .
Effective: 02/14/91

FDC 2/0921/3WE/ FI/P Weiss, St Louis, MO. VOR-C AMDT 4 . . . Circling HAA all CATS 881. ARPT ELEV 439. This becomes VOR-C AMDT 4A.

St Louis

Arrowhead
Missouri
VOR RWY 2 AMDT 4 . . .
Effective: 03/17/92

FDC 2/1592/02K/ FI/P Arrowhead, St Louis, MO. VOR RWY 2 AMDT 4 . . . MSA STL 2800. This becomes VOR RWY 2 AMDT 4A.

Sedalia

Sedalia Memorial
Missouri
NDB RWY 36 AMDT 7 . . .
Effective: 03/23/92

FDC 2/1697/DMO/ FI/P Sedalia Memorial, Sedalia, MO. NDB RWY 36 AMDT 7 . . . MSA DMO and, feeder RTE Augie to DMO . . . 2900. This becomes NDB RWY 36 AMDT 7A.

Sedalia

Sedalia Memorial
Missouri
NDB RWY 18 AMDT 7 . . .
Effective: 03/23/92

FDC 2/1698/DMO/ FI/P Sedalia Memorial, Sedalia, MO. NDB RWY 18 AMDT 7 . . . MSA DMO and, feeder RTE Augie to DMO . . . 2900. This becomes NDB RWY 18 AMDT 7A.

Salem

Salem Airpark Inc
Ohio
VOR-A ORIG . . .
Effective: 03/17/92

FDC 2/1591/38D/ FI/P Salem Airpark Inc, Salem, OH. VOR-A ORIG . . . Delete note, "procedure not authorized at night except by prior arrangement for runway lights." This is VOR-A ORIG A.

Philadelphia

Philadelphia Intl
Pennsylvania

ILS RWY 9L ORIG . . .
Effective: 03/16/92

FDC 2/1561/PHL/ FI/P Philadelphia Intl, Philadelphia, PA. ILS RWY 9L ORIG . . . CAT D circling "and" landi fix circling CAT D . . . MDA/HAA 600/579. This becomes ILS RWY 9L ORIG A.

New York

La Guardia
New York
LDA–A ORIG . . .
Effective: 03/18/92

FDC 2/1600/LGA/ FI/P La Guardia, New York, LDA–A ORIG . . . Change name BUHLL to CASLE, MIN ALT at CASLE 3000. This becomes LDA–A ORIG A.

Sheridan

Sheridan County
Wyoming
VOR/DME RWY 31 AMDT 5 . . .
Effective: 03/19/92

FDC 2/1644/SHR/ FI/P Sheridan County, Sheridan, WY. VOR/DME RWY 31 AMDT 5 . . . Circling CAT C MDA 4640, HAA 619, VIS 1 3/4, CAT D MDA 4780, HAA 759, VIS 2 1/2. Terminal route SHERZ INT /IAF/ to SHR R–125/ 20 DME change ALT to 7300. Add note, obtain LCL ALSTG on CTAF, when not received, PROC NA. Add ALT MINS note, /not authorized when CTLZ not in effect./ This is VOR/DME RWY 31 AMDT 5A.

Cheyenne

Cheyenne
Wyoming
VOR OR TACAN–A, AMDT 8, Delete note . . .
Effective: 03/19/92

FDC 2/1647/CYS/ FI/P Cheyenne, Cheyenne, WY. VOR OR TACAN–A, AMDT 8. Delete note . . . when CTL TWR CLSD SSALR RWY 26 operates as SSALS. Add ALT MINS ALT MINS NA when TWR CLSD. This becomes VOR or TACAN–A, AMDT 8A.

Cheyenne

Cheyenne
Wyoming
NDB RWY 26, AMDT 12, Delete note . . .
Effective: 03/20/92

FDC 2/1652/CYS/ FI/P Cheyenne, Cheyenne, WY. NDB RWY 26, AMDT 12. Delete Note . . . When CTL TWR closed SSALR RWY 26 operates as SSALS and S–26 CAT C VIS becomes 1¼ mile and CAT D becomes 1½ miles and INOP table does not apply to CAT C. Revise TRML route . . . from R–317 CYS VORTAC CW /IAF/, to . . . R–041 CYS VORTAC (NOPT), ALT 8000; from R–041 CYS VORTAC to COLLA INT ALT 7600. Revise TRML route CYS VORTAC to HORSE LOM to the following . . . from CYS VORTAC, to . . . HORSE LOM, ALT 8000. Revise missed APCH ALT to 8000 ft VS 7600 ft. This becomes NDB RWY 26, AMDT 12A.

Cheyenne

Cheyenne
Wyoming
ILS RWY 26, AMDT 32, Delete note . . .
Effective: 03/20/92

FDC 2/1653/CYS/ FI/P Cheyenne, Cheyenne, WY. ILS RWY 26, AMDT 32. Delete note . . . when CTL TWR closed SSALR becomes SSALS and the following VIS MINS apply . . . S–ILS–26 categories A,B,C,D ¾ miles. S–LOC–26 categories A,B ¾ mile, CAT C 1¼ miles, CAT D 1½ miles. Revise missed APCH ALT to . . . 8000 ft VS 7600 ft. This becomes ILS RWY 26, AMDT 32A.

[FR Doc. 92–7907 Filed 4–6–92; 8:45 am]
BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 26822; Amdt. No. 1485]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The

provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC, on March 27, 1992.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 u.t.c. on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) and 14 CFR 11.49(b)(2).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective June 25, 1992*

Dumas, AR—Billy Free Municipal, VOR/DME RWY 36, Amdt. 2
Dumas, AR—Billy Free Municipal, NDB RWY 36, Orig.
Heber Springs, AR—Heber Springs Muni, NDB–A, Amdt. 4, Cancelled
Heber Springs, AR—Heber Springs Muni, NDB, RWY 5, Orig.
Fresno, CA—Fresno-Chandler Downtown, VOR/DME–C, Amdt. 5
Porterville, CA—Porterville Muni, VOR–A, Orig.
Porterville, CA—Porterville Muni, VOR RWY 30, Amdt. 4, Cancelled
Milledgeville, GA—Baldwin County, NDB RWY 28, Amdt. 6, Cancelled
Milledgeville, GA—Baldwin County, NDB RWY 28, Orig.
Lewiston, ID—Lewiston–Nez Perce County, ILS RWY 26, Amdt. 11
Jefferson City, MO—Jefferson City Meml, LOC BC RWY 12, Amdt. 6
Jefferson City, MO—Jefferson City Meml, NDB RWY 12, Amdt. 1
Jefferson City, MO—Jefferson City Meml, NDB RWY 30, Amdt. 8
Jefferson City, MO—Jefferson City Meml, ILS RWY 30, Amdt. 3
Cambridge, NE—Cambridge Muni, NDB RWY 14, Amdt. 2
Cambridge, NE—Cambridge Muni, NDB RWY 32, Amdt. 2
Sidney, NE—Sidney Muni, VOR RWY 12, Amdt. 6
Sidney, NE—Sidney Muni, VOR RWY 30, Amdt. 6
Sidney, NE—Sidney Muni, VOR/DME or TACAN RWY 30, Amdt. 4
Sidney, NE—Sidney Muni, VOR/DME or TACAN RWY 12, Amdt. 4
Sidney, NE—Sidney Muni, RNAV RWY 30, Amdt. 1, Cancelled
Andover, NJ—Aeroflex–Andover, VOR–A, Amdt. 7
Oklahoma City, OK—Will Rogers World,VOR RWY 17L, Amdt. 1
Oklahoma City, OK—Will Rogers World, LOC BC RWY 35L, Amdt. 10
Oklahoma City, OK—Will Rogers World, NDB RWY 17R, Amdt. 23
Oklahoma City, OK—Will Rogers World, NDB RWY 35R, Amdt. 5
Oklahoma City, OK—Will Rogers World, ILS RWY 17R, Amdt. 9
Oklahoma City, OK—Will Rogers World, ILS RWY 35R, Amdt. 8
Oklahoma City, OK—Will Rogers World, RADAR–1, Amdt. 20
Corvallis, OR—Corvallis Muni, ILS RWY 17, Amdt. 2
Corvallis, OR—Corvallis Muni, NDB RWY 17, Orig.
Pulaski, TN—Abernathy Field, VOR/DME RWY 33, Orig.
Dallas, TX—Addison, VOR–A, Amdt. 3
Dallas, TX—Addison, LOC RWY 33, Amdt. 1
Dallas, TX—Addison, NDB RWY 15, Amdt. 3
Dallas, TX—Addison, ILS RWY 15, Amdt. 7
Dallas, TX—Addison, VOR/DME RNAV RWY 33, Amdt. 2
Mesquite, TX—Phil L Hudson Muni, LOC/DME (BC) RWY 35, Orig., Cancelled
Mesquite, TX—Phil L Hudson Muni, LOC RWY 17, Amdt. 2
Mesquite, TX—Phil L Hudson Muni, LOC BC RWY 35, Orig.
Mesquite, TX—Phil L Hudson Muni NDB RWY 17, Amdt. 3
Norfolk, VA—Norfolk Intl, NDB RWY 5, Orig.
Norfolk, VA—Norfolk Intl, ILS RWY 5, Amdt. 24
Seattle, WA—Boeing Field/King County Intl, ILS RWY 13R, Amdt. 25
Everett, WA—Snohomish County (Paine Fld), VOR–C, Orig.

** * * Effective May 28, 1992*

Frederick, MD—Frederick Muni, VOR–A, Orig.
Frederick, MD—Frederick Muni, VOR RWY 23, Amdt. 8, Cancelled
Mora, MN—Mora Muni, NDB RWY 35, Amdt. 2
Holdrege, NE—Brewster Field, VOR/DME–A, Amdt. 2
Holdrege, NE—Brewster Field, NDB RWY 18, Amdt. 6
Parson, TN—Scott Field, VOR/DME–A, Amdt. 1
Cottage Grove, WI—Blackhawk Field, VOR–A, Orig.

** * * Effective April 30, 1992*

Chicago, IL—Chicago O'Hare Intl, LOC RWY 4L, Amdt. 18
Peru, IN—Peru Muni, VOR RWY 1, Amdt. 5
Eliot, ME—Littlebrook Air Park, RADAR–1, Amdt. 2, Cancelled
Romeo, MI—Romeo, VOR/DME–A, Amdt. 7
Valley City, ND—Barnes County Muni, NDB RWY 31, Amdt. 3

Bellefontaine, OH—Bellefontaine Muni, NDB RWY 22, Amdt. 5
Washington, PA—Washington County, LOC RWY 27, Orig.
Ogden, UT—Ogden-Hinckley, ILS RWY 3, Orig.
Kenosha, WI—Kenosha Muni, VOR RWY 14, Orig.
Kenosha, WI—Kenosha Muni, VOR RWY 24R, Orig.
Kenosha, WI—Kenosha Muni, VOR RWY 14, Amdt. 7, Cancelled
Kenosha, WI—Kenosha Muni, VOR RWY 24R, Orig., Cancelled
Kenosha, WI—Kenosha Muni, NDB RWY 6L, Amdt. 1
Kenosha, WI—Kenosha Muni, ILS RWY 6L, Amdt. 2
Platteville, WI—Grant County, NDB RWY 25, Amdt. 5
Platteville, WI—Grant County, VOR/DME RNAV RWY 25, Amdt. 6
Sparta, WI—Sparta/Fort McCoy, NDB RWY 29, Amdt. 1

** * * Effective February 19, 1992*

Orangeburg, SC—Orangeburg Muni, VOR RWY 5, Amdt. 4

By amending: The FAA published an amendment in Docket No. 26778, Amdt. No. 1479 to part 97 of the Federal Aviation Regulations (57 FR 37; dated February 25, 1992) under § 97.23 effective April 30, 1992, which is hereby amended as follows: Sioux City, Sioux Gateway FDC 2/0566 Change "...hold SE RT 132 inbound)" to "...hold SE RT 312 inbound)."

By amending: The FAA published an amendment in Docket No. 26807, Amdt. No. 1483 to part 97 of the Federal Aviation Regulations (57 FR 55; dated March 20, 1992) under § 97.23 effective April 30, 1992, which is hereby amended as follows: Disregard FDC NOTAM 2/1275 in its entirety.

By amending: The FAA published an amendment in Docket No. 1484, Amdt. No. 26808 to part 97 of the Federal Aviation Regulations (57 FR 55; dated March 20, 1992) under § 97.23, 97.27, 97.29, 97.33 effective April 30, 1992, which is hereby amended as follows:

Change effective date to *proposed* April 30, 1992, for the following procedures:

Port Huron, MI—St. Clair County Intl, VOR/DME-A, Amdt. 6
Port Huron, MI—St. Clair County Intl, NDB RWY 4, Amdt. 9, Cancelled
Port Huron, MI—St. Clair County Intl, NDB RWY 4, Orig.
Port Huron, MI—St. Clair County Intl, ILS RWY 4, Orig.
Port Huron, MI—St. Clair County Intl, RNAV RWY 4, Orig., Cancelled
Port Huron, MI—St. Clair County Intl, VOR/DME RNAV RWY 22, Amdt. 1

By amending: The FAA published an amendment in Docket No. 26789, Amdt. No. 1481 to Part 97 of the Federal Aviation Regulations (57 FR 47; dated March 10, 1992) under § 97.23 effective May 28, 1992, which is hereby amended as follows: Change Highgate, VT—Franklin County State, VOR-B, Amdt. 1 to Franklin County State, VOR-B, Amdt. 1, Cancelled.

[FR Doc. 92-7929 Filed 4-6-92; 8:45 am]
BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084-AA26

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Ranges of Comparability for Clothes Washers

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission announces that the present ranges of comparability for clothes washers will remain in effect until new ranges are published.

Under the Appliance Labeling Rule, each required label on a covered appliance must show a range, or scale, indicating the range of energy costs or efficiencies for all models of a size or capacity comparable to the labeled model. The Commission publishes the ranges annually in the **Federal Register** if the upper or lower limits of the range change by 15% or more from the previously published range. If the Commission does not publish a revised range, it must publish a notice that the prior range will be applicable until new ranges are published. The Commission is today announcing that the ranges published on April 16, 1991, will remain in effect until new ranges are published.

EFFECTIVE DATE: April 7, 1992.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202-326-3035, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On November 19, 1979, the Commission issued a final rule,[1] pursuant to Section 324 of the Energy Policy and Conservation Act of 1975,[2] covering certain appliance categories, including clothes washers. The rule requires that energy costs and related information be disclosed on labels and in retail sales catalogs for all clothes washers presently manufactured. Certain point-of-sale promotional materials must disclose the availability of energy usage information. If a clothes washer is advertised in a catalog from which it may be purchased by cash, charge account or credit terms, then the range of estimated annual energy costs for the product must be included on each page of the catalog that lists the product. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of test procedures developed by the Department of Energy, which are referenced in the rule.

Section 305.8(b) of the rule requires manufacturers to report the energy usage of their models annually by specified dates for each product type.[3] Because the costs for the various types of energy change yearly, and because manufacturers regularly add new models to their lines, improve existing models and drop others, the data base from which the ranges of comparability are calculated is constantly changing.

To keep the required information in line with these changes, the Commission is empowered, under § 305.10 of the rule, to publish new ranges (but not more than annually) if an analysis of the new data indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission must publish a statement that the prior range or ranges remain in effect for the next year.

The annual reports for clothes washers have been received and analyzed and it has been determined to retain the ranges that were published on April 16, 1991.[4] In consideration of the foregoing, the present ranges for clothes washers, which were based on a national average electric rate of 8.24 cents per kilowatt hour and a national average natural gas rate of 60.54 cents per therm, will remain in effect until the Commission publishes new ranges for these products.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

The authority citation for part 305 continues to read as follows:

Authority: Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94-163) (1975), as amended by the National Energy Conservation Policy Act, (Pub. L. 95-619) (1978), the National Appliance Energy Conservation Act, (Pub. L. 100-12) (1987), and the National Appliance Energy Conservation Amendments of 1988, (Pub. L. 100-357) (1988), 42 U.S.C. 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 92-7941 Filed 4-6-92; 8:45 am]
BILLING CODE 6750-01-M

[1] 44 FR 66466, 16 CFR part 305.

[2] Pub. L. 94-163, 89 Stat. 871 (Dec. 22, 1975).

[3] Reports for clothes washers are due by March 1.

[4] 56 FR 15274.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 88F-0282]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of phosphoric acid; octenyl succinic acid; *N,N*-dimethyloctanamine; and a mixture of *n*-carboxylic acids (C_6-C_{12}, consisting of not less than 56 percent octanoic acid and not less than 40 percent decanoic acid) as components of a sanitizing solution to be used on food-processing equipment and utensils, including dairy-processing equipment. This action is in response to a petition filed by Diversey Corp. (formerly Diversey Wyandotte Corp.).

DATES: Effective April 7, 1992; written objections and requests for a hearing by May 7, 1992.

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

FOR FURTHER INFORMATION CONTACT: Sandra L. Varner, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of April 13, 1989 (54 FR 14865), FDA announced that a food additive petition (FAP 8H4092) had been filed by Diversey Wyandotte Corp., 1532 Biddle Ave., Wyandotte, MI 48192, proposing that Section 178.1010 *Sanitizing Solutions* (21 CFR 178.1010) be amended to provide for the safe use of phosphoric acid; octenyl succinic acid; octyldimethylamine; and a mixture of *n*-carboxylic acids (C_6-C_{12}, consisting of not less than 95 percent C_8 and C_{10} *n*-acids) as components of a sanitizing solution to be used for sanitizing food-contact surfaces. The agency has determined that octyldimethylamine is better identified as *N,N*-dimethyloctanamine. The agency has also determined that the mixture of *n*-carboxylic acids (C_6–C_{12}, consisting of not less than 95 percent C_8 and C_{10} *n*-acids) is better identified as a mixture of *n*-carboxylic acids (C_6-C_{12}, consisting of not less than 56 percent octanoic acid and not less than 40 percent decanoic acid).

I. Safety and Functional Effect of Petitioned Use of the Additives

Sanitizing solutions are regulated as mixtures of chemicals which function together to sanitize food-contact surfaces. Each listed component in a sanitizing solution has a functional effect. In addition, FDA regulations permit the addition to a sanitizing solution of any component that is generally recognized as safe (GRAS) (§ 178.1010(b)). The subject sanitizing solution contains phosphoric acid; octenyl succinic acid; *N,N*-dimethyloctanamine; and a mixture of *n*-carboxylic acids (C_6-C_{12}, consisting of not less than 56 percent octanoic acid and not less than 40 percent decanoic acid). The function of each component and the basis for FDA's determination of the safety of each component are described below.

A. Phosphoric Acid

Phosphoric acid functions as the antimicrobial agent in the subject sanitizing solution. Phosphoric acid is GRAS (21 CFR 182.1073). It is also listed as a component in sanitizing solutions listed in 21 CFR 178.1010 (b)(35) and (b)(36). On the basis of the data submitted in support of these already regulated uses, the data contained in the food additive petition submitted in support of this sanitizing solution, and other available data, FDA finds that the use of phosphoric acid is safe in the subject sanitizing solution.

B. Octenyl Succinic Acid

Octenyl succinic acid functions as a stabilizer in the subject sanitizing solution. Octenyl succinic acid is not currently regulated. On the basis of the data contained in the food additive petition submitted in support of the listing of this sanitizing solution, FDA finds that the use of octenyl succinic acid in the subject sanitizing solution is safe.

C. N,N-dimethyloctanamine

N,N-dimethyloctanamine functions as a coupling/emulsifying agent and a stabilizing agent in the subject sanitizing solution. *N,N*-dimethyloctanamine is not currently regulated. On the basis of the data contained in the food additive petition submitted in support of the listing of this sanitizing solution, FDA finds that the use of *N,N*-dimethyloctanamine in the subject sanitizing solution is safe.

D. Mixture of n-Carboxylic Acids (C_6–C_{12}, Consisting of Not Less Than 56 Percent Octanoic Acid and Not Less Than 40 Percent Decanoic Acid)

The mixture of *n*-carboxylic acids (C_6–C_{12}, consisting of not less than 56 percent octanoic acid and not less than 40 percent decanoic acid) functions as an antifoaming agent and an emulsifying agent in the subject sanitizing solution. Octanoic acid and decanoic acid are listed as components of regulated sanitizer solutions under § 178.1010 (b)(27), (b)(35), and (b)(36). (Octanoic acid is also affirmed as GRAS under its chemical name, caprylic acid, pursuant to 21 CFR 184.1025.) On the basis of the data submitted in support of the listing of this sanitizing solution and other data available in agency files, FDA finds that the use of a mixture of *n*-carboxylic acids (C_6–C_{12}, consisting of not less than 56 percent octanoic acid and not less than 40 percent decanoic acid) in the subject sanitizing solution is safe.

As discussed above, FDA has evaluated the data in the petition and other relevant materials. On the basis of this evaluation, the agency concludes that these data and materials establish the safety of the level of use and the effectiveness of the additive as a sanitizing solution and that the regulations should be amended in § 178.1010 as set forth below. The agency also finds that the data in this petition support the use of the subject sanitizing solution on dairy-processing equipment as well as on other food processing equipment and utensils.

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

II. Environmental Impact

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

III. Filing of Objections

Any person who will be adversely affected by this regulation may at any time on or before May 7, 1992 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 178.1010 is amended by adding new paragraphs (b)(39) and (c)(34) to read as follows:

§ 178.1010 Sanitizing solutions.

* * * * *

(b) * * *

(39) An aqueous solution containing phosphoric acid (CAS Reg. No. 7664–38–2); octenyl succinic acid (CAS Reg. No. 28805–58–5); *N,N*-dimethyloctanamine (CAS Reg. No. 7378–99–6); and a mixture of *n*-carboxylic acids (C_6–C_{12}, consisting of not less than 56 percent octanoic acid and not less than 40 percent decanoic acid). This solution may be used on food-processing equipment and utensils, including dairy-processing equipment.

(c) * * *

(34) Solutions identified in paragraph (b)(39) of this section shall provide when ready for use not less than 460 parts per million and not more than 625 parts per million of phosphoric acid, and all components shall be present in the following proportions: 1 part phosphoric acid to 0.25 octenyl succinic acid to 0.18 part *N,N*-dimethyloctanamine to 0.062 part of a mixture of *n*-carboxylic acids (C_6–C_{12}, consisting of not less than 56 percent octanoic acid and not less than 40 percent decanoic acid).

* * * * *

Dated: March 31, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92–7849 Filed 4–6–92; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Parts 510 and 558

Animal Drugs, Feeds, and Related Products; Monensin and Tylosin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Agri Beef Co. The NADA provides for the manufacture of a liquid Type B medicated feed containing 400 grams per ton (g/ton) monensin and 150 g/ton tylosin used to make a Type C medicated feed for improved feed efficiency and reduction of incidence of liver abscesses in cattle being fed in confinement for slaughter.

EFFECTIVE DATE: April 7, 1992.

FOR FURTHER INFORMATION CONTACT: Russell G. Arnold, Center for Veterinary Medicine (HFV–142), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8674.

SUPPLEMENTARY INFORMATION: Agri Beef Co., 2201 North 20th St., P.O. Box 47, Nampa, ID 83653, is sponsor of NADA 140–939 which provides for the use of approved Type A medicated articles to make liquid Type B medicated feeds containing 400 g/ton monensin sodium with 150 g/ton tylosin phosphate. The liquid Type B medicated feeds are used to make dry Type C medicated feeds containing 21.4 to 26.8 g/ton monensin and 8 to 10 g/ton tylosin. The Type C medicated feeds should provide 240 milligrams/head/day monensin and 90 milligrams/head/day tylosin for improved feed efficiency and reduction of incidence of liver abscesses in cattle being fed in confinement for slaughter. The NADA is approved as of March 31, 1992. The regulations are amended in 21 CFR 558.355(f)(3)(ix) to reflect the approval. The basis for approval for monensin and tylosin in combination is discussed in the freedom of information summary on file for NADA 104–646.

In addition, Agri Beef Co. has not previously been listed in 21 CFR 510.600 as sponsor of an approved NADA. That section is amended to add new entries for the firm.

In approving this NADA, the current genus name *Fusobacterium* is used for the organism formerly known as *Sphaerophorus*. The monensin regulation is amended in § 558.355(f)(3)(ii)(*a*) to reflect the newer name.

This approval did not require new effectiveness or safety data. Therefore, a freedom of information summary pursuant to 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii) is not required.

An approved Form FDA 356V is required for the use of monensin and tylosin Type A medicated articles in the manufacture of this monensin/tylosin liquid Type B feed as in 21 CFR 558.5(a). An approved Form FDA 1900 is also required for the manufacture of this liquid Type B medicated feed as in § 558.5(b).

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval does not qualify for marketing exclusivity because no new clinical or field investigations and no new human food safety studies essential to the approval were conducted or sponsored by the applicant.

FDA has carefully considered the potential environmental impact of this action and has concluded that the action will not have a significant impact on the human environment. Therefore, an environmental impact statement is not required. FDA's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (HFA–305), rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR

Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Part 538

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding a new entry for "Agri Beef Co." and in the table in paragraph (c)(2) by numerically adding a new entry "022941" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Agri Beef Co., 2201 North 20th St., P.O Box 47, Nampa, ID 83653	022941
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * *	
022941	Agri Beef Co., 2201 North 20th St., P.O. Box 47, Nampa, ID 83653
* * * * *	

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

4. Section 558.355 is amended by revising paragraph (f)(3)(ii)(*a*) and adding new paragraph (f)(3)(ix) to read as follows:

§ 558.355 Monensin.

* * * * *

(f) * * *

(3) * * *

(ii) * * *

(*a*) *Indications for use.* Improved feed efficiency; for reduction of incidence of liver abscesses caused by *Fusobacterium necrophorum* and *Corynebacterium pyogenes.*

* * * * *

(ix) *Amount.* To 022941: To make liquid Type B medicated feed containing 400 grams per ton monensin sodium with 150 grams per ton tylosin phosphate used to make a dry Type C medicated feed containing 21.4 to 26.8 grams per ton monensin plus 8 to 10 grams per ton tylosin.

(*a*) *Indications for use.* Improved feed efficiency; for reduction of incidence of liver abscesses caused by *Fusobacterium necrophorum* and *Corynebacterium pyogenes.*

(*b*) *Limitations.* Feed only to cattle being fed in confinement for slaughter. Feed continuously at the rate of 8.2 to 10.2 kilograms (18 to 22.5 pounds) of Type C medicated feed per head per day to supply 240 milligrams of monensin and 90 milligrams of tylosin per head per day; as monensin sodium; as tylosin phosphate. Do not allow horses or other equines access to feeds containing monensin. Ingestion of monensin by equines has been fatal. Safe use in unapproved species and breeding cattle has not been established. The liquid Type B medicated feed must bear an expiration date of 14 days after date of manufacture. The mixing directions for this liquid Type B medicated feed stored in recirculation or agitation tank systems are: Recirculate or agitate immediately prior to use for not less than 10 minutes, moving at least 1 percent of the tanks contents per minute from the bottom of the tank to the top. Recirculate or agitate as directed daily, even when the Type B medicated feed is not used. Inadequate mixing (recirculation or agitation) of liquid Type B medicated feeds may result in increased monensin concentrations which have been fatal to cattle. Both an approved NADA and an approved medicated feed application are required to make this liquid Type B medicated feed.

* * * * *

Dated: March 31, 1992.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 92-7848 Filed 4-6-92; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1 89-065]

Regulated Navigation Area; Kill Van Kull, NY-NJ

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is adopting rules to make the waters of the Kill Van Kull, New York and New Jersey from Constable Hook to Bergen Point West Reach a Regulated Navigation Area (RNA). This action is necessary because of the extensive channel deepening project being undertaken jointly by the Army Corps of Engineers and the Port Authority of New York and New Jersey. A Regulated Navigation Area is necessary to insure the safety of vessels transiting the restricted channel during blasting and dredging operations.

EFFECTIVE DATE: This regulation becomes effective April 7, 1992.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) C.W. Jennings, Waterways Management Officer, Captain of the Port, New York, at (212) 668-7933.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LTJG C.W. Jennings, project officer, Captain of the Port, New York and LT J.B. Gately, project attorney, First Coast Guard District Legal Office.

Regulatory History

On October 9, 1990 the Coast Guard published a notice of proposed rulemaking entitled Regulated Navigation Area; Kill Van Kull, New York and New Jersey in the **Federal Register** (55 FR 41110). By the close of the 45 day comment period the Coast Guard had received five letters commenting on the proposal. A hearing was not requested and one was not held.

Background and Purpose

The Kill Van Kull Channel is the area designated as a regulated navigation area. It is the channel located in the

waters between Bayonne, New Jersey and Staten Island, New York. The U. S. Coast Guard is adopting this designation to enhance vessel safety during the extensive channel deepening project being undertaken by the U. S. Army Corps of Engineers, which involves dredging and blasting. The Kill Van Kull Channel connects the deepwater ports of the New York Harbor, but present channel depths restrict the full economy of existing and future generations of deep draft vessels. Tankships arriving in the port with drafts approaching the forty five (45) foot controlling depths of the Ambrose and Anchorage Channels must lighter some of their cargo to barges in the deep New York Harbor anchorages in order to reduce their drafts enough to safely transit the thirty five (35) foot channel depths. This results in substantial lightering and delay costs. Container vessels cannot lighter in the anchorages and therefore must load to less than full drafts. This project, which is expected to last approximately three (3) years, will deepen the existing thirty five (35) foot channel to forty (40) feet to accommodate the deeper draft vessels. The area has been and will continue to be available for use by the general public. The users of this area, the marine industry, have been addressed formally and informally by the U. S. Coast Guard and the U. S. Army Corps of Engineers at various forums during the past three years. The parameters of these regulations are a direct result of the comments received, from the users, during those meetings and information obtained from the Computer Aided Operations Research Facility (CAORF) at the U. S. Merchant Marine Academy (USMMA), Kings Point, NY.

During the development of this regulation, the dredging project commenced. In order to ensure an adequate level of safety in the Kill, Captain of the Port New York imposed temporary safety zones in the work areas described as "Phases" in this regulated navigation area. Those safety zones will be terminated when this rule becomes effective.

Discussion of Comments and Changes

Five written comments were received during the comment period.

Four of the comments related to proposed regulation (d)(2) which prohibits tows on a hawser in the RNA. The commentators contended that this regulation was far too restrictive and that the length of tow commonly used in the Kill Van Kull was so short that it did not create an undue hazard to navigation. After monitoring tug and tow traffic in the Kill Van Kull, and consulting with local vessel operators in the area, it was decided that tows could be conducted safely if the length of hawser paid out does not exceed 100 feet while transiting the RNA. The regulation has been amended to reflect this change. See regulation (d)(7) of this rule.

The fifth comment stated that the wind restriction imposed by proposed regulation (d)(5), which preempts vessel transit through the RNA when sustained winds are 20 knots or greater, was ill conceived as it did not take several factors into account, such as: vessel sail area, tankship vs. container ship, laden vs. light. After reviewing and reevaluating this particular regulation it was decided to delete this requirement due to the difficulty involved in developing enforcement standards with proven safety benefits. It was also brought to our attention in public forums, by local operators, that wind is not that much of a factor when navigating in the Kill Van Kull as vessels transiting the area remain in a lee until rounding Bergen Point or passing Constable Hook. This is due to the relatively high banks on either side of the Kill.

Several of the items contained in the proposed regulation were redundant to existing regulations or advisory rather than regulatory. These items have been amended or deleted entirely. Therefore, the following changes have been made in this rule:

(1) Paragraph (b) of the NPRM, "Definitions of Terms Used in this Part", has been deleted. The same definitions appear in other parts of this title and a reiteration would be redundant.

(2) Proposed regulation (d)(4), advised vessels in excess of 300 feet to have sufficient tugs alongside when transiting the RNA. This regulation, as written, implied that vessels in this category must take an assist tug or tugs alongside. This was not the intent of the regulation. It was incorporated as an advisement to the master, pilot or person in charge of the vessel that they should consider the employment of a sufficient number of assist tugs when transiting the RNA due to the unusual navigational conditions imposed by the project. The regulation has been amended to reflect this and appears as regulation (d)(6) of this rule.

(3) Regulation (d)(6) of the NPRM, regarding movement through the RNA during conditions of reduced visibility, is considered advisory rather than regulatory and has been deleted from this rule.

(4) Regulations (d) (10), (11), and (13) of the NPRM have been deleted due to their redundancy to current Vessel Traffic Service New York (VTSNY) regulations. VTSNY was not an operational unit during the development of the NPRM and its mission impact was not considered in that document.

(5) The NPRM described regulated vessels as "all self propelled vessels greater than 1000 gross tons and all tugs with tows". This description conflicted with the reporting criteria for VTSNY, which has a 300 gross ton threshold for regulated vessels. In the interest of conformity, regulations (d) (4), (5), and (6) of this rule have been amended to adopt the VTS standard.

During the comment period, for the notice of proposed rulemaking (NPRM) which preceded this rule, the Army Corps of Engineers amended the contract for this project and published new blueprints to reflect the changes. The net effect of this action is a decrease in the impact of the regulation due to the significantly shortened project duration. The sections of this rule which differ from the original NPRM as a result of the amendment are as follows:

1. The startup date for the project has been changed from January 1991 to July 1991.

2. The total duration of the project and, thereby, the need for this regulated navigation area has been reduced from 5 years to approximately 3 years.

3. The entire project will be conducted under one contract, contract 4A, vice three separate contracts (4A, 4B and 4C).

4. The single contract will be conducted in five (5) phases. Each phase will last approximately 7 months. Phases I, II and III will involve dredging and blasting in the northern half of the Kill Van Kull from Bergen Point West Reach to Constable Hook Reach. Phases IV and V will involve dredging and blasting in the southern half of the Kill Van Kull from Bergen Point West Reach to Constable Hook Reach.

5. Due to the phasing of this project related changes to the present Aids to Navigation scheme will be published separately via a Local Notice to Mariners well in advance of any changes.

6. Some differences will be noted in the "Description of the Work Areas" that was published in the NPRM when compared to this rule. This is due to the issuance of new project blueprints for the revised contract which necessitated replotting the work areas, and the discovery of a larger rock concentration in Constable Hook Reach which required the expansion of the work areas there. Regardless, one-half of the

existing channel remains open to navigation at all times during the project, as it had under the parameters set forth in the NPRM. Therefore, this is not considered significant and only noted so persons comparing the Final Rule with the NPRM understand why this change was made.

7. While this rule was being developed the project commenced. This necessitated the publication of temporary safety zones which appeared in the **Federal Register**, 56 FR 40250, dated August 14, 1991; 56 FR 50274, dated October 4, 1991; and 57 FR 1106 and 57 FR 1108, both dated January 10, 1992. These zones were needed as interim measures to enhance vessel safety in the vicinity of the work areas in the Kill Van Kull. When this regulated navigation area becomes effective those zones will be cancelled. Making this rule effective in less than 30 days from publication is necessary to prevent having to implement other interim measures as work progresses in this area. In accordance with 5 U.S.C. 553 good cause exists for making this rule effective in less than 30 days from date of publication.

Regulatory Evaluation

These regulations are considered to be nonmajor under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary.

Establishment of this regulated navigation area will assure a navigable channel remains open for normal traffic throughout the duration of the project, thereby minimizing the economic impact to any segment of the public.

Small Entities

Because it expects the impact of this regulation to be minimal, 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

This rule contains a collection of information requirement in § 165.165. This requirement has been approved by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) as part of a blanket approval for waivers and deviations in part 165. The OMB control number assigned for part 165 is 2115–0540.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that these regulations do not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of these regulations and concluded that under section 2.B.2.c of Commandant Instruction M16475.1B, they will have no significant impact and they are categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulations:

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. Section 165.165 is revised to read as follows:

165.165 Kill Van Kull, New York and New Jersey—regulated navigation area.

(a) *Description of the regulated navigation area (RNA).* (1) The RNA encompasses all of the water in or adjacent to the Kill Van Kull (KVK) east of the KVK Light 16A (LLNR34585) in North of Shooters Island Reach, east of Shooters Island Light 2 (LLNR 34620) in South of Shooters Island Reach, south of Newark Bay Channel Buoy 3 (LLNR 34650) in Newark Bay South Reach, south of South Entrance Lighted Buoy 5 (LLNR 34285) in the New Jersey Pierhead Channel, and west of KVK Channel Junction Lighted Bell Buoy "KV" (LLNR 34505) in Constable Hook Reach. This area is being established due to a dredging project being undertaken jointly by the U. S. Army Corps of Engineers and the Port Authority of New York and New Jersey.

(b) *Description of Work Areas in the RNA.*—(1) *Phase I*—(i) *Bergen Point West Reach.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
40°38′36.4″ N	074°08′26.1″ W
40°38′40.2″ N	074°08′02.4″ W
40°38′39.8″ N	074°07′56.2″ W
40°38′35.2″ N	074°07′57.0″ W
40°38′35.7″ N	074°08′02.5″ W
40°38′31.9″ N	074°08′24.8″ W

and thence to the point of beginning.

(ii) *Constable Hook Reach.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
40°39′05.8″ N	074°05′09.4″ W
40°39′09.8″ N	074°04′54.0″ W
40°39′09.7″ N	074°04′51.3″ W
40°39′06.3″ N	074°04′44.0″ W
40°39′03.4″ N	074°04′44.0″ W
40°39′04.1″ N	074°05′09.4″ W

and thence to the point of beginning, and the waters bounded by a line connecting the following points:

Latitude	*Longitude*
40°39′06.6″ N	074°04′40.6″ W
40°39′05.2″ N	074°04′26.0″ W
40°39′07.8″ N	074°04′25.0″ W
40°39′05.8″ N	074°04′16.0″ W
40°38′58.7″ N	074°04′18.2″ W
40°39′03.0″ N	074°04′31.0″ W
40°39′03.2″ N	074°04′41.0″ W

and thence to the point of the beginning.

(2) *Phase II—(i) Bergen Point West Reach.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
40°38′33.6″ N	074°08′43.0″ W
40°38′36.4″ N	074°08′26.1″ W
40°38′31.9″ N	074°08′24.8″ W
40°38′29.3″ N	074°08′41.8″ W

and thence to the point of the beginning.

(ii) *Constable Hook Reach.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
40°39′05.8″ N	074°05′09.4″ W
40°39′09.8″ N	074°04′54.0″ W
40°39′09.7″ N	074°04′51.3″ W
40°39′06.3″ N	074°04′44.0″ W
40°39′03.4″ N	074°04′44.0″ W
40°39′04.1″ N	074°05′09.4″ W

and thence to the point of beginning, and the waters bounded by a line connecting the following points:

Latitude	*Longitude*
40°39′06.6″ N	074°04′40.6″ W
40°39′05.2″ N	074°04′26.0″ W
40°39′07.8″ N	074°04′25.0″ W
40°39′05.8″ N	074°04′16.0″ W
40°38′58.7″ N	074°04′18.2″ W
40°39′03.0″ N	074°04′31.0″ W
40°39′03.2″ N	074°04′41.0″ W

and thence to the point of the beginning.

(3) *Phase III*—

(i) *Bergen Point West Reach.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
40°38′39.4″ N	074°09′07.0″ W
40°38′33.4″ N	074°08′54.8″ W
40°38′33.6″ N	074°08′43.0″ W
40°38′29.3″ N	074°08′41.8″ W
40°38′29.2″ N	074°08′43.0″ W
40°38′30.8″ N	074°08′56.6″ W
40°38′37.0″ N	074°09′08.9″ W

and thence to the point of beginning.

(ii) *Constable Hook Reach.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
40°39′05.8″ N	074°05′09.4″ W

40°39'09.8" N	074°04'54.0" W
40°39'09.7" N	074°04'51.3" W
40°39'06.3" N	074°04'44.0" W
40°39'03.4" N	074°04'44.0" W
40°39'04.1" N	074°05'09.4" W

and thence to the point of beginning, and the waters bounded by a line connecting the following points:

Latitude	Longitude
40°39'06.6" N	074°04'40.6" W
40°39'05.2" N	074°04'26.0" W
40°39'07.8" N	074°04'25.0" W
40°39'05.8" N	074°04'16.0" W
40°38'58.7" N	074°04'18.2" W
40°39'03.0" N	074°04'31.0" W
40°39'03.2" N	074°04'41.0" W

and thence to the point of the beginning.

(4) *Phase IV—*

(i) *Bergen Point West Reach.* The waters bounded by a line connecting the following points:

Latitude	Longitude
40°38'29.9" N	074°08'38.2" W
40°38'35.7" N	074°08'02.5" W
40°38'35.2" N	074°07'57.0" W
40°38'31.5" N	074°08'57.8" W
40°38'31.4" N	074°08'07.5" W
40°38'26.3" N	074°08'37.3" W

and thence to the point of beginning.

(ii) *Constable Hook Reach.* The waters bounded by a line connecting the following points:

Latitude	Longitude
40° 38' 49.3" N	074° 05' 44.0" W
40° 38' 50.7" N	074° 05' 37.2" W
40° 39' 04.2" N	074° 05' 09.1" W
40° 39' 03.8" N	074° 05' 00.0" W
40° 38' 59.9" N	074° 05' 00.0" W
40° 38' 59.9" N	074° 05' 01.9" W
40° 38' 57.0" N	074° 05' 15.0" W
40° 38' 47.6" N	074° 05' 34.7" W
40° 38' 46.1" N	074° 05' 43.9" W

and thence to the point of beginning, and the waters bounded by a line connecting the following points:

Latitude	Longitude
40° 39' 03.2" N	074° 04' 41.0" W
40° 39' 03.0" N	074° 04' 31.0" W
40° 38' 58.7" N	074° 04' 18.2" W
40° 38' 51.1" N	074° 04' 21.0" W
40° 38' 54.8" N	074° 04' 32.1" W
40° 39' 01.2" N	074° 04' 41.6" W

and thence to the point of the begining.

(5) Phase V—(i) *Bergen Point West Reach.* The waters bounded by a line connecting the following points:

Latitude	Longitude
40° 38' 37.0" N	074° 09' 08.9" W
40° 38' 30.8" N	074° 08' 56.6" W
40° 38' 29.2" N	074° 08' 43.0" W
40° 38' 29.9" N	074° 08' 38.2" W
40° 38' 26.3" N	074° 08' 37.3" W
40° 38' 23.6" N	074° 08' 53.0" W
40° 38' 24.2" N	074° 09' 04.4" W
40° 38' 28.2" N	074° 09' 14.9" W

and thence to the point of beginning.

(ii) *Constable Hook Reach.* The waters bounded by a line connecting the following points:

Latitude	Longitude
40° 38' 49.3" N	074° 05' 44.0" W
40° 38' 50.7" N	074° 05' 37.2" W
40° 39' 04.2" N	074° 05' 09.1" W
40° 39' 03.8" N	074° 05' 00.0" W
40° 38' 59.9" N	074° 05' 00.0" W
40° 38' 59.9" N	074° 05' 01.9" W
40° 38' 57.0" N	074° 05' 15.0" W
40° 38' 47.6" N	074° 05' 34.7" W
40° 38' 46.1" N	074° 05' 43.9" W

and thence to the point of beginning, and the waters bounded by a line connecting the following points:

Latitude	Longitude
40° 39' 03.2" N	074° 04' 41.0" W
40° 39' 03.0" N	074° 04' 31.0" W
40° 38' 58.7" N	074° 04' 18.2" W
40° 38' 51.1" N	074° 04' 21.0" W
40° 38' 54.8" N	074° 04' 32.1" W
40° 39' 01.2" N	074° 04' 41.6" W

and thence to the point of the beginning.

(c) *Projected dates for each phase.* (1) Phase I: 2 July 1991 through 11 December 1991.

(2) Phase II: 12 December 1991 through 18 June 1993.

(3) Phase III: 19 June 1992 through 14 January 1993.

(4) Phase IV: 15 January 1993 through 13 June 1993.

(5) Phase V: 14 June 1993 through 09 April 1994.

(d) *Regulations.* (1) No vessel shall enter or transit any work area where drill barges and/or dredges are located.

(2) Each vessel transiting in the vicinity of the work areas, where drill barges and/or dredges are located, is required to do so at no wake speed.

(3) No vessel shall enter the RNA when the are advised by the drilling barge or Vessel Traffic Service New York (VTSNY) that a misfire or hangfire has occurred. Vessels already underway in the RNA shall proceed to clear the area immediately.

(4) Vessels, 300 gross tons or greater and tugs with tows, are prohibited from meeting or overtaking other vessels when transiting alongside work areas.

(5) Vessels, 300 greoss tons or greater and tugs with tows, transiting with the prevailing current are regarded as the stand-on vessel.

(6) Prior to entering the RNA, the master, pilot or operator of each vessel, 300 gross tons or greater and tubs with tows, shall ensure that they have sufficient propulsion and directional control to safely navigate the area under the prevailing conditions, and shall notify VTSNY as to their decision regarding the employment of assist tugs while transiting the RNA.

(7) Hawser or wire length must not exceed 100 feet, measured from the towing bit on the tug to the point where the hawser connects with the towed vessel, for any vessel with another vessel in tow.

(8) Waiver. The Captain of the Port, New York may, upon request, authorize a devision from any regulation in this section if it is found that the proposed operations can be done safely. An application for deviation must be received not less than 24 hours before the intended operation and must state the need and describe the proposal.

§ 165.170 [Removed]

3. § 165.170 is removed.

Dated: September 27, 1991.

K.W. Thompson,

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

[FR Doc. 92-7788 Filed 4-6-92; 8:45 am]

BILLING CODE 4910-014-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL-4121-1]

National Emission Standards for Hazardous Air Pollutants; Supplemental Delegation of Authority to Knox County, TN

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of Authority.

SUMMARY: On January 15, 1992, the Knox County Department of Air Pollution Control of the State of Tennessee requested delegation of authority for the implementation and enforcement of an additional category of the National Emission Standards for Hazardous Air Pollutants (NESHAPS). EPA's review of Knox County's laws, rules, and regulations showed them to be adequate for the implementation and enforcement of this federal standard. EPA granted the delegation as requested.

EFFECTIVE DATE: The effective date of the delegation of authority is March 12, 1992.

ADDRESSES: Copies of the request for delegation of authority and EPA's letter of delegation are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Tennessee Department of Environment and Conservation, Customs House, 4th Floor, Nashville, Tennessee 37243-1531.

Knox County Department of Air Pollution, City-County Building, room 459, 400 West Main Avenue, Knoxville, Tennessee 37902.

March 12, 1992, all requests,

applications, reports and other correspondence required pursuant to the newly delegated standards should not be submitted to the Region IV office, but should instead be submitted to the following address: Terry C. Harris, Director, Knox County Department of Air Pollution, City-County Building, room 459, 400 West Main Avenue, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: Andrew Fischer, Air Programs Branch, EPA Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, and telephone number (404) 347-2864 or (FTS) 257-2864.

SUPPLEMENTARY INFORMATION: Section 301, in conjunction with sections 110, 111(c)(1), and 112(d)(1) of the Clean Air Act as amended November 15, 1990, authorize the Administrator to delegate his authority to implement and enforce the standards set out in 40 CFR part 61, National Emission Standards for Hazardous Air Pollutants (NESHAPS).

After a thorough review of the category requested for delegation, the Regional Administrator determined that such delegation was appropriate for this source category with the conditions set forth in the initial delegation letter of May 20, 1977, and subsequent delegation letters of December 13, 1985; March 3, 1986; July 1, 1986; June 1, 1988; May 16, 1989; December 14, 1989; and October 29, 1990.

EPA, thereby, delegated its authority for 40 CFR part 61, subpart L, except § 61.136(d).

The Administrator retains the exclusive right to approve equivalent and alternative test methods, continuous monitoring procedures, and reporting requirements. Therefore, § 61.136(d) of 40 CFR part 61, subpart L is among the sections which may not be delegated.

The EPA hereby notifies the public that it has delegated the authority over certain NESHAP subparts to Knox County of the State of Tennessee.

The Office of Management and Budget exempted this rule from the requirements of section 3 of Executive Order 12291.

This notice is issued under the authority of sections 101, 110, 111, 112, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7410, 7412, and 7601).

Dated: March 26, 1992.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 92-7955 Filed 4-6-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA-7536]

Suspension of Community Eligibility

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646-2717.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the Federal Register.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 is revised to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Regular Program Conversions				
Region VI				
Oklahoma:				
Bethel Acres, town of, Pottawatomie County	400346	June 16, 1989, Emerg.; Dec. 1, 1989, Reg.; Apr. 2, 1992, Susp.	Apr. 2, 1992	Apr. 2, 1992
Pottawatomie County, unincorporated areas	400496	Mar. 26, 1984, Emerg.; June 1, 1988, Reg.; Apr. 2, 1992, Susp.	do	Do.
Region I				
Maine: Lubec, town of, Washington County	230139	July 15, 1975, Emerg.; Apr. 15, 1992, Reg.; Apr. 15, 1992, Susp.	Apr. 15, 1992	Apr. 15, 1992
New Hampshire:				
Bath, town of, Grafton County	330043	June 25, 1975, Emerg.; Apr. 15, 1992, Reg.; Apr. 15, 1992, Susp.	do	Do.
Bradford, town of, Merrimac County	330106	Aug. 12, 1975, Emerg.; Apr. 15, 1992, Reg.; Apr. 15, 1992, Susp.	do	Do.
Charlestown, town of, Sullivan County	330153	Nov. 3, 1975, Emerg.; Apr. 15,1981, Reg.; Apr. 15, 1992, Susp.	do	Do.
Kingston, town of, Rockingham County	330217	July 26, 1988, Emerg.; Sept. 1, 1988, Reg.; Apr. 15, 1992, Susp.	do	Do.
Lyme, town of, Grafton County	330067	July 1, 1975, Emerg.; Apr. 15, 1982, Reg.; Apr. 15, 1992, Susp.	do	Do.
Oxford, town of, Grafton County	330070	July 28, 1978, Emerg.; Apr. 15, 1992, Reg.; Apr. 15, 1992, Susp.	do	Do.
Raymond, town of, Rockingham County	330140	Oct. 15, 1975, Emerg.; Apr. 15, 1982, Reg.; Apr. 15, 1992, Susp.	do	Do.
Region III				
Pennsylvania:				
Dreher, township of, Wayne County	422164	May 14, 1975, Emerg.; Mar. 4, 1988, Reg.; Apr. 15, 1992, Susp.	do	Do.
Girardville, borough of, Schuylkill County	420772	Apr. 29, 1975, Emerg.; Feb. 2, 1990, Reg.; Apr. 15, 1992, Susp.	do	Do.
Maryland: Kingston, town of, Rockingham County	330217	July 26, 1988, Emerg.; Sept. 1, 1988, Reg.; Apr. 15, 1992, Susp.	do	Do.
Region V				
Illinois: Cahokia, village of, St. Clair County	170620	Oct. 4, 1973, Emerg.; Oct. 17, 1978, Reg.; Apr. 15, 1992, Susp..	do	Do.
Region VII				
Nebraska: Nemaha County, unincorporated areas	310460	Mar. 8, 1979, Emerg.; Apr. 2, 1992, Reg.; Apr. 15, 1992, Susp.	do	Do.

Code for reading third column: Emerg.-Emergency; Reg.-Regular; Susp.-Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: March 26, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-7935 Filed 4-6-92; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 73, and 90

[MM Docket No. 87-267]

Radio Broadcast Service, AM Technical Assignment Criteria

AGENCY: Federal Communications Commission.

ACTION: Final rule; confirmation of effective date.

SUMMARY: In Report and Order: Review of the Technical Assignment Criteria for the AM Broadcast Service, MM Docket No. 87-267, (56 FR 64842, December 12, 1991), the Federal Communications Commission explained and adopted innovative and substantial regulatory steps to ensure the survival and health of the AM broadcast service. Those steps included the rule changes described in the Report and Order cited above. This document announces the specific effective date of those rule changes.

EFFECTIVE DATE: These rule changes take effect at midnight on April 19, 1992.

FOR FURTHER INFORMATION CONTACT: Jim Burtle (AM Branch Chief), 202-632-7010.

SUPPLEMENTARY INFORMATION: Requests to migrate to the expanded band (1605-1705 kHz) will not be accepted at this time. A filing window for these requests will be announced at a later date.

List of Subjects

47 CFR Parts 2 and 90

Radio.

47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 92-7883 Filed 4-6-92; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

48 CFR Parts 305, 306, 313, 315, and 319

Acquisition Regulation; Miscellaneous Amendments

AGENCY: Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services is amending its acquisition regulation (HHSAR), title 48, Code of Federal Regulations, chapter 3, to make numerous administrative changes.

EFFECTIVE DATE: April 7, 1992.

FOR FURTHER INFORMATION CONTACT: Ed Lanham, Procurement Analyst, Division of Acquisition Policy, telephone (202) 245-8890.

SUPPLEMENTARY INFORMATION: The Department is amending its acquisition regulation for two primary reasons. Several amendments are being made to reconcile the HHSAR with recent changes to the Federal Acquisition Regulation (FAR), while others are being made to clarify and specify the intent of internal administrative procedures.

The Department of Health and Human Services adheres to the policy that the public, or certain elements comprising it, should have the opportunity to provide comments on regulations which may have an impact on them. The Department has determined, however, that this rule contains no amendments that would have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the Department. As a result, the Department is not requesting comments on these acquisition regulations, and is publishing them as a final rule.

The Department of Health and Human Services certifies this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*); therefore, no regulatory flexibility statement has been prepared. Furthermore, this document does not contain information collection requirements needing approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et. seq.*). The provisions of this regulation are issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

List of Subjects in 48 CFR Parts 305, 306, 313, 315, and 319

Government procurement.

Accordingly, the Department of Health and Human Services amends 48 CFR chapter 3 as set forth below.

Dated: March 27, 1992.

James F. Trickett,

Deputy Assistant Secretary for Management and Acquisition.

As indicated in the preamble, chapter 3 of title 48 Code of Federal Regulations is amended as shown.

1. The authority citation for parts 305, 306, 313, 315, and 319 continues to read as follows:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

PART 305—[AMENDED]

305.303 [Amended]

2. Paragraph 305.303(a) is amended by revising the time to read "5 p.m.", instead of "4 p.m.".

PART 306—[AMENDED]

306.302-1 [Amended]

3. Paragraph (b)(4) of section 306.302-1 is amended by removing, in the first sentence, the colon after the word "that" and the designation "(i)" following it. In addition, the word "or" at the end of the paragraph is also removed.

4. Paragraph (b)(4)(ii) of section 306.302-1 is amended by redesignating the paragraph as "(c) *Application for brand name descriptions.*"

306.301-1 [Amended]

5. Paragraphs (g) (1) and (2) of section 306.303-1 are amended by removing the dollar threshold "$25,000" and replacing it with the phrase "the small purchase limitation."

PART 313—[AMENDED]

6. Section 313.105 is revised to read as follows:

313.105 Small business-small purchase set-aside.

(d) (2) The contracting officer shall consult with the small and disadvantaged business utilization specialist (SADBUS) to determine whether small business sources are known by the SADBUS before determining not to proceed with the small business-small purchase set-aside. Coordination with the SADBUS is not required for small purchases at or below ten percent of the small purchase limitation.

PART 315—[AMENDED]

315.407 [Amended]

7. Section 315.407 is amended by redesignating paragraphs "(h)" and "(i)" as "(g)" and "(n)", respectively.

PART 319—[AMENDED]

319.201–70 [Amended]

8. Paragraph (d)(3) of section 319.201–70 is amended by removing the dollar threshold "$10,000," and replacing it with the term "the small purchase limitation,".

319.501 [Amended]

9. Section 319.501 is revised to read as follows:

319.501 General.

(c) Prior to the contracting officer's review, the SADBUS shall review each proposed acquisition to determine the feasibility of recommending award to the Small Business Administration (SBA) pursuant to section 8(a) of the Small Business Act. When it cannot be awarded to SBA pursuant to section 8(a), the SADBUS shall review the proposed acquisition to determine if it can be recommended as a set-aside under one of the set-aside priorities stated in FAR 19.504. The SADBUS's recommendation shall be entered on Form HHS–653, Small Business-Labor Surplus Set-Aside Review Form, with the reasons for the type of set-aside recommended, or the reasons for not recommending a set-aside, and provided to the contracting officer. Upon receipt of the Form HHS–653, the contracting officer shall promptly concur or nonconcur with the SADBUS's recommendation. The contracting officer will make the final determination as to whether the proposed acquisition will be set-aside or not. If the contracting officer approves the SADBUS's set-aside recommendation, the proposed acquisition will be set-aside as specified. However, if the contracting officer disapproves the SADBUS's set-aside recommendation, the reasons must be documented on the Form HHS–653, and the form signed. (See 319.505 for options available to the SADBUS regarding the contracting officer's disapproval of a set-aside recommendation.) In all cases, the completed Form HHS–653 is to be retained by the contracting officer and placed in the contract file.

319.505 [Amended]

10. The second paragraph of section 319.505, beginning "If the SADBUS refers. . . .", is revised to read as follows:

319.505 Rejecting set-aside recommendations.

* * * * *

If an SBA PCR is assigned or available and the SADBUS refers the case to that person, the SBA PCR may either concur with the decision of the contracting officer not to set-aside the proposed acquisition or recommend to the contracting officer that it be set-aside. For the SBA PCR to make a comprehensive review, at least the following should be provided as attachments to the Form HHS–653: the statement of work, evaluation criteria, Government cost estimate, source list including size of firms, and a copy of any justification for other than small business considerations that may be applicable. Once the case has been referred to the SBA PCR, no further appeal action shall be taken by the SADBUS. (Refer to FAR 19.505 for the procedures available to the SBA PCR if the contracting officer rejects the set-aside recommendation.)

319.705–3 [Amended]

11. Section 319.705–3 is amended by removing the second sentence, beginning "Whenever the clause. . . .", in its entirety.

319.705–4 [Amended]

12. Section 319.705–4 is amended by removing paragraph (c).

[FR Doc. 92–7799 Filed 4–6–92; 8:45 am]
BILLING CODE 415–004–M

Proposed Rules

Federal Register
Vol. 57, No. 67
Tuesday, April 7, 1992

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 100

Seismic and Geologic Siting Criteria for Nuclear Power Plants

AGENCY: The Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission staff will meet with the staff of the Nuclear Management and Resources Council (NUMARC) and other industry representatives to discuss the revision of appendix A, "Seismic and Geologic Siting Criteria for Nuclear Power Plants," to 10 CFR part 100.

DATES: April 23, 1992 9 a.m.

ADDRESSES: 11555 Rockville Pike, room: 1F7/9, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Dr. Andrew J. Murphy, Chief, Structural and Seismic Engineering Branch, Office of Nuclear Regulatory Research, Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–3860.

SUPPLEMENTARY INFORMATION: Appendix A to 10 CFR part 100 describes the seismic and geologic siting and earthquake engineering criteria for nuclear power plants. Because of the advances in the state-of-the-art since the publication of the regulation (effective December 13, 1973), a need for the revision has been established. Staff progress in the revision of appendix A to 10 CFR part 100 has been discussed in public meetings with NUMARC and other industry representatives on February 4, 1992, the Advisory Committee on Reactor Safeguards, Subcommittee on Extreme External Phenomena on February 5, 1992 and the Advisory Committee on Reactor Safeguards, Full Committee on February 7, 1992.

NUMARC has formed an ad hoc group on the revision of appendix A to part 100. The purpose of this meeting is to meet with NUMARC and other industry representatives to discuss the draft proposed revision of appendix A to 10 CFR part 100 that was placed in the NRC Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC (Memorandum from Lawrence C. Shao to Raymond F. Fraley, dated January 21, 1992, subject: revision of Appendix A to 10 CFR Part 100—Geological and Seismological Siting Criteria for Nuclear Power Plants). No specific agenda is being proposed.

Dated at Rockville, Maryland, this 31st day of March 1992, for the Nuclear Regulatory Commission.

Lawrence C. Shao,

Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 92–7969 Filed 4–6–92; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 096CE, Special Conditions 23–ACE–64]

Special Conditions; FFT Model Eurotrainer 2000 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the FFT Gesellschaft Fur Flugzeug und Faserverbund Technologie mbH Model Eurotrainer 2000 Series airplanes. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the airworthiness standards for normal, utility, acrobatic, and commuter category airplanes. These design features include the use of composite materials for primary structure for which the regulations do not contain adequate or appropriate airworthiness standards. This notice contains the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the current airworthiness standards.

DATES: Comments must be received on or before August 5, 1992.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. 096CE, room No. 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 096CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mike Downs, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, room 1544, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking further rulemaking action on this proposal. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 096CE." The postcard will be date stamped and returned to the commenter. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the rules docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Background

On April 8, 1991, FFT Gesellschaft Fur Flugzeug and Faserverbund Technologie mbh, located in Germany applied to the FAA for type certification of their model Eurotrainer 2000 Series airplane. The Eurotrainer 2000 Series airplane is a 4-seat, low-wing, conventional airplane

with Fowler flaps and retractable landing gear. The powerplant consists of a 6 cylinder, 270 hp, piston engine and a 3 bladed constant speed propeller. Construction of the airplane structure is of all composite materials.

Type Certification Basis

The type certification basis for the FFT Model Eurotrainer 2000 Series airplane is as follows: Part 21 of the Federal Aviation Administration (FAR), § 21.29 and § 21.183(c); part 23 of the FAR, effective February 11, 1965, including amendments 23–1 through 23–42; part 36 of the FAR, effective December 1, 1969, as amended by amendments 36–1 through the amendment effective on the date of type certification; exemptions, if any, and the special conditions that may result from this proposal.

Discussion

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become a part of the type certification basis as provided by § 21.17(a)(2).

The proposed type design of the FFT Model Eurotrainer 2000 Series airplane contains a number of novel or unusual design features not envisaged by the applicable part 23 airworthiness standards. Special conditions are considered necessary because the airworthiness standards of part 23 do not contain adequate or appropriate safety standards for the novel or unusual design features of the FFT Model Eurotrainer 2000 Series airplane.

Composite Flight Structure

The FFT Model Eurotrainer 2000 Series airplane is made of composite material and is assembled differently from the typical semi-monocoque aluminum airframes that have been predominant since the early 1940's. Composite materials of the type used on the FFT Model Eurotrainer 2000 Series airplane are generally not susceptible to initiation of fatigue cracks by the application of repetitive loads, but are susceptible to damage in the form of cracks, breaks, and delaminations from intrinsic and discrete sources growing under application of repetitive loads. Because of this and other factors, the FAA has determined that the fatigue requirements of § 23.572 are inadequate to ensure that composite material structure can withstand the repeated loads of variable magnitude expected in service. The use of composite materials and bonding of these materials in primary flight structure is a novel and unusual design feature with respect to the type of airplane construction envisaged by the existing airworthiness standards of part 23. Because the requirements of part 23 do not require the level of substantiation necessary for composite material structure, a special condition is being issued to include the necessary airworthiness standards as a part of the certification basis for the FFT Model Eurotrainer 2000 Series airplane. This special condition is being issued to ensure that a level of safety exists for airplanes made from composite materials equivalent to those existing for aluminum airplanes.

The special conditions will require composite structural components critical to safe flight to be evaluated by damage tolerance criteria. The damage tolerance consideration includes principal structural elements, such as the fuselage, and the vertical and horizontal stabilizers and their carry through structure, since failure of these structures could have catastrophic results. When damage tolerance is shown to be impractical, the special condition is worked to permit approval based on safe-life testing. Metal detail designs may continue to be evaluated to the fatigue requirements of § 23.572. Damage tolerance criteria for composite structure, in combination with the existing material requirements of part 23, such as §§ 23.603 and 23.613, will provide a level of safety for the composite material airframe structure used in the FFT Model Eurotrainer 2000 Series airplane equivalent to that required by the airworthiness standards of part 23.

In addition to those components requiring fatigue/damage tolerance evaluations, other components that are critical to flight safety, such as movable control surfaces and wing flaps, must also be protected against loss of strength or stiffness. Protection conventionally is provided through design and inspection. Since composite material strength is susceptible to manufacturing defects and damage from discrete sources, including lightning strikes, process controls and inspectability are limited; therefore, structures design must provide for these limits with adequate protection allowances.

The lack of adequate service experience with composite material structures in airplanes type certificated to the airworthiness standards of part 23, the unusual mechanical properties characteristics, and the experience with composite material structural bonding, to date, necessitate issuing special conditions to ensure an appropriate level of safety for the FFT Eurotrainer Model 2000 Series airframe structure. This special condition is intended to require: (1) Accounting for environmental effects, that is, temperature and humidity on material mechanical properties in all structural substantiation analyses and tests; (2) limit load residual strength with impact damage from discrete sources; (3) ability to carry ultimate load with realistic intrinsic and discrete impact damage at the threshold of detectability; and (4) design features to prevent disbonds greater than the disbonds for which limit load capability has been shown. Proof testing of each production component to limit load and reliance on manufacturing quality control procedures between limit and ultimate load may be used instead of design features provided each bonded joint is subjected to its critical design limit load during the proof testing. Acceptable nondestructive testing techniques do not yet exist in state of the art composite technology to reliably identify weak bonds. However, proof testing of each production article may be discontinued if such tests are developed and accepted by the FAA. Because the composite material and bonding may require maintenance and inspection procedures different from those commonly utilized for existing aluminum airframes, this special condition requires that instructions for continued airworthiness be established in addition to those required by § 23.1529.

Conclusion

This action affects only novel and unusual design features on the FFT Model Eurotrainer 2000 Series airplane. It is not a rule of general applicability and affects only those applicants who apply to the FAA for approval of these features on these airplanes.

List of Subjects in 14 CFR Parts 21 and 23

Aircraft, Air transportation, Aviation safety, and Safety. The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.29(b).

The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes the following special conditions as part of the type certification basis for the FFT Model Eurotrainer 2000A Series airplane:

1. Evaluation of Composite Structures

In lieu of complying with §§ 23.571 and 23.572, and in addition to the requirements of §§ 23.603 and 23.613, airframe structure, the failure of which would result in catastrophic loss of the airplane, each wing, wing carry through and its attaching structure, horizontal stabilizer, horizontal stabilizer carry through and attaching structure, fuselage, vertical stabilizer and its attaching structure, and all movable control surfaces and their attaching structure must be evaluated to damage tolerance criteria prescribed in paragraphs (a) through (j) of this special condition, unless shown to be impractical. In cases shown to be impractical, the aforementioned structure must be evaluated in accordance with the criteria of paragraphs (a) and (k) of this special condition.

Where bonded joints are used, the structure must also be evaluated in accordance with the residual strength criteria in paragraph (h) of this special condition.

(a) It must be demonstrated by tests, or by analysis supported by tests, that the structure is capable of carrying ultimate load with impact damage. The level of impact damage considered need not be more than the established threshold of detectability considering the inspection procedures employed.

(b) The growth rate of damage that may occur from fatigue, corrosion, intrinsic defects, manufacturing defects; for example, bond defects, or damage from discrete sources under repeated loads expected in service; that is, between the time at which damage becomes initially detectable and the time at which the extent of damage reaches the value selected by the applicant for residual strength demonstration, must be established by tests or by analysis supported by tests.

(c) The damage growth, between initial detectability and the value selected for residual strength demonstration, factored to obtain inspection intervals, must permit development of an inspection program suitable for application by operations and maintenance personnel.

(d) Instructions for continued airworthiness for the airframe must be established consistent with the results of the damage tolerance evaluations. Inspection intervals must be set so that, after the damage initially becomes detectable by the inspection method specified, the damage will be detected before it exceeds the extent of damage for which residual strength is demonstrated.

(e) Loads spectra, load truncation, and the locations and types of damage considered in the damage tolerance evaluations must be documented in test proposals.

(f) The structure of the fuselage must be shown by residual strength tests, or by analysis supported by residual strength test, to be able to withstand the loads listed in subparagraphs (1) and (2) below, considered as ultimate loads, with damage consistent with the results of the damage tolerance evaluations.

(g) Each wing, wing carry through and its attaching structure, and horizontal stabilizer carry through and attaching structure, and vertical stabilizer, horizontal stabilizer and its attaching structure, and all moveable control surfaces and their attaching structure must be shown by residual strength tests, or analysis supported by residual strength tests, to be able to withstand critical limit flight loads, considered as ultimate loads, with the extent of damage consistent with the results of the damage tolerance evaluations.

(h) In lieu of a nondestructive inspection technique that ensures ultimate strength of each bonded joint, the limit load capacity of each bonded joint critical to safe flight must be substantiated by either of the following methods used singly or in combination.

(1) The maximum disbonds of each bonded joint consistent with the capability to withstand the loads in paragraph (f) and (g) of this special condition must be determined by analysis, test, or both. Disbonds of each bonded joint greater than this must be prevented by design features.

(2) Proof testing must be conducted on each production article that will apply the critical limit design load to each critical bonded joint.

(i) The effects of material variability and environmental conditions; for example, exposure to temperature, humidity, erosion, ultraviolet radiation, and/or chemicals, on the strength and durability properties of the composite materials must be accounted for in the damage tolerance evaluations and in the residual strength tests.

(j) The airplane must be shown to be free from flutter with the extent of damage for which residual strength is demonstrated.

(k) For those structures where the damage tolerance method is shown to be impractical, the strength of such structures must be demonstrated by tests, or analysis supported by tests, to be able to withstand the repeated loads of variable magnitude expected in service. Sufficient component, subcomponent, element, or coupon tests must be performed to establish the fatigue scatter and environmental effects. Impact damage in composite material components that may occur must be considered in the demonstration. The impact damage level considered must be consistent with the detectability of the inspection procedures employed.

Issued in Kansas City, Missouri, on March 25, 1992.

Richard F. Yotter,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-7909 Filed 4-6-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 21 and 25

[Docket No. NM-66; Notice No. SC-92-1-NM]

Special Conditions: Convair 340 or 440 Airplanes; Lightning and High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for Convair Model 340 or 440 airplanes, modified by the Allison Gas Turbine Division of General Motors Corporation. These airplanes, which have been modified previously to incorporate Allison 501 series turbopropeller engines, will have a novel or unusual design feature associated with high-technology digital avionics systems that perform critical and essential functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of lightning and high-intensity radiated fields (HIRF). This notice contains the additional safety standards that the Administrator considers necessary to ensure that the critical and essential functions that these systems perform are maintained when the airplanes are exposed to lightning and HIRF.

DATES: Comments must be received on or before May 22, 1992.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM-7), Docket No. NM-66, 1601 Lind Avenue SW., Renton, Washington 98055-4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM-66. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Gene Vandermolen, FAA, Flight Test and Systems Branch, ANM-111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2135.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before further rulemaking action on this proposal is taken. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket, both before and after the closing date for comments, for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-66." The postcard will be date/time stamped and returned to the commenter.

Background

On July 12, 1984, the Allison Gas Turbine Division of General Motors Corporation applied for a supplemental type certificate to increase the fuselage length and maximum takeoff weight of Convair Model 340 or 440 airplanes that have previously been modified to incorporate Allison 501-D22G engines in accordance with Supplemental Type Certificate (STC) No. SA4-1100. These are twin-engine, transport category airplanes with a maximum takeoff weight of 56,156 lbs. (Airplanes modified in accordance with STC No. SA4-1100 are sometimes unofficially referred to as 580's.) The present modification consists of:

1. An increase in the maximum takeoff weight from 58,156 lbs. to 63,000 lbs., an increase in the maximum landing weight from 53,000 lbs. to 58,000 lbs., and in increase in zero fuel weight from 50,000 lbs. to 55,000 lbs.

2. An increase in the fuselage length of 14 ft. 3 in.

3. An increase in the takeoff torque limit so that takeoff power is increased from 4,000 to 4,300 shp. Maximum continuous limits remain unchanged.

4. Installation of Electronic Flight Instrument Systems (EFIS) and related avionics systems. The equipment originally installed in these airplanes presented the required flight information in the form of electro-mechanical analog displays. The information presented is both flight critical and essential. The EFIS as a digital system is vulnerable to lightning and high-intensity radiated fields external to the airplane.

Supplemental Type Certification Basis

Under the provisions of § 21.101, Allison Gas Turbine Division must show that the Convair 340 or 440, as modified by STC No. SA4-1100, and as further modified, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. 6A6 and STC No. SA4-1100, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis."

The regulations incorporated by reference in Type Certificate No. 6A6 and STC No. SA4-1100 are as follows: Part 4b of the Civil Air Regulations, effective July 20, 1950, including Amendments 4b-1, 4b-3, and 4b-5; Special Civil Air Regulations No. SR-422B and SR-423; and Special Federal Aviation Regulation No. 27.

In addition, if the regulations incorporated by reference do not provide adequate standards with respect to the change, the applicant must comply with certain regulations in effect on the date of application for the change. The FAA has determined that the Convair 340 or 440 must also be shown to comply with the following sections of part 25, as amended by Amendments 25-1 through 25-72: § 25.869(a); §§ 25.1303 (a), (b), and (c); §§ 25.1309 (a) through (g); § 25.1321(e); §§ 25.1322 (a) through (d); §§ 25.1331 (a) and (b); §§ 25.1333 (a), (b), and (c); § 25.1335; §§ 25.1355 (a) and (c); §§ 25.1359 (a) through (d); §§ 25.1431 (a), (b), and (c); § 25.1525; § 25.1529; and § 25.1542(a).

If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the Convair 340 or 440 airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Convair 340 or 440 must comply with the noise certification requirements of part 36.

Discussion

The existing lightning protection airworthiness certification requirements are insufficient to provide an acceptable level of safety with new technology avionic systems. There are two regulations that specifically pertain to lightning protection; one for the airframe in general (§ 25.581), and the other for fuel system protection (§ 25.954). There are, however, no regulations that deal specifically with protection of electrical and electronic system from lightning. The loss of a critical function of these systems due to lightning could prevent continued safe flight and landing of the airplane. Although the loss of an essential function would not prevent continued safe flight and landing, it could significantly impact the safety level of the airplane.

There is also no specific regulation that addresses protection requirements for electronic and electronic systems from high-intensity radiated fields (HIRF). Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the modified Convair 340 or 440 airplanes that would require that the EFIS be designed and installed to preclude component damage and interruption of function due to both the

direct and indirect effects of lightning and HIRF.

Lightning

To provide a means of compliance with these special conditions, clarification of the threat definition for lightning is needed. The following "threat definition," based on FAA Advisory, Circular 20–136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning, dated March 5, 1990, is proposed as a basis to use in demonstrating compliance with the lightning protection special condition.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in Advisory Circular (AC) 20–53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analyses need to be conducted in order to obtain the resultant internal threat to the installed systems. The electronics systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level; then

2. *Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as multiple strokes. Although multiple strokes are not necessarily a salient factor in damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of Component D (peak amplitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation.

3. *Multiple Burst:* (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause physical damage, it is possible that transients resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of short duration, low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is necessary that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes each, distributed over a period of 2 seconds. Each set of 20 strokes is made up of 20 repetitive Component H waveforms distributed within a period of one millisecond. The minimum time between individual Component H pulses within a burst is 10μs, the maximum is 50μs. The 24 bursts are distributed over a period of up to 2 seconds according to the following constraints: (1) the minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. The individual "Multiple Burst" Component H waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A) "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H).

These components are defined by the following double exponential equation:

$i(t) = I_o (e^{-at} - e^{-bt})$

where:

t = time in seconds,

i = current in amperes, and

		Severe strike (component A)	Restrike (component D)	Multiple stroke (½ component D)	Multiple burst (component H)
I_o, amp	=	218,810	109,405	54,703	10,572
a, sec^{-1}	=	11,354	22,708	22,708	187,191
b, sec^{-1}	=	647,265	1,294,530	1,294,530	19,105,100
This equation produces the following characteristics:					
I_{peak}	=	200 KA	100 KA	50 KA	10 KA
and,					
$(di/dt)_{max}$(amp/sec)	=	1.4×10^{11} @t=0+sec	1.4×10^{11} @t=0+sec	0.7×10^{11} @t=0+sec	2.0×10^{11} @t=0+sec
di/dt, (amp/sec)	=	1.0×10^{11} @t=.5μs	1.0×10^{11} @t=.25μs	0.5×10^{11} @t=.25μs	.....
Action Integral (amp^2 sec)	=	2.0×10^{6}	0.25×10^{6}	0.625×10^{6}	.....

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communication, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as the EFIS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be

exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–500 KHz	60	60
500 KHz–2 MHz	80	80
2 MHz–30 MHz	200	200
30 MHz–100 MHz	33	33
100 MHz–200 MHz	150	33
200 MHz–400 MHz	56	33
400 MHz–1 GHz	4,020	935
1 GHz–2 GHz	7,850	1,750
2 GHz–4 GHz	6,000	1,150
4 GHz–6 GHz	6,800	310
6 GHz–8 GHz	3,600	666
8 GHz–12 GHz	5,100	1,270
12 GHz–18 GHz	3,500	551
18 GHz–40 GHz	2,400	750

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S.

Conclusion: This action affects only certain novel or unusual design features on the modified Convair 340 or 440 airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on these airplanes.

List of Subjects in 14 CFR Parts 21 and 25

Air Transportation, Aircraft, Aviation safety, Safety.

The authority citation for these proposed special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the modified Convair 340 or 440 airplanes:

1. Lightning protection:

a. Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

b. Each essential function of electrical or electronics systems or installations must be protected to ensure that the function can be recovered in a timely manner after the airplane has been exposed to lightning.

2. Protection from unwanted effects of high-intensity radiated fields (HIRF). Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

3. The following definitions apply with respect to these special conditions:

Critical Function. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Essential Functions. Functions whose failure would contribute to or cause a failure condition that would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

Issued in Renton, Washington, on March 30, 1992.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–7908 Filed 4–6–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–CE–93–AD]

Airworthiness Directives; de Havilland Model DHC–2 Beaver MK–I, MK–II, and MK–III Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would be applicable to de Havilland Model DHC–2 Beaver MK–I, MK–II, and MK–III airplanes. The proposed action would require repetitive inspections of the horizontal stabilizer front center spar web at the pickup and lightening holes for cracks, and horizontal stabilizer front center spar replacement if cracks are found. The Federal Aviation Administration (FAA) has received several reports of the horizontal stabilizer front center spar web cracking in the area of the pickup and lightening holes on the affected airplanes. The actions specified by the proposed AD are intended to prevent horizontal stabilizer front center spar failure, which could lead to loss of control of the airplane.

DATES: Comments must be received on or before June 10, 1992.

ADDRESSES: Submit comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–93–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that is applicable to this AD may be obtained from Boeing of Canada, Ltd., de Havilland Division, Downsview, Ontario, Canada, M2K 1Y5. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Franco Pieri, Aerospace Engineer, FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; Telephone (516) 791–6220.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of

the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket 91–CE–93–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–93–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Transport Canada, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain de Havilland Model DHC–2 Beaver MK–I, MK–II, and MK–III airplanes. Transport Canada advises that several reports have been received of the horizontal stabilizer front center spar web cracking in the area of the pickup and lightening holes on the affected airplanes. These cracks, if not detected and corrected, could result in failure of the horizontal stabilizer front center spar, which could lead to loss of control of the airplane.

De Havilland has issued Service Bulletin (SB) 2/47, Revision B, dated December 20, 1991, which specifies instructions and criteria for inspecting and replacing the horizontal stabilizer front center spar. Transport Canada classified this service bulletin as mandatory and issued Transport Canada AD CF–91–42, dated December 20, 1991, in order to assure the airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since this condition could exist or develop in other de Havilland Model DHC–2 Beaver MK–I, MK–II, and MK–III airplanes of the same type design, the proposed AD would require repetitive inspections of the horizontal stabilizer front center spar for cracks, and replacement of this spar if found cracked. The actions would be done in accordance with de Havilland SB 2/47, Revision B, dated December 20, 1991. The proposed AD would also require the incorporation of the following modifications as specified in de Havilland SB 2/47 for certain airplanes that do not already have these modifications incorporated:

2/436—Installation of longer pick-up brackets; and

2/758—installation of gusset plates on pick-up brackets.

The FAA estimates that 149 airplanes in the U.S. registry would be affected by this AD, that it would take approximately 6 hours per airplane to accomplish the proposed inspection, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the inspections proposed by this AD on U.S. operators is estimated to be $49,170. The FAA has no available method of determining how many airplanes have incorporated Modifications 2/436 and 2/758. Therefore, a total cost analysis of these modifications for all U.S. operators is not available. However, the FAA estimates that it would take approximately 7 workhours to accomplish Modification 2/436 and approximately 7 workhours to accomplish Modification 2/758. The average labor rate is approximately $55 an hour. Parts for Modification 2/436 would cost approximately $950 and parts for Modification 2/758 would cost $250. Based on these figures, Modification 2/436 would cost approximately $1,335 per airplane and Modification 2/758 would cost approximately $635 per airplane.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 25, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

de Havilland: Docket No. 91–CE–93–AD.

Applicability: Model DHC–2 Beaver MK–I, MK–II, and MK–III airplanes (all serial numbers), certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent horizontal stabilizer front center spar failure, which would lead to loss of control of the airplane, accomplish the following:

(a) Within the next 200 hours time-in-service (TIS) after the effective date of this AD, accomplish the following:

(1) Dye penetrant inspect the horizontal stabilizer front center spar for cracks in accordance with paragraphs 1, 2, and 3 of Part A. of the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland Service Bulletin (SB) 2/47, Revision B, dated December 20, 1991.

(i) If no cracks are found, accomplish the requirements of paragraph (a)(2) of this AD or accomplish the requirements of paragraph 5 of Part A. of the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland SB 2/47, Revision B, dated December 20, 1991, whichever is applicable.

(ii) If cracks are found on airplanes not having a gusset plate installed on the rear face of the horizontal stabilizer front center spar (Pre-Modification 2/758), prior to further flight, replace the horizontal stabilizer front center spar in accordance with Part B. of the

ACCOMPLISHMENT INSTRUCTIONS section of de Havilland SB 2/47, Revision B, dated December 20, 1991.

(iii) If cracks are found on airplanes that have a gusset plate installed on the rear face of the horizontal stabilizer front center spar (Post-Modification 2/758), within the next 400 hours TIS, replace the horizontal stabilizer front center spar in accordance with Part B. of the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland SB 2/47, Revision B, dated December 20, 1991.

(2) For airplanes that have lightening holes in the horizontal stabilizer front center spar (Pre-Modification 2/466) that did not have the horizontal stabilizer front center spar replaced as required by either paragraph (a)(1)(ii) or (a)(1)(iii) of this AD, visually inspect the front spar web for cracks in accordance with paragraph 4 of Part A. of the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland SB 2/47, Revision B, dated December 20, 1991.

(i) If no cracks are found, accomplish the requirements of paragraph 5 of Part A. of the Accomplishment Instructions section of de Havilland SB 2/47, Revision B, dated December 20, 1991.

(ii) If any cracks are found, prior to further flight, replace the horizontal stabilizer front center spar in accordance with Part B. of the Accomplishment Instructions section of de Havilland SB 2/47, Revision B, dated December 20, 1991.

Note 1: De Havilland SB 2/47, Revision B, dated December 20, 1991, references both the horizontal stabilizer front center spar and the tailplane front center spar. These are one and the same. For the purposes of this AD, all reference is to the horizontal stabilizer front center spar.

(b) If any previously stop-drilled cracks are found per the inspections specified in paragraphs (a)(1) and (a)(2) of this AD, within the following time frames, replace the horizontal stabilizer front center spar in accordance with Part B. of the Accomplishment Instructions section of de Havilland SB 2/47, Revision B, dated December 20, 1991, unless already accomplished in accordance with either paragraph (a)(1)(ii), (a)(1)(iii), or (a)(2)(ii) of this AD:

(1) Within the next 600 hours TIS if the stop-drilled cracks have not progressed past the stop.

(2) Within the next 400 hours TIS if the stop-drilled cracks have progressed past the stop and the airplane has a gusset plate installed on the rear face of the horizontal stabilizer front center spar (Post-Modification 2/758).

(3) Prior to further flight if the stop-drilled cracks have progressed past the stop and the airplane does not have a gusset plate installed on the rear face of the horizontal stabilizer front center spar (Pre-Modification 2/758).

(c) Within the next 1,200 hours TIS after the effective date of this AD, accomplish the following:

(1) For serial numbers 1 through 100, install longer pick-up brackets (Modification 2/436) in accordance with the instructions in de Havilland Technical News Sheet B55, dated August 1, 1952, unless already incorporated.

Note 2: Modification 2/436 was incorporated at manufacture on airplanes beginning with S/N 101. Other airplanes may have incorporated this modification in the field.

(2) For S/N 1 through 317, install a gusset plate on the rear face at each of the pick-up brackets (Modification 2/758) in accordance with the instructions in de Havilland Technical News Sheet B55, dated August 1, 1952, unless already incorporated.

Note 3: Modification 2/758 was incorporated at manufacture on airplanes beginning with S/N 318. Other airplanes may have incorporated this modification in the field.

Note 4: Modification 2/466—deletion of the front lightening holes—is referenced in de Havilland SB 2/47, Revision B, dated December 20, 1991. Accomplishment of this AD incorporates this modification.

(d) Within the next 1,400 hours TIS after the effective date of this AD or within 1,200 hours TIS after accomplishing the requirements of paragraph (c) of this AD, whichever occurs later, and thereafter at intervals not to exceed 1,200 hours TIS, visually inspect the front face of the horizontal stabilizer front center spar for cracks. If any cracks are found, prior to further flight, obtain a repair scheme from the manufacturer through the New York Aircraft Certification Office at the address specified in paragraph (f) of this AD, and incorporate the repair scheme.

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

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

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York Aircraft Certification Office.

(g) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Boeing of Canada, Ltd., de Havilland Division, Downsview, Ontario, Canada, M2K 1Y5; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on April 1, 1992.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-7895 Filed 4-6-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 91-ANE-61]

Proposed Amendment to Transition Area; Presque Isle, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend the Presque Isle, Maine, Transition Area. This proposal is prompted by a re-evaluation of the requirements of the United States Standard for Terminal Instrument Procedures (TERPS) for the Presque Isle Transition Area. This action is necessary to keep the description of the Presque Isle Transition Area operationally current in order to provide increased separation for aircraft executing instrument approaches in that area.

DATES: Comments must be received on or before May 7, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, Air Traffic Division, New England Region, Docket No. 91-ANE-61, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803-5299.

The Official Docket may be examined in the Office of the Assistant Chief Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803-5299, weekdays, except Federal holidays, between the hours of 8 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Rick Miller, System Management Branch, ANE-530, Federal Aviation Administration, Burlington, MA 01803-5299; Telephone: (617) 273-7146.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the

FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91–ANE–61." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA pesonnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Office of the Assistant Chief Counsel, ANE–7, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA proposes an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to update the description of the Transition Area for Presque Isle, Maine. This proposed action is the result of a re-evaluation of the requirements of the United States Standards for Terminal Instrument Procedures (TERPS) as applied to the airspace surrounding Northern Maine Regional Airport, Presque Isle, ME; Caribou Municipal Airport, Caribou, Maine; and Loring Air Force Base, Limestone, Maine. The effect of this proposed amendment would be to increase slightly the Presque Isle Transition Area in the area north of Loring AFB. The FAA has determined that this amendment is necessary to protect that airspace that may be used by aircraft executing instrument approaches to Loring AFB. The description of the transition area is published in § 71.181 of FAA Order 7400.7, effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1.

The FAA has determined that this proposed regulation involves only an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will, when promulgated, not have a significant economic impact on a substantial number of small business entities under the Criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas, Incorporation by reference.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—AMENDED

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

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 4 C.F.R., 1959–1963 comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.181 Transition Areas.

* * * * *

ANE ME TA Presque Isle, ME

That airspace extending upward from 700 feet above the surface within a 13-mile radius of Northern Maine Regional Airport (lat. 46°41'30"N., long. 68°02'30"W.); within 3.5 miles east and 8 miles west of the Presque Isle localizer course extending from the 13-mile radius area to 11.5 miles south of the LOM; within 3.5 miles east and 8 miles west of the Presque Isle VORTAC 338° radial extending from the 13-mile radius area to 11.5 miles north of the VORTAC; within an 8.5-mile radius of Caribou, ME, Municipal Airport, (lat. 46°52'20"N., long. 68°01'10"W.); within a 10-mile radius of Loring AFB, Limestone, ME, (lat. 46°57'05"N. long 67°53'10".), excluding that portion outside of the United States; within 2.5 miles of each side of the Loring TACAN 347° radial extending from the 10-mile radius area to 12.5 miles north of Loring AFB, excluding that portion outside of the United States.

* * * * *

Issued in Burlington, Massachusetts on March 27, 1992.

Francis J. Johns,

Manager, Air Traffic Division, New England Region.

[FR Doc. 92–7913 Filed 4–6–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 91–ANE–33]

Proposed Amendment to Transition Area; Rangeley, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend the Rangeley, Maine Transition Area by correcting the longitude and latitude references for the Rangeley Municipal Airport and the Rangeley NDB. This proposal is prompted by a geographic survey conducted by the National Flight Data Center for the Rangeley Transition Area. This action is necessary to keep the description of the Rangeley Transition Area operationally current.

DATES: Comments must be received on or before May 7, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, Air Traffic Division, New England Region, Docket No. 91–ANE–33, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299.

The Official Docket may be examined in the Office of the Assistant Chief Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299, weekdays, except Federal holidays, between the hours of 8 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Rick Miller, System Management Branch, ANE–530, Federal Aviation Administration, Burlington, MA 01803–5299; Telephone: (617) 273–7146.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91–ANE–33." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Office of the Assistant Chief Counsel, ANE–7, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA proposes an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to update the description of the Transition Area for Rangeley, Maine. This proposed action is the result of a geographic survey conducted by the National Flight Data Center (NFDC) as applied to the airspace surrounding Rangeley Municipal Airport, Rangeley, ME. Based on that survey the FAA has determined that corrections are necessary to the latitude and longitude references for the Rangeley Municipal Airport and the Rangeley NDB in order to accurately describe the Rangeley Transition Area. This amendment is necessary to keep the description of the Rangeley Transition Area operationally current. A description of the transition area is published in § 71.181 of FAA Order 7400.7, effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1

The FAA has determined that this proposed regulation involves only an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small business entities under the Criteria of the Regulator Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviaiton safety, Transition areas, Incorporation by Reference.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—AMENDED

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

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 C.F.R., 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 C.F.R. 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.181 Transition Areas.

* * * * *

ANE ME TA Rangeley, ME

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the center of the Rangeley Municipal Airport, Rangeley, Maine (lat. 44°59'30"N., long. 70°39'51"W.), and that airspace within 3.5 miles on each side of the Rangeley NDB 244 magnetic (226 true) bearing from the Rangeley NDB, extending southwest from the 6.5-mile radius area to 10 miles southwest of the Rangeley NDB (lat. 44°56'04"N., long. 70°45'06"W.).

* * * * *

Issued in Burlington, Massachusetts on March 27, 1992.

Francis J. Johns

Manager, Air Traffic Division, New England Region.

[FR Doc. 92–7914 Filed 4–6–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 91–ANE–62]

Proposed Amendment to Control Zone; Limestone, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend the Limestone, Maine, Control Zone, by decreasing the Control Zone in the area south of Loring Air Force Base (AFB), Limestone, Maine, and increasing the Control Zone to the north of Loring AFB. This proposal is prompted by a re-evaluation of the United States Standards for Terminal Instrument Procedures (TERPS) as applied to the airspace surrounding Northern Maine Regional Airport, Presque Isle, ME; Caribou Municipal Airport, Caribou, ME; and Loring AFB. The action would keep the description of the Limestone, Maine, Control Zone operationally current.

DATES: Comments must be received on or before May 7, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, Air Traffic Division, New England Region, Docket No. 91–ANE–62, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299.

The Official Docket may be examined in the Office of the Assistant Chief Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299, weekdays, except Federal holidays, between the hours of 8 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Rick Miller, System Management Branch, ANE–530, Federal Aviation Administration, Burlington, MA 01803–5299; Telephone: (617) 273–7146.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91–ANE–62." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Office of the Assistant Chief Counsel, ANE–7, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA proposes to amend § 71.171 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to update the description of the Control Zone for Limestone, Maine. This proposed action is the result of a re-evaluation of the requirements of the United States Standards for Terminal Instrument Procedures (TERPS) as applied to the airspace surrounding Northern Maine Regional Airport, Presque Isle, ME; Caribou Municipal Airport, Caribou, ME; and Loring Air Force Base, Limestone, ME. The net effect of the proposed amendment would be to decrease slightly the Limestone, Maine, Control Zone in the area south of Loring AFB, and increase the Control Zone to the north of Loring AFB. This action would keep the description of the Limestone, Maine, Control Zone operationally current. The description of the control zone is published in § 71.171 of FAA Order 7400.7, effective November 1, 1991; which is incorporated by reference in 14 CFR 71.1.

The FAA has determined that this proposed regulation involves only an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small business entities under the criteria of the Regulator Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Incorporation by reference.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963, Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulation, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.171 Control Zones

* * * * *

ANE ME TA Limestone, ME

Within a 5-mile radius of the center of Loring AFB, Limestone, ME (Lat. 46°57'05"N, long. 67°53'10"W), excluding the portion outside of the United States; within 1.5 miles each side of the Loring TACAN 166° radial extending from the 5-mile radius area to 4.0 miles south of the TACAN; and within 2 miles each side of the Loring TACAN 347° radial extending from the 5-mile radius area to 13.5 miles north of the TACAN, excluding the portion outside of the United States.

* * * * *

Issued in Burlington, Massachusetts, on March 27, 1992.

Francis J. Johns,

Manager, Air Traffic Division, New England Region.

[FR Doc. 92–7910 Filed 4–6–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 91–ANE–60]

Proposed Amendment to Transition Area; Highgate, VT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend the Highgate, Vermont, Transition Area. This proposed amendment would redefine the Highgate Transition Area using the St. Jean VORTAC due to the establishment of a new VOR/DME Instrument Approach Procedure (IAP) to the Highgate/Franklin County State Airport. This amendment is necessary to protect that airspace which may be used by aircraft executing the new IAP to Highgate.

DATES: Comments must be received on or before May 7, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANE–530, New England Region, Docket No. 91–ANE–60, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299.

The Official Docket may be examined in the Office of the Assistant Chief Counsel, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299, weekdays, except Federal holidays, between the hours of 8 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Rick Miller, System Management Branch, ANE–530, Federal Aviation Administration, Burlington, MA 01803–5299; Telephone: (617) 273–7146.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91-ANE-60." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Office of the Assistant Chief Counsel, ANE-7, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803-5299. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA proposes an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Transition Area for Highgate, Vermont. The Highgate, Vermont Transition Area is currently based on the VOR-B Instrument Approach Procedure (IAP) to the Highgate/Franklin County State Airport (Highgate). The current IAP is based on the Plattsburg VORTAC (PLB). Due to limitations on the use of the Plattsburg VORTAC, the VOR-B IAP is not authorized. Therefore, a new IAP to Highgate will be established based on the St. Jean VORTAC (YJN). Accordingly, the Highgate Transition Area must be redefined. The net effect of the proposed amendment would be to decrease the size of the Highgate Transition Area in the area southwest of the airport and increase the transition area extending northwest of the airport toward the St. Jean VORTAC. This amendment is necessary to protect aircraft that may be using the new VOR/DME Runway 19 IAP to Highgate. The description of the transition area is published in § 71.181 of FAA Order 7400.7, effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1.

The FAA has determined that this proposed regulation involves only an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small business entities under the Criteria of the Regulator Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways, Incorporation by reference.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.181 Transition Areas

* * * * *

ANE VT TA Highgate, VT

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Highgate/Franklin County State Airport, Highgate, VT (lat. 44°56'26"N, long. 73°05'54"W); and within 3.5 miles east and west of the St. Jean VORTAC (YJN) 153° radial extending from the 7-mile radius area to 17 miles SE of the St. Jean VORTAC, excluding that airspace outside of the United States.

* * * * *

Issued in Burlington, Massachusetts, on March 27, 1992.

Francis J. Johns,

Manager, Air Traffic Division, New England Region.

[FR Doc. 92-7911 Filed 4-6-92; 8:45 am]

BILLING CODE 4910-13-M

Coast Guard

33 CFR Part 117

[CGD8-92-09]

Drawbridge Operation Regulations; Pearl River, Louisiana

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is considering a change to the regulation governing the operation of the swing span bridge on U.S. 90, across the Pearl River, mile 8.8, in St. Tammany Parish, Louisiana, near Pearlington, Mississippi, by requiring at least four hours advance notice for an opening of the draw from 7 p.m. to 7 a.m. The draw would continue to open on signal from 7 a.m. to 7 p.m. The present regulation requires at least four hours notice for an opening of the draw between the hours of 9 p.m. and 5 a.m.

This action should still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before May 22, 1992.

ADDRESSES: Comments should be mailed to Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130-3396. The Comments and other materials referenced in this notice will be available for inspection and copying in room 1313 at this address. Normal office hours are between 8 a.m. and 3:30 p.m., Monday through Friday, except

holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, at the address given above, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed 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 postcard or envelope.

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

Drafting Information

The drafters of this regulation are Mr. John Wachter, project officer, and LT J. A. Wilson, project attorney.

Discussion of Proposed Regulation

Vertical clearance of the bridge in the closed to navigation position is 10 feet above high tide and 12 feet above low tide. Navigation through the bridge consists of recreational craft, primarily fishing vessels. Data submitted by LDOTD show that during the calendar year of 1991, between the proposed additional advance notice hours of 5 a.m. to 7 a.m., only 12 vessels requested an opening of the draw. During the proposed additional advance notice hours of 7 p.m. to 9 p.m., only 8 vessels requested an opening of the draw.

Considering the few vessels that pass the bridge during the proposed additional advance notice hours, the Coast Guard feels that vessel operators should be able to give the bridge owner four hours notice for a bridge opening with little or no expense or inconvenience to themselves.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034: February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that during the proposed regulated period there will be very little inconvenience to vessels using the waterway. In addition, mariners requiring the bridge openings are repeat users of the waterway and giving the bridge owner advance notice, or scheduling their arrivals to avoid the proposed regulated period should involved little or no additional expense to them. 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.

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.5 of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking document.

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:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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. Part 117 is amended by revising § 117.488 to read as follows:

§ 117.488 Pearl River.

(a) The draw of the railroad bridge, mile 1.0 near English Lookout, shall open on signal; except that, from 9 p.m. to 5 a.m. the draw shall open on signal if at least four hours notice is given.

(b) The draw of the US 90 highway bridge, mile 8.8 near Pearlington, shall open on signal; except that, from 7 p.m. to 7 a.m. the draw shall open on signal if at least four hours notice is given.

Dated: March 19, 1992.

T.D. Fisher,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard Dist., Acting.

[FR Doc. 92–7916 Filed 4–6–92; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL MARITIME COMMISSION

46 CFR Part 552

[Docket No. 91–51]

Financial Report of Common Carriers by Water in the Domestic Offshore Trades

AGENCY: Federal Maritime Commission.

ACTION: Advance notice of proposed rulemaking; replies.

SUMMARY: On November 8, 1991, the Federal Maritime Commission published (56 FR 57298) an advance notice of proposed rulemaking ("ANPR") soliciting comments and information from the public on the issues which should be addressed in a proposed rule concerning substantive guidelines for determining what constitutes a just and reasonable rate of return or profit for common carriers by water in the FMC-regulated portion of the domestic offshore trades.

Pursuant to the ANPR, comments were submitted by ten interested parties. Matson Navigation Company ("Matson") and Puerto Rico Maritime Shipping Authority ("PRMSA") now also have requested permission to file replies to comments in this matter. The State of Hawaii opposes these requests, unless the Commission believes they are necessary before a Notice of Proposed Rulemaking can be issued. Additionally, Matson has incorporated in its comments a suggestion that the Commission conduct a negotiated rulemaking, pursuant to the Negotiated Rulemaking Act, Public Law 101–648, "to accomplish the *technical* revisions necessary for G.O. 11" (Matson Comments at 10).

The Commission believes that a reply round of comments may be helpful. This is based on two factors. First, the comments include significant suggestions beyond the eight issues specified in the ANPR, which commentors have not had previous opportunity to consider. These suggestions range from total economic deregulation of the domestic offshore trades to specific refinements of the Commission's financial reporting rules. Second, Matson's suggestion to proceed by way of negotiated rulemaking deserves comments by other interested

persons. Accordingly, the Commission will permit reply comments to be filed by any interested person, not just the ten current parties, providing the opportunity for other affected carriers, and for other government and shipper interests to respond to both the substantive and procedural suggestions contained in the original comments. Parties who have filed comments are provided in the attached list. All parties are directed to provide copies of their comments to anyone upon request, so as to facilitate timely replies. Alternatively, comments are available for inspection and copying at the Commission's Office of the Secretary. Pursuant to rule 53, 46 CFR 502.53, reply comments shall be served on initial round participants.

DATES: Reply comments (original and 15 copies) due on or before May 22, 1992.

ADDRESSES: Comments are to be submitted to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573–0001, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Austin L. Schmitt, Director, Bureau of Trade Monitoring and Analysis, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573–0001, (202) 523–5787.

By the Commission.

Joseph C. Polking,

Secretary.

Docket No. 91–51

Alan P. Sherbrooke, Esq., Garvey, Schubert & Barer, 1000 Potomac Street, NW., Washington, DC 20007, (202) 965–7880, (atty. for Totem Ocean Trailer Express, Inc.)

Barry J. Israel, Esq., Dorsey & Whitney, 1330 Connecticut Avenue, NW., suite 200, Washington, DC 20036, (202) 857–0700, (atty. for Government of Guam)

Neal M. Mayer, Esq., Paul D. Coleman, Esq., Hoppel, Mayer & Coleman, 1000 Connecticut Avenue, NW., suite 410, Washington, DC 20036, (202) 296–5460, (atty. for Tropical Shipping & Construction Co., Ltd.)

Robert T. Basseches, Esq., David B. Cook, Esq., David J. Reich, Esq., Shea & Gardner, 1800 Massachusetts Ave, NW., Washington, DC 20036, (202) 828–2000, (atty. for American President Lines, Ltd.)

William H. Fort, Esq., Fort & Schlefer, 1401 New York Avenue, NW., Washington, DC 20005, (202) 467–5900, (atty. for Crowley Maritime Corporation)

Rick A. Rude, Esq., suite 103, 207 Park Avenue, Falls Church, Virginia 22046, (703) 536–3063, (atty. for Caribbean Shippers Association, Inc.)

Amy Loeserman Klein, Esq., Klein & Bagileo, 1101 Thirtieth St., NW., suite 120, Washington, DC 20007, (202) 944–3301, (atty. for PRMSA)

Lawrence M. Reifurth, Esq., Deputy Attorney General, State of Hawaii, 425 Queen Street, Honolulu, Hawaii 96813, (808) 586–1180.

Stephen T. Rudman, Esq., Matson Navigation Co., 333 Market Street, San Francisco, CA 94105–2190, (415) 957–4545.

Tobias E. Seaman, President, NASCCMA, 350 Ward Avenue, suite 106, Honolulu, Hawaii 96814, (808) 533–7738.

[FR Doc. 92–7850 Filed 4–6–92; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 80

[PR Docket No. 92–30; FCC 92–71]

Vessel Traffic Service (VTS) Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Notice of Proposed Rule Making (Notice) proposes to amend part 80 of the Commission's Rules, 47 CFR part 80, to add to the San Francisco, California port area to the United States Coast Guard (Coast Guard) designated radio protection areas for mandatory Vessel Traffic Services (VTS) and establish marine VHF channel 14 (156.7 MHz) as the VTS frequency for the San Francisco port area. This Notice responds to a request by the Coast Guard which has proposed a program requiring that certain vessels participate in a VTS system in the port of San Francisco. The effect of the proposed action is enhanced protection of the marine environment by preventing vessel collisions and groundings.

DATES: Comments must be submitted on or before April 27, 1992, and reply comments on or before May 12, 1992.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marc S. Martin, Aviation & Marine Branch, Private Radio Bureau, (202) 632–7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, adopted February 20, 1992, and released March 5, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch, (room 230), 1919 M Street NW., Washington, DC 20054. The complete text of this decision 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 Notice of Proposed Rulemaking

In response to the Oil Pollution Act of 1990, the Coast Guard has proposed rules that will require oil tankers and other large cargo vessels operating in the port of San Francisco to participate in a VTS system. The Coast Guard's action is intended to protect U.S. waters and associated natural resources from environmental harm caused by collisions between vessels by requiring such vessels to report their movement in certain designated geographic areas. The Coast Guard notes that there is a voluntary VTS system in San Francisco that operates on marine VHF channel 13 (156.65 MHz). The Coast Guard expects that channel 13 will become congested when VTS participation becomes mandatory because it is already used for bridge-to-bridge communications, that is, navigation communications involving safety from the bridge of one vessel to the bridge of another.

We propose that the port of San Francisco be added to the Commission's list of Coast Guard designated radio protection areas and that marine VHF channel 14 (156.7 MHz) be allotted exclusively for VTS communications in the port of San Francisco. Marine VHF channel 14 is a port operations channel used for communications related to the handling and safe movement of ships. Additionally, it is reserved for VTS communications in other coast guard designated VTS areas. Currently, there are four U.S. ports: Houston, New York, New Orleans and Seattle, that are designated VTS areas. Further, as the Coast Guard notes, channel 13 is used for bridge-to-bridge communications and will continue to be used for bridge-to-bridge communications by vessels not required to participate in the VTS system and, thus, could be congested if allotted for VTS communications. Finally, the Coast Guard's proposed rules are in response to legislation intended to prevent oil spills and San Francisco is highly likely to be designated as a VTS area. There are two private coast station licensees on channel 14 in this area who will have to move. We recommend grandfathering them until the end of their current license term and will work with

individual licensees who may wish to change channels before the end of their current license term.

Procedural Matters

Paperwork Reduction

Authority for issuance of the Notice of Proposed Rule Making 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).

List of Subjects in 47 CFR Part 80

Coast stations, Radio, Ship stations, Telephone.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Proposed Rule Changes

Part 80 of chapter 1 of title 47 of the Code of Federal Regulations is proposed to be 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.

2. Section 80.383 is amended by revising the table in paragraph (a) to add San Francisco to the list of geographic areas for the carrier frequency 156.700 MHz,[2] amending paragraph (b)(3) by removing the final "and", amending paragraph (b)(4) by replacing the final "." with "; and" and adding a new paragraph (b)(5) to read as follows:

§ 80.383 Vessel Traffic Services (VTS) system frequencies.

* * * * *

(a) Assigned frequencies:

VESSEL TRAFFIC CONTROL FREQUENCIES

Carrier frequencies (MHz)	Geographic areas
* * * * *	
156.700	New York, New Orleans [1], Seattle, San Francisco [2].

[2] Existing private coast station licenses for the use of this frequency will not be renewed beyond their current term. Continued use until expiration must be on a noninterference basis to Coast Guard VTS communications.

(b) * * *

(5) *San Francisco.* The rectangle between north latitudes 37 degrees and 39 degrees and west longitudes 120 degrees 50 minutes and 123 degrees 20 minutes.

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[FR Doc. 92–7847 Filed 4–6–92; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 57, No. 67
Tuesday, April 7, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

National Agricultural Research and Extension Users Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776), the Office of Grants and Program Systems, Cooperative State Research Service, announces the following meeting:

Name: National Agricultural Research and Extension Users Advisory Board.

Date: May 17–20, 1992.

Time: 5:30 p.m.–7:30 p.m., May 17, 1992; 8 a.m.–5:30 p.m., May 18, 1992; 8 a.m.–5:30 p.m., May 19, 1992; 8 a.m.–12 p.m., May 20, 1992.

Place: Ramada Inn—Executive Towers, 222 South Cayuga Street, Ithaca, New York 14580, (607) 272–1000.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To review agricultural research, teaching and extension programs that focus on (1) the promises of agricultural biotechnology and (2) accomplishment in food safety and quality.

Contact Person for Agenda and More Information: Marshall Tarkington, Executive Secretary, National Agricultural Research and Extension Users Advisory Board; room 432–A, Administration Building, U.S. Department of Agriculture, Washington DC 20250–2200; telephone (202) 720–3684.

Done in Washington, DC, this 25th day of March 1992.

John Patrick Jordan,

Administrator.

[FR Doc. 92–7885 Filed 4–6–92; 8:45 am]

BILLING CODE 3410–22–M

Forest Service

Notice of Intent To Prepare an Environmental Impact Statement

SUMMARY: The Department of Agriculture, Forest Service will prepare an environmental impact statement for a proposal to expand the permit boundaries and further development of the Sipapu Ski Area. The Carson National Forest Land and Resource Management Plan has been prepared. One of the management decisions in the plan allocated land for possible expansion of the Sipapu Ski Area to meet resource objectives outlined in the Carson Forest Plan. A range of alternatives for this site will be considered. One of these alternatives will include no action, or no further expansion and development on National Forest System lands.

DATES: Comments concerning the scope of the analysis should be received in writing by May 15, 1992.

ADDRESSES: Send written comments to the Forest Supervisor, Carson National Forest, P.O. Box 558, Taos, NM 87571, Phone: 505/758–6200.

FOR FURTHER INFORMATION CONTACT: Richard L. Speegle, Camino Real Ranger District, P.O. Box 68, Penasco, NM 87553. Phone 505/587–2255.

SUPPLEMENTARY INFORMATION: The Forest Supervisor of the Carson National Forest is the official responsible for deciding if expansion is desirable for the area and, if so, which alternative will be implemented. The Forest Supervisor may decide to:

1. Defer action (select the no action alternative), or
2. implement one of the action alternatives.

The action alternatives will include the following decisions:

1. Size and location of expansion area,
2. degree and design of facilities, and
3. timing and duration of management activities.

This environmental impact statement will be tiered to the Carson Forest Plan Environmental Impact Statement (EIS), and Record of Decision (ROD), dated October 31, 1986. This document discusses alternative long term land uses and the environmental, economic, and social effects of implementing these land uses.

Intensive scoping to determine pertinent issues relating to the proposal have been ongoing since the beginning of the analysis in 1990. Scoping has been accomplished formally through meetings, open houses and correspondence. Scoping will continue, in the same manner if and when it is determined that such additional scoping opportunities are desirable and beneficial. Dates and locations of future scoping opportunities will be made available to interested parties as they are planned. Written comments regarding issues relating to the proposal are encouraged and will be accepted anytime throughout the preparation of the draft environmental impact statement and within 45 days after publication of the draft environmental impact statement in the **Federal Register**.

Preliminary issues which have been identified are as follows:

Water quality
Water flow timing
Old growth
Soil productivity
Threatened, endangered, and sensitive (TES) species
Trail and lift location and management
Habitat capability for wildlife
Developed and dispersed recreation opportunity
Visual quality
Socioeconomic impacts upon local communities
Economic efficiency
Parking
Safety
Sanitation and sewage treatment

The estimated date for filing the draft environmental impact statement is September 1992. The estimated date for filing the final environmental impact statement is March 1993.

Reviewers Obligation to Comment: The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is

meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

Dated: March 27, 1992.

Leonard A. Lindquist,

Forest Supervisor.

[FR Doc. 92–7918 Filed 4–6–92; 8:45 am]

BILLING CODE 3410–11–M

Intent To Prepare an Environmental Impact Statement To Develop a Conservation Strategy for Mexican Spotted Owls; Southwestern Region, Arizona, New Mexico, West Texas and Oklahoma

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an Environmental Impact Statement.

SUMMARY: This current notice is being issued to update information on time frames, hearings, and roles of the various agencies in the Environmental Impact Statement process.

The Southwestern Region of the Forest Service is proposing to develop a conservation strategy for Mexican spotted owl (*Strix occidentalis lucida*). A conservation strategy is needed to ensure that continued existence of Mexican spotted owls is not jeopardized by management activities on National Forest Land. The conservation strategy will be implemented on the eleven national forests in Arizona and New Mexico by each Forest Supervisor as management activities are planned.

DATES: Comments concerning the scope of the analysis (issues, preliminary alternatives, etc.) should be received in writing by April 20, 1992.

ADDRESSES: Send written comments to USDA Forest Service, Southwestern Region, 517 Gold Avenue SW., Albuquerque, NM 87102, Attn: Director of Wildlife.

FOR FURTHER INFORMATION CONTACT: Contact Wildlife Staff Unit, (505) 842–3261.

SUPPLEMENTARY INFORMATION: The Forest Service is planning to develop a conservation strategy for Mexican spotted owls (*Strix occidentalis lucida*).

Mexican spotted owls are presently being considered for listing as a threatened or endangered species. A conservation strategy is needed to conserve and manage owl habitat so that continued existence of the species is assured while providing management guidelines for carrying out other national forest multiple use activities within owl habitat. Management activities within owl habitat are presently being guided by interim guidelines.

The Regional Forester, Southwestern Region, will be the responsible official and will decide on the conservation strategy to be implemented on the eleven national forests in the region.

Preliminary issues are: Whether or not Mexican spotted owls are adequately protected under present guidelines and effects of the strategy on other wildlife, other multiple uses, local economies, and biodiversity. Tentative alternatives include continuing current guidelines, ecologically based strategy, and total prohibition of activity in owl habitat.

Many public comments have been received concerning Mexican spotted owl management over the last several years and form the backbone for scoping activities for this process. No additional scoping activities are planned before the draft environmental impact statement is issued.

It is expected that the draft environmental impact statement will be available approximately June 1992, and the environmental impact statement will be available approximately September 1992.

The comment period on the draft environmental impact statement will be 45 days from the date of the Environmental Protection Agency's notice of availability appears in the **Federal Register.** It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC* 435 US 519, 553 (1978). 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. *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *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 to them in the final.

Dated: April 1, 1992.

Patrick L. Jackson,

Acting Deputy Regional Forester, Southwestern Region.

[FR Doc. 92–7892 Filed 4–6–92; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee (CAC) on the American Indian and Alaska Native Populations for the 1990 Census, the CAC on the Asian and Pacific Islander Populations for the 1990 Census, the CAC on the Black Population for the 1990 Census, and the CAC on the Hispanic Population for the 1990 Census; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409), we are giving notice of a joint meeting (described below) of the CAC on the American Indian and Alaska Native Populations for the 1990 Census, the CAC on the Asian and Pacific Islander

Populations for the 1990 Census, the CAC on the Black Population for the 1990 Census, and the CAC on the Hispanic Population for the 1990 Census. The joint meeting will convene on April 24, 1992 at the Bureau of the Census in the Conference Center, room 1630, Federal Building 3, Suitland, Maryland 20233.

Each of these Committees is composed of 12 members appointed by the Secretary of Commerce. They provide an organized and continuing channel of communication between the communities they represent and the Bureau of the Census on the problems and opportunities of the 1990 deccenial census.

The Committees will draw on past experience with the 1990 census process and procedures, results of evaluations and research studies, and the knowledge and insight of its members to provide advice and recommendations during the planning phase for the 2000 census.

The agenda for the April 24 combined meeting that will begin at 8:30 a.m. and end at 5 p.m. is: (1) Introductory remarks by the Dirctor, Bureau of the Census; (2) alternative designs assessment meeting; and (3) preliminary evaluations of the 1990 data from the race, Hispanic origin, and ancestry questions.

All meetings are open to the public and a brief period is set aside for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Census Bureau official named below at least 3 days before the meeting.

Persons wishing additional information regarding these meetings or who wish to submit written statements may contact Ms. Diana Harley, Decennial Planning Division, Bureau of the Census, room 3546, Federal Building 3, Suitland, Maryland (Mailing address: Washington, DC 20233), Telephone: (301) 763–4275.

Dated: March 31, 1992.

Barbara Everitt Bryant,

Director, Bureau of the Census.

[FR Doc. 92–7859 Filed 4–6–92; 8:45 am]

BILLING CODE 3510–07–M

National Oceanic and Atmospheric Administration

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Applications for Scientific Research Permits (P771#61 and P771#62).

Notice is hereby given that the National Marine Fisheries Service's National Marine Mammal Laboratory, 7600 Sand Point Way, NE, BIN C15700, Seattle, WA 98115–0070, has applied in due form for two Permits to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Species and Type of Take

P771#61: The applicant is requesting authorization to conduct immune response studies on up to 260 California sea lions (*Zalophus californianus*) over a two year period. Phase one of the study will involve the physical restraint, immunization (with an antigen (tetanus toxoid, purified hen egg white lysozyme, or sheep red blood cells and also Bacille Calmette-Guerin (BCG)), and blood sampling of up to 20 newly captive beached/stranded animals in order to determine the minimum antigen dose required to elicit a quantifiable immune response in healthy animals.

Phase two of the study will involve: the capture, physical restraint, immunization, marking, and release of up to 40 two-month old wild pups, 20 of which will be recaptured two to four weeks later, blood sampled, and released; and the capture, physical restraint, immunization, marking, and release of up to 200 four- to five-month old wild pups, 100 of which will be recaptured two to four weeks later, physically restrained, anesthetized, blubber biopsied, injected with Tetracycline, blood sampled, temporarily maintained for up to 72 hours, hot branded, flipper tagged, and released. The purpose of the proposed research is to evaluate the immune system competence of free-ranging California sea lions to determine if high levels of organochlorine pollutants (DDT and PCB's) are associated with immunosuppression.

P77#62: The applicant requests a Permit to take over a two-year period up to 150 California sea lion pups (*Zalophus californianus*), of which up to 100 (moribund animals) will be captured and killed and up to 50 (healthy animals) will be captured, chemically restrained with gas anesthesia, blood sampled, tissue biopsied, and released. The purpose of the proposed research is to elucidate the role that organochlorine pollutant residues, such as DDT and PCB's have played in high neonatal pup mortality in southern California.

The research proposed in applications P771#61 and P771#62 is part of a comprehensive Injury Determination Study for the Southern California Damage Assessment.

Location of the Proposed Research

The proposed research will be conducted at Channel Islands National Park on San Miguel Island, California.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application, should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

By appointment: Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90802–4213 (310/980–4016).

Dated: March 31, 1992.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 92–7881 Filed 4–6–92; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Office of the Secretary

AGENCY: Defense Intelligence Agency Advisory Board.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of a panel of the DIA Advisory Board has been scheduled as follows:

DATES: Monday & Tuesday, April 13–14, 1992 (9 a.m. to 5 p.m. each day).

ADDRESSES: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John G. Sutay, USAF, Executive Secretary, DIA Advisory Board, Washington, DC. 20340–1328 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting will be devoted to the discussion of classified information as defined in section 552b(c)(1), title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Measurement and Signature Intelligence.

Dated: April 1, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–7936 Filed 4–6–92; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

National Advisory Committee on Accreditation and Institutional Eligibility; Education

AGENCY: National Advisory Committee on Accreditation and Institutional Eligibility; Education.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the proposed agenda of the National Advisory Committee on Accreditation and Institutional Eligibility. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of its opportunity to attend this public meeting.

DATES AND TIMES: May 4–6, 1992—8:30 a.m. until 5 p.m.

LOCATION: The Rosslyn Westpark Hotel, 1900 Fort Myer Drive, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Steven G. Pappas, Executive Director, National Advisory Committee on Accreditation, and Institutional Eligibility, U.S. Department of Education, 400 Maryland Avenue, SW, room 3915–ROB#3, Washington, DC 20202–5151.

SUPPLEMENTARY INFORMATION: The National Advisory Committee on Accreditation and Institutional Eligibility is established under section 1205 of the Higher Education Act as amended by Public Law 93–374 (20 U.S.C. 1145). The Committee advises the Secretary of Education regarding his responsibility to publish a list of nationally recognized accrediting agencies and associations, State agencies recognized for the approval of public postsecondary vocational education, and State agencies recognized for the approval of nurse education. The Committee also advises the Secretary of Education on policy matters concerning recognition of accrediting and State approval bodies and institutional eligibility for participation in Federally funded programs.

Agenda

The meeting on May 4–6, 1992 is open to the public. The Advisory Committee will review petitions and interim reports of accrediting agencies and State approval bodies relative to initial or continued recognition by the Secretary of Education. The Committee will also hear presentations by representatives of these petitioning agencies and any third parties who have requested to be heard. The following petitions and interim reports are scheduled for review:

Nationally Recognized Accrediting Agencies and Associations

Petition for Initial Recognition

Association of Collegiate Business Schools and Programs (baccalaureate and master's degree programs in business administration and management, and baccalaureate and master's degree programs in accounting).

Petitions for Renewal of Recognition

1. Accrediting Council for Continuing Education and Training, Accrediting Commission (non-collegiate continuing education institutions and programs).

2. American Academy of Microbiology, Committee on Postdoctoral Educational Programs (postdoctoral programs in medical and public laboratory microbiology).

3. American Bar Association, Council of the Section of Legal Education and Admissions to the Bar (professional schools).

4. American Optometric Association, Council on Optometric Education (professional degree programs, residency programs, and optometric technician programs).

5. American Psychological Association, Committee on Accreditation (doctoral programs in clinical, counseling, school and combined professional-scientific psychology, and predoctoral internship programs in professional psychology).

6. American Veterinary Medical Association, Council on Education (colleges of veterinary medicine offering programs leading to a professional degree).

7. American Veterinary Medical Association, Committee on Veterinary Technician Activities and Training (associate degree and programs of at least two years in basic education for veterinary technicians).

8. Commission on Opticianry Accreditation (two-year programs for the ophthalmic dispenser and one-year program for the ophthalmic laboratory technician).

9. Society of American Foresters (programs leading to a bvachelor's or higher first professional degree).

10. New England Association of Schools and Colleges (postsecondary institutions located in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont).

11. North Central Association of Colleges and Schools, Commission on Institutions of Higher Education (postsecondary institutions located in Arizona, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, West Virginia, Wisconsin, Wyoming).

12. North Central Association of Colleges and Schools, Commission on Schools (institutions offering postsecondary adult vocational education programs located in Arizona, Arkansas, Colorado, Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, West Virginia, Wisconsin, Wyoming).

13. Northwest Association of Schools and Colleges, Commission on Colleges (postsecondary institutions located in Alaska, Idaho, Montana, Nevada, Oregon, Utah, Washington).

14. Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges (community and junior colleges located in California, Hawaii, American Samoa, Guam, and the Commonwealth of the Northern Marianas).

Interim Reports

1. American Council for Construction Education (baccalaureate degree programs)

2. Middle States Association of Colleges and Schools, Commission on Secondary Schools (public vocational/technical high schools offering non-degree postsecondary education).

State Approval Agencies for Vocational Education

Petitions for Renewal of Recognition

1. Kansas State Board of Education (public postsecondary vocational education).

2. Puerto Rico State Agency for Approval of Public Postsecondary Vocational Technical Education Institutions and Programs (public postsecondary vocational education).

Interim Reports

1. Minnesota State Board of Vocational Technical Education.

2. Washington State Board for Community and Technical Colleges.

State Approval Agency for Nurse Education

Petition for Renewal of Recognition

1. Montana State Board of Nursing

Request by the National Defense University

The Advisory Committee will also review a request from the National Defense University for authority of the National War College to award a Master of Science degree in national security strategy and for the Industrial College of the Armed Forces to award a master of Science degree in national resource strategy.

Requests for oral presentation before the Advisory Committee should be submitted to Mr. Pappas (address above) by April 20, 1992. Requests should include the names of all persons seeking an appearance, the organization they represent, and the purpose for which the presentation is requested.

A record will be made of the proceeding of the meeting and will be available for public inspection at the Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., (room 3036 ROB#3), Washington, DC, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

Authority: 5 U.S.C.A. appendix 2.

Dated: March 31, 1992.

Carolynn Reid-Wallace,

Assistant Secretary for Postsecondary Education.

[FR Doc. 92-7894 Filed 4-6-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Floodplain Statement of Findings for Installation of Sediment Samplers and Flow Measuring Devices in Stream Channels at the Department of Energy, Rocky Flat Plant, Golden, CO

AGENCY: Department of Energy (DOE).

ACTION: Statement of findings.

SUMMARY: The Department of Energy (DOE) has proposed a project at the Rocky Flats Plant which will be located within the 100-year floodplain of drainage on plant site. The project entails the installation of temporary stream gauging stations comprised of flow monitors, water samplers, and one of two possible types of suspended-sediment samplers in the stream channels (as located on the map). Stream flows would be measured using pressure transducers or bubbler manometers secured in the channel and linked to electronic data loggers placed in wooden boxes located near the channel. Water samples would be collected through intakes secured in the channels and connected to automatic water samplers placed in the same boxes as the data loggers. Cables and intake hoses would be buried approximately six inches below the surface in order to insulate and anchor the lines.

The notice of involvement published at 56 FR 41834 (August 23, 1991) stated that two types of sediment samplers would be paired at most locations. Since that time, it has been determined that only one sediment sampler would be placed at each location.

The purpose of the project is to characterize stream flows on the plant site. This requires the placement of samplers and sensors in stream beds with the boxes containing the electronic equipment to be placed nearby.

The no-action alternative would produce no impacts on the floodplain. However, the no-action alternative does not meet the need to characterize water conditions on the Plant site to support the development of water management plans for the Plant. This lack of data could impair the Plant's ability to develop adequate plans and, consequently, to comply with regulatory requirements. Therefore, the no-action alternative is unacceptable. Manual sampling was also considered. This method would involve sending people to collect samples as needed, especially during high water periods. This method would not produce the consistency of the installed sampling devices, however, and is therefore unacceptable.

No alternatives that would locate sensors outside the floodplain were considered because the purpose of this action, to monitor flow and water quality and to sample sediments in stream channels, would not be served by such alternatives.

The potential areas of disturbance in wetland is very small. These areas would re-vegetate naturally (if disturbed) with no apparent change in appearance when the equipment is removed. There would be no permanent changes to the floodplain, so that removal of equipment would leave the floodplain in the same condition, as existed prior to installation of the equipment. Consequently, no additional actions are needed to mitigate the impacts of this project to the floodplain.

The project complies with section 42 of the Jefferson County Zoning Resolution, which identifies requirements for construction in the floodplain. The equipment to be used is small and should not produce a noticeable rise in the water level of the floodplain during runoff.

No special efforts are planned, or needed, to protect or minimize harm to the floodplain. The boxes containing the electronic equipment are to be placed on the ground surface, thereby avoiding any permanent disturbance to the floodplain, and can be removed, along with buried cables and tubing, when no longer needed. The sediment samplers would occupy very little surface area, and would not produce any significant changes to the floodplain.

DATES: Comments must be postmarked by April 22, 1992.

ADDRESSES: Comments may be sent to: Statement of Findings, c/o Beth Brainard, Public Affairs Office, U.S. Department of Energy, Rocky Flats Office, P.O. Box 928, Golden, CO 80402-0928. Telephone: (303) 966-5993. Telefax comments to: (303) 966-6633.

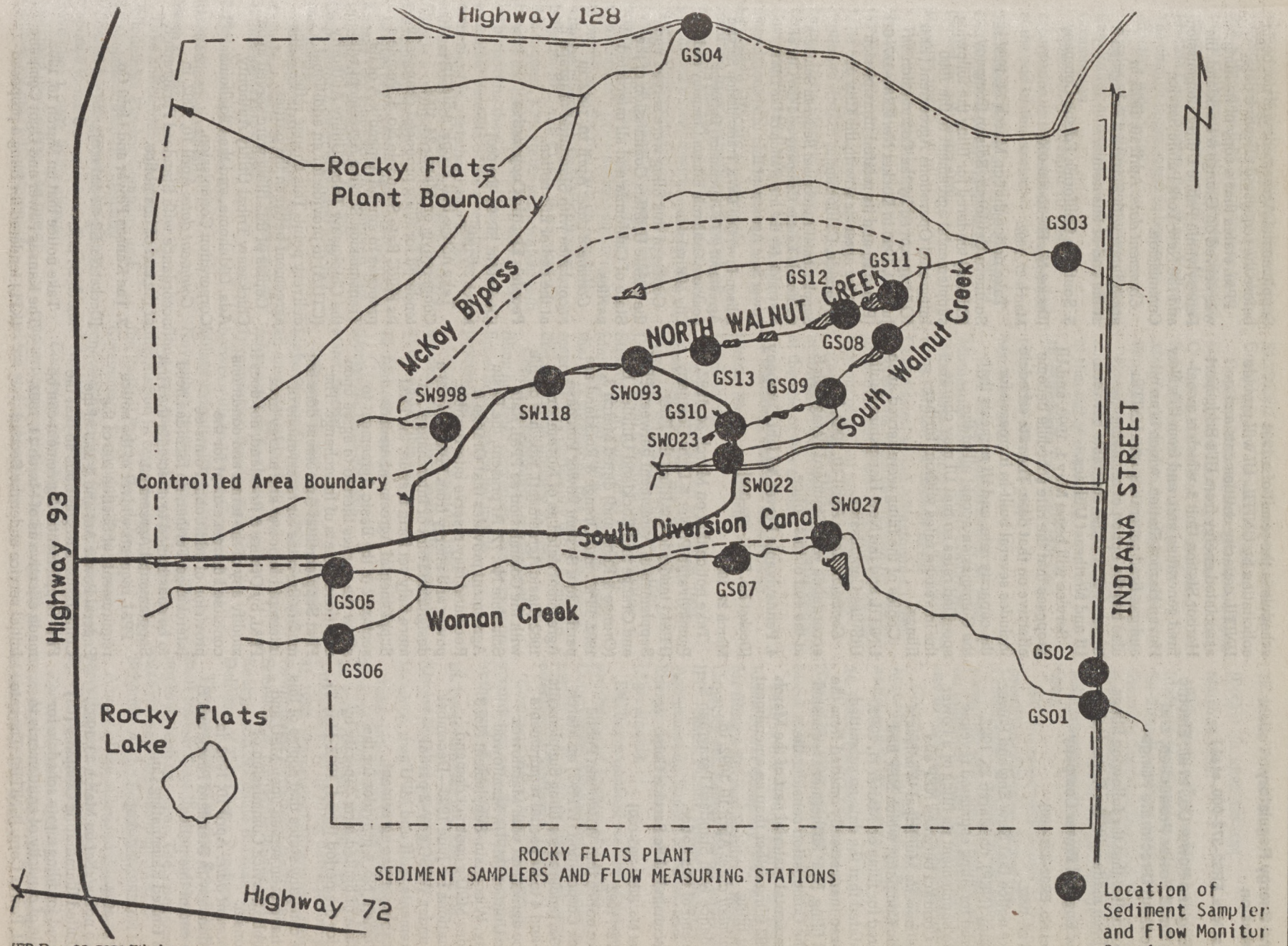
FOR FURTHER INFORMATION: For information on floodplain environmental review requirements, contact: Carol M. Borgstrom, Director, Office of NEPA Oversight, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: (202) 586-4600 or (800) 472-2756.

Issued in Washington DC, this 20th day of March, 1992.

Richard A. Claytor,

Assistant Secretary for Defense Programs.

BILLING CODE 6450-01-M



[FR Doc. 92-7972 Filed 4-6-92; 8:45 am]

BILLING CODE 6450-01-C

Federal Energy Regulatory Commission

[Docket Nos. ER92-372-000, et al.]

New England Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. New England Power Company

[Docket No. ER92-372-000]

March 27, 1992.

Take notice that New England Power Company (NEP), on March 25, 1992, tendered for filing estimated revenue data to supplement its filing of a Power Sales Contract between NEP and Massachusetts Municipal Wholesale Electric Company, which NEP had tendered for filing on March 11, 1992. NEP stated that the data so submitted had been inadvertently omitted from the initial filing. NEP furthermore requested that the Commission consider the supplemental material part of the March 11, 1992 filing rather than an amendment to that filing.

Comment date: April 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Wisconsin Public Service Corp.

[Docket No. ER92-395-000]

March 27, 1992.

Take notice that Wisconsin Public Service Corporation (WPSC) on March 23, 1992, tendered for filing Supplements No. 3 and 4 to its partial requirements service agreement with Manitowoc Public Utilities (MPU), Manitowoc County, Wisconsin. Supplement No. 3 provides MPU's contract demand nominations for June 1993—December 1996, under WPSC's W-2 partial requirements tariff and MPU's applicable service agreement. Supplement No. 4 provides for the purchase of limited term capacity by MPU for the period June 1, 1992–May 31, 1993.

The company states that copies of this filing have been served upon MPU and the Public Service Commission of Wisconsin.

Comment date: April 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. The United Illuminating Co.

[Docket No. ER92-397-000]

March 27, 1992.

Take notice that on March 23, 1992, The United Illuminating Company (UI) tendered for filing a rate schedule for the sale of capacity of entitlements to UNITIL Power Corp. (UNITIL). The rate schedule is the result of a 1991 solicitation by UNITIL. UI will provide UNITIL capacity entitlements and associated energy from UI's Bridgeport Harbor Station Unit 3, which is a coal-fired generating unit, and from UI's New Haven Harbor Station, which is an oil and gas-fired generating unit UNITIL also has the option of receiving transmission under contracts between UI and Northeast Utilities.

Service will begin May 1, 1993, and UI proposes that the rate schedule become effective on that date. The rate schedule includes several built-in increases for the capacity rate, and UI requests that the Commission accept all of the specified rates so that UI may charge the increased rates without further filings.

Copies of the filing were served upon UNITIL and the New Hampshire Public Utilities Commission.

Comment date: April 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Pennsylvania Power & Light Company

[Docket No. ER92-399-000]

March 27, 1992.

Take notice that on March 24, 1992, Pennsylvania Power & Light Company (PP&L) tendered for filing the First Supplemental Agreement between PP&L and Orange and Rockland Utilities, Inc. (Orange & Rockland) dated March 3, 1992. PP&L and Orange & Rockland are parties to a System Power Purchase Agreement dated as of November 24, 1982 (Basic Agreement), which is on file with the Commission as PP&L Rate Schedule No. 77. At present, the Basic Agreement provides that Orange & Rockland may reserve interruptible power and energy from PP&L only at a designated Point of Interchange. As more fully set forth therein, the First Supplemental Agreement amends section 2 of the Basic Agreement to allow the parties thereto to agree upon additional Points of Interchange. The First Supplemental Agreement does not modify the rates for reservations of interruptible power and energy from PP&L by Orange & Rockland, nor does it modify any of the terms and conditions contained therein except for the provision of additional Points of Interchange. Further, no facilities need to be constructed to effectuate the First Supplemental Agreement.

PP&L requests waiver of the notice requirements of Section 205 of the Federal Power Act and § 35.3 of the Commission's Regulations so that the First Supplemental Agreement can be made effective as of March 24, 1992. Initial service under the Second Supplemental Agreement will not begin before the requested effective date.

PP&L states that a copy of its filing was served on Orange & Rockland, the Pennsylvania Public Utility Commission and the New York Public Service Commission.

Comment date: April 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Southern California Edison Company

[Docket No. ER-92-398-000]

March 27, 1992.

Take notice that on March 24, 1992, Southern California Edison Company (Edison) tendered for filing the following supplemental agreement to the 1990 Integrated Operations Agreement (1990 IOA) approved by the Commission on July 30, 1990 in Docket No. ER81-177-011 (Phase II) and its related transmission service agreement with the City of Riverside, California:

Supplemental Agreement Between Southern California Edison Company and the City of Riverside for the Integration of the DWR Power Sale Agreement II

Edison-Riverside DWR Transmission Service Agreement (FTS Agreement) Between Southern California Edison Company and the City of Riverside

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: April 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

People's Electric Cooperative

[Docket No. ER-92-400-000]

March 27, 1992.

Take notice that People's Electric Cooperative, on March 24, 1992, tendered for filing proposed changes in its FERC Rate Schedule No. 1. People's proposes to amend appendix A of its Transmission Service Agreement with the Chickasaw Tribal Utility Authority (CTUA) to provide for an additional delivery point. This change reflects an agreement between the parties.

Copies of this filing were served upon Chickasaw Tribal Utility Authority, Ada, Oklahoma, and the Oklahoma Corporation Commission.

Comment date: April 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. The Kansas Power and Light Co.

[Docket No. ER-92-380-000]

March 27, 1992.

Take notice that on March 16, 1992, The Kansas Power and Light Company (KPL) tendered for filing a proposed

change to its Federal Energy Regulatory Commission Electric Service Tariff No. 218. KPL states that the change is to revise delivery points under its electric power supply contract with Kaw Valley Electric Cooperative, Inc. (Kaw Valley). The change is proposed to become effective June 1, 1992.

Copies of this filing were served upon Kaw Valley and the Kansas Corporation Commission.

Comment date: April 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

The Kansas Power and Light Company Co., Kansas Gas and Electric Co.

[Docket No. ER-92-326-000]

March 27, 1992.

Take notice that on March 23, 1992, The Kansas Power and Light Company (KPL) tendered for filing an amendment to its original filing in the above captioned docket related to a proposed change in its Electric Interconnection Contract with Kansas Gas and Electric Company (KG&E). KPL states that the amendment is to clarify the method to be used to allocate energy costs resulting from centralized dispatch of KPL's and KG&E's generating units and purchased power resources under the Electric Interconnection Contract. KPL continues its request contained in the original filing for a waiver of the Commission's prior notice requirements to permit an effective date to coincide with the closing date of the merger between KPL and KG&E. In support of this request, KPL states such waiver will benefit the customers of KPL and KG&E by permitting the Companies to reflect economic benefits of the operating agreement in customer rates at the earliest possible date. Included in KPL's filing is a Certificate of Concurrence to the filing by KG&E.

Copies of this filing were served upon Kansas Gas and Electric Company, the Utilities Division of the Kansas Corporation Commission and affected purchasers.

Comment date: April 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Philadelphia Electric Co.

[Docket No. EL-92-42-001]

March 27, 1992.

Take notice that on March 16, 1992, Philadelphia Electric Company and Susquehanna Electric Company tendered for filing a refund report in response to the Commission's Order of November 1, 1991, in the above-captioned proceeding. The report supports refunds with interest of $1,250,302 made to Conowingo Power Company on February 28, 1992.

Copies of this refund report have been served upon Conowingo Power Company, as well as the Maryland Public Service Commission, the Maryland People's Counsel, and the Pennsylvania Public Utility Commission.

Comment date: April 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Minnesota Power & Light Co.

[Docket No. ER-92-7-000]

March 30, 1992.

Take notice that on March 26, 1992, Minnesota Power & Light Company (Minnesota Power) filed an amendment to its Petition for Waiver of the Commission's Fuel Adjustment Clause Regulations to permit Minnesota Power to recover the costs associated with the buy-out of a Coal Supply Agreement.

Comment date: April 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Fitchburg Gas and Electric Co.

[Docket No. ER-92-88-000]

March 30, 1992.

Take notice that on March 26, 1992, Fitchburg Gas and Electric Light Company (Fitchburg) filed with the Commission a Second Supplemental Statement in Support of Proposed Market-Based Rates. Fitchburg states that it is submitting this information in response to a deficiency letter issued in this docket on January 21, 1992.

Copies of Fitchburg's supplemental filing has been served on each person on the official service list in this proceeding.

Comment date: April 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Idaho Power Co.

[Docket No. ER92-300-000]

March 30, 1992.

Take notice that on March 25, 1992, Idaho Power Company (IPC) submitted an amendment to its filing in the above referenced docket regarding the Transmission Service Agreement between Idaho Power Company and Milner Irrigation District dated November 21, 1991 (Agreement). The filing was amended to submit additional information in response to a request by the Federal Energy Regulatory Commission Staff. Idaho Power has renewed its request for an effective date of April 1, 1992 for the Agreement.

Comment date: April 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. Idaho Power Co.

[Docket No. ER92-405-000]

March 30, 1992.

Take notice that on March 25, 1992, Idaho Power Company (IPC) tendered for filing Revision 1 to Exhibit C, Monthly Contract Demand Values, to the Transmission Service Agreement between IPC and the Bonneville Power Administration dated December 21, 1990.

IPC has requested waiver of the notice provision of Section 35.3 of the Commission's regulations in order to permit the Revision to become effective on January 1, 1992, the date deliveries are to commence under the Agreement.

Comment date: April 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. Idaho Power Co.

[Docket No. ER92-404-000]

March 30, 1992.

Take notice that on March 25, 1992, Idaho Power Company (IPC) tendered for filing a Revised Exhibit 2, Monthly Capacity and Energy Values under the IPC—Sierra Pacific Power Company Agreement for Supply of Power and Energy, dated November 1, 1989 (Agreement).

IPC has requested waiver of the notice provisions of Section 35.3 of the Commission's regulations in order to permit the revised exhibit to become effective on January 1, 1992.

Comment date: April 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

15. Louisville Gas and Electric Co.

[Docket No. ER92-301-000]

March 30, 1992.

Take notice that Louisville Gas and Electric Company, by letter dated March 26, 1992, tendered for filing an amendment to its filing dated January 31, 1992. The original filing was a new Power Sales Agreement containing Schedule A, Louisville Power and Energy, and Schedule B, Louisville Delivery of Third Party Purchases.

The amendment revises Schedule B to limit transactions thereunder to periods not to exceed one year. The amendment also revises the rates contained in Schedule A and Schedule B.

A copy of the amended filing was served upon the Kentucky Public Service Commission.

Comment date: April 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

16. Idaho Power Co.

[Docket No. ER92–403–000]

March 30, 1992.

Take notice that on March 25, 1992, Idaho Power Company (IPC) tendered for filing revisions to Exhibit I, Use of Facilities Charges and Exhibit D, Monthly Contract Demand Values, under Idaho Power Company's Transmission Service Agreement dated June 6, 1989 with the Bonneville Power Administration.

IPC has requested waiver of the notice provisions of Section 35.3 of the Commission's regulations in order to permit the revised exhibit to become effective December 31, 1990 and January 1, 1992, respectively.

Comment date: April 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

17. Idaho Power Co.

[Docket No. ER92–402–000]

March 30, 1992.

Take notice that on March 25, 1992, Idaho Power Company (IPC) tendered for filing a Revised Exhibit 2 for IPC's Agreement for Supply of Power and Energy with UAMPS, dated February 10, 1988; and IPC's Agreement for Supply of Power and Energy with Washington City, Utah, dated July 6, 1987. Exhibit 2 for both Agreements is with regard to monthly capacity and energy values under said Agreements.

IPC has requested waiver of the notice provisions of Section 35.3 of the Commission's regulations in order to permit the revised exhibits to become effective on January 1, 1992.

Comment date: April 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

18. Idaho Power Co.

[Docket No. ER92–401–000]

March 30, 1992.

Take notice that on March 25, 1992, Idaho Power Company (IPC) tendered for filing a revised exhibit entitled Monthly Contract Demand Values with regard to IPC's Transmission Services Agreement with the City of Seattle, City Light Department, dated June 27, 1988.

IPC has requested waiver of the notice provisions of Section 35.3 of the Commission's regulations in order to permit the revised exhibit to become effective on January 1, 1992

Comment date: April 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

19. Boston Edison Co.

[Docket No. ER92–406–000]

March 30, 1992.

Take notice that Boston Edison Company of Boston, Massachusetts (Edison) on March 26, 1992, tendered for filing a specification of the power to be taken by the Town of Reading (Reading) under Reading's Contract Demand rate. Edison states that the filing does not change the terms and conditions of service or affect the rate level charged to Reading.

Copies of the filing have been served upon Reading and Massachusetts Department of Public Utilities.

Comment date: April 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

20. Philadelphia Electric Co.

[Docket No. ER92–407–000]

March 30, 1992.

Take notice that on March 26, 1992, Philadelphia Electric company (PE)—with the concurrence of GPU Service Corporation (GPU) tendered for filing a Supplemental Agreement dated March 17, 1992 modifying the Agreement between PE and GPU as agent for Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company dated July 11, 1990, which is on file as PE's Rate Schedule FERC NO. 53.

PE states that the Supplemental Agreement modifies the terms and conditions for the sale by PE to GPU of installed capacity credits for accounting purposes under the Pennsylvania-New Jersey-Maryland Interconnection Agreement, which installed capacity credits PE expects to have available for sale from time to time and the purchase of which will be economically advantageous to GPU. The rate for this service will be negotiated from time to time but will need exceed $193 per MW-day. PE requests that the Commission allow this Supplemental Agreement to become effective on June 1, 1992.

PE states that a copy of this filing has been sent to GPU and will be furnished to the Pennsylvania Public Utility Commission and the New Jersey Board of Regulatory Commissioners.

Comment date: April 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

21. Idaho Power Co.

[Docket No. ER92–408–000]

March 30, 1992.

Take notice that on March 26, 1992, Idaho Power Company (IPC) tendered for filing a Service Agreement under Idaho Power Company's FERC Electric Tariff, Second Revised, Vol. No. 1, between Oregon Trail Electric Consumers Cooperative, Inc. and IPC.

IPC has requested waiver of the notice provisions of Section 35.3 of the Commission's regulations in order to permit the Agreement to become effective on January 1, 1992.

Comment date: April 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

22. Florida Power Corp.

[Docket No. ER92–396–000]

March 31, 1992.

Take notice that on March 23, Florida Power Corporation (FPL) tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 117. FPL requests an effective date of May 31, 1992.

Comment date: April 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

23. American Municipal Power Ohio, Inc.

[Docket No. ER92–393–000]

March 31, 1992.

Take notice that on March 23, 1992, American Municipal Power Ohio, Inc. (AMP–Ohio) tendered for filing Supplemental Schedules XIV and XV to the Agreement dated April 1, 1974, between AMP–Ohio and Ohio Power Company (OPCO). Included in its filing on behalf of Columbus Southern Power Company (CSP) was Supplemental Schedule III, to the interconnection Agreement between City of Columbus and CSP.

Comment date: April 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

24. Pacific Gas and Electric Co.

[Docket No. ER92–410 –000]

March 31, 1992.

Take notice that on March 27, 1992, Pacific Gas and Electric Company (PG&E) tendered for filing proposed changes to certain rates, terms, and conditions concerning certain services rendered by PG&E to the Department of Water Resources of the State of California (DWR) as reflected: 1) a new Rate Settlement Agreement which amends Rate Schedule FERC No. 77; and 2) amends modifying Rate Schedule FERC Nos. 92, 93, 94, and 100.

The filing seeks an overall decrease to the transmission rates and revision of the special facilities charges under the DWR Comprehensive Agreement, Rate Schedule FERC No. 77. The filing also seeks to change the rate basis in Rate Schedule FERC Nos. 92, 93, 94 and 100 from PG&E's system average ownership charge for transmission facilities to the

California Public Utilities Commission's (CPUC) PG&E Electric Rule No. 2 Cost of Ownership Rate for transmission-level, customer-financed Special Facilities. In addition, this filing requests automatic rate adjustments for both the transmission rates and all of the special facilities charges.

Copies of this filling were served upon DWR and the CPUC.

Comment date: April 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

25. Commonwealth Edison Co.

[Docket No. ER92-409-000]

March 30, 1992.

Take notice that on March 26, 1992, Commonwealth Edison Company (Edison) tendered for filing Amendment No. 2, dated October 21, 1991, to the Electric Coordination Agreement (ECA), dated December 31, 1998, between Edison and the Village of Winnetka, Illinois (Village). Amendment No. 2 with the Village adds a new Service Schedule G, Transmission Service A, and a new Service Schedule H, System Support to the ECA.

Edison requests expedited consideration of the filing and an effective date of June 1, 1992. Accordingly, Edison requests a waiver of the Commission's Notice Requirements to the extent necessary.

Copies of this filing were served upon the Village and the Illinois Commerce Commission.

Comment date: April 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

26. Iowa Southern Utilities Co.

[Docket No. ES92-13-000]

March 31, 1992.

Take notice that on November 12, 1991, Iowa Southern Utilities Company (Iowa) filed a request with the Federal Energy Regulatory Commission pursuant to § 204 of the Federal Power Act seeking authority to negotiate for the placement of up to $13,400,000 of notes or First Mortgage Bonds. The proposed refinancing would replace securities issued to the City of Chillicothe, Iowa to guarantee pollution control revenue bonds issued by the City applicable to pollution control facilities at the Ottumwa Generating Station. This filing was notice on November 20, 1991, with no comments or protest being received. By letter dated December 4, 1991, the Chief Accountant authorized the request.

On March 25, 1992, Iowa filed an application now requesting authority only to guarantee $3.4 million of Tax-Exempt Pollution Control Revenue Bonds to be issued by the City of Chillicothe, Iowa, applicable to pollution control facilities at the Ottumwa Generating Station. The proposed first mortgage bonds or notes would not be issued. Also, Iowa requests exemption from the Commission's competitive bidding regulations for the guarantee.

Comment date: April 8, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20246, 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 motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-7875 Filed 4-6-92: 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3259-002]

Joseph Martin Keating; Availability of Environmental Assessment

March 31, 1992.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for an original license for the Paoha Hydroelectric Project located on Wilson Creek in Mono County near Lee Vining, CA, and has prepared and Environmental Assessment (EA) for the project.

The EA analyzed the potential environmental impacts of the proposed project and concluded that approval of the proposed project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426, and at the local office of the Bureau of Land Management in Bishop, CA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-7878 Filed 4-6-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-04472T Colorado-43]

State of Colorado; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

March 31, 1992.

Take notice of March 11, 1992, the Oil and Gas Conservation Commission of the State of Colorado (Colorado), submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that a portion of the Dakota Formation in Weld County, Colorado, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The area of application, which contains Federal and State Lands, is described on the attached appendix.

The notice of determination also contains Colorado's findings, as amended on March 27, 1992, that the referenced portion of the Dakota Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

Appendix

Township 1 North

Range 65 West, 6th P.M.
Sections 4-9, 16-21 and 28-33: All
Range 66 West, 6th P.M.
Sections 1-36: All
Range 67 West, 6th P.M.
Sections 1-28: All
Section 29: N/2
Sections 30-36: All
Range 68 West, 6th P.M.
Sections 1-36: All

Township 2 North

Range 65 West, 6th P.M.
Sections 4-9, 16-21 and 28-33: All
Range 66 West, 6th P.M.
Sections 1-36: All

Range 67 West, 6th P.M.
Sections 1–36: All
Range 68 West, 6th P.M.
Sections 1–4, 9–36: All

Township 3 North

Range 65 West, 6th P.M.
Sections 4–9, 16–21 and 28–33: All
Range 66 West, 6th P.M.
Sections 1–36: All
Range 67 West, 6th P.M.
Sections 1–15: All
Section 16: E/2
Sections 17–36: All
Range 68 West, 6th P.M.
Sections 21–28 and 33–36: All.

[FR Doc. 92–7879 Filed 4–6–92; 8:45 am]
BILLING CODE 6717–01–M

[Docket Nos. CP92–424–000, et al.]

Trunkline Gas Co., et al. Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Trunkline Gas Co.

March 26, 1992.

[Docket No. CP92–424–000]

Take notice that on March 20, 1992, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP92–424–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon transportation services provided to CNG Transmission Corporation (CNG), formerly Consolidated Gas Transmission Corporation, in Docket No. CP85–289–000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline states that in Docket No. CP85–289–000, it was authorized to provide transportation service for CNG from Vermilion Block 321, Offshore Louisiana, under a transportation agreement dated November 13, 1984, and covered by Rate Schedule T–94 of Trunkline's FERC Gas Tariff, Original Volume No. 2.

It is stated that Rate Schedule T–94 provides for Trunkline to receive up to 16,500 Mcf per day (Mcfd) of natural gas on a firm basis and up to 8,500 Mcfd of natural gas on an interruptible basis, for CNG's account, from Panhandle Eastern Pipe Line Company at Vermilion Block 321. According to Trunkline, it utilizes its capacity on Stingray Pipeline Company and Natural Gas Pipeline Company of America to transport the gas to its own onshore system. Trunkline states that it then transports and redelivers the gas to Transcontinental Gas Pipeline Corporation (Transco) in Beauregard Parish, Louisiana. It is further stated that Trunkline may also redeliver gas to Transco for CNG's account at the onshore terminus of the U-T Offshore System in Cameron Parish, Louisiana. Trunkline avers that Transco makes the final delivery to CNG.

Trunkline states that, in a January 6, 1992, letter, CNG requested that the transportation services be terminated in accordance with Article IV of Rate Schedule T–94. According to Trunkline, it accepted the termination notice as six month's written notice of termination to be effective July 10, 1992. Therefore, Trunkline requests Commission authorization to abandon Rate Schedule T–94 effective July 10, 1992.

Comment date: April 16, 1992, in accordance with Standard Paragraph F at the end of this notice.

2. CNG Transmission Corp.

March 27, 1992.

[Docket No. CP92–425–000]

Take notice that on March 20, 1992, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP92–425–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain sales services and related standby service to Rochester Gas and Electric Corporation (RG&E), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNG states that RG&E determined that it did not need the full level of service specified in its agreement with CNG. CNG states further that RG&E and CNG have mutually agreed to reduce RG&E's level of service to 297,269 dth per day.

CNG therefore requests the abandonment of service to RG&E, effective July 1, 1992 to effectuate RG&E's reduction from 329,000 dth per day to 297,269 dth per day.

It is stated that no facilities are proposed to be abandoned.

Comment date: April 17, 1992, in accordance with Standard Paragraph F at the end of this notice.

3. Enron Natural Gas Liquids Corp.; Tennessee Gas Pipeline Co.

March 27, 1992.

[Docket No. CP92–430–000]

Take notice that on March 20, 1992, Enron Natural Gas Liquids Corp. (ENGL), 1400 Smith Street, Houston, Texas 77002–1188, and Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, jointly referred to as petitioners, filed in Docket No. CP92–430–000 a petition for declaratory order requesting that the Commission declare that Enron's nonjurisdictional natural gas processing plants may replace the British thermal units (Btus) of natural gas consumed and removed during processing without being deemed by the replacement to have sold or transported gas within the meaning of section 7(c) of the Natural Gas Act, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

It is stated that prior to December 31, 1991, Tenneco Natural Gas Liquids Corporation (TNGL) was a wholly owned subsidiary of Tennessee. It is also stated that on December 31, 1991, Tennessee sold and transferred all of the shares of TNGL to Enron Gas Processing Corporation (EPG), and that on January 7, 1992, TNGL changed its name to ENGL. It is indicated that, in connection with this conveyance, Enron queried whether the replacement of gas removed by a nonjurisdictional gas processing plant, even when it occurs within the processing plant, may constitute an exchange or sale of natural gas that requires Commission authorization under the Natural Gas Act. ENGL and Tennessee state that it is their opinion that these Btu transactions are nonjurisdictional.

It is stated that ENGL is now the plant owner or lessee, in whole or in part, of three natural gas processing plants which straddle Tennessee's system: The Magnolia City Gas Processing Plant in Nueces County, Texas; the Blue Water Plant in Acadia Parish, Louisiana; and the Sabine Pass Plant, Cameron Parish, Louisiana. It is indicated that ENGL receives gas with relatively high Btu content from Tennessee at the inlet side of each of these plants, extracts liquefiable hydrocarbons from the gas, and then returns the residue gas with lower heat content to Tennessee at the discharge side of each plant. Petitioners state that the total Btu's stripped from the gas stream, referred to as plant thermal reduction or PTR, is the sum of (1) the Btu's contained in that portion of the gas stream consumed as fuel or other uses during processing and (2) shrinkage, the Btu content of the natural gas liquefiables extracted from the gas stream.

Tennessee states that it has entered into gas processing agreements under which ENGL receives the right to extract the liquefiable hydrocarbons from certain gas delivered by Tennessee into the three plants. It is indicated that under the terms of the agreements, ENGL has the option to reimburse Tennessee for the PTR removed at the

plant either by paying Tennessee's weighted average cost of gas (WACOG) for the Btu equivalent of the PTR or by returning to Tennessee a quantity of gas containing the Btu equivalent of the PTR.

It is indicated that under Tennessee's processing agreements with ENGL, ENGL has the option to deliver Btu replacement gas to Tennessee at the tailgate of the processing plant itself. It is stated that, generally, arrangement is made by the plant owner for delivery of this replacement gas to Tennessee by purchasing from marketers and producers gas delivered to the plant, or by purchasing gas at other points and having that gas transported to the plant under Tennessee's Rate Schedule IT. It is indicated that in the alternative, where a plant is connected to another pipeline, the plant owner may receive Btu replacement quantities via that pipeline and deliver them to Tennessee at the tailgate of the plant.

Petitioners request the Commission's determination of the jurisdictional status of Btu replacement transactions where, from a contractual and regulatory standpoint, (1) Tennessee delivers gas to a plant and receives the same quantity (measured in Btus) of gas from the plant; (2) all transportation of gas occurs pursuant to Tennessee's blanket certificates or on other pipelines pursuant to their own authorities; and (3) ENGL performs no transportation function for Tennessee. It is argued that the jurisdiction of the Commission is clearly not present. Petitioners indicate that the petition for declaratory order is necessary because the Commission on at least two occasions issued certificates under section 7(c) of the Natural Gas Act authorizing an exchange which appears to consist of nothing more than the replacement of PTR within a processing plant.[1]

It is stated that the Commission has held that it has certificate jurisdiction under section 7 of the Natural Gas Act over processing operations only where the services rendered through the facilities are essential to make gas fit for pipeline transportation. Petitioners state that the processing operations carried out by ENGL under its agreements with Tennessee are not required to make the gas fit for pipeline transportation.

Comment date: April 17, 1992, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

[1] See Northern Natural Gas Company, 40 FERC at 62,277 and Columbia Gulf Transmission Corporation, 43 FERC ¶ 61,039 (1988).

4. United Gas Pipe Line Co.

March 27, 1992.

[Docket No. CP92–429–000]

Take notice that on March 23, 1992, United Gas Pipe Line Company (United) Post Office Box 1478, Houston, Texas 77251, filed in Docket No. CP92–429–000 a request pursuant §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a user at an existing four-inch tap and pipeline for DeSoto Pipeline Company Inc. under the blanket certificate issued in Docket No. CP82–430–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United states that the proposed facilities will enable United to transport an estimated average of 2,000 MMBtu/d of natural gas for DeSoto to serve City of Winona, Texas under United's ITS Rate Schedule.

United further states that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers.

Comment date: May 11, 1992, in accordance with Standard Paragraph G at the end of this notice.

5. ANR Pipeline Co.

March 30, 1992.

[Docket No. CP92–422–000]

Take notice that on March 20, 1992, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP92–357–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a sale of natural gas to Northwest Pipeline Corporation (Northwest), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR proposes to abandon the sale to Northwest which was authorized by the Commission in Docket Nos. CP79–146 and CP78–165 and was carried out pursuant to the provisions of a Gas Gathering and Transportation Agreement between ANR and Northwest dated September 23, 1977, and an amended Gas Transportation Agreement dated November 17, 1978, on file with the Commission as ANR's Rate Schedule X–77. It is stated that the agreements provided for Northwest to gather up to 10,000 Mcf of natural gas per day in Sweetwater County, Wyoming, and to transport the gas for ANR to Ignacio, Colorado, and for ANR to sell 5 percent of the volumes transported to Northwest. It is stated that ANR and Northwest agreed to terminate the services in Termination Agreements dated April 1, 1991, and April 30, 1991. It is further stated that Northwest received abandonment authorization for its part of the services in Docket No. CP92–187–000, by order issued February 10, 1992.

It is asserted that the proposal involves no abandonment of facilities. It is stated that no other customers of ANR would be affected by the proposed abandonment.

Comment date: April 20, 1992, in accordance with Standard Paragraph F at the end of this notice.

6. Tennessee Gas Pipeline Co.

March 31, 1992.

[Docket No. CP92–419–000]

Take notice that on March 19, 1992, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP92–419–000 a request pursuant to § § 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157. 205, 157.212) for authorization to construct and operate new delivery point facilities to accommodate delivery of natural gas to Barren County Gas Company (Barren) under Tennessee's blanket certificate issued in Docket No. CP82–413–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee proposes to install a three-inch hot tap assembly on its pipeline in Barren County, Kentucky, at Tennessee's milepost 91–4+8.1. Tennessee explains that the delivery point is required by a transportation agreement under which up to 400 dekatherms equivalent of gas per day would be delivered to Barren on an interruptible basis under Tennessee's Rate Schedule IT. Tennessee advises that the transportation service would be performed under its blanket authorization issued in Docket No. CP87–115–000. It is stated that Tennessee would be reimbursed the cost of the facilities, estimated to be $15,270.

Comment date: May 15, 1992, in accordance with Standard Paragraph G at the end of this notice.

7. Panhandle Eastern Pipe Line Co.

March 31, 1992.

[Docket No. CP92–434–000]

Take notice that on March 25, 1992, Panhandle Eastern Pipe Line Company

(Panhandle), 5400 Westheimer Court, Houston, Texas 77056-5310, filed in Docket No. CP92-434-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange service with ANR Pipeline Company (ANR), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle requests authorization to abandon an exchange service with ANR provided under Panhandle's Rate Schedule E-15. Panhandle states that it gathers gas in Sweetwater County, Wyoming and ANR gathers gas in Freemont County, Wyoming; and both companies redeliver the gas to Colorado Interstate Gas Company at their respective interconnects. Panhandle states that its gas purchase agreements in Sweetwater County, Wyoming have terminated and gas is no longer available to effectuate the exchange service.

No facilities are proposed to be abandoned herein.

Comment date: April 21, 1992, in accordance with Standard Paragraph F at the end of this notice.

8. CNG Trading Company, et al.

March 31, 1992.

[Docket No. CI87-811-006,[2] *et al.*]

Take notice that each Applicant listed on the Appendix hereto filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Regulatory Commission's (Commission) regulations thereunder for extension of its blanket limited-term certificate with pregranted abandonment authorizing sales for resale in interstate commerce previously issued by the Commission for a term expiring March 31, 1992, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Comment date: April 13, 1992, in accordance with Standard Paragraph J at the end of the notice.

APPENDIX

Docket No.	Date filed	Applicant
CI87-811-006 [1].....	3-26-92	CNG Trading Company, CNG Tower, 1450 Poydras Street, New Orleans, Louisiana 70112-6000.
CI88-481-004 [1].....	3-26-92	CNG Producing Company, CNG Tower, 1450 Poydras Street, New Orleans, Louisiana 70112-6000.
CI91-34-001.....	3-25-92	Midland Cogeneration Venture Limited Partnership, 100 Progress Place, Midland, Michigan 48640.

[1] Applicant also requests that its certificate be amended to include authority to make sales for resale in interstate commerce of imported natural gas.

[2] This notice does not provide for consolidation for hearing of the several matters covered herein.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., 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 385.211 and 385.214) and Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy 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 filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., 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 385.211, .214). 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 in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-7880 Filed 4-6-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA91-1-31-008 and TA91-1-31-009]

Arkla Energy Resources; Filing of Revised Tariff Sheets

March 31, 1992.

Take notice that on March 26, 1992, Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing the following stariff sheet to become effective April 1, 1991:

2nd Revised Volume No. 1
2nd Substitue 2nd Revised Original Sheet No. 16.

This tariff sheet is being filed in response to the Commission's order dated January 23, 1992 on AER's annual PGA filing which requires AER to (1)

revise its demand rates to reflect the allocation factors and billing determinants from its "Reserved Issues Settlement" effective November 1, 1990 and (2) furnish a revised FERC Form No. 542–PGA.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 7, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92–7874 Filed 4–6–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ92–9–25–000]

Mississippi River Transmission Corp.; Rate Change Filing

March 31, 1992.

Take notice that on March 27, 1992, Mississippi River Transmission Corporation (MRT) tendered for filing Seventy-Fifth Revised Sheet No. 4 and Thirty-Fourth Revised Sheet No. 4.1 to its FERC Gas Tariff, Second Revised Volume No. 1 to be effective April 1, 1992.

MRT states that the purpose of the out-of-cycle filing is to request waiver of the Commission's regulations, in particular § 154.305(d) and § 154.308(c), in order to allow MRT reflect an increase of 12.20 cents per MMBtu in the commodity cost of purchased gas from PGA rates filed to be effective March 1, 1992 in Docket No. TQ92–8–25–000, and to adjust its commodity surcharge rate from the current level of (11.76¢) per MMBtu to (36.12¢) per MMBtu. MRT states that the impact of the instant filing on its Rate Schedule CD–1 rates is a decrease of 12.16¢ per MMBtu in the CD–1 and SGS–1 commodity charge.

MRT states that a copy of this filing has been served on all of MRT's jurisdictional sales customers and to the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 7, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 92–7876 Filed 4–6–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–143–000]

South Georgia Natural Gas Co.; Proposed Changes to FERC Gas Tariff

March 31, 1992.

Take notice that on March 23, 1992, South Georgia Natural Gas Company ("South Georgia") tendered for filing Sixth Revised Sheet No. 4A and Sixth Revised Sheet No. 4B to its FERC Gas Tariff, First Revised Volume No. 1.

South Georgia is making the instant filing in response to the option the Commission granted South Georgia in its Order dated February 28, 1992 to place into effect on March 1, 1992, the revised rates proposed in South Georgia's filing of December 31, 1991, that allow South Georgia to remain revenue neutral with respect to whether it makes firm sales or provides firm transportation service.

South Georgia states that copies of the filing will be served upon all of South Georgia's jurisdictional customers, interested state commissions and interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (§§ 385.211 and 385.214). All such motions or protests should be filed on or before April 7, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92–7873 Filed 4–6–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP88–391–011]

Transcontinental Gas Pipe Line Corp.; Supplement to Compliance Filings

March 31, 1992.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on March 20, 1992 certain revised tariff sheets to Second Revised Volume No. 1 and Third Revised Volume No. 1 of its FERC Gas Tariff, which tariff sheets are enumerated in Appendix A attached to the filing. The tariff sheets are proposed to be effective as indicated in Appendix A attached to the filing.

Transco states that the purpose of the instant filing is to supplement Transco's compliance filings of July 22, July 31, and September 6, 1991 in Docket Nos. CP88–391, *et al.* The instant filing includes revised tariff sheets which reflect the revisions required by the Commission's orders issued December 17, 1991 and February 19, 1992 in Docket Nos. CP88–391, *et al.* The revisions required by such orders are detailed in Appendix B to the instant filing. Transco has also incorporated into the revised tariff sheets the language from footnote 41 of Transco's reply comments dated August 13, 1990 in Docket Nos. RP87–7–000, *et al.* to clarify in the tariff Transco's post-month adjustment process as it relates to cash-out.

Transco states that it is serving copies of the instant filing to its customers, State Commissions and interested parties to Docket Nos. CP88–391, *et al.* In accordance with provisions of § 154.16 of the Commission's regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before April 7, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92–7877 Filed 4–6–92; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 91–105–NG]

Entrade Corp.; Order Granting Blanket Authorization to Export Natural Gas to Canada and Mexico

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an order granting blanket authorization to export natural gas to Canada and Mexico.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting EnTrade blanket authorization to export up to 100 Bcf of natural gas to Canada and up to 100 Bcf of natural gas to Mexico over a two-year period beginning on the date of first export.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 3, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–7973 Filed 4–6–92; 8:45 am]

BILLING CODE 6450–01–M

[Fe Docket No. 91–114–NG]

Kimball Energy Corp.; Order Granting Blanket Authorization to Import Natural Gas From Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of an order granting blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Kimball Energy Corporation (Kimball) blanket authorization to import a total of 75 Bcf of Canadian natural gas over a two-year term beginning on the date of first delivery after April 1, 1992, the date on which Kimball's current import authorization expires.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 31, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–7974 Filed 4–6–92; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4120–9]

Underground Injection Control Program, Hazardous Waste Disposal Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; Amoco Oil Company, Texas City, TX

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on petition.

SUMMARY: Notice is hereby given that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Amoco Oil Company, for the Class I injection wells located at Texas City, Texas. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by Amoco Oil Company, of the specific restricted hazardous waste identified in the petition, into the Class I hazardous waste injection wells at the Texas City, Texas facility specifically identified in the petition, for as long as the basis for granting an approval of the petition remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued February 7, 1992. A public hearing was held March 12, 1992, and the public comment period ended on March 23, 1992. EPA received no comments. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of March 31, 1992.

ADDRESSES: Copies of the petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Management Division, Water Supply Branch (6W–SU), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Oscar Cabra, Jr., Chief Municipal Facilities Branch, EPA—Region 6, telephone (214) 655–7110, (FTS) 255–7110.

Myron O. Knudson,

Director, Water Management Division (6W).

[FR Doc. 92–7957 Filed 4–6–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4120–8]

Underground Injection Control Program, Hazardous Waste Disposal Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; Oxy Petrochemicals Company, Corpus Christi, TX

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on petition.

SUMMARY: Notice is hereby given that an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Oxy Petrochemicals Company, for the Class I injection wells located at Corpus Christi, Texas. As required by 40 CFR part 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection of Oxy Petrochemicals Company, of the specific restricted hazardous waste identified in the petition, into the Class I hazardous waste injection wells at the Corpus Christi, Texas facility specifically identified in the petition, for as long as the basis for granting an approval of the petition remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued

February 3, 1992. A public hearing was held March 5, 1992, and the public comment period ended on March 18, 1992. All comments have been addressed and have been considered in the final decision. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of March 31, 1992.

ADDRESSES: Copies of the petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Management Division, Water Supply Branch (6W–SW), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Oscar Cabra, Jr., Chief Water Supply Branch, EPA—Region 6, telephone (214) 655–7150, (FTS) 255–7150.

Myron O. Knudson,

Director, Water Management Division (6W).

[FR Doc. 92–7958 Filed 4–6–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–937–DR]

Texas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA–937–DR), dated March 20, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of Texas, dated March 20, 1992, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 20, 1992:

Tyler County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dated: March 30, 1992.

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 92–7930 Filed 4–6–92; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–937–DR]

Texas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA–937–DR), dated March 20, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington DC 20472 (202) 646–3614.

NOTICE: Notice is hereby given that the incident period for this disaster is closed effective March 30, 1992.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dated: March 30, 1992.

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 92–7931 Filed 4–6–92; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–930–DR]

Texas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA–930–DR), dated, December 6, and related determinations.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC, 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of Texas, dated December 26, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 6, 1991:

Brazoria County for Public Assistance. (Already designated for Individual Assistance.)

Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dated: March 30, 1992.

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 92–7932 Filed 4–6–92; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–938–DR]

Vermont; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Vermont (FEMA–938–DR), dated March 18, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of Vermont, dated March 18, 1992, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 18, 1992:

Chittenden County for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Dated: March 23, 1992.

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 92–7934 Filed 4–6–92; 8:45 am]

BILLING CODE 6718–02–M

Senior Executive Service Performance Review Board Members

ACTION: List of members' names.

SUMMARY: This notice lists the names of the members of the Federal Emergency Management Agency (FEMA) Senior Executive Service Performance Review Board, which board was established pursuant to 5 U.S.C. 4314(c)(4).

Members: Richard W. Krimm; G. Clay Hollister; John D. Hwang; Steve M. Gaddy; Edward M. Wall; Richard H. Strome; Craig S. Wingo; Katherine H. Shannon.

FOR FURTHER INFORMATION CONTACT: Denise R. Yachnik, Executive Coordinator, Office of Human Resources Management, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3040.

Patricia M. Gormley,

General Counsel.

[FR Doc. 92–7933 Filed 4–6–92; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL TRADE COMMISSION

[Dkt. C-3376]

American Enviro Products, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a California-based disposable diapers company and its corporate officers from making unsubstantiated degradability or environmental benefit claims for any plastic product or plastic packaging in the future.

DATES: Complaint and Order issued March 18, 1992.[1]

FOR FURTHER INFORMATION CONTACT: Michael Dershowitz, FTC/S–4002, Washington, DC 20580. (202) 326–3158.

SUPPLEMENTARY INFORMATION: On Tuesday, September 10, 1991, there was published in the **Federal Register**, 56 FR 46184, a proposed consent agreement with analysis In the Matter of American Enviro Products, Inc., et al., 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 the order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 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. 92–7940 Filed 4–6–92; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C-3375]

Newtron Products Company, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, an Ohio company and its principals from making any representations regarding the performance characteristics of any air cleaning product, unless it possesses competent and reliable evidence to substantiate those claims.

DATES: Complaint and Order issued March 16, 1992.[1]

FOR FURTHER INFORMATION CONTACT: Joel Winston, FTC/S–4002, Washington, DC 20580. (202) 326–3153.

SUPPLEMENTARY INFORMATION: On Friday, September 13, 1991, there was published in the **Federal Register** 56 FR 46618, a proposed consent agreement with analysis In the Matter of Newtron Products Company, Inc., et al., 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 the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 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. 92–7939 Filed 4–6–92; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Program Announcement No. 913]

Grants for Injury Control Research Centers and Injury Control Research Program Project Grants; Availability of Funds for Fiscal Year 1993

Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces that grant applications are being accepted for Injury Control Research Centers (ICRCs) and Injury Control Research Program Project Grants (RPPGs). The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHSD-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Violent and Abusive Behavior and Unintentional Injuries. (For ordering a copy of Healthy People 2000, see the section where to obtain additional information.)

Authority

This program is authorized under sections 301 and 391(b) of the Public Health Service Act (42 U.S.C. 241 and 280(b)). Program regulations are set forth in title 42 of the Code of Federal Regulations, part 52.

Eligible Applicants

Eligible applicants include all nonprofit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, and other public and private organizations, state and local health departments and small, minority and/or women-owned businesses are eligible for these grants. Current holders of CDC injury prevention research center grants and injury control research program project grants are eligible to apply.

Availability of Funds

Approximately $1.2 million is expected to be available in Fiscal Year 1993 to fund approximately two to four center awards and/or research program project awards for up to five years. The amount of funding actually available may vary and is subject to change. Beginning award dates for each submission are shown in the "Receipt and Review" section of this announcement. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds. New center grant awards will not exceed $600,000 per year (total of direct and indirect costs), new research program project awards will not exceed $350,000 per year (total of direct and indirect costs) and supplmental funding awards will not exceed $225,000 per year (total of direct and indirect costs).

Purpose

The purposes of this program are:

A. To support injury prevention and control research on priority issues as delineated in: Healthy People 2000; Injury in America; Injury Prevention: Meeting the Challenge; and Cost of Injury: A Report to the Congress.

[1] Copies of the Complaint and the Decision and Order are available form the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[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.

(Information on these reports may be obtained from the individuals listed in the section where to obtain additional information);

B. To integrate the disciplines of engineering, medicine, health care, public health, criminal justice, behavioral and social sciences, and others, in order to prevent and control injuries more effectively;

C. To identify and evaluate current and new interventions for the prevention and control of injuries;

D. To support ICRCs which will develop an in-depth approach to injury control research and training;

E. To bring the knowledge and expertise of ICRCs to bear on the development of effective public- and private-section programs for injury prevention and control;

F. To help make available the expertise of academic institutions for the evaluation and improvement of injury prevention, surveillance, and control programs instituted and carried out by Federal, state or local government and private-sector organizations;

G. To support RPPHs which will focus several interdisciplinary research projects on a particular phase of injury (See Definitions, item C., section in the program announcement contained in the application kit), a cause of injury, or a population segment affected by injury; and

H. To facilitate injury control efforts within a geographic region supported by various governmental agencies.

Program Requirements

A. Essential Requirements for ICRCs

1. New applicants should show expertise in at least one of the three phases of injury control (prevention, acute care, or rehabilitation) and provide specific, time-framed plans to support research in all three phases by the second or third year of the applicant's project period.

2. Applicants should describe ongoing injury-related research projects or control activities currently supported by other sources of funding.

3. Applicants should provide a director who has specific authority and responsibility to carry out the project. The director should report to an appropriate institutional official, e.g. dean of a school or vice president of a university.

4. Applicants should demonstrate experience in successfully conducting, evaluating, and publishing injury research and/or designing, implementing, and evaluating injury control programs.

5. Applicants should provide evidence of effective and well-defined working relationships with outside agencies and other entities which will ensure implementation of the proposed activities.

6. Applicants should provide evidence in involvement of specialists or expert in medicine, health care, engineering, epidemiology, behavioral and social sciences, and public health, with a specific, time-framed plan of expansion to include biomechanics and health policy and management. These will be considered the core disciplines and fields for ICRCs.

7. Applicants should have an established curricula and graduate training programs in disciplines relevant to injury control (for example, epidemiology, biomechanics, safety engineering, traffic safety, behavioral sciences, and economics).

8. Applicants should have established methods and the capacity for disseminating the injury control research findings, translating them into interventions, and evaluating their effectiveness.

9. Applicants should have an established relationship, demonstrated by letters of agreement, with injury prevention and control programs or injury surveillance programs being carried out in the state in which the ICRC is located. Cooperation with governmental programs is required; cooperation with private-section programs is encouraged. Special emphasis should also be given to establishing cooperative relationships with any adjacent states having CDC-funded injury control capacity-building, incentive, or surveillance grants and other state and local health departments who may not currently have CDC support for injury activities.

B. Essential Requirements for RPPGs

1. Applicants should show expertise in the phases or disciplines of injury control which the research program addresses. RPPG applicants should also provide specific time-framed objectives for their research, covering all years of the proposed project.

2. The director must have specific authority and responsibility to carry out the project and must report to an appropriate level university official, e.g. dean of a school or department chairperson.

3. The investigators must have demonstrated experience in successfully conducting, evaluating, and publishing injury research, and/or designing, implementing, and evaluating injury control programs.

4. The applicant must describe effective and well-defined working relationships with outside agencies and other entities which can ensure implementation of proposed activities.

5. The applicant must specify mechanisms for linking the injury control research findings with public health (i.e. state and local organizations) and other intervention efforts to facilitate rapid translation, dissemination, and application of research findings preferably within three years of inception.

6. Applicants should clearly describe and be able to demonstrate how several proposed multiple research projects interrelate and complement each other. Outcome objectives of the research should be stated such that accomplishments clearly reflect elements of each individual project within the RPPG.

7. The applicant must specify how each individual project and the program as a whole will be evaluated.

Grant funds will not be made available to support the provision of direct care. Studies may be supported which evaluate methods of care and rehabilitation for potential reductions in injury effects and costs. Studies can be supported which identify the effect on injury outcomes and cost of systems for pre-hospital, hospital, and rehabilitative care and independent living. Eligible applicants may enter into contracts, including consortia agreements (as set forth in the PHS Grants Policy Statement, dated October 1, 1990, as amended), as necessary to meet the requirements of the program and strengthen the overall application. In general, consortia agreements would be carried out with entities located in the same state, an adjacent state or the same regional grouping of states.

Evaluation Criteria

Applications may be evaluated through a three step review process. The first review may be conducted with a screening of the applications by reviewers from the Injury Research Grants Review Committee (IRGRC) to eliminate non-responsive and non-competitive applications from further review. The second review will be a peer evaluation of the scientific and technical merit of the application. The final review will be conducted by senior Federal staff, who will consider the results of the peer review together with program need and relevance. Awards will be made based on merit and priority score ranking by the IRGRC, program review by senior Federal staff, and the availability of funds.

A. Review by the Injury Research Grants Review Committee (IRGRC)

Peer review of ICRC grant applications will be conducted by the IRGRC, which may recommend approval as an ICRC, approval as an RPPG or disapproval based on the intent of the application. Site visits may be a part of this process. Factors to be considered by IRGRC include:

1. The degree to which the applicant possesses the requirements described in the section Program Requirements and the fit they make with the specific aims of the injury program.

2. The overall match between the applicant's research and where applicable, training objectives, and those listed in national program priorities as referenced in the Background section of the program announcement contained in the application kit.

3. The scientific and technical merit of the overall application to include the significance and originality of the proposed research.

4. The adequacy of the framework for managing and coordinating the overall program and its component parts.

5. The extent to which the evaluation plan will allow for the quantitative measurement of progress toward the achievement of stated objectives that relate to the proposed program design, approaches, and methodology.

6. Qualifications, adequacy, and appropriateness of personnel to accomplish the proposed activities.

7. The degree of commitment measured in terms of injury control personnel, facilities, and activities supported by other funding sources and the likelihood that this commitment will be sustained or expanded in future years.

8. The degree of commitment and cooperation of other interested parties as evidenced by letters detailing the nature and extent of this commitment and cooperation. Specific letters of support or understanding from appropriate governmental bodies must be provided with the application.

9. The soundness of the budget for the proposal in terms of adequacy of resources and their allocation.

10. Progress thus far made, if the applicant is submitting a competitive renewal application. Special consideration may be given to existing ICRCs who have documented success against the workplan developed during the previous project periods, who are recompeting and where the applicant ICRC or RPPG has an appropriate organizational, and reporting relationship within the applicant institution.

11. A description of plans to secure additional resources and support other than this grant.

B. Review by Senior Federal Staff

Further review will be conducted by senior Federal staff. Factors to be considered will be:

1. The results of the peer review.

2. The significance of the proposed activities as they relate to the achievement of national objectives.

3. National needs and geographic balance. Because there were no ICRCs were funded during fiscal year 1989 and 1990 in Federal regions II, V, VI, VII, approved ICRC or RPPG proposals from states in these regions may be accorded special consideration.

4. Overall distribution of the thematic focus of competing applications, the overall balance of the program in addressing the three phases of injury control (prevention, acute care and rehabilitation), the control of injury among populations who are at increased risk, including minority groups, the elderly and children; the major causes of intentional and unintentional injury; and major disciplines of injury control (such as biomechanics and epidemiology).

5. Budgetary considerations.

6. Plans to attract additional resources and support for the project.

C. Applications for Supplemental Funding

Competing Supplemental grant awards may be made when funds are available, to support research work or activities not previously approved by the IRGRC. Supplementary funding may be sought for either injury research grants, or Injury Control Research Center (ICRC) grants and Research Program projects (RPPG) grants. Applications should be clearly labelled to denote their status as requesting supplemental funding support. These applications will be reviewed by the IRGRC and the secondary review group.

D. Continued Funding

Continuation awards within the project period will be made on the basis of the availability of funds and the following criteria:

1. The accomplishments of the current budget period show that the applicant's objectives as prescribed in the yearly workplans are being met;

2. The objectives for the new budget period are realistic, specific, and measurable;

3. The methods described will clearly lead to achievement of these objectives;

4. The evaluation plan allows management to monitor whether the methods are effective by having clearly defined process, impact, and outcome objectives, and the applicant demonstrates progress in implementing the evaluation plan;

5. The budget request is clearly explained, adequately justified, reasonable, and consistent with the intended use of grant funds; and

6. Progress has been made in developing cooperative and collaborative relationships with injury surveillance and control programs implemented by state and local governments and private sector organizations.

E.O. 12372 Review

Applications are not subject to the review requirements of Executive Order 12372, entitled Inter-Governmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number (CFDA)

The Catalog of Federal Domestic Assistance Number is 93.136.

Application Submission and Deadlines

A. Preapplication Letter of Intent

Although it is not a prerequisite to apply, potential applicants are encouraged to submit a nonbinding letter of intent to apply to the Grants Management Officer (whose address is given in this section Item B). It should be postmarked no later than two months prior to the submission deadline (December 1, 1992 for February 1, 1993 submission deadline). The letter should identify the announcement number being responded to, indicate the submission deadline which will be met, indicate whether the application is for an ICRC or an RPPG, name the principal investigator, and specify the injury control theme of the proposed center or program (e.g., acute care, biomechanics, epidemiology, prevention, intentional injury or rehabilitation). The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently.

B. Applications

Applicants from academic institutions and the private sector should use Form PHS–398 (Rev. 9–91) and adhere to the ERRATA Instruction Sheet for PHS–398 contained in the Grant Application Kit. State and local government applicants may use PHS–5161, however PHS 398 is preferred. The narrative section for *each* project within an ICRC or an RPPG should not exceed 25 typewritten pages. Refer to section 4, page 10, of PHS–398

instruction for description of specifications for font type and size. Applications not adhering to these specifications may be returned to applicant. Applicants using Form PHS–398 should submit an original and five copies and applicants using Form PHS–5161–1 should submit an original and two copies of the application to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., room 300, Mailstop E–14, Atlanta, Georgia 30305.

C. Deadlines

Applications shall be considered as meeting the deadline above if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the peer review committee. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications which do not meet the criteria in C1. or C2. above are considered late applications and will be returned to the applicant.

D. Receipt and Review Schedule

This is a continuous announcement, consequently, these receipt dates will be ongoing until further notice. The proposed timetables for receiving applications and awarding grants is as follows:

Receipt of new/revised/ supplementary/competitive renewal applications	Initial review	Secondary review	Earliest award date
Feb. 1, 1993	May	July	Sept. 1993.
Future receipt dates are as follows:			
February 1	May	July	Sept.

Where to Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address and phone number, and will need to refer to Announcement Number 913. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Lisa Tamaroff, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Mailstop E–14, Atlanta, Georgia 30305, (404) 842–6796. Programmatic technical assistance may be obtained from Howard Hill, Project Officer, National Center for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop F–36, Atlanta, Georgia 30333, (404) 488–4265.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238).

Dated: April 1, 1992.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 92–7893 Filed 4–6–92; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

Pilot Clinical Pharmacology Training Program; Availability of Grant; Request for Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Drug Evaluation and Research (CDER), is announcing a pilot program to support a grant for the establishment of a clinical pharmacology training program. The purpose of the grant is to: (1) increase the number of trained biomedical scientific personnel in clinical pharmacology, and (2) establish a clinical pharmacology training program at a medical school currently without such a program. FDA intends to award one grant for up to $750,000 in total Federal costs (direct and indirect costs) per annum for up to 5 years. Applications exceeding this amount will be considered nonreponsive and will be returned. Applicants may submit an application under this announcement. This notice is subject to the availability of funds.

DATES: Applications must be received by 4:30 p.m. on June 8, 1992.

ADDRESSES: Application forms are available from, and completed applications should be submitted to: Robert L. Robins, State Contracts and Assistance Agreements Branch (HFA–520), Food and Drug Administration, Park Bldg., rm. 3–20, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6170. Note: Applications hand-carried or commercially delivered should be addressed to Park Bldg., rm. 3–20, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Regarding the administrative and financial management aspects of this program: Robert L. Robins (address above).

Regarding the programmatic aspects of this pharmacology training program: Mr. Robert Linkous, Center for Drug Evaluation and Research (HFD–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4720.

SUPPLEMENTARY INFORMATION: FDA will support the clinical pharmacology training covered by this notice under section 2(a) of Public Law 102–222. The Public Health Service (PHS) urges applicants to submit work plans that address specific objectives of the publication "Healthy People 2000." Potential applicants may obtain a copy of "Healthy People 2000" (full report, Stock No. 017–001–00474–0) or "Healthy People 2000" (summary report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, 202–783–3238.

I. Background

There is currently a nationwide shortage of trained clinical pharmacologists. This shortage limits the number of clinical pharmacologists trained in drug development and regulatory science whose availability would promote public health, improve the quality and speed of the approval process, and accelerate the development of new drugs in this country. This pilot program will increase the availability of pharmacology training in this country and help alleviate the shortage of trained biomedical personnel. This grant is intended to establish such a program at a medical school currently without such a clinical pharmacology training program.

II. Research Goals and Objectives

The goal of the grant is to establish a clinical pharmacology training program at an appropriate medical school currently without a clinical pharmacology program. Clinical pharmacology activities in such a program would include, but not be limited to, studies of drug action at the cellular and molecular levels, pharmacokinetics,

pharmacoepidemiology, drug metabolism, drug development and regulation, drug action in human disease states, clinical trials, and therapeutics. The research and training activities will help establish links for the exchange of ideas and new information between practitioners and investigators who study drugs in the laboratory. The potential program should offer clinical activities that would include, but not be limited to, consultations and training in clinical pharmacology and toxicology, graduate courses in drug development/protocol design, a rotation through a clinical pharmacokinetics laboratory, and optional participation in a drug studies unit.

III. Reporting Requirements

A program progress report and a Financial Status Report (SF–269) are required. An original and two copies of these reports shall be submitted to FDA's Grants Management Officer within 90 days of the budget expiration date of the grant. Failure to file the Financial Status Report (SF–269) in a timely fashion will be grounds for suspension or termination of the grant. Program progress reports will be required semiannually. A final program progress report, Financial Status Report (SF–269) and Invention Statement must be submitted within 90 days after the expiration of the project period as noted on the Notice of Grant Award.

Program monitoring of the grantee may be conducted on an ongoing basis, and written reports will be done at least annually by the project officer. The monitoring may be in the form of telephone conversations between the project officer/grants management specialist and the principal investigator and/or a site visit with appropriate officials of the grantee organization. The results of these reports will be duly recorded in the official grant file and may be available to the grantee upon request.

IV. Mechanism of Support

A. Award Instrument

Support for this program will be in the form of a grant. This award will be subject to all policies and requirements of 45 CFR part 74. The regulations promulgated under Executive Order 12372 do not apply to this program.

B. Eligibility

This grant is open to any institution of higher education with an established, fully accredited college of medicine which is currently without a clinical pharmacology program. Those applications deemed ineligible will be returned.

C. Length of Support

The length of support will be 5 years. Funding beyond the first year will be noncompetitive and will depend on: (1) Performance during the preceding year; and (2) the availability of Federal fiscal year appropriations.

D. Funding Plan

The award will depend on the quality of the applications received and the availability of Federal funds to support this project.

V. Review Procedures and Criteria

A. Review Procedures

Applications will undergo a peer review by a competitive review panel with the final funding decision made by the Commissioner of Food and Drugs.

B. Review criteria

Applications sent out for peer review will be evaluated according to the following weighted criteria;

1. Clinical and Research Facilities

The program should be based in a fully accredited medical school and should have documented access to, preferably, a number of local hospitals with a total of at least 1,000 beds. A greater number of hospitals and beds will provide a greater diversity of clinical experiences, ultimately benefiting the program. These hospitals would ideally include sizable pediatric or orphan disease programs because pediatric and orphan drug dosing issues are of particular concern and have not been adequately studied. The applicant should also address the adequacy of laboratory space, office space, additional resources and equipment available for this program. This will ensure that the program has access to facilities and state-of-the-art equipment to adequately assesses products utilized in a variety of situations, including instrumentation that can be used to monitor dug distribution (40 points);

2. Current Curriculum and Training Available to the Program

The applicant's institution should be able to show how this clinical pharmacology program will be devised and integrated into an existing curriculum, which should be described in detail. This curriculum should include, but not be limited to, clinical medicine, basic medical sciences, residency training programs, hospital services, regulatory science, undergraduate medical education, and drug development/protocol design (20 points);

3. Personnel and Technical Capability

The research experiences, training, and competence of the faculty and support staff available should be detailed (20 points);

4. Budget

Reasonableness of the proposed budget given, e.g., the anticipated number of students who will be accepted into the program, and the corresponding costs (20 points).

A total of 100 points is available. Applicants are encouraged to commit matching funds from State, community, and other sources for the establishment of this pilot program. Applications considered nonresponsive to the review criteria will be returned to the applicant.

VI. Submission Requirements

The original and six copies of the completed Grant Application Form PHS 398 (Rev. 9/91), with copies of the appendix for each of the copies, should be complete. No supplemental material will be accepted after the closing date. The outside of the mailing package and item 2 of the application face page should be labeled "Response to RFA-FDA-CDER-92-01."

VII. Methods of Application

A. Submission Instructions

Applications will be accepted from 8 a.m. to 4:30 p.m., Monday through Friday, on or before June 8, 1992.

Applications will be considered received on time if sent on or before the closing date as evidenced by a legible U.S. Postal Service dated postmark or a legible dated receipt from a commercial carrier, unless they arrive too late for orderly processing. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will not be considered for review and will be returned to the applicant.

Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on this method, applicants should check with their local post office.

B. Format for Applications

Submission of the application must be on Grant Application Form PHS 398 (Rev. 9/91). All general instructions and specific instructions in the application kit should be followed, with the exception of the receipt dates and the mailing label address. Do not send applications to the Division of Research Grants, the National Institutes of Health.

The face page of the application must reflect the request for applications number RFA–FDA–CDER–92–01.

Data included in the application, if restricted with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (21 CFR 20.61).

The Information collection requirements requested on Form PHS 398 and the instructions have been submitted by PHS to the Office of Management and Budget (OMB) and were approved and assigned OMB control number 0925–0001.

C. Legend

Unless disclosure is required by the Freedom of Information Act as amended (5 U.S.C. 552) as determined by the freedom of information officials of the Department of Health and Human Services or by a court, data contained in the portions of this application which have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted information shall not be used or disclosed except for evaluation purposes. The Catalog of Federal Domestic Assistance number for this FDA program is pending.

Dated: March 3, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–8025 Filed 4–3–92; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization, Public Meeting

AGENCY: Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 101–512, the Office of the Assistant Secretary—Indian Affairs is announcing the forthcoming meeting of the Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization (Task Force).

DATES: April 27, 28, and 29, 1992; 9 a.m. to 5:30 p.m.; Quality Hotel Four Seasons, 2500 Carlisle Boulevard NE., Albuquerque, New Mexico. Adjournment times on April 27 and 28, 1992, may be later than the 5:30 p.m. time set above in order to accommodate all those persons signing up to present comments to the Task Force and to provide sufficient time for Work Group Sessions. The meeting of the Task Force is open to the public.

FOR FURTHER INFORMATION CONTACT: Veronica L. Murdock, Designated Federal Officer, Office of the Assistant Secretary—Indian Affairs; MS 4140 MIB; 1849 C Street NW.; Washington, DC 20240; Telephone number (202) 208–4173.

SUPPLEMENTARY INFORMATION: The Task Force welcomes public oral and written comments, and most, if not all, of the first day of this meeting of the Task Force will be used to obtain Tribal Government, Indian and Tribal Organization, and individual comments on the activities of the Task Force. The order for speaking will be determined by the order in which persons sign up to speak. Persons wishing to present written comments or speak to the Task Force may sign up in advance on April 26, 1992, from 7 p.m. until 10 p.m. at the Quality Hotel Four Seasons. Sign up sheets will also be available on April 27, 1992, at the Task Force registration table at the meeting room. Speakers are encouraged to prepare written testimony, background material, comments, and other documents for presentation to the Task Force because time for oral presentations may be limited. Also, written comments may be submitted by individuals unable to attend the meeting. Written comments that are not delivered to the Task Force meeting may be mailed to Veronica L. Murdock, Office of the Assistant Secretary—Indian Affairs, Mail Stop 4140 MIB, Department of the Interior, 1849 C Street NW., Washington, DC 20240. The Task Force will discuss comments obtained from the public, resume discussion of items tabled at the last meeting, and continue work group sessions with concentration on Area/Agency structures, the Bureau's budget process, and the directives systems under which the Bureau operates.

Dated: April 1, 1992.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 92–7856 Filed 4–6–92; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[CO–030–06–4410–08]

Availability of the Proposed Gunnison Resource Management Plan and Final Environmental Impact Statement, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Pursuant to the National Environmental Policy Act of 1969 (40 CFR 1550.2), and the Federal Land Policy and Management Act of 1976, the Bureau of Land Management (BLM), Montrose District has prepared the Proposed Gunnison Resource Management Plan/Final Environmental Impact Statement (PRMP/FEIS). This document is now available to the public for a thirty (30) day protest period.

SUMMARY: A proposed resource management plan and final environmental impact statement for the Gunnison Resource Area has been prepared and is now available to the public. This plan will replace and supersede the existing land use plan and other related documents for managing BLM-administered lands and mineral resources for the next 10 to 12 years. Located in south-central Colorado, the Gunnison Resource Area (GRA) encompasses 585,012 acres of federal surface estate and a total of 728,567 acres of Federal subsurface mineral estate within Gunnison, Hinsdale, Montrose, Saguache, and Ouray Counties. Persons or organizations who participated in this process and believe that approval of the resource management plan would be in error, may protest. Protests must be in writing and should be sent by certified mail, return receipt requested to the Director (760), Bureau of Land Management, 1849 C Street NW., Washington, DC 20240. At a minimum, the protest must contain the following:

1. The name, mailing address, telephone number, and interest of the person filing the protest.

2. A statement of the issue or issues being protested.

3. A statement of the part or parts of the Gunnison Resource Management Plan/Final Environmental Impact Statement being protested. To the extent possible, this should be done in reference to specific pages, paragraphs, sections, tables, maps, etc., included in the document.

4. A copy of all documents addressing the issues that you submitted during the process or a reference to the date the issue or issues were discussed by you for the record. Only those persons or organizations who participated in this planning process leading to the RMP may protest.

5. A concise statement explaining why the Colorado State Director's decision is believed to be incorrect. As much as possible, reference or cite the planning documents, environmental analysis documents, available planning records (e.g., meeting minutes, correspondence, etc.). A protest that only expresses disagreement with the Colorado State Director's proposed decision without

any supporting data will not be considered.

DATES: Protests must be received in writing within thirty (30) days of the date the Environmental Protection Agency publishes the notice of receipt of this final impact statement in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Copies of the PRMP/FEIS are available upon request by writing Gunnison RMP Project, Bureau of Land Management, 2465 Townsend Avenue, Montrose, Colorado 81401, or by calling Bill Bottomly, RMP Project Manager. His phone number is (303)249–6047. Copies may also be obtained from the Gunnison Resource Area Office, 216 N. Colorado, Gunnison, Colorado 81230. The office phone number is (303) 641–0471.

SUPPLEMENTARY INFORMATION: Some of the highlights of the Gunnison Proposed RMP/Final EIS are as follows:.

1. The proposed plan integrates the contents of the preferred alternative in the draft RMP/EIS published in March, 1991 together with the public input received during the comment period.

2. The plan focuses on the principles of multiple use and sustained yield as mandated by section 202 of FLPMA. Decisions in the plan will guide management in the planning area for the next 10 or 12 years.

3. The plan designates six (6) areas of BLM-administered lands (42,261 acres) as Areas of Critical Environmental Concern (ACEC):

- American Basin: 1,595 acres, T.24N., R.6W.; to protect visual and related recreation opportunities.
- Redcloud Peak: 5,947 acres, T.43N.,R5W.; to protect and enhance the Uncompahgre fritillary butterfly and related habitat. The butterfly has been listed as an endangered species by the U.S. Fish and Wildlife Service.
- Slumgullion Earthflow National Landmark: 1,407 acres, T.43N., R.4W.; protect visual and natural values.
- West Antelope Creek: 28,215 acres, T.49,50N., R.1,2,3,4W.; to protect and enhance wintering big game and related habitat.
- South Beaver Creek: 4,565 acres, T.48,49n., R.1W.; to protect and enhance populations of skiff milkvetch, a special status species.
- Dillion Pinnacles: 532 acres, T.49N., R.4W.; to protect and enhance scenic and recreational opportunities.

Special management will be provided to minimize surface disturbing activities (e.g., motorized vehicle limitations, mineral development restrictions, etc.) that would adversely affect the significant values within these six areas. Coordinated resource management activity plans will be prepared to detail these protective measures.

4. The plan designates three (3) areas as special recreation management areas (SRMAs):

- Alphine Triangle SRMA: encompasses land along the Lake Fork of the Gunnison River south of Blue Mesa Reservoir and lands south and west of Lake City. The area has valuable fisheries, historical features, riparian, natural and scenic values.
- Powderhorn Primitive Area SRMA: The area has valuable natural and scenic values in a non-motorized setting.
- Cochetopa Canyon SRMA: This riparian corridor has valuable scenic and river-related values.

5. Pursuant to the Wild and Scenic Rivers Act, the plan analyzed 131 creek/river segments for potential designation as wild and scenic rivers. One segment of the Lake Fork of the Gunnison River (13.3 miles) met eligibility criteria and was carried into the process further.

This segment was given a potential classification as "recreational." It was not determined suitable for inclusion into the wild and scenic rivers system.

Dated: March 25, 1992.

Tom Walker,

Associate State Director, Colorado.

[FR Doc. 92–7917 Filed 4–6–92; 8:45 am]

BILLING CODE 4310–JB–M

[ES–962–4950–13–4600: ES–045084, Group 10, Virginia]

Notice of Filing of Plat of Dependent Resurvey

The plat, in one sheet, of the retracement and reestablishment of a portion of the boundary of Prince William Forest Park, Prince William County, Virginia, has been officially filed in Eastern States, Alexandria, Virginia, at 7:30 a.m., on March 26, 1992.

The survey was made upon request submitted by the National Park Service. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Dated: March 30, 1992.

Walter Rewinski,

Acting State Director.

[FR Doc. 92–7857 Filed 4–6–92; 8:45 am]

BILLING CODE 4310–GJ–M

Fish and Wildlife Service

Receipt of Application for Permit

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) and the regulations governing marine mammals and endangered species (50 CFR 17 and 18).

Applicant:

File no.: 766146.

Name: Dr. Graham Worthy.

Address: Texas A&M University, Galveston, Texas.

Type of Permit: Scientific Research.

Name and Number of Animals: West Indian Manatee (*Trichechus manatus*) up to 50 animals (10 per year).

Summary of Activity to be Authorized: The applicant proposes the following take activities and methodologies to study reproductive energetics, growth and thermoregulation: (1) Measurement of oxygen consumption and daily metabolic rate by doubly labeled water; (2) measurement of body condition and fat stores by ultrasound, bioelectric impedance and deuterium dilution; (3) assimilation efficiency using manganese as a marder, sampling food and collection of feces; (4) milk composition by manually milking mammary glands; (5) water flux by collecting urine samples, dietary sodium intake, and deuterium water turnover.

Source of Marine Mammals for Research: The manatees to be used are being held in captivity for rehabilitation purposes at Sea World of Florida and Lowry Park Zoo, in Florida.

Period of Activity: 5 years.

Cuncurrent with the publication of this notice, the Office of Management Authority is forwarding copies of the application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45–4:15)

in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: April 1, 1992.

Susan Jacobsen,

Acting Chief, Branch of Permits Office of Management Authority.

[FR Doc. 92–7860 Filed 4–6–92; 8:45 am]

BILLING CODE 4310–55–M

UNITED STATES INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Announcing a Meeting of the International Private Investment Advisory Council on Foreign Aid

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the U.S. Agency for International Development's International Private Investment Advisory Council on Foreign Aid (also known as the "Business Advisory Council") on Tuesday, April 21, 1992.

The Council is a Federal Advisory Committee that advises the U.S. Agency for International Development on issues of mutual interest to the U.S. government and the private sector. It assists in identifying areas for potential private sector involvement in the U.S. international development program. The Business Advisory Council was formed as a part of the A.I.D. Partnership for Business and Development Initiative.

The topics for discussion at the meeting will be: A.I.D. and other U.S.G. private sector activities as they relate to international development and their implications from the perspective of the U.S. private sector; programs and plans for the New Independent States; and the U.S./Asia Environmental Partnership.

Date: Tuesday, April 21, 1992.

Time: 9 a.m.–11:30 a.m.

Place: The Grand Hotel, The Ballroom, 2350 M Street, NW., Washington, DC 20037, Tel: (202) 429–0100.

The meeting is free and open to the public. However, notification of attendance by Friday, April 17, 1992, through the advisory committee headquarters, is required. Persons wishing to attend the meeting must call Jill Hecht (202) 483–8006 or Tracy L. Smith (202) 647–3805, or write to: International Private Investment Advisory Council on Foreign Aid, U.S. Agency for International Development, room 3214 NS, Washington, DC 20523–0084.

Dated: April 2, 1992.

Tracy L. Smith,

Executive Director, International Business Development, Private Enterprise Bureau.

[FR Doc. 92–7950 Filed 4–6–92; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act, Title IV, Section 451, Part D—National Level Multi-State Programs to Train and Employ the Disabled; Extension of Closing Date

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and of solicitation for grant applications (SGA); extension of closing date.

SUMMARY: On January 28, 1992, the Employment and Training Administration (ETA), Department of Labor, published a notice in the **Federal Register** announcing the availability of funds and a solicitation for grant applications (SGA/DAA 92–001) for the conduct of programs designed to train and employ the disabled by national level, multi-State, non-profit organizations. FR Doc. 92–2030, 57 FR 3220; see also correction at FR Doc. 92–2873, 57 FR 4648 (February 6, 1992). Due to discrepancies in announced closing dates for the SGA, ETA has determined to extend the closing date for receipt of proposals.

Accordingly, FR Doc. 92–2030, 57 FR 3220 is amended by revising the last sentence in the first paragraph of the "DATES" section to read "The closing date for receipt of proposals is April 20, 1992, 2 p.m., eastern time".

DATES: The closing date for receipt of proposals with respect to SGA/DAA 92–001, is April 20, 1992, 2 p.m., eastern time. The solicitation for grant application continues to be available. Requests must be made in writing to the address below. Telephone and telefacsimile (FAX) requests will not be honored. The request must cite SGA/DAA 92–001 and must include two (2) self-addressed labels. Requests will be honored on a first come, first served basis until the supply of 300 is exhausted. Any application not meeting the designated place, date, and time of delivery will not be considered.

ADDRESSES: Mail your request for Solicitation of Grant Application (SGA) to: U.S. Department of Labor, Employment and Training Administration, Office of Grants and Contract Management, Division of Acquisition and Assistance, 200 Constitution Avenue, NW., room C–4305, Washington, DC 20210, Attention: Gwendolyn Baron-Simms, Reference SGA/DAA 92–001.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Baron-Simms, Telephone: (202) 535–8702 (This is not a toll-free number).

Signed at Washington, DC, on March 25, 1992.

Robert D. Parker,

ETA Grant Officer.

[FR Doc. 92–7888 Filed 4–6–92; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

Advisory Committee on the Use of Air in the Belt Entry to Ventilate the Production (Face) Area at Underground Coal Mines and Related Provisions; Meeting

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of advisory committee meeting.

SUMMARY: This notice provides the date, time, place and agenda summary for the second meeting of the Mine Safety and Health Administration's Advisory Committee on the Use of Air in the Belt Entry to Ventilate the Production (Face) Area at Underground Coal Mines and Related Provisions.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Ballston Tower #3, 4015 Wilson Boulevard, room 631, Arlington, Virginia 22203; phone (703) 235–1910.

SUPPLEMENTARY INFORMATION: Under sections 101(a) and 102(c) of the Federal Mine Safety and Health Act of 1977, a public meeting of the advisory committee will be held as follows:

(1) April 22, 1992, from 1 p.m. until 9 p.m. at the Crown Sterling Suites (Cotillion Ballroom) located at 2300 Woodcrest Place, Birmingham, Alabama 35209; and

(2) April 23, 1992, from 8 a.m. until 4 p.m. at the Crown Sterling Suites (Cotillion-Camelia Ballroom).

The Secretary of Labor appointed this advisory committee to make recommendations on conditions under which belt entry air could be safely used in the face areas of underground coal mines.

The purpose of the meeting is to: (1) Obtain information relative to the conditions under which belt haulage entries could be safely used as intake air courses to ventilate working places; (2) minimum velocities in conveyor belt haulageways; and (3) ventilation of escapeways.

The agenda for the second meeting will include discussions of mine ventilation systems design and monitoring systems.

The public is invited to attend. The chairperson will provide a half-hour during each day of the meeting to allow interested persons to make comments. Official records of the meeting will be available for public inspection at the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, room 631, Arlington, Virginia 22203.

Dated: April 1, 1992.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 92-7976 Filed 4-6-92; 8:45am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a pubic meeting of the Working Group on Individual Participant Rights of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9:30 a.m., Tuesday April 28, 1992, in suite S-4215 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This Individual Participant Rights Working Group was formed by the Advisory Council to study issues relating to Individual Participant Rights for employee benefit plans covered by ERISA.

The purpose of the April 28 meeting is to review, and discuss topics and questions to be addressed through the public hearing process. Also, to decide who should be invited to give testimony at a future date. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations wishing to address the Working Group should submit a written request on or before April 23, 1992 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N-5677. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before April 23, 1992.

Signed at Washington, DC, this 1st day of April, 1992.

David George Ball,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 92-7851 Filed 4-6-92; 8:45 am]

BILLING CODE 4510-29-M

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Pension Coverage and Adequacy of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 2:30 p.m., Tuesday, April 28, 1992, in suite S-4215 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This Pension Coverage and Adequacy Working Group was formed by the Advisory Council to study issues relating to Pension Converge and Adequacy for employee benefit plans covered by ERISA.

The purpose of the April 28 meeting is to discuss further the topic which the Work Group will be addressing, including potential witnesses for testimony and the next steps to be followed. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations wishing to address the Working Group should submit written request on or before April 23, 1992 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N-5677. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before April 23, 1992.

Signed at Washington, DC, this 1st day of April, 1992.

David George Ball,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 92-7852 Filed 4-6-92; 8:45 am]

BILLING CODE 4510-29-M

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Pension Investment Activity of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9 a.m., Wednesday April 29, 1992, in Suite S-4215 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This Pension Investment Activity Working Group was formed by the Advisory Council to study issues relating to Pension Investment Activity for employee benefit plans covered by ERISA.

The purpose of the April 29 meeting is to review and discuss a number of documents and working papers distributed earlier and to hear from expert witnesses invited to testify before the group. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations wishing to address the Working Group should submit written request on or before April 23, 1992 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N-5677. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers

will be accepted and included in the record of the meeting if received on or before April 23, 1992.

Signed at Washington, DC This 1st day of April, 1992.

David George Ball,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 92–7853 Filed 4–6–92; 8:45 am]

BILLING CODE 4510–29–M

Advisory Council on Employee Welfare and Pension Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Wednesday, April 29, 1992, in suite S–4215 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

The purpose of the Seventy-Fourth meeting of the Secretary's ERISA Advisory Council which will begin at 12:30 p.m., is to hear status reports and provide input to each of the Council's work group i.e., Individual Participant Rights; Health Care; Pension Investment Activity; Pension Coverage & Adequacy, and to invite public comment on any aspect of the administration of ERISA.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before April 23, to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue, N.W., Washington, DC 20210. Individuals, or representatives of organizations wishing to address the Advisory Council should forward their request to the Executive Secretary or telephone (202) 523–8753. Oral presentations will be limited to ten minutes, but an extended statement may be submitted for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before April 23, 1992.

David George Ball,

Assistant Secretary, Pension and Welfare Benefits Administration.

Signed at Washington, DC. This 1st day of April, 1992.

[FR Doc. 92–7854 Filed 4–6–92; 8:45 am]

BILLING CODE 4510–29–M

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Health Care of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 12 noon, Tuesday April 28, 1992, in suite S–4215 AB, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This Health Care Working Group was formed by the Advisory Council to study issues relating to Health Care for employee benefit plans covered by ERISA.

The purpose of the April 28 meeting is to hear the testimony of several experts in the health care field regarding the possible reduction in the medicare eligibility age from 65 to 60 years of age. The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations wishing to address the Working Group should submit written request on or before April 23, 1992 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before April 23, 1992.

Signed at Washington, DC This 1st day of April, 1992.

David George Ball,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 92–7855 Filed 4–6–92; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL COMMUNICATIONS SYSTEM

Federal Telecommunication Standards

AGENCY: National Communications System, Office of Technology and Standards.

ACTION: Notice for comment on proposed standards.

SUMMARY: The purpose of this notice is to solicit the views of Federal agencies, industry, the public and State and local governments on proposed Telecommunications Standards 1055, "Telecommunications: Interoperability Requirements for Meteor Burst Communications Between Conventional Master & Remote Stations"; 1056, "Telecommunications: Interoperability Requirements for the Encryption of Meteor Burst Radio Communications"; and 1057, "Telecommunications: Interoperability Requirements for Meteor Burst Radio Communications between Networks by Conventional Master Stations."

DATES: Comments are due by July 6, 1992.

ADDRESSES: Send comments to the National Communications System, Office of Technology and Standards, Attn: NT, 701 South Court House Road, Arlington, VA 22204–2198.

SUPPLEMENTARY INFORMATION: .

1. The General Services Administration (GSA) is responsible under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal Standardization Program. On August 14, 1972, the Administrator of General Services designated the National Communications System (NCS) as the responsible agent for the development of Federal telecommunication standards for NCS interoperability and the computer communication interface.

2. Prior to the adoption of proposed Federal standards, it is important that proper consideration be given to the needs and views of Federal agencies, industry, the public, and State and local government.

3. An earlier draft of proposed Federal Standard 1055 was announced for comment in the July 25, 1989, issue of the **Federal Register**. Substantive changes have been made to the draft since that time.

4. Requests for copies of the March 20, 1992, draft of proposed Federal Standards 1055, 1056, and 1057 should be directed to the National Communications System, Office of Technology and Standards, Attn. NT, 701 South Court House Road, Arlington, VA 22204–2198.

Dennis Bodson,

Assistant Manager, NCS Office of Technology and Standards.

[FR Doc. 92–7861 Filed 4–6–92; 8:45 am]

BILLING CODE 3810–DG–M

NUCLEAR REGULATORY COMMISSION

Proposed Generic Communication NRC Bulletin No. 90–01, Supplement 1: Loss of Fill Oil in Transmitters Manufactured by Rosemount

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to issue a supplemental bulletin on loss of fill oil in transmitters manufactured by Rosemount. The supplemental bulletin would request all operators of nuclear power reactors to either replace or specifically monitor certain models of Rosemount transmitters. The NRC is seeking comment from interested parties regarding both the technical and regulatory aspects of the proposed bulletin presented under the Supplementary Information heading.

DATES: Comment period expires May 7, 1992. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to Chief, Rules and Directives Review Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 am to 4:15 pm, Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ngoc B. Le (3010 504–1458.

SUPPLEMENTARY INFORMATION: The oil-filled transmitter manufactured by Rosemount provides a means of direct electronic sensing of process pressure with a completely sealed capacitance sensing element. The capacitance sensing element contains a silicon oil fill fluid which allows process pressure to be transmitted through an isolating diaphragm to a sensing diaphragm in the center of the cell. These oil-filled transmitters are used extensively in nuclear power plants to provide various pressure, level, and flow indications.

A bulletin is an NRC document that transmits information to, requests action by, and usually requires a written response from licensees or permit holders or both regarding matters of safety, safeguards, or environmental significance. The addressees may be asked to take actions over a specified period of time and report implementation of such actions by letter. The NRC will consider comments received from interested parties in the final evaluation of the proposed bulletin. The NRC's final evaluation will include a review of the technical position and analysis of value/impact on licensees. This proposed bulletin, in its entirety, including the references, is also available for public inspection in the Public Document Room. Should this bulletin be issued by the NRC, it will become available for public inspection in the Public Document Room. The proposed bulletin text is given in its entirety below:

NUCLEAR REGULATORY COMMISSION, OFFICE OF NUCLEAR REACTOR REGULATION, WASHINGTON, DC 20555

NRC Bulletin No. 90–01, Supplement 1: Loss of Fill-Oil in Transmitters Manufactured by Rosemount

Addressees

All holders of operating licenses or construction permits for nuclear power reactors.

Purpose

The U.S. Nuclear Regulatory Commission (NRC) is issuing this bulletin supplement to inform addressees of activities taken by the NRC staff and the industry in evaluating Rosemount transmitters and to request licensees to take actions to adequately resolve this issue. This supplement updates information provided in Bulletin 90–01, "Loss of Fill-Oil in Transmitters Manufactured by Rosemount." It is requested that recipients review the information for applicability to their facilities and modify, as appropriate, their actions and enhanced surveillance programs to meet the intent of the staff's position discussed in this bulletin supplement.

Description of Circumstances

On April 21, 1989, the NRC issued Information Notice (IN) 89–42, "Failure of Rosemount Models 1153 and 1154 Transmitters," to alert the industry to a series of reported failures of Models 1153 and 1154 pressure and differential pressure transmitters manufactured by the Rosemount Inc. (Rosemount). Rosemount investigated the cause of the failures and confirmed that the failure mode was a gradual loss of fill-oil from the sealed sensing module of the transmitter. On March 9, 1990, the NRC issued Bulletin 90–01, in which it requested that licensees promptly identify and take appropriate corrective actions for Model 1153 Series B, Model 1153 Series D, and Model 1154 transmitters manufactured by Rosemount that may be or have the potential for leading fill-oil. During the summer and fall of 1990, the Nuclear Management and Resources Council (NUMARC) surveyed the industry to gather data on all installed Rosemount Model 1153 and 1154 transmitters and safety-related Model 1151 and 1152 transmitters at commercial nuclear facilities. NUMARC also requested data on all suspected or confirmed failures of Rosemount transmitters attributed to a loss of fill-oil from these same facilities.

Discussion

The staff has reviewed the Rosemount transmitter loss of fill-oil issue by analyzing data gathered from (1) licensee event reports, (2) the licensee's responses to NRC Bulletin 90–01, (3) technical information provided by Rosemount, (4) site visits, (5) NUMARC report 91–02, "Summary Report of NUMARC Activities to Address Oil Loss in Rosemount Transmitters," and (6) numerous meetings with representatives from the industry, NUMARC, and Rosemount. The NRC became concerned about this complex technical issue because the failure could occur and remain undetected while the transmitter was in service and could be a common mode failure. The manufacturer indicated that these failures resulted from a failure of a glass-to-metal seal inside the sensor which allowed fill fluid to leak out of the sensor at a very slow rate. Then this condition occurs, the transmitter performance gradually deteriorates and may lead to failure. The loss of fill-oil failures have not been traced to a specific time of manufacture, manufacturing lots, or process conditions. The manufacturer performed extensive analyses to understand thoroughly and to quantify the symptoms of the failure and to develop diagnostic guidelines for detecting a loss of fill fluid. While performing these analyses and reviewing historical data on the failed transmitters, the manufacturer fund that the issue involved a number of interacting factors. These factors are discussed in the references (1) through (5). These factors include the range code of the transmitter, the ability of various evaluation methods to detect the characteristics of a loss of fill fluid, the operating pressure of the transmitter, and the amount of time that the transmitter had been in service.

Rosemount attributed many of the failures resulting in a loss of fill-oil to the use of stainless steel "O" rings and the increased stresses on the sensor

module that result. The manufacturer made improvements to the manufacturing process and the post-production screening for transmitters and sensors produced after July 11, 1989. These improvements included making process changes to reduce stresses on the sensor modules and pressure testing the sensors to identify any incipient failures caused by leaking fill fluid. By making these improvements, the manufacturer corrected to a large extent the problem of sensor fill-oil loss, since only one failure attributed to a loss of fill-oil has been found in transmitters manufactured after that date. However, the industry has little data on the performance of sensors manufactured after July 11, 1989.

The staff has reviewed the licensees' individual responses to NRC Bulletin 90–01 and concluded that the bulletin helped to improve the safety of operating reactors by reducing the susceptibility of Rosemont transmitters to fail because of a loss of fill-oil. This was accomplished mainly by prompting the licensees to remove Rosemount transmitters that were installed in the reactor protection systems (RPS) or engineered safety feature (ESF) actuation systems that the manufacturer found to have a high failure fraction resulting from a susceptibility to a loss of fill-oil (i.e., suspect lot transmitters). The licensee also was to evaluate against appropriate operability acceptance criteria those transmitters that it suspected of exhibiting symptoms of a loss of fill-oil when it reviewed the plant's historical records on the calibration of these transmitters. The licensees established enhanced surveillance programs by considering various diagnostic procedures for detecting whether or not a transmitter is leaking fill-oil. These diagnostic procedures included trending calibration data, trending operational data, reviewing transmitter performance for sluggish transient response, and conducting process noise analysis.

However, the staff raised a number of concerns upon reviewing the licensee's responses. These included the following:

1. The responses from two licensees indicating that they did not intend to replace suspect lot transmitters installed in RPS or ESF actuation systems.

2. Using pressure times time-in-service criteria provided in the Rosemount Technical Bulletin No. 4 as a means to identify which transmitters should be included in the enhanced surveillance program.

3. Eliminating low pressure application (below 250 psi) transmitters from the enhanced surveillance program because the low oil pressure was not sufficient to cause oil loss.

4. The difference between the number of transmitters manufactured by Rosemount and the total number of transmitters (those installed and those in the suspect lots) found from the responses of all licensees.

5. The adequacy of the licensee's enhanced surveillance programs to determine the trend of transmitter drift and identify degradation without having a transmitter fail before the next scheduled calibration test.

During the licensee response period to Bulletin 90–01, NUMARC surveyed all utilities to collect data on all installed Rosemount Model 1153 and 1154 transmitters, and on Rosemount Model 1151 and 1152 transmitters installed in safety-related systems. NUMARC conducted the survey to address the staff's concerns (2) through (4) above, the closure of enhanced surveillance monitoring activities, and to address concerns regarding the loss of fill-oil in the Rosemount Model 1151, 1152, and 1153 Series A transmitters.

The staff reviewed the data collected by NUMARC to (1) verify NUMARC's conclusions, (2) evaluate surveillance issues regarding the licensee's responses in implementing the enhanced surveillance program requested by the staff in the Bulletin, and (3) determine if other insights could be drawn from this data. The Brookhaven National Laboratory (BNL) assisted the staff in evaluating the data by assessing the failure rates for various types of transmitters by operating pressure, time-in-service, and suspect or nonsuspect lot classification. BNL provided the staff with the report, "Evaluation of Surveillance and Technical Issues Regarding Rosemount Pressure Transmitter Loss of Fill-Oil Failures," December 20, 1991. The staff also evaluated the effect of the various failure rates on RPS unavailability to address the staff's concerns (2), (3), and (5) discussed above. In addition, the staff considered the effects of the various failure rates on the potential for anticipated transients without scram (ATWS). The staff concluded that the estimated RPS unavailability and the associated impact on ATWS frequency could be very sensitive to changes in the transmitter failure rate.

In evaluating this issue, the staff found a relationship, as had been previously found by Rosemount and NUMARC, between operating pressure, time-in-service, and the suspect and nonsuspect lot classifications in identifying where the transmitters would most likely fail. A high operating pressure was the most dominant factor leading to a loss of fill-oil.

Second among these factors was time-in-service, with those transmitters having been in service for less than 60,000 psi-months exhibiting higher failure rates than transmitters that had been in service for more than 60,000 psi-months. However, the population of transmitters in service beyond 60,000 psi-months was less than 10 percent of the total transmitter population evaluated. Figure 1 represents the staff estimates of Rosemount transmitter failure rates based on pressure application and the time in service derived from the NUMARC survey data.

Third among these factors was the classification of the lot as suspect or nonsuspect. All suspect lots as defined by Rosemount contained at least one confirmed failure and possibly more, depending on the size of the lot. However, many confirmed or suspected failures caused by a loss of fill-oil were identified in nonsuspect lots. If all other factors were assumed equal, suspect lots had higher failure rates than nonsuspect lots. When pressure application or time-in-service was considered, classification by suspect or nonsuspect lot was of lesser importance.

Throughout this evaluation period, the staff found several noteworthy items including the following:

1. The manufacturer continues to confirm that transmitters are failing because of a loss of fill-oil.

When the NRC issued Bulletin 90–01, the manufacturer confirmed that approximately 90 transmitters had failed because of a loss of fill-oil. By taking the actions requested in the bulletin, the licensees would have removed from service both those groups of transmitters identified as suspect transmitters and those transmitters suspected of oil loss based on historical calibration data. Since that time, Rosemount has confirmed approximately 50 additional transmitters as having failed because of a loss of fill-oil. While the number of failures resulting from a loss of fill-oil has decreased recently, this condition continues to cause transmitters to fail.

2. The manufacturer continues to classify more transmitters as being suspect lots.

In December 1989, Rosemount issued the initial list of suspect lot transmitters which included approximately 1075 transmitters. Since that time, the manufacturer has updated this list with four addenda, with the most recently issued addendum adding approximately 215 transmitters in December 1991. The current number of transmitters found in the suspect lots is approximately 1700.

3. At nuclear facilities, Model 1151 and Model 1152 transmitters have failed because of a loss of fill-oil. While few Model 1151 and Model 1152 transmitters have been confirmed to have failed, the fact that these transmitters failed indicates that the failures are not limited to transmitters with stainless steel "O" rings.

4. In November 1991, Rosemount informed the NRC that it was recalling approximately 1300 Model 1151 transmitters based on a Rosemount engineering analysis which indicated that these transmitters are susceptible to a loss of fill-oil.

Rosemount indicated that it had shipped only a few of these transmitters to nuclear facilities and that none had been reported as having failed because of a loss of fill-oil. The staff reviewed information on these transmitters and concluded that Rosemount has addressed the issue adequately by making a recall. Rosemount is also improving the postproduction screening test of Model 1151 transmitters.

The staff's concern throughout the evaluation of this issue is the need to determine whether or not the Rosemount transmitter meets the current criteria as a reliable component for which failures can be readily detected. The NRC issued General Design Criterion (GDC) 21, "Protection System Reliability and Testability" in appendix A to part 50 of title 10 of the Code of Federal Regulation (10 CFR part 50) to require the protection system to be designed with high functional reliability and with sufficient capability to allow periodic testing of its functioning when the reactor is in operation. The NRC established this requirement to ensure that the licensee can readily detect failures of subcomponents and subsystems within the protection system and can readily detect loss of the required protection system redundancy when it occurs. In 10 CFR 50.55a(h), the NRC requires that protection systems meet the Institute of Electrical and Electronics Engineers Standard, "Criteria for Protection Systems for Nuclear Power Generating Stations" (IEEE–279). In IEEE–279, the Institute stated that means shall be provided for checking, with a high degree of confidence, the operational availability of each system input sensor during reactor operation. To achieve a high functional reliability, a transmitter must have a low probability of failing while it is operating. Conversely, failures should be readily detectable commensurate with the safety function while the transmitter is in operation. Upon reviewing the analyses, evaluations, and historical data on the loss of fill-oil, the staff concludes that actions requested by the previous bulletin are insufficient to ensure the transmitters achieve the desired high fucntional reliability.

The staff concludes the following:

1. The following Rosemount transmitters are not achieving high functional reliability: Model 1153 Series B, Model 1153 Series D, and Model 1154 transmitters manufactured before July 11, 1989, that are currently used in either safety-related systems or systems installed in accordance with 10 CFR 50.62 (the ATWS rule), and that (1) have a normal operating pressure greater than 1500 psi, and (2) are installed in reactor protection trip systems or ESF actuation systems. The licensee should (1) replace these transmitters with Rosemount transmitters manufactured after July 11, 1989, (2) replace them with qualified transmitters manufactured by another vendor, or (3) monitor them for the life of the transmitter using an online monitoring system. Licensees may monitor transmitters in this category that have reached the appropriate psi-month threshold criterion recommended by Rosemount (60,000 psi-months or 130,000 psi-months depending on the range code of the transmitter) by using an enhanced surveillance monitoring program, if sufficient justification is provided to demonstrate the reliability of the safety function will be sufficiently enhanced by the redundancy or diversity of applicable instrumentation and control systems. The justification should show that the importance of the function, when considered in conjunction with the overall performance of the reactor protection trip system, ESF actuation systems or ATWS system, provides a sufficiently high level of reliability for the function.

Replacing a Rosemount transmitter with one manufactured after July 11, 1989, means installing a transmitter which has been refurbished with a sensor module manufactured after July 11, 1989 (senior module number greater than 2182605), or installing a transmitter manufactured after July 11, 1989 (a transmitter having a serial number greater than 500000).

An online monitoring system is a system or method by which the licensee can evaluate transmitter output while the transmitter is in service and can detect changes in output on the same order of magnitude as the manufacturer's drift data criteria for determining degradation caused by a loss of fill-oil. The plant process computer provides a means of evaluating the output of the transmitter while the transmitter is in service. Other methods such as process noise analysis may be applicable for specific applications.

2. The following Rosemount transmitters are not achieving high functional reliability: Model 1153 Series B, Model 1153 Series D, and Model 1154 transmitters manufactured before July 11, 1989, that are currently used in either safety-related systems or systems installed in accordance with 10 CFR 50.62 (the ATWS rule), and that (1) have a normal operating pressure greater than 500 psi and less than or equal to 1500 psi, and (2) are installed in reactor protection trip systems or ESF actuation systems.

The licensees of boiling water reactor (BWR) facilities should (1) replace these transmitters with Rosemount transmitters manufactured after July 11, 1989, (2) replace them with qualified transmitters manufactured by another vendor, or (3) monitor them using an online monitoring system until the transmitter reaches the appropriate psi-month threshold criterion recommended by Rosemount (60,000 psi-months or 130,000 psi-months depending on the range code of the transmitter). The licensees of pressurized water reactor (PWR) facilities should (1) replace these transmitters with Rosemount transmitters manufactured after July 11, 1989, (2) replace them with qualified transmitters manufactured by another vendor, or (3) monitor them using an enhanced surveillance program until the transmitter reaches the appropriate psi-month threshold criterion recommended by Rosemount (60,000 psi-months or 130,000 psi-months depending on the range code of the transmitter).

3. The following Rosemount transmitters are not achieving high functional reliability: Model 1153 Series B, Model 1153 Series D, and Model 1154 transmitters manufactured before July 11, 1989, that are currently used in either safety-related systems or systems installed in accordance with 10 CFR 50.62 (the ATWS rule), and that (1) have a normal operating pressure greater than 1500 psi, and (2) are not installed in reactor protection trip systems or engineered safety feature actuation systems. The licensee should (1) replace these transmitters with Rosemount transmitters manufactured after July 11, 1989, (2) replace them with qualified transmitters manufactured by another vendor, or (3) monitor the transmitter throughout its life using an enhanced surveillance monitoring program.

4. The following Rosemount transmitters are not achieving high functional reliability: Model 1153 Series

B, Model 1153 Series D, and Model 1154 transmitters manufactured before July 11, 1989, that are currently used in either safety-related systems or systems installed in accordance with 10 CFR 50.62 (the ATWS rule), and that (1) have a normal operating pressure greater than 500 psi and less than or equal to 1500 psi, and (2) are not installed in reactor protection trip systems or engineered safety feature actuation systems. The licensee should (1) replace these transmitters with Rosemount transmitters manufactured after July 11, 1989, (2) replace them with qualified transmitters manufactured after July 11, 1989, (2) replace them with qualified transmitters manufactured by another vendor, or (3) monitor them using an enhanced surveillance monitoring program until the transmitter reaches the appropriate psi-month threshold criterion recommended by Rosemount (60,000 psi-months or 130,000 psi-months depending on the range code of the transmitter).

5. The enhanced surveillance monitoring program should provide measurement data with an accuracy range consistent with that needed for comparison with the manufacturer's drift data criteria for determining degradation caused by a loss of fill-oil. To achieve the desired accuracy, the licensee can determine the trending of zero drift and span drift from the calibration data. In determining the calibration interval for those transmitters which are to be monitored by an enhanced surveillance program, the licensee may find that the normal calibration interval may not be sufficient to provide a high degree of confidence that it can detect degradation caused by a loss of fill-oil before the transmitter fails. The licensee should determine the appropriate enhanced surveillance tests and intervals for each of these transmitters individually considering the specific safety function(s), diversity available, and other factors. Until the appropriate surveillance tests and intervals have been determined, the licensee should obtain and evaluate quarterly the measurement data with an accuracy range consistent with that needed for comparison with the manufacturer's drift data criteria for transmitters described in Item (3) that have not reached the appropriate psi-month threshold recommended by Rosemount (60,000 psi-months or 130,000 psi-months depending on the range code of the transmitter). At least once every 18 months, the licensee should evaluate all remaining transmitters subject to the enhanced surveillance monitoring program.

6. The following Rosemount transmitters are achieving a high functional reliability: Model 1153 Series B, Model 1153 Series D, and Model 1154 transmitters manufactured before July 11, 1989, that are currently used in either safety-related systems or systems installed in accordance with 10 CFR 50.62 (the ATWS rule), and that have a normal operating pressure less than or equal to 500 psi. These transmitters may remain in service and may be excluded from any enhanced surveillance program. However, the licensee is encouraged to continue monitoring these transmitters in an enhanced surveillance program to detect any degrading performance of the transmitter.

7. The performance experience and identified failures do not indicate that additional licensee action is warranted to address the issue of a loss of fill-oil for Rosemount Model 1151, 1152, and 1153 (Series A) transmitters.

8. NUMARC's report and the associated database sufficiently account for the population of transmitters. The NUMARC survey data provided that staff a "snapshot" of the installed population of Rosemount transmitters subject to the bulletin, including application by function, time-in-service, and operating pressure. the database did not account for spares or transmitters previously removed for reasons other than a loss of fill-oil. While some uncertainty may be generated as new suspect lots are identified by the manufacturer but are not listed in the database, the overall transmitter usage has been identified to the point of reducing the staff's concerns on this issue.

Requested Actions

Operating Reactors

The NRC requests that all holders of operating licenses for nuclear power reactors take the following actions:

1. Review the plant records and identify any Rosemount Model 1153 Series B, Model 1153 Series D, and Model 1154 transmitters manufactured before July 11, 1989, that are currently used in either safety-related systems or systems installed in accordance with 10 CFR 50.62 (the ATWS rule), and

(a) Replace, or monitor for the life of the transmitter using an online monitoring system, any transmitters that have a normal operating pressure greater than 1500 psi and that are installed in reactor protection trip systems or ESF actuation systems. Action for these transmitters that have not met the Rosemount psi-month threshold criterion should be expedited. At the licensee's discretion, an enhanced surveillance program may be used for transmitters in this category which have reached the appropriate psi-month threshold criterion recommended by Rosemount with justification that the reliability of the safety function will be sufficiently enhanced by the redundancy or diversity of applicable instrumentation and control systems. The justification should show that the importance of the function, when considered in conjunction with the overall performance of the reactor protection trip system, ESF actuation systems, or ATWS system, provides a sufficiently high level of reliability for the function.

(b) (For BWRs) Replace, or monitor using an online monitoring system, any transmitters that have a normal operating pressure greater than 500 psi and less than or equal to 1500 psi and that are installed in reactor protection trip systems or ESF actuation systems until the transmitter reaches the appropriate threshold criterion recommended by Rosemount.

(For PWRs) Replace, or monitor using an enhanced surveillance program, any transmitters that have a normal operating pressure greater than 500 psi and less than or equal to 1500 psi and that are installed in reactor protection trip systems or ESF actuation systems until the transmitter reaches the appropriate threshold criterion recommended by Rosemount. If the transmitters are monitored by using an enhanced surveillance program, sufficient justification should be provided to demonstrate the reliability of the safety function will be sufficiently enhanced by the redundancy or diversity of applicable instrumentation and control systems. The justification should show that the importance of the function, when considered in conjunction with the overall performance of the reactor protection trip system, ESF actuation systems or ATWS system, provides a sufficiently high level of reliability for the function.

(c) Replace, or monitor for the life of the transmitter using an enhanced surveillance monitoring program, any transmitters that have a normal operating pressure greater than 1500 psi and that are not installed in reactor protection trip systems or ESF actuation systems.

(d) Replace, or monitor using an enhanced surveillance monitoring program, any transmitters that have a normal operating pressure greater than 500 psi and less than or equal to 1500 psi, and that are not installed in reactor

protection trip systems or ESF actuation systems until the transmitter reaches the appropriate threshold criterion recommended by Rosemount.

(e) At the licensee's discretion, exclude from any enhanced surveillance program transmitters that have a normal operating pressure less than or equal to 500 psi. Licensees are encouraged to continue monitoring these transmitters in an enhanced surveillance program to detect any degrading performance of a transmitter.

2. Evaluate the enhanced surveillance monitoring program to ensure that the program provides measurement data with an accuracy range consistent with that needed for comparison with the manufacturer's drift data criteria for determining degradation caused by a loss of fill-oil. Determine the appropriate enhanced surveillance test interval(s) on a case-by-case basis, for each transmitter in the enhanced surveillance program, to provide a high degree of confidence in detecting degradation of the transmitter caused by a loss of fill-oil before the transmitter fails. The licensee shall document the enhanced surveillance program evaluation and the determination of test interval(s).

3. Until the licensee determines the appropriate surveillance tests and intervals as described in Action Item 2 above, the licensee should obtain and evaluate quarterly the measurement data with the accuracy range consistent with that needed for comparison with the manufacturer's drift data criteria for transmitters described in Action Item 1(c) that have not reached the appropriate psi-month threshold criterion recommended by Rosemount (60,000 psi-months or 130,000 psi-months depending on the range code of the transmitter). At least once every 18 months, the licensee should evaluate all remaining transmitters subject to the enhanced surveillance monitoring program.

The actions described in this supplement supersede the actions requested in the original bulletin and may be the subject of NRC audits in the future.

Construction Permit Holders

All holders of construction permits are requested to, complete Items 1, 2, and 3 of Requested Actions for Operating Reactors before the date scheduled for loading fuel.

The actions described in this supplement supersede the actions requested in the original bulletin and may be the subject of NRC audits in the future.

Reporting Requirements

Operating Reactors

Provide within 60 days after receipt of this bulletin, a response that includes the following:

1. A list of the specific actions, with justification where necessary, that the licensee will complete to meet Item 1 of Requested Actions for Operating Reactors provided in this supplement.

2. The schedule for completing licensee actions to meet Item 1 of Requested Actions provided in this supplement.

3. A statement confirming that Item 3 of Requested Actions for Operating Reactors provided in this supplement has been completed.

Construction Permit Holders

Before the date scheduled for loading fuel, all holders of construction permits are required to provide a response that confirms that the Requested Action for Construction Permit Holders has been completed.

The written reports required above shall be addressed to the U.S. Nuclear Regulatory Commission, Attn: Document Control Desk, Washington, DC 20555, and shall be submitted under oath or affirmation pursuant to the provisions of section 182a, Atomic Energy Act of 1954, as amended and 10 CFR 50.54(f). A copy shall also be submitted to the appropriate Regional Administrator.

Backfit Discussion

The NRC is requesting that the addressees take the actions described herein to ensure that they promptly detect transmitter failures caused by a loss of fill-oil. A loss of fill-oil may result in a transmitter not performing its intended safety function.

The actions requested in this bulletin supplement represent new positions of the staff and thus, this request is considered a backfit in accordance with the NRC's procedures. The staff is imposing this backfit to bring facilities into compliance with existing requirements that were not satisfied. Therefore, the staff did not perform a full backfit analysis. However, the staff performed an evaluation of the type discussed in 10 CFR 50.109(a)(6) including a statement of the objectives of and reasons for the actions requested and the basis for invoking the compliance exemption. It will be made available in the Public Document Room with the minutes of the [xxxth] meeting of the Committee to Review Generic Requirements.

This request is covered by Office of Management and Budget Clearance Number 3150–001 which expires May 31, 1994. The estimated average number of burden hours is 2 person-hours for each transmitter for each licensee. This includes the time needed to assess the requested actions, review plant records, analyze the data obtained from plant records, evaluate the existing enhanced surveillance program, and prepare the required response. This does not include the time needed to revise the enhanced surveillance programs or to replace transmitters. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch, Division of Information Support Services, Office of Information Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Paperwork Reduction Project (3150–0011), Office of Management and Budget, Washington, DC 20503.

References:

1. Rosemount Technical Bulletin No. 1, May 10, 1989.
2. Rosemount Technical Bulletin No. 2, July 12, 1989.
3. Rosemount Technical Bulletin No. 3, October 23, 1989.
4. Rosemount Technical Bulletin No. 4, December 22, 1989.
5. NUMARC Report 91–02, "Summary of NUMARC Activities to Address Oil Loss in Rosemount Transmitters," April 1991.
6. BNL Report, "Evaluation of Surveillance and Technical Issues Regarding Rosemount Pressure Transmitter Loss of Fill-Oil Failures," December 20, 1991.

Dated at Rockville, Maryland, this 31st day of March 1992.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92–7968 Filed 4–6–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–344]

Exemption

In the matter of Portland General Electric Co., et al. (Trojan Nuclear Plant).

I

Portland General Electric Company, et al. (PGE or the licensee) is the holder of Facility Operating License No. NPF–1, which authorizes operation of the Trojan Nuclear Plant. The license provides, among other things, that the licensee is subject to all rules, regulations and orders of the Commission now or hereafter in effect.

The facility consists of a pressurized water reactor at the licensee's site located in Columbia County, Oregon, on the Columbia River.

II

Title 10 of the Code of Federal Regulations part 50 (10 CFR part 50), "Domestic Licensing of Production and Utilization Facilities," provides specific fire protection requirements in appendix R, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979." One requirement of 10 CFR part 50, appendix R, is found in section III.J, "Emergency Lighting," which specifically states, "Emergency lighting units with at least an 8-hour battery power supply shall be provided in all areas needed for operation of safe shutdown equipment and in access and egress routes thereto."

III

By letter dated December 30, 1988, and supplemented by letters dated April 15, 1991, October 15, 1991, and February 11, 1992, the licensee requested an exemption under 10 CFR 50.12 from the requirements of 10 CFR part 50, appendix R, section III.J, "Emergency Lighting." The requested exemption would allow the use of portable emergency battery lighting units as an alternative to permanently installed emergency batter lighting units with an 8-hour batter power supply in selected outdoor areas. The licensee is requesting the use of portable emergency batter lighting because of the impracticality of installing fixed emergency batter lighting units at outdoor locations and the lack of readily available power supplies and the difficulty in providing protection against harsh weather.

Appendix R, section III.J of 10 CFR part 50 states, "Emergency lighting units with at least an 8-hour battery power supply shall be provided in all areas needed for operation of safe shutdown equipment and in access and egress route thereto." By letter dated December 30, 1988, the licensee requested an exemption from this requirement for several outdoor areas. Certain postulated fire scenarios can damage redundant trains of service water pumps. Should that occur, plant operators will be dispatched to operate specific service water and/or fire protection water system valves to assure safe shutdown water requirements. These valves are in outdoor locations and no lighting is provided. The basis for the December 30, 1988, requested exemption is that power for regular lighting is not provided in these areas and, due to severe weather conditions, maintenance of permanently installed emergency battery powered lighting (EBL) units will be difficult. (Emergency battery powered lighting units are connected to the normal lighting circuits and operate only when power to that normal lighting circuit is lost. Therefore, in order to install permanent 8-hour battery powered emergency lighting units in these outdoor locations, permanent normal lighting would first have to be installed.)

The licensee has provided two sets of two portable emergency battery lighting units in the control building. One set is located on the 93-foot elevation and the other set is located on the 45-foot elevation near the controlled access point. These EBL units use a 6-watt halogen lamp; are Underwriters Laboratory listed under UL Standard 924, "Emergency Lighting Equipment;" are equipped with an on/off switch; and will provide a minimum of 6 hours of continuous lighting. (Two units are provided in each set to assure 8 hours of light even though each unit will operate for at least 6 hours, is equipped with on/off switches, and the operator actions can be completed in about 30 minutes.) Monthly surveillance checks are made of each unit to assure that it is operable and that it is connected to the battery charger.

The licensee has also installed brackets at each location to hold the EBL units to assure that the lighting unit will be aimed where it is needed, while allowing the operator full use of both hands. The staff rejected the licensee's original design of the mounting brackets. However, by letter dated February 11, 1992, the licensee submitted a new bracket design that the staff found acceptable.

By letter dated April 15, 1991, the licensee revised this requested exemption. They identified (1) three additional valves which will require operator response and, therefore, the installation of EBL holding brackets; and (2) a fire hydrant connnection was no longer needed.

By letter dated October 15, 1991, the licensee again revised this exemption request. The licensee identified two areas where operator monitoring activities only (no operator actions) were required. Accordingly, these locations were added to the list of access/egress routes. Since this entails monitoring activities only, no mounting brackets are required.

Three different fire scenarios will require manual operation of the safe shutdown equipment located outdoors, and/or monitoring of level indicators for outdoor storage tanks for the refueling water storage tank (RWST) and the condensate storage tank (CST).

The portable lighting units are used for the following safe shutdown system alignments and instrument monitoring activities:

(1) Providing circulating water system supply to the service water system (SWS) for the alternative SWS alignment. The alignment is used until the fire protection water system is aligned to the SWS.

(2) Providing fire protection water system supply to the SWS for the alternative SWS.

(3) Providing fire protection water to the CST upon depletion of CST inventory for the auxiliary feedwater (AFW) system.

(4) Monitoring locally level indicators for the RWST and CST.

The portable EBL units used for systems alignments 1 and 2, above, are required for fires in fire area I1 (service water pump room in the intake structure), M3 (manhole number 3), and M4 (manhole number 4). The portable EBL units used for system alignment 3, above, is used if CST inventory is depleted. Each of the above alignments can be completed in less than 30 minutes, thus ensuring that the 6-hour capacity of the protable lighting units will be adequate.

The protable EBL units used for monitoring activity 4, above, would be used in checking RWST and CST levels. The activities involve only intermittent visual monitoring; manual actions such as valve manipulations are not required.

The staff rejected the original design of the brackets provided to hold the EBL units at each of the 9 outdoor locations requiring operator actions because it was unnecessarily complicated. That design provided for attaching a 15"×8"×¼" thick stainless steel plate on one side of the EBL. The plate had a 5/16" diameter hole drilled in each corner. The operator would be required at each location to remove a wing nut and flat washer from each of four ¼" studs held by a unistrut assembly installed on a nearby vertical surface. The operator would then fit the four 5/16" holes in the plate over the ¼" studs and replace the washers and wing nuts. The procedure was to be repeated at each location requiring operator action.

The issue was resolved by letter dated February 11, 1992. The new design, which the staff has found acceptable, provides for hooks to be installed on the top of the steel plates. Long slots will be made in the top edge of the unistrut assembly which will accept the hooks. The slots are sufficiently larger than the hooks, both in length and width, so that

the operator should have little difficulty in hanging the EBL at each location.

The combination of portable battery powered emergency lighting units and hanging brackets provided in those locations where operator actions will be required are equivalent to the technical requirement as promulgated by 10 CFR part 50, appendix R, section III.J. Therefore, the staff concludes, on the basis of the above evaluation, that licensee requested exemption to provide the portable emergency battery powered lighting units in lieu of a permanent 8-hour battery powered emergency lights as required by section III.J of 10 CFR part 50, appendix R, for the outdoor locations listed in the licensee's letters of December 30, 1988, April 15 and October 15, 1991, and February 11, 1992, satisfy the intent of 10 CFR part 50, appendix R, section III.J.

Pursuant to 10 CFR 50.12(a), "The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are—(1) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. (2) The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever—* * * (ii) Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule; or (iii) Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated * * *."

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a)(1), that an exemption as described in section III above is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission has determined, pursuant to 10 CFR 50.12(a)(2) that special circumstances exist. The underlying purpose of the rule is to provide emergency lighting. The use of the portable emergency battery lighting units will provide the requisite outdoor lighting and meet the intent of the rule. Additionally, it would be costly to provide permanent power supplies and harsh weather protection for outdoor fixed emergency battery lighting. Therefore, the Commission hereby grants Portland General Electric Company, et al., an exemption from the requirements of 10 CFR part 50, appendix R, section III.J, "Emergency Lighting."

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant impact on the quality of the human environment (57 FR 7805).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 30th day of March 1992.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Director, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-7970 Filed 4-6-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-338 and 50-339]

Virginia Electric and Power Co.; Denial of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Virginia Electric and Power Company (the licensee) for amendments to Facility Operating License Nos. NPF-4 and NPF-7, issued to the licensee for operation of the North Anna Power Station, Unit Nos. 1 and 2 (NA-1&2) located in Louisa County, Virginia. Notice of Consideration of Issuance of these amendments was published in **Federal Register** on May 23, 1988 (53 FR 18364).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) related to the differential settlement between the service building and the NA-2 main steam valve house.

The NRC staff has concluded that the licensee's request cannot be granted. The licensee was notified of the Commission's denial of the proposed change by letter dated March 31, 1992.

By May 7, 1992, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendments dated March 10, 1988, as supplemented March 23, 1989, and (2) the Commission's letter to the licensee dated March 31, 1992.ad

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498. A copy of Item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 31st day of March 1992.

Herbett N. Berkow,

Director, Project Directorate II-2, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-7871 Filed 4-6-92; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF NATIONAL DRUG CONTROL POLICY

Agency Information Collection Under Review by the Office of Management and Budget (OMB); Expedited Review

ONDCP has submitted to OMB for expedited clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). The collection is for the Office of National Drug Control Policy of the EXOP.

In an effort to fully inform the reporting public, the collection instrument is printed in full, including instructions, at the end of this notice. Written comments concerning the collection form should be sent to Frank Kalder, Director, Budget and Legislative Review Staff, Office of National Drug Control Policy, Executive Office of the President, 750 17th Street NW., Washington, DC, 20500, within 15 days after date of publication of this notice in the **Federal Register.**

Written comments concerning this notice, proposed information collection, estimated public burden and associated

response time, should be directed to the OMB reviewer, Ms. Allison Eydt, on (202) 395–7316, New Executive Office Building, room 3001, Washington, DC 20503, and Mr. Frank Kalder (202) 467–9870, Director, Budget and Legislative Review Staff, Office of National Drug Control Policy, Executive Office of the President, Washington, DC, 20500. If you anticipate commenting on the forms/collections, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the ONDCP Director of Budget and Legislative Staff of your intent as soon as possible.

Title: Survey of Expenditure for Drug Control Activities of (A) Local Governments (B) Campus Police Forces.

Form Number: (A) DCS–1, (B) DCS–2, Office of National Drug Control Policy.

Expedited Review

Type of Request: New collection.

Frequency of Collection: One time.

Respondent Universe: State and local governments. These agencies already maintain their own finance records of the information being requested, and will compile existing data to respond to the survey.

Needs and Uses: The Anti-Drug Abuse Act of 1988 recognized the need for an integrated system of drug control to ensure that all aspects receive proper and balanced attention. These data are needed to enable ONDCP to identify, describe, and analyze the balance of public sector resources devoted to drug supply and demand reduction activities at different levels of government. The data will be used to plan, implement, and evaluate proposals for the President's *National Drug Control Strategy*. The expedited review is necessary to allow adequate time for the collection, compilation, and analysis of the data to occur prior to the formulation of the President's fifth National Drug Control Strategy, which is to be released in January, 1993, as required by law.

Total Respondents and Average Response Time: (A) DCS–1 estimated 9,000 respondents, 4,500 burden hours, average response time 30 minutes; (B) DCS–2 estimated 1,000 respondents, 240 burden hours, average response time 15 minutes. Total public burden is 4,750 hours.

Public Burden: Total public burden is 4,750 hours. To minimize burden, we have followed the same data collection format as used for the "Survey of Justice Expenditure and Employment." Respondents are familiar with this format and accustomed to providing the required data elements. Data for State governments and the fifty largest local governments will be compiled from existing government records. Estimates of public burden are based on previous, similar surveys, and test compilations for five governments.

Respondent Obligation: Voluntary.

A copy of the survey is published below. Public comment is encouraged.

Dated: March 30, 1992.

Terrence J. Pell,

Chief of Staff, Office of National Drug Control Policy, Executive Office of the President.

DCS–1

Return to:

Bureau of the Census, 1201 East 10th Street, Jeffersonville, IN 47132–0001

In correspondence pertaining to this report, please refer to the identification number above your address.

OMB No. 0000–0000: Approval Expires 00/00/00

FORM DCS–1, (3–11–92)—U.S. Department of Commerce, Bureau Of The Census

Survey of Expenditure For Drug Control Activities of Local Governments

Data Supplied By:
(Please correct any error in name, address, and ZIP Code)

Name _____
Title _____
Official address—Number and street _____
City _____
State _____
ZIP Code _____
Telephone _____
Area code _____
Number _____
Extension _____

Important—Please read the definitions and instructions on page 3.

From the Directors, Bureau of the Census, and Office of National Drug Control Policy

On behalf of the Office of National Drug Control Policy (ONDCP) of the Executive Office of the President, the Bureau of the Census is collecting public expenditure data for drug control activities including those related to police protection, judicial, prosecution, public defense, corrections, health, and education activities. The ONDCP will use the data from this survey to plan, implement, and evaluate a national drug control strategy pursuant to Title 1 of the Anti-Drug Abuse Act of 1988 (Public Law 100–690). The ONDCP will publish the data in a report.

We are enclosing supplemental instructions about the types of activities to be included. Please review the instructions, extract the requested data from your financial records, and enter them on the enclosed questionnaire. If answers to questions are not available from records, please provide reasonable estimates and show them with an asterisk (*). Return the addressed copy of the questionnaire in the enclosed envelope within 4 weeks. The duplicate copy is for your files.

The Anti-Drug Abuse Act of 1988 authorizes the collection of this information (Public Law 100–690). Although you are not legally required to respond, we need your participation to make the results of the survey comprehensive, accurate, and timely. If you need further assistance in completing the questionnaire, please call Sheryl Jones on 1–800–352–7229.

We estimate that it will take 15 minutes to 3 hours to collect this information, with 30 minutes being the average time per response. This includes the time for reviewing the definitions and instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collected. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Office of National Drug Control Policy, Washington, DC 20500; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Public Use Reports Project XXXX–XXXX, Washington, DC 20503.

Thank you for your cooperation in this voluntary survey.

Sincerely,

Barbara Everitt Bryant,

Bureau of the Census.

Enclosures.

Robert Martinez,

Office of National Drug Control Policy.

Section I—EXPENDITURE AND REVENUE

A. Figures previously reported—For ease in completing this section, please refer to the figures you previously reported in the FY 1990 Survey of Expenditure and Employment for Civil and Criminal Justice Activities. (See enclosure.)

B. Report expenditures for the 1990 and 1991 fiscal years. If figures for the 1990 fiscal year are not available, please provide an estimate of the percentage of total expenditures that were spent for drug control activities by function.

C. Drug control activities: Please see Section II, Definitions and Instructions, BEFORE completing this section.

Mark (X) appropriate box to indicate your government's fiscal year (12-month accounting period) and report data for this period only.

- ☐ January–December
- ☐ February–January
- ☐ March–February
- ☐ April–March
- ☐ May–April
- ☐ June–May
- ☐ July–June
- ☐ August–July
- ☐ September–August
- ☐ October–September
- ☐ November–October
- ☐ December–November

	Part 1—Expenditure								Part 2—Revenue	
	Current operation; Total current operating expenses, including salary and employer contributions for employee benefits; FICA, PERS, workman's compensation		Capital outlay; Annual expenditures for construction, equipment, and land		Intergovernmental expenditure—Annual payments to				Intergovernmental revenue received directly from the Federal Government	
					Cities, counties, and towns		The State government			
	FY 1991	FY 1990	FY 1991	FY 1990	FY 1991	FY 1990	FY 1991	FY 1990	FY 1991	FY 1990
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
1 Police protection—See definition on page 4										
a. Total expenditures for all police protection activities										
b. Drug related-direct—Expenditures for identifiable drug related activities, e.g., narcotics investigation division										
c. Drug related-indirect—Expenditures for the balance of police protection that you estimate as being drug related, e.g., a percentage of patrol costs using drug arrests as a percentage of total arrests—Include a percentage of administrative/support personnel and overhead costs										
2. Judicial—See definition on page 4										
a. Total expenditures for all judicial activities										
b. Drug related-direct—Expenditures for identifiable drug related activities										
c. Drug related-indirect—Expenditures for the balance of judicial activities that you estimate as being drug related, e.g., a percentage using drug related cases as a percentage of total cases—Include a percentage of administrative/support personnel and overhead costs										
3 Legal services and prosecution—See definition on page 4										
a. Total expenditures for all legal services and prosecution activities										
b. Drug related-direct—Expenditures for identifiable drug related activities										
c. Drug related-indirect—Expenditures for the balance of legal services and prosecution activities that you estimate as being drug related, e.g., a percentage using drug related cases as a percentage of total cases—Include a percentage of administrative/support personnel and overhead costs										
4 Public defense—See definition on page 4										
a. Total expenditures for public defense activities										
b. Drug related-direct—Expenditures for identifiable drug related activities										
c. Drug related-indirect—Expenditures for the balance of public defense activities that you estimate as being drug related, e.g., a percentage using drug related cases as a percentage of total cases—Include a percentage of administrative/support personnel and overhead costs										
5. Corrections—See definition on page 4										

	Part 1—Expenditure								Part 2—Revenue	
	Current operation; Total current operating expenses, including salary and employer contributions for employee benefits; FICA, PERS, workman's compensation		Capital outlay; Annual expenditures for construction, equipment, and land		Intergovernmental expenditure—Annual payments to				Intergovernmental revenue received directly from the Federal Government	
					Cities, counties, and towns		The State government			
	FY 1991	FY 1990	FY 1991	FY 1990	FY 1991	FY 1990	FY 1991	FY 1990	FY 1991	FY 1990
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
a. Total expenditures for correctional activities										
b. Drug related-direct—Expenditures for identifiable drug related activities, e.g., Comprehensive Substance Abuse Program										
c. Drug related-indirect—Expenditures for the balance of correctional activities that you estimate as being drug related—Include a percentage of correctional officers salaries using the number of inmates whose most serious conviction is drug related as a percentage of all inmates; include a percentage of administrative/support personnel and overhead costs										
6. Health/hospitals (treatment)—See definition on page 4 Drug related-direct—Expenditures for identifiable drug related activities, e.g., community based treatment programs										
7. Education (prevention)—See definition on page 4 Drug related-direct—Expenditures for identifiable drug related activities, e.g., Drug Free school program										
8. Other and combined—See definition on page 4 a. Total expenditures for all other criminal justice or drug control activities—Please list each activity separately in the spaces provided below (1) (2) (3) (4) (5) (6)										
b. Drug related-direct—Expenditures for identifiable drug related activities, e.g., Alcohol and Drug Abuse Council–RADAR Network agency										
c. Drug related-indirect—Expenditures for the balance of all other activities that you estimate as being drug related—Include a percentage of administrative/support personnel and overhead costs										

Section II—Definitions and Instructions

Drug Control Activities

Police protection—All police activities, including special police force units and both sworn and nonsworn police personnel. Include also coroners and medical examiners. Exclude jails holding adults or juveniles beyond arraignment (usually more than 48 hours) and report under "Corrections." Exclude also school crossing guards.

Judicial—All civil and criminal courts and court-related activities.

Include—

- Judges and staff (law clerks, court reporters, etc.)
- Clerk of court and staff
- Other current operating expenditure (e.g., jury fees, law library, etc.)

Exclude probation and parole and report under "Corrections."

Legal services and prosecution—Prosecuting attorney's offices, legal departments, and all attorneys providing legal services for your government.

Include—

- Prosecutor and staff
- Legal advisor and staff
- Attorneys on retainer or fees
- All other legal expenses

Exclude annual retainers and/or fees paid to private attorneys/law firms.

Public defense—Public defenders' offices. Include fees paid to court-appointed counsel and contributions to private legal aid societies.

Corrections—Jails, prisons, reformatories, detention homes, halfway houses, and the like, holding adults or juveniles beyond arraignment (usually for more than 48 hours). Probation and parole agencies and programs including probation and parole programs administered by the courts. Exclude institutions solely for dependent or neglected children.

Health/hospitals (treatment)—Clinics, hospitals, treatment centers, counseling services, in-patient/out-patient medical care.

Education (prevention)—Include payments to public school systems, private institutions and special education programs.

Other and combined—Other criminal justice or drug control activities (e.g., alcohol and drug abuse councils, crime commissions) not reported above. Please list each activity separately in the space provided on page 2.

Expenditure

Column (1), Current operation—Annual expenditure for salaries and wages of your government's officers and employees, including overtime, termination, retroactive pay, and employer contributions for employee benefits; and for the purchase of supplies, materials, and contractual services from individuals and firms in the private sector, e.g., attorney retainers or fees to court-appointed counsel. Exclude capital outlay and report in column (2). Also exclude expenditures for debt retirement, securities investment, loan extensions, and within-government transactions.

Column (2), Capital outlay—Direct expenditure for contract or force account construction of buildings and other fixed improvements, and for the purchase of equipment, land, and existing structures.

Columns (3) and (4), Intergovernmental expenditure—All money paid to other governments as fiscal aid or payment for services rendered, or for contracts or compacts with another government (e.g., purchase of police services or care and boarding of prisoners in another government's jail). Exclude money paid to another government for the purchase of commodities, property or utility services, any taxes imposed and paid as such, and contributions for social insurance.

- Column (3), Payments to cities, counties, and towns—Payments of your government to other counties, cities, or towns. Exclude payments to special purpose governments such as special districts or independent school districts.
- Column (4), Payments to the State government—Payments of your government to the State government or any of its departments or agencies.

Revenue

Column (5), Intergovernmental revenue received directly from the Federal Government (for drug control activities)—Enter only revenue received directly from the Federal Government. Do NOT enter amounts from the Federal Government received through the State or any of its departments or agencies.

DCS–2

Return To
Government Division, Bureau of the Census, Washington, DC 20233–0001
OMB No. Approval Expires
Form DCS–2—U.S. Department of Commerce, Bureau of the Census

Survey of Expenditure for Drug Control Activities of Campus Police Forces

Data Supplied by
(Please correct any error in name, address, and ZIP Code)
Name _____
Title _____
Official address—Number and street _____
City _____
State _____
ZIP Code _____
Telephone _____
Area code _____
Number _____
Extension _____

Important —Please Read the Definitions on Page 2

From the Directors, Bureau of the Census/ Office of National Drug Control Policy

On behalf of the Office of National Drug Control Policy (ONDCP) of the Executive Office of the President, the Bureau of the Census is collecting public expenditure data for drug control activities of selected campus police forces. The ONDCP will use the data from this survey to plan, implement, and evaluate a national drug control strategy pursuant to Title I of the Anti-Drug Abuse Act of 1988 (Public Law 100–690). The ONDCP will publish the data in a report.

Please extract the requested data from your financial records and enter them on the enclosed questionnaire. If answers to questions are not available from records, please provide reasonable estimates and show them with an asterisk (*). Return the addressed copy of the questionnaire in the enclosed envelope within 4 weeks. The duplicate copy is for your files.

The Anti-Drug Abuse Act of 1988 authorizes the collection of this information (Public Law 100–690). Although you are not legally required to respond, we need your participation to make the results of the survey comprehensive, accurate, and timely. If you need further assistance completing the questionnaire, please call Sheryl Jones on 1–800–352–7229.

We estimate that it will take from 10 to 30 minutes to collect this information, with 15 minutes being the average time per response. This includes the time for reviewing the definitions and instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collected. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Office of National Drug Control Policy, Washington, DC 20500; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Public Use Reports Project xxxx–xxxx, Washington, DC 20503.

Thank you for your cooperation in this voluntary survey.

Sincerely,

Barbara Everitt Bryant,

Director, Bureau of the Census.

Enclosures.

Bob Martinez,

Director, Office of National Drug Control Policy.

Part I—Campus Drug Control Survey

Are you administratively independent from another agency?

☐ Yes—Carefully read all definitions and instructions before completing the appropriate questions below.

☐ No—Please return the questionnaire in the preaddressed envelope that was enclosed.

Part II—Definitions and Instructions

Police Protection—Sworn campus policy officers having general power to arrest (Include support personnel who do not have general arrest power) that are employed directly and/or by contract.

Health/Hospitals (Treatment)—Clinics, hospitals, treatment centers, counseling services, in-patient/out-patient medical care.

Education (Prevention)—Education programs to discourage drug use.

Expenditures

Current Operation, column (1)—Annual expenditure for salaries and wages of your campus' officers and employees, including overtime, termination, retroactive pay, and employer contributions for employee benefits; and for the purchase of supplies, materials, and contractual services from individuals and firms in the private sector. Exclude capital outlay and report in column (2). Also exclude expenditures for debit retirement, securities investment, loan extensions, and within-government transactions.

Capital Outlay, Column (2)—Direct expenditure for contract or force account construction of buildings and other fixed improvements, and for the purchase of equipment, land, and existing structures.

Intergovernmental Expenditure—All money paid to other governments as fiscal aid or payment for services rendered, or for contracts or compacts with another government (e.g., purchase of police services). Exclude money paid to another government for the purchase of commodities, property or utility services, any taxes imposed and paid as such, and contributions for social insurance.

Payments to other general purpose local governments, column (3A)—Payments to a county, city, or town, or any of their departments or agencies.

Payments to the State government, column (3B)—Payments to the State government or any of its departments or agencies. Applies

only to universities/colleges operated by a Local government.

Revenue

Intergovernmental Revenue Received Directly From The Federal Government for law enforcement, drug treatment, or drug education. If your university/college is operated by a Local government, exclude any amounts from the Federal government received through the State or any of its departments or agencies.

Expenditures

Report expenditures for the 1990 and 1991 fiscal years. If figures for the 1990 fiscal year are not available, please provide an estimate of the percentage of total expenditures that were spent for drug control activities by function.

Mark (X) appropriate box to indicate your government's fiscal year (12-month accounting period) and report data for this period only.

- ☐ January–December
- ☐ February–January
- ☐ March–February
- ☐ April–March
- ☐ May–April
- ☐ June–May
- ☐ July–June
- ☐ August–July
- ☐ September–August
- ☐ October–September
- ☐ November–October
- ☐ December–November

Revenues

Enter only revenue directly from the Federal Government during the 1990 and 1991 fiscal years. Do *not* include amounts from the Federal Government received through the State or any of its departments or agencies. If 1990 figures are not available please estimate the percentage of total revenues dedicated to drug control activities.

Part II	Expenditure								Revenue	
	(1) Current operation		(2) Capital outlay		(3) Intergovernmental expenditure				(4) Intergovernmental revenue received directly from the Federal Government	
Functions	Total current operating expenses, including salary and employer contributions for employee benefits; FICA, PERS, workman's comp.		Annual expenditures for construction, equipment and land		(A) Annual payments to cities, counties and towns		(B) Annual payments to the State government			
	FY 1991	FY 1990	FY 1991	FY 1990	FY 1991	FY 1990	FY 1991	FY 1990	FY 1991	FY 1990
POLICE PROTECTION (See definition above):										
a. Total amount for all police protection activities										
b. Drug related-direct: Amount for identifiable drug related activities										
c. Drug related-direct: Amount for the balance of police protection that you estimate as being drug related, e.g. a percentage of patrol costs using drug arrests as a percentage of total arrests; include a percentage of administrative/support personnel and overhead costs										
HEALTH/HOSPITALS (Treatment) (See definition above):										
a. Drug related-direct: Amount for identifiable drug related activities, e.g. campus based treatment programs										
EDUCATION (Prevention) (See definition above):										
a. Drug related-direct: Amount for identifiable drug activities, e.g. campus based drug education program										

Remarks:

[FR Doc. 92–7631 Filed 4–6–92; 8:45 am]
BILLING CODE 3180–02–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Sherry Turpenoff, (202) 606–0950.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on March 4, 1992 (57 FR 7823). Individual authorities established or revoked under Schedules A and B and established under Schedule C between February 1 and February 29, 1992, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30, 1992.

Schedule A

No Schedule A authorities were established or revoked during February.

Schedule B

The following exception was established:

Department of Agriculture

Not to exceed 55 Executive Director positions, GM–301–14/15, with the State Rural Development Councils in support of the Presidential Rural Development Initiative. Effective February 14, 1992.

Schedule C

Agency for International Development

One Deputy to the Director, Office of External Affairs. Effective February 27, 1992.

One Confidential Assistant to the Executive Secretary. Effective February 27, 1992.

Department of Agriculture

One Staff Assistant to the Administrator, Agricultural Marketing Service. Effective February 3, 1992.

One Confidential Assistant to the Chief of Soil Conservation Service. Effective February 3, 1992.

One Executive Assistant to the Secretary of Agriculture. Effective February 18, 1992.

One Northeast Area Director to the Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service. Effective February 21, 1992.

One Southeast Area Director to the Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service. Effective February 21, 1992.

Department of Defense

One Private Secretary to the Principal Deputy Assistant Secretary, (Special Operations and Low Intensity Conflict). Effective February 11, 1992.

One Private Secretary to a Judge, U.S. Court of Military Appeals. Effective February 11, 1992.

One Personal and Confidential Assistant to a Judge, U.S. Court of Military Appeals. Effective February 11, 1992.

One Special Assistant for Intelligence Planning to the Assistant Secretary of Defense (Command, Control, Communication and Intelligence). Effective February 27, 1992.

One Associate Director to the Deputy Assistant to the Vice President/Deputy Director, Vice President's Advance Office Effective February 27, 1992.

One Law Clerk to a Judge, U.S. Court of Military Appeals. Effective February 27, 1992.

Department of Education

One Special Assistant to the Director, Corporate Liaison Staff, Office of the Deputy Secretary. Effective February 13, 1992.

One Special Assistant to the Assistant Secretary for Educational Research and Improvement. Effective February 18, 1992.

One Special Assistant to the Assistant Secretary for Human Resources and Administration. Effective February 18, 1992.

One Confidential Assistant to the Assistant Secretary for Educational Research and Improvement. Effective February 19, 1992.

One Special Assistant to the Deputy Assistant Secretary, Office of Intergovernmental and Interagency Affairs. Effective February 27, 1992.

Department of Energy

One Intergovernmental Affairs Specialist to the Deputy Assistant Secretary for Intergovernmental and Public Affairs, Office of Congressional and Intergovernmental Affairs. Effective February 11, 1992.

One Special Assistant to the Assistant Secretary for Fossil Energy. Effective February 11, 1992.

One Public Affairs Specialist to the Press Secretary/Principal Deputy Director of Public Affairs. Effective February 11, 1992.

One Deputy to the Director, Office of Minority Economic Impact. Effective February 19, 1992.

One Special Assistant to the Secretary to the Chief of Staff, Office of the Secretary. Effective February 27, 1992.

Equal Employment Opportunity Commission

One Media Contact Specialist (Bilingual) to the Director, Office of Communications and Legislative Affairs. Effective February 4, 1992.

One Media Contact Specialist to the Director, Office of Communications and Legislative Affairs. Effective February 4, 1992.

Department of Health and Human Services

One Special Assistant (Advance) to the Assistant Secretary for Public Affairs. Effective February 3, 1992.

One Confidential Assistant to the Director of Advance. Effective February 13, 1992.

One Director of Communications to the Deputy Assistant Secretary for Public Affairs. Effective February 19, 1992.

One Confidential Assistant (Scheduling) to the Executive Secretary, Office of the Secretary. Effective February 27, 1992.

Department of Housing and Urban Development

One Regional Administrator—Regional Housing Commissioner, Region X, to the Secretary. Effective February 11, 1992.

One Regional Administrator—Regional Housing Commissioner, Region VII, to the Secretary. Effective February 11, 1992.

One Deputy Assistant Secretary for Legislation to the Assistant Secretary for Congressional and Intergovernmental Relations. Effective February 11, 1992.

One Deputy Assistant Secretary for Resident Initiatives to the Assistant Secretary for Public and Indian Housing. Effective February 11, 1992.

One Deputy Assistant Secretary for Economic Development to the Assistant Secretary for Community Planning and Development. Effective February 11, 1992.

One Assistant to the Secretary for Field Management to the Secretary. Effective February 11, 1992.

One Regional Administrator—Regional Housing Commissioner, Region VIII, to the Secretary. Effective February 11, 1992.

One Deputy Assistant Secretary for Intergovernmental Relations to the Assistant Secretary for Congressional and Intergovernmental Relations. Effective February 12, 1992.

One Deputy Assistant Secretary for Finance and Management to the Assistant Secretary for Administration. Effective February 12, 1992.

One Deputy to the Assistant Secretary for Public Affairs. Effective February 12, 1992.

One Special Assistant to the Director of the Executive Secretariat. Effective February 13, 1992.

One Deputy Assistant Secretary for Single Family Housing to the General Deputy Assistant Secretary. Effective February 19, 1992.

One Legislative Officer to the Deputy Assistant Secretary for Legislation. Effective February 27, 1992.

One Deputy Assistant Secretary for Operations to the General Deputy Assistant Secretary. Effective February 27, 1992.

Interstate Commerce Commission

One Special Assistant to a Director, Office of Congressional and Legislative Affairs. Effective February 4, 1992.

Department of the Interior

One Special Assistant to the Deputy Assistant Secretary for Fish and Wildlife and Parks. Effective February 13, 1992.

One Congressional Liaison Officer to the Director, Minerals Management Service. Effective February 18, 1992.

International Trade Commission

One Special Assistant to the Commissioner. Effective February 12, 1992.

One Confidential Assistant to a Commissioner. Effective February 12, 1992.

One Confidential Assistant to a Commissioner. Effective February 25, 1992.

One Staff Assistant to a Commissioner. Effective February 25, 1992.

One Staff Assistant to a Commissioner. Effective February 29, 1992.

Department of Justice

One Staff Assistant to the Assistant to the Attorney General. Effective February 11, 1992.

One Principal Staff Assistant to the Assistant to the Attorney General. Effective February 11, 1992.

One Assistant to the Attorney General. Effective February 11, 1992.

Department of Labor

One Executive Assistant to the Assistant Secretary for Employment Standards. Effective February 19, 1992.

One Staff Assistant to the Assistant Secretary for Employment Standards. Effective February 21, 1992.

One Special Assistant to the Administrator, Wage and Hour Division. Effective February 23, 1992.

One Special Assistant to the Director, Women's Bureau. Effective February 25, 1992.

One Senior Legislative Officer to the Deputy Assistant Secretary for Congressional and Intergovernmental Affairs. Effective February 25, 1992.

One Attorney-Advisor (Labor) to the Solicitor of Labor. Effective February 27, 1992.

National Labor Relations Board

One Confidential Assistant to a Board Member. Effective February 14, 1992.

Office of Personnel Management

One director of Intergovernmental Affairs and Volunteer Activities to the Director, Human Resources Development Group. Effective February 21, 1992.

Occupational Safety and Health Review Commission

One Counsel to a Commissioner to a Member of the Commission. Effective February 27, 1992.

Securities and Exchange Commission

One Regional Administrator, New York Regional Office. Effective February 8, 1992.

Department of State

One Staff Assistant to the Deputy Under Secretary, Bureau of Economic and Agricultural Affairs. Effective February 11, 1992.

U.S. Trade and Development Program

One Congressional Liaison Officer to the Director. Effective February 11, 1992.

One Special Assistant to the Director. Effective February 11, 1992.

One International Trade Specialist (Special Projects) to the Director. Effective February 13, 1992.

Department of the Treasury

One Special Assistant to the Assistant Secretary (Management). Effective February 11, 1992.

Authority 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P. 218.

Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 92–7866 Filed 4–6–92; 8:45 am]

BILLING CODE 6325–01–M

PEACE CORPS

Notice of Submission of Public Use Form for Review by the Office of Management and Budget

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C. chapter 35), the Office of Medical Services of the Peace Corps has submitted to the Office of Management and Budget a request to approve the use of a Returned Peace Corps Volunteer Health Survey. The survey is completed voluntarily by Returned Peace Corps Volunteers and collects information on volunteer health training, in-country health care, the close-of-service examination, morbidity during the after service, and problems experienced with the FECA Program. The information will enable Peace Corps to improve the quality of the health services provided to current and future Volunteers.

Information About the Survey

Agency Address: Peace Corps, 1990 K Street, NW., Washington, DC 20526.

Title Agency Number: Returned Peace Corps Volunteer (RPCV) Health Survey.

Type of Request: New Collection.

Frequency of Collection: One time only.

General Description of Respondents: A sample of Returned Peace Corps Volunteers who completed their service between June 1988 and June 1991.

Estimated Number of Respondents: 2,000.

Estimated Hours for Respondents to Furnish Information: 0.33 hours each.

Respondents' Obligation to Reply: Voluntary.

Comments: Comments on this form should be directed to Lin Liu, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20523.

A copy of this form may be obtained from Dr. Tom Eng, Office of Medical Services, Peace Corps, telephone (202) 606–3014. This notice is issued in Washington, DC on March 19, 1992.

Collins Reynolds,

Associate Director for Management.

BILLING CODE 6051–01–M

RETURNED PEACE CORPS VOLUNTEER (RPCV) HEALTH SURVEY

Pre-Service and In-Country Health Care

The following are questions related to the health services you received at the start of service and while in-country. Please check (✓) one answer for each question unless otherwise indicated.

1. Do you think that the HEALTH INFORMATION presented at the Pre-Departure Orientation (Staging) in the USA was a useful introduction for your stay in-country?

___ Yes
___ No

If you felt it was NOT useful, what are some reasons why?

___ NA

a) _____

b) _____

What HEALTH INFORMATION do you suggest should be included or emphasized during Pre-Departure Orientation?

___ No suggestions

a) _____

b) _____

2. How do you feel OVERALL about the health education given during the Pre-Service Training (PST) in-country to prepare you for health risks and health conditions encountered during Peace Corps service?

___ It was more than adequate
___ It was adequate
___ Cannot determine its adequacy
___ It was inadequate
___ It was very inadequate

OMB approval number _____. Estimated completion time: 20 minutes. Send comments on this estimate to Office of Management and Budget, Paperwork Reduction Project _____, Washington. D.C. 20503 or to Peace Corps Paperwork Reduction Project _____, Washington. D.C. 20526

Please review the list of topics below and mark those topics you feel should be covered more extensively during PST. (Check all that apply.)

___ Nutrition
___ Environmental risks
___ Stress management
___ Health services available in-country
___ Health risks in-country
___ Self-care and first aid
___ Personal preventive health measures
___ Hygiene and sanitation
___ Volunteer safety and security
___ Medical evacuation plans
___ Communication channels in case of emergency
___ Other (please specify_____

3. The following questions will enable Peace Corps to determine your level of satisfaction with the PREVENTIVE and CURATIVE care you received in-country and with the PROVIDERS you may have used. If you had more than one Medical Officer or used several other providers, your answer should reflect your *overall* satisfaction or how you may have felt *most of the time*. Please give a rating (circle one) for each item according to the scale below:

VS = Very Satisfied
S = Satisfied
N = Neutral
D = Dissatisfied
VD = Very Dissatisfied
NA = Not Applicable

Preventive Care (e.g., immunizations, education in health maintenance and nutrition)

How satisfied were you with the ease and convenience of getting to a health care provider for your scheduled immunizations (e.g., immunoglobulin [GG shots])?	VS	S	N	D	VD	NA
How satisfied were you with the ease and comfort you felt in discussing preventive health issues of a sensitive nature with the Medical Officer(s)?	VS	S	N	D	VD	NA
How satisfied were you with the health education given by Peace Corps on health risks and how to prevent illness?	VS	S	N	D	VD	NA
How satisfied were you with the range of services offered in-country by Peace Corps to prevent you from becoming ill?	VS	S	N	D	VD	NA

Curative Care In-country (e.g., treatment for disease and injury, counseling for mental health)

How satisfied were you with the ease and convenience of getting to the Medical Officer(s) for treatment or counseling?	VS	S	N	D	VD	NA
How satisfied were you with the ease and convenience of getting to an appropriate local provider or specialist?	VS	S	N	D	VD	NA

How satisfied were you with the ease and comfort you felt in discussing your health problem(s) with the Medical Officer(s)?	VS	S	N	D	VD	NA
How satisfied were you with the ease and comfort you felt in discussing your health problem(s) with local non-Peace Corps health care providers such as host country nationals or expatriates?	VS	S	N	D	VD	NA
How satisfied were you with the care provided to you by the Medical Officer(s) during a medical emergency in-country?	VS	S	N	D	VD	NA
How satisfied were you with the care provided to you by local non-Peace Corps health care providers during a medical emergency in-country?	VS	S	N	D	VD	NA
How satisfied were you with the range of services offered by the Medical Officer(s) to treat or cure your condition?	VS	S	N	D	VD	NA
How satisfied were you with the range of services offered by local non-Peace Corps health care providers to treat or cure your condition?	VS	S	N	D	VD	NA
How satisfied were you with the technical skills, knowledge, and competence of the Medical Officer(s)?	VS	S	N	D	VD	NA
How satisfied were you with the technical skills, knowledge, and competence of local non-Peace Corps health care providers you may have used?	VS	S	N	D	VD	NA
Dental Care						
How satisfied were you with the dental care you received either in-country or in a neighboring country?	VS	S	N	D	VD	NA

4. Did your Medical Officer or other Peace Corps staff ever give you a verbal or written list of designated providers at or near your site?

___ Yes
___ No
___ Do not know

While in-country, did you ever go to a local health provider outside of this list of designated providers in a non-emergency situation?

___ NA
___ Yes
___ No
___ Do not know

If you did use a provider outside this list, what were your reasons? (Check all that apply.)

___ NA
___ Too far to reach Medical Officer or approved provider
___ Inconvenient to reach Medical Officer or approved provider
___ More confidence in unapproved provider than in Medical Officer or approved provider
___ Did not want Peace Corps to know of problem
___ Other (please specify)_____ _____

5. Please rate your OVERALL satisfaction with the emotional and mental health support available to you in-country?

___ Very Satisfied
___ Satisfied
___ Neutral
___ Dissatisfied
___ Very Dissatisfied
___ NA

Who were your sources of this support? (Check all that apply.)

___ NA
___ Medical Officer
___ APCD and other PC staff
___ Other Peace Corps Volunteers (PCVs)
___ Non-PC expatriates
___ Host country nationals in the community
___ Other (please specify)_____

Close-of-Service (COS)

The following questions relate specifically to the health services you received as part of the Close-of-Service exams.

6. Please rate your satisfaction with the medical history and physical examination you received as part of the COS?

___ Very Satisfied
___ Satisfied
___ Neutral
___ Dissatisfied
___ Very Dissatisfied
___ NA

7 Who did the physical examination? (Check all that apply.)

___ NA
___ Peace Corps physician
___ Peace Corps nurse, nurse practitioner, or physician's assistant
___ Non-Peace Corps physician who was a host country national
___ Non-Peace Corps physician who was US or other expatriate
___ Other (please specify)_____

Where was the physical exam done?

___ NA
___ In-country
___ In the USA
___ Other (please specify)_____

8. Please rate your OVERALL satisfaction with the laboratory or diagnostic testing (e.g., blood *[other than for HIV]*, urine, stool, X-rays, mammograms) you may have received from Peace Corps at COS.

___ Very Satisfied
___ Satisfied
___ Neutral
___ Dissatisfied
___ Very Dissatisfied
___ NA

If you were dissatisfied with either the laboratory or diagnostic testing, why were you dissatisfied? (Check all that apply.)

___ NA
___ A specific test you felt should have been done was not done
___ The number of samples for a specific test was insufficient
___ The reliability of laboratory testing was questionable
___ The results of testing were not given
___ Other (please specify)_____

Do you think laboratory or diagnostic testing in addition to the testing you received should have been done?

___ NA
___ Yes
___ No

9. Did you have blood drawn for HIV testing at the end of Peace Corps service?

___ Yes
___ No
___ Do not remember

Where was the blood sample drawn?

___ NA
___ In-country
___ In the USA

Were you informed of the test results?

___ NA
___ Yes
___ No

10. Peace Corps Authorization for Medical/Dental Evaluation forms, known as 127a's, are vouchers Volunteers are given for medical exams and/or other services to be delivered in the USA. Did you receive any 127a's for exams other than HIV testing?

___ Yes
___ No
___ Do not remember

If you did receive 127a's, did you use or attempt to use them?

___ NA
___ Yes
___ No

What problems, if any, did you encounter?

___ NA
___ Health provider was not familiar with authorization process or forms
___ They were not accepted by the health provider
___ Did not have access to an appropriate provider
___ Not fully reimbursed
___ Other (please specify)_____

11. Did you travel after COS before returning to the USA?

___ Yes
___ No

Did this include travel to another developing country?

___ NA
___ Yes
___ No

How long after COS did you spend travelling before returning to the USA?

___ NA
___ Less than 1 month
___ 1-2 months
___ 3-4 months
___ 5-6 months
___ More than 6 months

12. Peace Corps is considering options for where to conduct COS exams and would like to know what your preferences would have been. These options would all require that COS exams be conducted within 30 days from termination of service.

Where would you have preferred to have your COS exam done?

___ In-country
___ At a convenient location in the USA
___ Other (please specify)_____

Infections and Other Health Conditions

13. Peace Corps currently collects information on common infections and health conditions experienced by Peace Corps Volunteers. However, information on certain rare conditions or conditions that appear after service, are not presently collected. A listing of these conditions follows. This section only refers to SERVICE-RELATED conditions which:

- you acquired and were manifest while you were a Volunteer (or Trainee) in-country, and/or
- you acquired in-country, but symptoms did not appear until after COS.

We are interested in conditions that have been DIAGNOSED by a health professional. If you did NOT experience a service-related health condition, SKIP this section and go to Question #14.

INSTRUCTIONS:

Please review the *entire* list.

a) For each condition, fill in **NO. OF EPISODES** with the number of times you may have experienced the condition. If you did not experience the condition, enter "0" and continue with the next condition.

b) Under **ONSET**, circle whether your episode(s) began during:

S = Service *and/or* **P** = Post Service (after COS)

c) Under **DIAGNOSIS**, circle whether diagnosis was made during:

S = Service *and/or* **P** = Post Service

d) If onset occurred post service (i.e., you circled **P** under **ONSET**), calculate the number of months between COS and onset.

	NO. OF EPISODES	ONSET	DIAGNOSIS	NO. MONTHS BETWEEN COS AND ONSET
Infections and conditions that cause diarrhea or infect the gastrointestinal system				
Example: giardiasis	2	S (P)	S (P)	<1
1 amebiasis	___	S P	S P	___
2 giardiasis	___	S P	S P	___
3 hookworm	___	S P	S P	___
4 strongyloidiasis	___	S P	S P	___
5 tapeworm (e.g., taeniasis)	___	S P	S P	___
6 other intestinal parasites	___	S P	S P	___
7 chronic diarrhea	___	S P	S P	___
8 colitis	___	S P	S P	___
Infections that cause fever				
9 brucellosis	___	S P	S P	___
10 dengue fever	___	S P	S P	___
11 filariasis	___	S P	S P	___
12 leishmaniasis (visceral)	___	S P	S P	___
13 leptospirosis	___	S P	S P	___
14 malaria	___	S P	S P	___
15 Q fever	___	S P	S P	___
16 relapsing fever	___	S P	S P	___
17 tick fevers	___	S P	S P	___
18 typhoid fever	___	S P	S P	___
19 typhus fever	___	S P	S P	___
Infections of the liver				
20 hepatitis A	___	S P	S P	___
21 hepatitis B	___	S P	S P	___
22 hepatitis non A - non B	___	S P	S P	___
23 liver flukes (e.g., fascioliasis, clonorchiasis)	___	S P	S P	___
Infections transmitted by sex				
24 chlamydia infection	___	S P	S P	___
25 genital herpes	___	S P	S P	___
26 gonorrhea (clap)	___	S P	S P	___
27 HIV infection or AIDS	___	S P	S P	___
28 syphilis	___	S P	S P	___
29 other sexually transmitted diseases	___	S P	S P	___
Infections of the skin				
30 chronic fungal infection	___	S P	S P	___
31 leishmaniasis (cutaneous)	___	S P	S P	___
Miscellaneous infections				
32 African trypanosomiasis (sleeping sickness)	___	S P	S P	___
33 American trypanosomiasis (Chagas disease)	___	S P	S P	___
34 arbovirus infection	___	S P	S P	___
35 cysticercosis	___	S P	S P	___
36 echinococcosis (hydatid disease)	___	S P	S P	___

	NO. OF EPISODES	ONSET	DIAGNOSIS	NO. MONTHS BETWEEN COS AND ONSET
37 leprosy (Hansen's disease)	____	S P	S P	____
38 loa loa	____	S P	S P	____
39 lyme disease	____	S P	S P	____
40 onchocerciasis (river blindness)	____	S P	S P	____
41 schistosomiasis (bilharzia, snail fever)	____	S P	S P	____
42 toxoplasmosis	____	S P	S P	____
43 trichinosis	____	S P	S P	____
Infections and conditions of the lungs				
44 asthma	____	S P	S P	____
45 histoplasmosis	____	S P	S P	____
46 tuberculosis (TB)	____	S P	S P	____
Eye Conditions				
47 cataracts	____	S P	S P	____
48 retinal disease	____	S P	S P	____
Injuries and musculo-skeletal conditions				
49 physical injury related to trauma (e.g., motor vehicle injuries, broken bones, sports injuries, falls)	____	S P	S P	____
50 arthritis	____	S P	S P	____
51 other musculo-skeletal conditions	____	S P	S P	____
Mental health problems				
52 adjustment reaction	____	S P	S P	____
53 depression	____	S P	S P	____
54 post-traumatic stress	____	S P	S P	____
55 anxiety disorder	____	S P	S P	____
56 other mental health problem	____	S P	S P	____
Conditions related to dependency				
57 alcoholism	____	S P	S P	____
58 cigarette smoking	____	S P	S P	____
59 drug use	____	S P	S P	____
Other conditions not listed				
_____	____	S P	S P	____
_____	____	S P	S P	____

Federal Employees' Compensation Act (FECA) Claims

The following questions relate to your exposure to and experience with the FECA program.

14. Did you receive information about the FECA Program before you left service?

___ Yes
___ No
___ Do not remember

If you received information about the FECA Program, in what form did you receive it? (Check all that apply.)

___ NA
___ Peace Corps Returned Volunteer Health Benefits Handbook
___ Health Insurance Information Packet
___ Other written materials (please specify)_____
___ Verbal information from the Medical Officer
___ Verbal information from the Office of Medical Services in Washington, DC
___ Other (please specify)_____

15. Peace Corps wishes to examine the magnitude of SERVICE-RELATED health problems experienced by RPCVs for which they have NOT filed a FECA claim. If you did not experience a service-related health problem, SKIP to Question #19.

Do you currently have or have you ever had a health problem for which you have not filed a claim AND that meets any of the following criteria?

- diagnosed during Peace Corps service and is recurrent or still present after COS, and/or
- diagnosed after COS, but is service-related, and/or
- a pre-existing condition that has been aggravated by your Peace Corps service.

___ Yes
___ No

List the specific diagnosis given by your health provider.

___ NA

a)_____

b) _____

16. If you have a service-related health condition that has NOT yet been diagnosed, please list the signs and symptoms of your condition.

___ NA

a) _____

b) _____

If you listed a condition above, why has the condition(s) not been diagnosed? (Check all that apply.)

___ NA
___ Did not actively seek medical care
___ Do not have medical insurance
___ Medical care was sought but diagnosis was not made
___ Do not have access to tropical medicine or other appropriate specialists
___ Other (please specify)_____

17. If you have a DIAGNOSED service-related health condition for which you have NOT filed a claim, what are your reasons? (Check all that apply.)

___ NA
___ Do not know how to file
___ Do not know of eligibility under FECA
___ Already covered under other insurance
___ Had a previous health problem with Peace Corps that was not adequately handled
___ Heard negative stories from other Volunteers
___ Other (please specify)_____

18. If you have filed a FECA claim, what difficulties or constraints did you experience with the claims process?

___ NA

Within Peace Corps: (Check all that apply.)

___ Did not experience any difficulties or constraints
___ Difficult to reach appropriate staff through the 1-800 number
___ Peace Corps delay in processing the case to the Dept. of Labor
___ Peace Corps cannot directly pay small bills for treatments
___ Calls are not returned in a timely manner
___ Other (please specify)_____

With the Dept. of Labor: (Check all that apply.)

___ Did not experience any difficulties or constraints
___ Difficult to reach claims examiner
___ No 1-800 number
___ No response to telephone or written request for information
___ Processing claims takes too long
___ 2 - 3 months required before bills are paid and compensation given
___ Permission required for surgery or other invasive procedures, even after case accepted
___ Other (please specify)_____

Health Insurance

19. Have you been covered by a health insurance policy since leaving Peace Corps service?

___ Yes, continuously
___ Yes, not continuously
___ No

How soon after your close-of-service date (or the date you left the country) did your health insurance coverage start?

___ NA
___ Before leaving the country
___ Less than 1 month after leaving the country
___ 1 - 6 months after leaving the country
___ 7 - 12 months after leaving the country
___ More than 1 year after leaving the country

If you applied for health insurance after Peace Corps, what problems, if any, did you encounter? (Check all that apply.)

___ NA
___ Did not encounter problems
___ Was turned down at least once because of a health condition or reason (e.g., lived abroad) related to Peace Corps service
___ Was turned down at least once because of a health condition or reason (e.g., age) unrelated to Peace Corps service
___ Could not afford the cost of the policy
___ Other (please specify)_____

Other Peace Corps-related Information

20. Did you complete your Peace Corps service?

___ Yes
___ No

If you did not complete your Peace Corps service, were you evacuated (for non-medical reasons)?

___ NA
___ Yes
___ No

21. Were you medically separated from Peace Corps before the end of your tour of duty?

___ No
___ Yes, medically separated in Washington, DC
___ Yes, medically separated in-country
___ Yes, medically separated in another location

22. Your country(s) of service:_____

23. The date you entered service (m/y): _____

24. Date of close-of-service (m/y): _____

25. Date of birth (m/d/yr): _____

26. Sex (m/f): _____

27. What are some additional health-related questions or concerns you feel were not addressed by this survey?

___ No additional concerns

_____

_____

28. What are your suggestions for improving the medical care provided to PCVs and RPCVs?

___ No suggestions

_____

_____

29. We strongly suggest that RPCVs experiencing service-related health conditions seek prompt medical help by either consulting a local physician or contacting Peace Corp directly. If you wish to be contacted by a health professional at Peace Corps regarding a health condition, please provide your name, address, and telephone number in the spaces provided below.

Name: _____

Current mailing address : _____

_____

_____

Telephone: (day) _____-_____-_____

(evening) _____-_____-_____

PRIVACY ACT NOTICE

The Peace Corps, an agency of the Federal Government, is required, by provisions of the Privacy Act of 1974 (5 U.S.C. § 552a), to advise you of the following information regarding this survey:

a. This survey is authorized by the provisions of the Peace Corps Act (22 U.S.C. § 2501, et seq.).

b. The principal purpose for which the information provided herein will be used is to identify opportunities to improve health services for Volunteers during and after service.

c. The information collected will be kept confidential and will be available to Peace Corps Office of Medical Services and a Peace Corps contractor who will analyze the data. It will be considered a Volunteer medical record for purposes of routine uses under the Privacy Act.

d. Furnishing this information is voluntary.

[FR Doc. 92-7951 Filed 4-6-92; 8:45 am]
BILLING CODE 6051-01-C

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Prospective Payment Assessment Commission; Meeting

Notice is hereby given of the meetings of the Prospective Payment Assessment Commission on Tuesday and Wednesday, April 21–22, 1992, at the Madison Hotel, 15th and M Streets, Northwest, Washington, DC.

The full commission will meet each day at 9 a.m. in Executive Chambers 1, 2 and 3.

All meetings are open to the public.

Donald A. Young,

Executive Director.

[FR Doc. 92–7648 Filed 4–6–92; 8:45 am]

BILLING CODE 6820-BW-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval:

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Investigation of Claim for Possible Days of Employment or State Benefits Received.

(2) *Form(s) submitted:* ID–5i, ID–5R(SUP), ID–49R, ID–49S and UI–48.

(3) *OMB Number:* 3220–0049.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households, State or local governments and small businesses or organizations.

(8) *Estimated annual number of respondents:* 11,250.

(9) *Total annual responses:* 11,300.

(10) *Average time per response:* .18115 hours.

(11) *Total annual reporting hours:* 2,047.

(12) *Collection description:* Under the RUIA, unemployment or sickness benefits are not payable for any day in which remuneration is payable or accrues to the claimant. The collection obtains information from the claimant, railroad and non-railroad employers and state agencies about work performed and/or benefits received during the same period as benefits are claimed.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 92–7865 Filed 4–6–92; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–18642; 811–814]

EFC Sponsors Corporation Systematic and Single Payment Investment Plans for the Accumulation of Shares of Axe-Houghton Stock Fund, Inc.; Application

March 31, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: EFC Sponsors Corporation Systematic and Single Payment Investment Plans for the Accumulation of Shares of Axe-Houghton Stock Fund, Inc.

RELEVANT ACT SECTIONS: Section 8(f) and rule 8f–1 thereunder.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on April 16, 1990 and amended on August 28, 1990, August 9, 1991, and March 23, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving the Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 27, 1992, and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Axe-Houghton Management, Inc., 400 Benedict Avenue, Tarrytown, New York 10591.

FOR FURTHER INFORMATION CONTACT: Eva Marie Carney, Senior Attorney, (202) 504–2274, or Jeremy N. Rubenstein, Assistant Director, (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a unit investment trust organized under the laws of the State of New York. According to Commission records, Applicant registered under the Act by filing a Notification of Registration on Form N–8A pursuant to section 8(a) on May 16, 1958, and a registration statement on Form N–8B–2 pursuant to section 8(b) on June 2, 1958. Commission records also reflect that on June 2, 1958 Applicant registered its securities—periodic payment plan certificates, in the form of systematic and single payment plans (the "Plans"), for the accumulation of shares of Axe-Houghton Stock Fund, Inc. (formerly Axe Science Corporation, before its 1974 merger into the Axe-Houghton Stock Fund, Inc.) (the "Fund")—under the Securities Act of 1933 by filing a registration statement on Form S–6. This registration statement became effective later that year and the initial public offering of the Plans commenced immediately thereafter.

2. Each Plan was created pursuant to a plan certificate which formed the agreement between the sponsor, EFC Sponsors Corporation or its predecessors (the "Sponsor"), the custodian, The Bank of New York, and the holder of the Plan (the "Planholder"). Investors Planning Corporation of America served as sponsor of the Plans from their initial offering until April 1969. IPC Sponsors Corporation served as sponsor from 1969 until 1971, when EFC Sponsors Corporation became the successor sponsor of the Plans. As of the date of this application, there are no Plans outstanding.

3. Pursuant to a letter dated September 15, 1989, all Planholders were offered the opportunity to become direct shareholders of the Fund by converting their Plans to direct investments in Fund shares. A copy of the letter is attached as an exhibit to the application. On December 15, 1989, all Plans were terminated in accordance with their terms and all Fund shares were withdrawn from Applicant.

4. Fund shares withdrawn from Applicant were either redeemed for cash upon instruction of the Planholder or deposited in a shareholder account in the name of a converting Planholder. Each conversion was effected by a book-entry transaction opening with the Fund an identically registered account in the name of the converting Planholder having the same number of full and fractional shares of the Fund as held in the converted Plan account. No brokerage commissions were incurred in connection with the termination of any Plan.

5. Termination of the Plans did not result in any Planholder paying a sales load in excess of that permitted under section 27 of the Act or provided under the terms of the Plan. As of December 15, 1989, Fund shares were being sold to the public without imposition of any sales load. Accordingly, those Planholders who opted to convert their Plans to direct investments in Fund shares were able to avoid payment of Plan custodial fees and the additional sales loads applicable to further purchases of Fund shares under a Plan.

6. As of December 15, 1989 there were 1,559 Plans outstanding representing an aggregate of approximately 1,303,667 shares of the Fund, with a per share net asset value of $7.20 and an aggregate net asset value of $9,386,402.

7. All expenses, including legal, accounting, and other general and administrative expenses, relating to the Trust's liquidation and the winding up of its affairs are being borne by EFC Sponsors Corporation and its successors.

8. Applicant has no assets, liabilities or shareholders. Applicant is not engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding-up of its affairs. Applicant is not a party to any litigation or administrative proceeding.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-7944 Filed 4-6-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18641; 811-628]

EFC Sponsors Corporation Systematic and Single Payment Investment Plans for the Accumulation of Shares of Axe-Houghton Fund B, Inc.; Application

March 31, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: EFC Sponsors Corporation Systematic and Single Payment Investment Plans for the Accumulation of Shares of Axe-Houghton Fund B, Inc.

RELEVANT ACT SECTIONS: Section 8(f) and rule 8f-1 thereunder.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on April 16, 1990 and amended on August 28, 1990, August 9, 1991, and March 23, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving the Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 27, 1992, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, c/o Axe-Houghton Management, Inc., 400 Benedict Avenue, Tarrytown, New York 10591.

FOR FURTHER INFORMATION CONTACT: Eva Marie Carney, Senior Attorney, (202) 504-2274, or Jeremy N. Rubenstein, Assistant Director, (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a unit investment trust organized under the laws of the State of New York. According to Commission records, on August 20, 1953 Applicant registered under the Act by filing a Notification of Registration pursuant to section 8(a) and a registration statement on Form N-8B-2 pursuant to section 8(b). Commission records also reflect that on that same date, Applicant registered its securities—periodic payment plan certificates, in the form of systematic and single payment plans (the "Plans"), for the accumulation of shares of Axe-Houghton Stock Fund, Inc. (the "Fund")—under the Securities Act of 1933 by filing a registration statement on Form S-6. This registration statement became effective later that year and the initial public offering of the Plans commenced immediately thereafter.

2. Each Plan was created pursuant to a plan certificate which formed the agreement between the sponsor, EFC Sponsors Corporation or its predecessors (the "Sponsor"), the custodian, The Bank of New York, and the holder of the Plan (the "Planholder"). Investors Planning Corporation of America served as sponsor of the Plans from their initial offering until April 1969. IPC Sponsors Corporation served as sponsor from 1969 until 1971, when EFC Sponsors Corporation became the successor sponsor of the Plans. As of the date of this application, there are no Plans outstanding.

3. Pursuant to a letter dated September 15, 1989, all Planholders were offered the opportunity to become direct shareholders of the Fund by converting their Plans to direct investments in Fund shares. A copy of the letter is attached as an exhibit to the application. On December 15, 1989, all Plans were terminated in accordance with their terms and all Fund shares were withdrawn from Applicant.

4. Fund shares withdrawn from Applicant were either redeemed for cash upon instruction of the Planholder or deposited in a shareholder account in the name of a converting Planholder. Each conversion was effected by a book-entry transaction opening with the Fund an identically registered account in the name of the converting Planholder having the same number of full and fractional shares of the Fund as held in the converted Plan account. No brokerage commissions were incurred in connection with the termination of any Plan.

5. Termination of the Plans did not result in any Planholder paying a sales load in excess of that permitted under section 27 of the Act or provided under the terms of the Plan. As of December 15, 1989, Fund shares were being sold to

the public without imposition of any sales load. Accordingly, those Planholders who opted to convert their Plans to direct investments in Fund shares were able to avoid payment of Plan custodial fees and the additional sales loads applicable to further purchases of Fund shares under a Plan.

6. As of December 15,1989 there were 6,994 Plans outstanding representing an aggregate of approximately 11,134,100 shares of the Fund, with a per share net asset value of $8.98 and an aggregate net asset value of approximately $99,984,218.

7. All expenses, including legal, accounting, and other general and administrative expenses, relating to Applicant's liquidation and the winding-up of its affairs are being borne by EFC Sponsors Corporation and its successors.

8. Applicant has no assets, liabilities or shareholders. Applicant is not engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding -up of its affairs. Applicant is not a party to any litigation or administrative proceeding.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–7945 Filed 4–6–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18640; 811–1251]

EFC Sponsors Corporation Systematic and Single Payment Investment Plans for the Accumulation of Shares of Fund of America, Inc.; Application

March 31, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: EFC Sponsors Corporation Systematic and Single Payment Investment Plans for the Accumulation of Shares of Fund of America, Inc.

RELEVANT ACT SECTIONS: Section 8(f) and rule 8f–1 thereunder.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on April 16, 1990 and amended on August 28, 1990, August 9, 1991, and March 23, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving the Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 27, 1992, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, c/o Axe-Houghton Management, Inc., 400 Benedict Avenue, Tarrytown, New York 10591.

FOR FURTHER INFORMATION CONTACT: Eva Marie Carney, Senior Attorney, (202) 504–2274, or Jeremy N. Rubenstein, Assistant Director, (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a unit investment trust organized under the laws of the State of New York. According to Commission records, on March 16, 1964 Applicant registered under the Act by filing a Notification of Registration pursuant to section 8(a) and a registration statement on Form N–8B–2 pursuant to section 8(b). Commission records also reflect that on that same date, Applicant registered its securities—periodic payment plan certificates, in the form of systematic and single payment plans (the "Plans"), for the accumulation of shares of Fund of America, Inc. (the "Fund")—under the Securities Act of 1933 by filing a registration statement on Form S–6. This registration statement became effective and the initial public offering of the Plans commended immediately thereafter.

2. Each Plan was created pursuant to a plan certificate which formed the agreement between the sponsor, EFC Sponsors Corporation or its predecessors (the "Sponsor"), the custodian, The Bank of New York, and the holder of the Plan (the "Planholder"). Investors Planning Corporation of America served as sponsor of the Plans their initial offering until April 1969. IPC Sponsors Corporation served as sponsor from 1969 until 1971, when EFC Sponsors Corporation became the successor sponsor of the Plans. As of the date of this application, there are no Plans outstanding.

3. By letter dated October 16, 1989, all Planholders were offered the opportunity to become direct shareholders of the Fund by converting their Plans to direct investments in Fund shares. A copy of the letter is attached as an exhibit to the application. On December 22, 1989, all Plans were terminated in accordance with their terms and all Fund shares were withdrawn from Applicant.

4. Fund shares withdrawn from Applicant were either redeemed for cash upon instruction of the Planholder or deposited in a shareholder account in the name of a converting Planholder. Each conversion was effected by a book-entry transaction opening with the Fund an identically registered account in the name of the converting Planholder having the same number of full and fractional shares of the Fund as held in the converted Plan account. No brokerage commissions were incurred in connection with the termination of any Plan.

5. Termination of the Plans did not result in any Planholder paying a sales load in excess of that permitted under section 27 of the Act or provided under the terms of the Plan.

6. As of December 22, 1989 there were 7,950 Plans outstanding representing an aggregate of approximately 4,159,948 shares of the Fund, with a per share net asset value of $10.91 and an aggregate net asset value of approximately $45,385,033.

7. All expenses, including legal, accounting, and other general and administrative expenses, relating to Applicant's liquidation and the winding up of its affairs are being borne by EFC Sponsors Corporation and its successors.

8. Applicant has no assets, liabilities or shareholders. Applicant is not engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding-up of its affairs. Applicant is not a party to any litigation or administrative proceeding.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–7946 Filed 4–6–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC-18639; 811-675]

EFC Sponsors Corporation Systematic and Single Payment Investment Plans for the Accumulation of Shares of Seligman Growth Fund, Inc.; Application

March 31, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: EFC Sponsors Corporation Systematic and Single Payment Investment Plans for the Accumulation of Shares of Seligman Growth Fund, Inc.

RELEVANT ACT SECTIONS: Section 8(f) and rule 8f-1 thereunder.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on April 16, 1990 and amended on August 28, 1990, August 9, 1991, and March 23, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving the Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 27, 1992, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish notification of a hearing may write to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Axe-Houghton Management, Inc., 400 Benedict Avenue, Tarrytown, New York 10591.

FOR FURTHER INFORMATION CONTACT: Eva Marie Carney, Senior Attorney, (202) 504-2274, or Jeremy N. Rubenstein, Assistant Director, (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a unit investment trust organized under the laws of the State of New York. According to Commission records, Applicant registered under the Act by filing a Notification of Registration pursuant to section 8(a) on April 13, 1958, and a registration statement on Form N-8B-2 pursuant to section 8(b) on June 2, 1958. Commission records also reflect that on June 2, 1958 Applicant registered its securities—periodic payment plan certificates, in the form of systematic and single payment plans (the "Plans"), for the accumulation of shares of Seligman Growth Fund, Inc. (formerly National Investors Corporation) (the "Fund")—under the Securities Act of 1933 by filing a registration statement on Form S-6. This registration statement became effective and the initial public offering of the Plans commenced immediately thereafter.

2. Each Plan was created pursuant to a plan certificate which formed the agreement between the sponsor, EFC Sponsors Corporation or its predecessors (the "Sponsor"), the custodian, The Bank of New York, and the holder of the Plan (the "Planholder"). Investors Planning Corporation of America served as sponsor of the Plans from their initial offering until April 1969: IPC Sponsors Corporation served as sponsor from 1969 until 1971, when EFC Sponsors Corporation became the successor sponsor of the Plans. As of the date of this application, there are no Plans outstanding.

3. Pursuant to a letter dated October 12, 1989, all Planholders were offered the opportunity to become direct shareholders of the Fund by converting their Plans to direct investments in Fund shares. A copy of the letter is attached as an exhibit to the application. On December 20, 1989, all Plans were terminated in accordance with their terms and all Fund shares were withdrawn from Applicant.

4. Fund shares withdrawn from Applicant were either redeemed for cash upon instruction of the Planholder or deposited in a shareholder account in the name of a converting Planholder. Each conversion was effected by a book-entry transaction opening with the Fund an identically registered account in the name of the converting Planholder having the same number of full and fractional shares of the Fund as held in the converted Plan account. No brokerage commissions were incurred in connection with the termination of any Plan.

5. Termination of the Plans did not result in any Planholder paying a sales load in excess of that permitted under section 27 of the Act or provided under the terms of the Plan.

6. As of December 20, 1989 there were 11,239 Plans outstanding representing an aggregate of approximately 26,125,144 shares of the Fund, with a per share net asset value of $4.92 and an aggregate net asset value of approximately $128,535,708.

7. All expenses, including legal, accounting, and other general and administrative expenses, relating to Applicant's liquidation and the winding-up of its affairs are being borne by EFC Sponsors Corporation and its successors.

8. Applicant has no assets, liabilities or shareholders. Applicant is not engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding-up of its affairs. Applicant is not a party to any litigation or administrative proceeding.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-7946 Filed 4-6-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18644; 812-7850]

Gateway Tax Credit Fund III Ltd., et al.; Application

April 1, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Gateway Tax Credit Fund III Ltd., a Florida limited partnership (the "Partnership") and its managing general partner, RJ Credit Partners, Inc., a Florida corporation (the "Managing General Partner").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from all provisions of the Act.

SUMMARY OF APPLICATION: Applicants seek an order exempting the Partnership from all provisions of the Act to permit the Partnership to invest in limited partnerships that own and operate multifamily housing projects qualified for the low income housing tax credit under the Internal Revenue Code of 1986.

FILING DATES: The application was filed on January 10, 1992 and amended on March 24, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a

hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 27, 1992, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate or service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 880 Carillon Parkway, St. Petersburg, Florida 33716.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, State Attorney, (202) 272–2511, or Elizabeth G. Osterman, Branch Chief, (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Partnership was organized on October 17, 1991, under the Florida Revised Uniform Limited Partnership Act. On December 4, 1991, the Partnership filed a registration statement under the Securities Act 1933, pursuant to which the Partnership proposes to offer 50,000 units of limited partnership interests ("Units") at $1,000 each with a minimum investment of $5,000. Purchasers of these units ("Investors" or "Limited Partners") will become limited partners of the Partnership.

2. The Partnership will operate as a "two-tier" entity, *i.e.*, the Partnership, as a limited partner, will invest in other limited partnerships ("Project Partnerships") which will acquire, develop, construct and/or rehabilitate, operate and maintain multifamily housing projects ("Projects") each of which will qualify for the low-income housing tax credit under section 42 of the Internal Revenue Code of 1986, as amended. The Partnership's objectives are to provide tax benefits in the form of tax credits to Limited Partners which, subject to certain limitations, may be used to offset their Federal income tax liability, to preserve and protect the capital contributions of Investors, to participate in any capital appreciation in the value of the Projects, and to provide passive losses to offset passive income from other passive activities.

3. The Partnership will offer Units in one or more series.[1] The insurance of Units in series will help to equalize the tax benefits available to Limited Partners who acquire their Units at different times during the offering period. If only one series of Units were offered, those Investors who acquired their Units early in the Partnership's offering period would receive more tax benefits than would be available to investors who purchased Units during the later portion of the offering period. This is because tax credits generally will be available to the Partnership for a ten year period beginning on the date in which a Project is first placed in service. By offering one series of Units to early investors and one or more subsequent series to late investors, the Partnership can enable later investors to participate in tax credits for a full ten year period.

4. Although the Partnership's direct control over the management of each Project will be limited, the Partnership's ownership of interests in Project Partnerships will, in an economic sense, be tantamount to direct ownership of the Projects themselves. The Partnership normally will acquire at least a 90% interest in the profits, losses and tax credits of the Project Partnerships. In certain cases, however, the Partnership will acquire a lesser interest in a Project Partnership. In such cases the Partnership will own more than a 50% interest in operating profits, losses and tax credits and will hold a voting interest of more than 50% with respect to certain basic actions to be taken by the Project Partnership.

5. The Partnership will be controlled by the Managing General Partner and Raymond James Partners, Inc., the Partnership's general partners (the "General Partners"), pursuant to the Partnership's partnership agreement (the "Partnership Agreement"). The Limited Partners, consistent with their limited liability status as limited partners, will not be entitled to participate in the control of the Partnership's business. Limited Partners, by majority vote, have the right to dissolve the Partnership, remove the General Partners and elect a replacement therefor, approve or disapprove of the sale of all or substantially all of the Partnership's assets, and amend the Partnership Agreement (subject to certain limitations). In addition, under the Partnership Agreement, each Limited Partner is entitled to review all books and records of the Partnership at any and all reasonable times.

6. All proceeds of the public offering of Units will be deposited in an escrow account with First Union National Bank of Florida, St. Petersburg, Florida ("First Union"). Pending release of the offering proceeds deposited in the escrow account to the Partnership, First Union will invest the funds in short-term certificates of deposit, insured bank accounts, or short-term government securities backed by the full faith and credit of the United States Government.

7. Upon receipt of a prescribed minimum number of subscriptions, the General Partners are empowered to cause funds in escrow to be released to the Partnership and held in trust pending investments in Project Partnerships. The Partnership may invest any proceeds not immediately utilized to acquire interests in Project Partnerships or for other permitted Partnership purposes (such as the establishment of a reserve) in short-term tax-exempt securities or commercial paper rated in the highest or next highest category by a nationally recognized statistical rating organization; direct obligations of, or obligations unconditionally guaranteed by, the United States Government or any agency thereof; certain certificates of deposit or Eurodollar certificates of deposit issued by any bank whose deposits are federally insured; certain collateralized repurchase agreements with domestic banks whose deposits are federally insured; and shares of certain open-end investment companies that invest primarily in securities of the type enumerated above or bankers' acceptances; provided, however, that if the value of "investment securities" (as defined in the Act and which term shall not include the value of the Project Partnerships) exceeds 40% of the value of the Partnership's total assets (exclusive of government securities, as defined in the Act and cash items) at any time, such excess may be invested only in government securities. The Partnership does not intend to trade in temporary investments, and will not speculate in any such investments.

Applicants' Legal Conclusions

1. Applicants request that the Partnership be exempted from all provisions of the Act. Such an exemption is both necessary and appropriate in the public interest,

[1] As explained in a letter from applicants' counsel dated March 31, 1991, each series will invest in a different group of Project Partnerships. For purposes of allocating tax credits, taxable income or loss, and cash distributions from the Project Partnerships, each series will be treated as though it were a separate partnership. An investor in the Partnership will share only in the tax credits, taxable income or loss, and cash distributions on the Project Partnerships in the series in which he invests and will not have an interest in any other series.

because, among other reasons, investment in low and moderate income housing in accordance with the national policy expressed in title IX of the Housing and Urban Development Act of 1968 is not economically suitable for private investors without the tax and organizational advantages of the limited partnership form. Public investors typically consider investment in low and moderate income housing programs as involving greater risk than investment in real estate generally. The limited partnership form insulate each Investor from personal liability, limits his financial risk to the amount he has invested in the program, and permits the pass-through to the Investor, on his individual tax return, of his proportionate share of the tax credits, income and losses from the investment.

2. Investment Company Act Release No. 8456 (Aug. 9, 1974) ("Release No. 8456") provides that the exemptive power of the SEC under section 6(c) may be applied to two-tier partnerships that engage in the kind of activities in which the Partnership will engage, that is, "two-tier partnerships that invest in limited partnerships engaged in the development and building of housing for low and moderate income persons * * *" Release No. 8456 lists two conditions, designed for the protection of investors, which must be satisfied in order for the Partnership to qualify for such an exemption: (a) "interests in the issuer should be sold only to persons for whom investments in limited profit, essentially tax-shelter, investments would not be unsuitable;" and (b) "requirements for fair dealing by the general partner of the issuer with the limited partners of the issuer should be included in the basic organizationals documents of the company." The Partnership will comply with these conditions and will otherwise operate in a manner designed to ensure investor protection.

3. Any subscriptions for Units must be approved by the General Partners, which approval will be conditioned upon receipt of representations as to suitability of the investment for each subscriber. Such suitability standards provide, among other things, that investment in the Partnership is suitable only for an investor who either (a) has a net worth (exclusive of home, furnishings and automobiles) of at least $50,000 and an annual gross income of not less than $30,000 or (b) has a net worth (exclusive of home, furnishings and automobiles) of at least $75,000, or (c) is purchasing in a fiduciary capacity for a person or entity having such net worth and annual gross income as set forth in clause (a) or such net worth as set forth in clause (b). The foregoing suitability standards have been approved by a majority of the states in which the Units will be sold, but Units will be sold in certain other states only to persons who meet additional or alternative standards imposed by those states that will require a greater income or net worth, or both, than the standards specified in the preceding sentence. These additional or alternative standards are set forth in the Partnership's prospectus ("Prospectus"). Transfer of Units may be made only with the approval of the General Partners. The General Partners will permit transfers of limited partnership interests only if the transferee meets or exceeds the same suitability standards as had been imposed upon the transferor.

4. The Partnership Agreement and the Prospectus contain numerous provisions designed to insure fair dealing by the General Partners with the Limited Partners. All compensation to be paid to the General Partners and their affiliates is specified in the Partnership Agreement and Prospectus and no compensation will be payable to the General Partners or any of their affiliates unless so specified. The fees and other forms of compensation that will be paid to the General Partners and their affiliates were not negotiated at arms length. The General Partners believe, however, that all such compensation is fair and on terms no less favorable to the Partnership than would be the case if such arrangements had been made with independent third parties. Such compensation meets all applicable guidelines necessary to permit the Units to be offered and sold in all fifty states, including those states which adhere to the guidelines comprising the statement of policy adopted by the North American Securities Administrators Association, Inc. applicable to real estate programs in the form of limited partnerships.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Security.

[FR Doc. 92-7949 Filed 4-6-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18638; 812-7848]

Pacific Horizon Funds, Inc., et al.; Application

March 31, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Pacific Horizon Funds, Inc. (the "Company") and Douglas B. Fletcher ("Mr. Fletcher").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) for an exemption from section 2(a)(19)(B)(ii) for the purposes of section 15(f).

SUMMARY OF APPLICATION: Applicants seek an order of the SEC exempting Mr. Fletcher from the definition of "interested person" set forth in section 2(a)(19)(B)(ii) of the Act solely for the purpose of determining whether, under section 15(f) of the Act, 75% of the members of the board of directors of the Company are not "interested persons" of its predecessor or successor investment adviser.

FILING DATE: The application was filed on January 10, 1992 and amended on March 13, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving the applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 22, 1992, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants: Pacific Horizon Funds, Inc., 156 West 56th Street, suite 1902, New York, New York 10019; Douglas B. Fletcher, 800 Production Place, Newport Beach, California 92663.

FOR FURTHER INFORMATION CONTACT: Eva Marie Carney, Senior Attorney, at (202) 504-2274 or Elizabeth G. Osterman, Branch Chief, at (202) 272-3016 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Company is an open-end, series management investment company which Security Pacific National Bank

("Security Pacific") serves as investment adviser.

2. Security Pacific is a wholly-owned subsidiary of Security Pacific Corporation.

3. Security Pacific Corporation and BankAmerica Corporation, each publicly-held bank holding company, entered into an Agreement and Plan of Merger dated August 12, 1991, providing for their merger. Shareholders of each bank holding company approved the proposed merger in December, 1991. It is expected that, subject to required regulatory approvals, the merger may occur as early as April 30, 1992. It is further expected that Security Pacific will merge with Bank of America National Trust and Savings Association, the principal banking subsidiary of BankAmerica Corporation, at the same time or shortly after the merger of the bank holding companies. The resulting banking association, which will be known as bank of America National Trust and Savings Association ("Bank of America"), will serve as the Company's investment adviser.

4. In accordance with the provisions of section 15(a)(4) of the Act, the Company's existing advisory agreements with Security Pacific provide for their automatic termination in the event of an assignment. The proposed mergers constitute an assignment of the Company's existing advisory agreements, which will lead to an automatic termination of the agreements.

5. The board of directors of the Company, including all of the "non-interested" directors, approved new investment advisory agreements with Security Pacific and Bank of America at a meeting held on September 13, 1991, which agreements will become effective in connection with the mergers. These agreements are identical in all material respects to the Company's existing agreements with Security Pacific and were approved by the shareholders of each fund offered by the Company at a special meeting convened on December 2, 1991.

6. Mr. Fletcher has served as one of five members of the Company's board of directors since January 9, 1985. Three of the five directors are not "interested persons" of Security Pacific or of the Company and two members (including Mr. Fletcher) are "interested persons" of these entities.

7. Christopher Fletcher is the adult son of Mr. Fletcher. He is financially independent of Mr. Fletcher and maintains a separate residence. Christopher Fletcher joined Security Pacific's corporate banking training program in 1982 and has held various positions in Security Pacific's real estate divisions. Christopher Fletcher currently serves as an officer of Security Pacific EuroFinance PLC ("SPEF") in the property finance division of SPEF's London, England office. SPEF is part of Security Pacific Finance Services System ("SPFSS"), a group of companies that engage in finance company transactions. SPFSS is a non-bank subsidiary of Security Pacific Corporation. Christopher Fletcher currently manages a portfolio of real estate loans and assists in the orderly liquidation of the portfolio in a workout environment. Although he is no longer a Security Pacific employee, Christopher Fletcher has retained the title of officer (First Vice President) of Security Pacific, which he assumed during his tenure with the Bank, because it is necessary or convenient for him to have signing authority within Security Pacific. Christopher Fletcher has not been involved in any way with Security Pacific's investment advisory business or in the provision of services to the Company.

8. It is currently anticipated that SPFSS (and SPEF as a part thereof) will survive the proposed mergers as a subsidiary of BankAmerica Corporation and that, in connection with his current position with SPEF, Christopher Fletcher will be appointed an officer of Bank of America after the mergers solely for the purpose of affording him signing authority. It is also possible that (a) before the proposed mergers are effected, Christopher Fletcher may become a direct employee of Security Pacific, and (b) after the proposed mergers are effected Christopher Fletcher may become a direct employee of Bank of America.

Applicants' Analysis

1. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include "any officer, director, partner, copartner, or employee of such other person." Section 2(a)(19)(B)(ii) of the Act provides that any person, a member of whose immediate family is an affiliated person of an investment adviser, is an "interested person" of such investment adviser. "Immediate family" includes any child of such person. Christopher Fletcher may be deemed an "affiliated person" of Security Pacific because he is an officer of Security Pacific and an officer and employee of an affiliated person of Security Pacific. Further, Christopher Fletcher may be deemed an "affiliated person" of Bank of America if he in fact becomes an officer or employee of Bank of America or an affiliate after the proposed mergers. As a result, Mr. Fletcher may be deemed an "interested person" of both Security Pacific and Bank of America.

2. Section 15(f)(1) of the Act permits an investment adviser to a registered investment company, or an affiliate of such investment adviser, to receive an amount or benefit in connection with a sale of securities or any other interest in such investment adviser which results in an assignment of the investment advisory agreement if, for a period of three years following the sale, at least 75% of the investment company's directors are not "interested persons" of either the predecessor or successor investment adviser, and neither the transaction nor any express or implied term, condition, or understanding applicable thereto imposes an unfair burden on the investment company.

3. Applicants submit that section 15(f) of the Act was enacted in an effort to remove the uncertainty that was caused by the decision of the U.S. Court of Appeals for the Second Circuit in *Rosenfeld* v. *Black*, 445 F.2d 1337 (2d Cir. 1971). Applicants state that the *Rosenfeld* court held that an investment adviser to an investment company breached its fiduciary duty by recommending a successor adviser to the fund and profiting from the change in adviser, and that section 15(f) was added to the Act in response to *Rosenfeld* to "make clear that an investment adviser can make a profit on the sale of its business." S. Rep. No. 75, 94th Cong., 1st Sess. 71 (1975).

4. Applicants assert that the proposed merger of Security Pacific Corporation and BankAmerica Corporation, and the subsequent merger of Security Pacific and Bank of America, do not present the same types of concerns addressed by the Second Circuit in *Rosenfeld* and that the terms of the proposed mergers are consistent with all fiduciary duties owed by Security Pacific to the Company. Nonetheless, applicants state that they have determined that it is advisable to remove any doubts that may arise in connection with the application of section 15(f)(1) to the mergers. Accordingly, to meet section 15(f)(1)(A)'s board-composition requirements, applicants request an order under section 6(c) of the Act exempting Mr. Fletcher from the definition of "interested person" set forth in section 2(a)(19)(B)(ii) solely for the purpose of determining whether 75% of the members of the board of directors of the Company are not "interested persons" of both Security Pacific, the Company's predecessor investment adviser, and Bank of America, the Company's successor investment adviser.

5. Applicants assert that the requested exemption is appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants emphasize that they do not request that Mr. Fletcher be deemed a non-interested director for any purpose other than operation of section 15(f)(1)(A), and that 60% of the members of the Company's board of directors will continue to be non-interested for all purposes.

6. Applicants state that the Company's board of directors and all of the non-interested directors have considered the composition of the board in light of section 15(f)(1)(A) and have determined that it is in the best interest of the Company and its shareholders to retain Mr. Fletcher as a member of the board and that the interests of the Company and its shareholders will be enhanced by a change in Mr. Fletcher's "interested person" status for purposes of that provision. Applicants assert that to cause Mr. Fletcher to resign in order to comply strictly with section 15(f)(1)(A) would disrupt the continuity with which the present board of directors have served the Company and deprive the Company and its shareholders of a valuable, talented resource. In the alternative, applicants assert that to cause the Company to add three additional non-interested directors would be unduly burdensome, would increase the Company's expenses and costs, and might impair the efficiency of the board.

7. Applicants submit that, in light of the proposed conditions that will prohibit Christopher Fletcher's involvement in the investment advisory business of BankAmerica Corporation and its affiliates and subsidiaries, and in the provision of services to the Company, for the three-year period specified in section 15(f)(1)(A), Mr. Fletcher will be in a position to continue to exercise his independent judgment with respect to the Company and its investment adviser, notwithstanding his son's present and anticipated affiliations with the Company's predecessor and successor investment advisers.

Applicants' Conditions

Applicants agree that the following conditions may be imposed in any order of the Commission granting the requested relief:

1. For the three-year period specified in section 15(f)(1)(A) of the Act, Christopher Fletcher will not be involved in any way in the investment advisory business of BankAmerica Corporation, its affiliates or subsidiaries.

2. For the three-year period specified in section 15(f)(1)(A) of the Act, Christopher Fletcher will not be involved in any way in the provision of services to the Company.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-7948 Filed 4-6-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1598]

United States Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Study Group D Meeting

The Department of State announces that the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) Study Group D will meet on May 19, 1992 at 10 a.m. in room 1207 at the Department of State, 2201 C Street NW., Washington, DC 20520.

The agenda of the meeting will include the review of U.S. contributions for the meetings of Study Group XVII, and to consider any other business within the scope of Study Group D. The Meetings will also consider proposals for the work program questions to be studied during the next four year plenary period.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Persons who plan to attend should so advise the Office of Gary Fereno, Department of State, (202) 647-0201, FAX (202) 647-7407. The above includes government and non-government attendees. Public visitors will be asked to provide their date of birth and Social Security number at the time they register their intention to attend and must carry a photo ID with them to the meeting in order to be admitted. All attendees must use the C Street entrance.

Dated: March 26, 1992.

Earl S. Barbely,

Director, Telecommunications and Information Standards, Chairman, U.S. CCITT National Committee.

[FR Doc. 92-7863 Filed 4-6-92; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice 1599]

Overseas Security Advisory Council; Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on Tuesday, May 5, 1992 at 8:30 a.m. at the Ritz Carlton Hotel, St. Louis, Missouri. Pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b (c) (1) and (4), it has been determined the meeting will be closed to the public. Matters relative to classified nationals security information as well as privileged commercial information will be discussed. The agenda calls for the discussion of classified and corporate proprietary/security information as well as private sector physical and procedural security policies and protective programs at sensitive U.S. Government and private sector locations overseas.

For more information contact Patricia Richards, Overseas Security Advisory Council, Department of State, Washington, DC 20522-1003, phone: 703/204-6210.

Dated: March 26, 1990.

Clark Dittmer,

Director of the Diplomatic Security Service.

[FR Doc. 92-7864 Filed 4-6-92; 8:45 am]

BILLING CODE 4710-24-M

Bureau of Politico-Military Affairs

[Public Notice 1602]

Imposition of Missile Proliferation Sanctions Against North Korean and Iranian Entities

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Under Secretary of State for International Security Affairs has determined that two North Korean entities and one Iranian entity have engaged in missile technology proliferation activities that require imposition of sanctions pursuant to the Arms Export Control Act and the Export Administration Act of 1979, as amended by the National Defense Authorization Act for Fiscal Year 1991, and the National Defense Authorization Act for Fiscal Years 1992 and 1993.

EFFECTIVE DATE: March 6, 1992.

FOR FURTHER INFORMATION CONTACT: Mark Pekala, Office of Weapons Proliferation Policy, Bureau of Politico-Military Affairs, Department of State (202-647-4930).

SUPPLEMENTARY INFORMATION: Pursuant to section 73(a)(1) of the Arms Export Control Act (22 U.S.C. 2797b(a)(1)), section 11B(b)(1) of the Export Administration Act of 1979 (50 U.S.C. app. 2410(b)(1)), and sections 1702 and 1703 of the National Defense Authorization Act for Fiscal Year 1990–91 (Pub. L. 101–510), and the President's Memorandum Delegation of Authority of June 25, 1991, the Under Secretary of State for International Security Affairs determined on March 6, 1991 that the following foreign persons have engaged in missile technology proliferation activities that require the sanctions described in sections 73(a)(2)(B) and 73(a)(2)(C) of the Arms Export Control Act (22 U.S.C. 2797b(a)(2)(B) and 2797b(a)(2)(C)) and sections 11B(b)(1)(B)(ii) and 11B(b)(1)(B)(iii) of the Export Administration Act of 1979 (50 U.S.C. app. 2410(b)(1)(B)(ii) and 2410b(b)(1)(B)(iii));

1. Lyongaksan Machineries & Equipment Export Corporation (North Korea).

2. Changgwang Credit Corporation (North Korea).

3. Ministry of Defense and Armed Forces Logistics (Iran).

In the case of sanctions to be applied pursuant to the Arms Export Control Act, section 74(8)(B) of that act, as amended, requires that, because of North Korea's status as a non-market economy, sanctions must be applied, not only to the entities cited above, but to all activities of the North Korean government relating to missile development or production, as well as all activities of that government affecting development or production of electronics, space systems or equipment, and military aircraft.

Accordingly, the following measures have been imposed: (a) Licenses for export to the entities described above of items controlled pursuant to the Export Administration Act of 1979 will be denied for two years; (b) licenses for export to the entities and, in the case of North Korea, government activities described above of items controlled pursuant to the Arms Export Control Act will be denied for two years; (c) no U.S. government contracts involving those entities or North Korean government activities will be entered into for two years; and (d) no products produced by those entities or North Korean government activities may be imported into the United States for two years.

These measures shall be implemented by the responsible agencies as provided in the President's Memorandum Delegation of Authority of June 25, 1991.

Dated: March 27, 1992.

Richard A. Clarke,

Assistant Secretary of State for Politico-Military Affairs.

[FR Doc. 92–7937 Filed 4–6–92; 8:45 am]

BILLING CODE 4710–25–M

Office of the Under Secretary for International Security Affairs

[Public Notice 1596]

Waiver of Missile Technology Proliferation Sanctions on Foreign Persons

On June 25, 1991, the Secretary of State determined that China Great Wall Industry Corporation (CGWIC) and China Precision Machinery Import-Export Corporation (CPMIEC) had engaged in missile technology proliferation activities that required the sanctions described in section 73(a)(2)(A) of the Arms Export Control Act (22 U.S.C. 2797b(a)(2)(A)) and section 11B(b)(1)(B)(i) of the Export Administration Act of 1979 (50 U.S.C. app. 2410b(b)(1)(B)(i)). Accordingly, the required sanctions were imposed.

Pursuant to section 73(e) of the Arms Export Control Act (22 U.S.C. 2797b(e)) and section 11B(b)(5) of the Export Administration Act of 1979 (50 U.S.C. app. 2401b(b)(5)), I hereby determine that it is essential to the national security of the United States to waive these sanctions.

I intend this waiver to take effect 20 working days after this determination is notified to the Congress. Thereafter, the waiver shall remain in effect unless revoked.

Dated: February 26, 1992.

Reginald Bartholomew,

Under Secretary Ambassador.

[FR Doc. 92–7862 Filed 4–6–92; 8:45 am]

BILLING CODE 4710–10–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Request of WestAir Commuter Airlines, Inc. and Atlantic Coast Airlines, Inc. d/b/a Atlantic Coast Airlines d/b/a United Express

On February 5, 1992, the captioned airlines jointly requested the Department of Transportation to designate Atlantic Coast Airlines in place of WestAir Commuter Airlines for operation of four U.S.-Canada scheduled services. The services are Washington (Dulles)-Hamilton, Ontario; Washington (Dulles)-London, Ontario; Newburgh, New York-Toronto, Ontario; and Newburgh, New York-Montreal, Quebec.

WestAir Commuter is authorized to provide these services under the U.S.-Canada Exchange of Notes on Regional, Local and Commuter Services. The request to change the designations arises from the sale of the Atlantic Coast division of WestAir Commuter Airlines. Atlantic Coast has been found fit by the Department and certificated to provide air carrier services (Order 92–1–17). Atlantic Coast has indicated that it will submit a formal application to the Canadian Government for transmittal to the Canadian authorities.

It is the practice of the Department to give notice of such applications to allow other airlines the opportunity to file comments on the proposed transfer.

Such responses to this Notice must be received by April 10, 1992. The should be sent to the undersigned at the following address: U.S. Department of Transportation, 400 Seventh Street, SW., room 6402, P–40, Washington, DC 20590.

We will decide upon further procedures, if any shall prove necessary, upon review of the responses received. We will publish this notice in the **Federal Register.**

Dated: April 1, 1992.

Paul L. Gretch,

Director, Office of International Aviation.

[FR Doc. 92–7923 Filed 4–6–92; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

[Summary Notice No. PE–92–12]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary

is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 27, 1992.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. —, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. C. Nick Spithas, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9704.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on March 30, 1992.

Denise D. Castaldo,

Manager, Program Management Staff.

Petitions for Exemption

Docket No.: 26744.

Petitioner: Interair Parts-Miami, Inc.

Sections of the FAR Affected: 14 CFR 145.35 and 145.37.

Descriptionof Relief Sought: To allow Interair Parts-Miami, Inc., to expand the authority of its certificate to add McDonnell Douglas DC–8 Series Limited Airframe and Powerplant rating. This would be accomplished by grant of an exemption to allow Interair Parts-Miami to use a maintenance facility which is not fully enclosed.

Docket No.: 26787.

Petitioner: Mr. Henry Hayek.

Sections of the FAR Affected: 14 CFR 91.313.

Descriptionof Relief Sought: To allow Mr. Henry Hayek to temporarily operate a U.S.-registered, restricted category Albatross HU–16B aircraft in common carriage operations with 19 commuter seats outside the United States.

Docket No.: 26790.

Petitioner: Casino Express Airlines.

Sections of the FAR Affected: 14 CFR 121.411(a)(6).

Description of Relief Sought: To allow Captain Ken Lord to perform duties as a check airman in selected, specified operations in aircraft simulators or from non-crewmember (i.e. observer) seats on the flight deck without his having a medical certificate as required by the regulation.

Docket No.: 26795.

Petitioner: Becton Dickinson and Company.

Sections of the FAR Affected: 14 CFR 91.169(c).

Descriptionof Relief Sought: To allow certain pilots for Becton Dickinson and Company to deviate from the requirements of the regulation by deriving their alternate weather minimums from a table that has been derived from the standard U.S. operating specifications.

Docket No.: 26160.

Petitioner: Massachusetts Institute of Technology.

Sections of the FAR Affected: 14 CFR 91.319(c).

Descriptionof Relief Sought/ Disposition: To extend Exemption No. 5210 which will permit the Massachusetts Institute of Technology to operate five aircraft having experimental airworthiness certificates and specified in Exemption No. 5210 in a congested airway or over densely populated areas.

Grant, March 20, 1992, Exemption No. 5210A.

Docket No.: 26610.

Petitioner: Flying Boat, Inc., dba Chalk's International Airline.

Sections of the FAR Affected: 14 CFR 91.313(c).

Descriptionof Relief Sought/ Disposition: To permit Chalk's International Airline to conduct air carrier flight crewmember training in their Grumman HU–16B, which holds a restricted airworthiness certificate.

Grant, March 20, 1992, Exemption No. 5428.

[FR Doc. 92–7925 Filed 4–6–92; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Special Committee 166; User Requirements for Future Airport and Terminal Area Communication, Navigation and Surveillance Systems; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix I), notice is hereby given for the fourteenth meeting of Special Committee 166 to be held April 30–May 1, 1992, in the RTCA conference room, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036, commencing at 9 a.m.

The agenda for this meeting is as follows:

(1) Chairman's introductory remarks;

(2) Approval of minutes of the thirteenth meeting held on December 17–18, 1991, RTCA paper no. 126–92/ SC166–85 (previously distributed);

(3) Discussion of EUROCAE Working Group 41 activity on Surface Movement Guidance and Control Systems;

(4) Reports on action items assigned during the thirteenth committee meeting;

(5) Discussion of Cardion comments on seventh draft of committee draft, RTCA paper no. 217–92/SC166–87 (enclosed);

(6) Discussion of Boeing Defense and Space Group comments on seventh draft of committee report, RTCA paper no. 218–92/SC166–88 (enclosed);

(7) Report by Chairman of Transition/ Economics Working Group activity;

(8) Review of material for inclusion in the eighth draft of the committee report; (a) Bibliography; (b) Conclusions and recommendations; (c) Other;

(9) Assignment of tasks;

(10) Other business;

(11) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 30, 1992.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 92–7927 Filed 4–6–92; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Special Committee 168; Lithium Batteries; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub.L. 92–463, 5 U.S.C., appendix I), notice is hereby given for the sixth meeting of Special Committee 168 to be held April 28–29, 1992, in the RTCA conference room 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036, commencing at 9:30 a.m.

The agenda for this meeting is as follows:

(1) Chairman's introductory remarks;

(2) Approval of the summary from the fifth meeting, RTCA paper no. 201–92/ SC168–31;

(3) Technical presentations;

(4) Review EUROCAE WG–39 activity;

(5) Working group report;

(6) Review of draft material from task assignments;

(7) Assignment of tasks;

(8) Other business;

(9) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 30, 1992.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 92–7926 Filed 4–6–92; 8:45 am]

BILLING CODE 4910–13–M

Intent to Rule on Application to Impose a Passenger Facility Charge (PFC) at Baltimore-Washington International Airport, Baltimore, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at Baltimore-Washington International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before May 7, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Washington Airports District Office, 101 West Broad Street, suite 300, Falls Church, Virginia 22046.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Theodore E Mathison, Administrator of the Maryland Aviation Administration at the following address: Post Office Box 8766, BWI Airport, Maryland 21240–0766.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Maryland Aviation Administration under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Robert B. Mendez, Manager, Washington Airport District Office, 101 West Broad Street, suite 300, Falls Church, Virginia, (703) 285–2570. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at Baltimore-Washington International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 10, 1992, the FAA determined that the application to impose a PFC submitted by Maryland Aviation Administration was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 2, 1992.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: September 1, 1992.

Proposed charge expiration date: August 31, 2002.

Total estimated PFC revenue: $144.0 Million.

Brief description of propose projects: Expansion of BWI Fire/Rescue Facility, Runway 10/28 Extension, Terminal Roadway Improvements.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135 Operators-Charter Carriers and Air Taxis.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Maryland Aviation Administration.

Issued in Jamaica, New York on March 26, 1992.

Louis P. DeRose,

Manager, Airports Division, Eastern Region.

[FR Doc. 92–7924 Filed 4–6–92; 8:45 am]

BILLING CODE 4910–13–M

Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at John F. Kennedy International Airport (JFK), Jamaica, NY; LaGuardia Airport (LGA), Flushing, NY and Newark International Airport (EWR), Newark, NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at JFK, LGA and EWR Airports under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before May 7, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: New York Airport District Office, 181 South Franklin Ave., rm. 305, Valley Stream, NY 11581.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Stanley Brezenoff, Executive Director of the Port Authority of New York and New Jersey following address: One World Trade Center, rm. 64W, New York, NY 10048.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Port Authority of New York and New Jersey under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Philp Brito, Manager, New York Airport District Office, 181 South Franklin Ave., rm. 305, Valley Stream, NY (718) 553–1882. The applications may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the applications to impose and use the revenue from a PFC at JFK, LGA and EWR Airports under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 23, 1992, the FAA determined that the applications to impose and use the revenue from a PFC submitted by The Port Authority of New York and New Jersey was substantially

complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the applications, in whole or in part, no later than June 27, 1992.

The following is a brief overview of the applications.

Level of the proposed PFC: $3.00.

Proposed charge effective date: September 1, 1992.

Proposed charge expiration date: August 31, 1992.

Total estimated PFC revenue: $6.415 billion.

Brief description of proposed project(s):

JFK/LGA Automated Guideway Transit/Initial Phase

JFK/LGA Automated Guideway Transit-Implementation

—Phase I

—Phase II

JFK Passenger Distribution System Second Grand Central Parkway to LGA Flyover

EWR Fixed Guideway Transit/Other Ground Access Improvements—Initial Phase

EWR Fixed Guideway Transit/Other Ground Access Improvements—Initial Implementation

EWR Automated People Mover.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air taxis, except commuters air carrier.

Any person may inspect the applications in person at the FAA office listed above under **"FOR FURTHER INFORMATION CONTACT"** and at the FAA regional Airports office located at: Fitzgerald Federal Building, rm. 331, John F. Kennedy Int'l Airport, Jamacia, NY 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the applications in person at the Port Authority of New York and New Jersey.

Issued in Jamacia, NY on March 26, 1992.

Louis P. DeRose,

Manager, Airports Division, Eastern Region.

[FR Doc. 92-7915 Filed 4-6-92; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Jackson, Lawrence and Craighead Counties, Arkansas.

FOR FURTHER INFORMATION CONTACT: H.C. Wieland, Division Administrator, Federal Highway Administration, 3128 Federal Office Building, Little Rock, Arkansas 72201; or Johnny McLean, Ecologist, Environmental Division, Arkansas State Highway and Transportation Department, Post Office Box 2261, Little Rock, Arkansas 72203, Telephone (501) 569-2281.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Arkansas State Highway and Transportation Department, will prepare an EIS on a proposal to construct U.S. Highway 67 as a four-lane, divided, fully controlled access facility located on new alignment with a four-lane connection to Jonesboro, Arkansas. This facility would serve northeast Arkansas, including Clay, Craighead, Greene, Jackson, Lawrence, Poinsett and Randolph Counties.

The proposed roadway lies east of existing U.S. Highway 67 and extends northward from Newport to Walnut Ridge with four alternative corridors and varying termini and connections being considered. The project would increase regional mobility by eliminating speed reductions and time delays, upgrade intrastate travel by providing a more direct route from Little Rock to Walnut Ridge and Jonesboro northward, and encourage further economic development in this part of the state. Approximate length of the project is 38 miles.

U.S. Highway 67 totals more than 1,500 miles, beginning in Presidio, Texas and extending northeasterly across Arkansas through Texarkana, Little Rock and Corning before terminating near Clinton, Iowa. This highway serves as a major commercial route for movement of agriculture and manufactured products to and from the Newport, Walnut Ridge and Jonesboro areas. Additionally, the seven counties in the project study area exhibited population increases from 1975 to 1985 and as expected, road usage also increased during this period.

The planning study recommended that four alternative corridors be consider for this project with termini including State Highway 18 near Newport and a variable point near U.S. Highway 63 between Walnut Ridge and Jonesboro. The preferred alternative would be built by the staged construction method and would have a four-lane cross-section with full access control.

Alternatives to be considered are:

1. The "Do-Nothing" Alternative where roads are constructed according to the regional plan with the exception of the proposed facility.

2. The "Reconstruction" Alternative where roads on the regional plan are upgraded to handle traffic forecast for the proposed facility.

3. The "New Location" Alternative considering several different alignments.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state and local agencies and to private organizations, including conservation groups and groups of individuals who have voiced opposition to the project in the past and to major Arkansas newspapers. Also, a series of public involvement sessions will have been held in a mobile trailer situated directly in the areas to be affected. In addition, a public hearing and a formal scoping meeting will be held. Public notice will be given of the time and place of the hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: March 26, 1992.

Carl Kraehmer,

Environmental and Design Specialist, Little Rock, Arkansas.

[FR Doc. 92-7919 Filed 4-6-92; 8:45 am]

BILLING CODE 4910-22-M

Maritime Administration

Revised Voluntary Tanker Agreement

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: The Maritime Administration (MARAD) is advising the public concerning the status of the Revised Voluntary Tanker Agreement (Agreement), providing a notice of legislation affecting the Agreement, listing the companies participating in the Agreement, and inviting additional tanker owners and charterers to join the program.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Nevel, Office of National Security Plans room P1–1303, U.S. Department of Transportation, Maritime Administration, 400 Seventh Street SW., Washington, DC 20590. (202) 366–5900.

SUPPLEMENTARY INFORMATION: Under the authority of section 708 of the Defense Production Act of 1950 (DPA), as amended (50 U.S.C. app. 2158), MARAD is the sponsor of the Agreement whereby tanker owners and charterers agree with MARAD to make available tankers and tanker space when needed for the national defense. The text of the Agreement was published in the **Federal Register** on August 25, 1983 (48 FR 38716). All voluntary agreements must be reviewed and approved by the Attorney General every two years. On July 25, 1991, the Attorney General, after consultation with the Chairman of the Federal Trade Commission, made the statutory findings and authorized the renewal of the Agreement for two years.

On August 17, 1991, Public Law 102–99 extended the expiration date of the DPA and amended section 708 of the DPA pertaining to voluntary agreements. The amendments simplify and improve administration of voluntary agreements, and clarify the legal protection provided through the antitrust defense available to participants when developing or carrying out a voluntary agreement or a plan of action. Section 708 was not affected by the expiration of the other provisions of the DPA on March 1, 1992.

MARAD is writing directly to each signatory to the Agreement in order to provide highlights of changes to section 708, as well as an amendment to the company's signed Agreement reflecting that the participant will comply with the statute as changed.

Each company named below has signed the Agreement:

American Heavy Lift Shipping Co., Houston, TX
American Maritime Transport, Inc., Tarrytown, NY
Amoco Transport Company, Chicago, IL
Arco Marine, Inc., Long Beach, CA
Bay Tankers, Inc., Englewood Cliffs, NJ
Chevron Shipping Company, San Francisco, CA
Cove Maritime Companies, Inc., Mobile, AL
Exxon Corporation, New York, NY
Keystone Shipping Company, Philadelphia, PA
Marine Transport Lines, Inc., Secaucus, NJ
Mobil Shipping and Transportation Company, New York, NY
Mormac Marine Transport, Inc., Stanford, CT
OMI Corporation, New York, NY
OSG Bulk Ships, Inc., New York, NY
Phillips Petroleum Co., Bartlesville, OK
Sabine Towing and Transport Co., Inc., Groves, TX
Sun Transport, Inc., Aston, PA
Texaco, Inc., White Plains, NY
West Coast Shipping (Union Oil Company of California), Los Angeles, CA

All other U.S. companies which own, operate, or charter tankers and ocean going tugs and tank barges are invited to participate in the Agreement. Copies of the Agreement and the Application Form will be sent on request.

By order of the Maritime Administration.
Department of Transportation.
Dated: March 31, 1992.

James E. Saari,
Secretary, Maritime Administration.

[FR Doc. 92–7871 Filed 4–6–92; 8:45 am]
BILLING CODE 4910–81–M

National Highway Traffic Safety Administration

[Docket No. 91–07, Notice 2]

Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs)

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice presents revised model specifications for the performance and testing of breath alcohol ignition interlock devices (BAIIDs). These devices are designed to prevent a driver from starting a car when the driver's breath alcohol content (BrAC) is at or above a set alcohol level. These devices are currently being used in connection with sanctions for Driving While Intoxicated (DWI) in a number of States. Persons required to use BAIIDs are under court supervision. NHTSA published its proposed model specifications for BAIIDs in the **Federal Register** on April 24, 1991 (56 FR 18857). The model specifications adopted below have been revised in response to comments received about the April 1991 model specifications.

DATES: This notice becomes effective on April 7, 1992.

FOR FURTHER INFORMATION CONTACT: Dr. James F. Frank, Office of Program Development & Evaluation (NTS–30), National Highway Traffic Safety Administration, 400 Seventh St. SW., Washington, DC 20590, Telephone: (202) 366–5593.

SUPPLEMENTARY INFORMATION: On April 24, 1991 (56 FR 18857), the National Highway Traffic Safety Administration (NHTSA) issued a notice and request for comments on proposed "Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs)." These devices are breath alcohol test instruments designed to allow a vehicle ignition switch to start an engine when a driver's breath alcohol concentration (BrAC) is below an alcohol setpoint; conversely, the devices are designed to prevent a driver from starting a car when the BrAC is at or above the alcohol setpoint. These model specifications were proposed for use by State and local governments.

An explained in the April 1991 notice, a number of States have passed laws authorizing the use of "certified" breath alcohol ignition interlock devices, and the responsibility for developing certification standards and test procedures has fallen to various agencies within these States. Consequently, a number of States and manufacturers of these ignition interlock devices have requested that the Federal Government develop and issue standards for certifying these devices. These requests have been based, at least in part, on the concern that an economic hardship might be placed on manufacturers of these devices if they were faced with having to meet numerous different State standards and test requirements.

NHTSA has considerable experience in the breath alcohol test measurement area. On November 5, 1973, the agency issued standards and test procedures for evidential breath test devices (38 FR 30459), and on August 19, 1975, the agency issued standards and test procedures for calibrating units for breath alcohol testers (40 FR 36167). The agency converted both of these standards to model specifications on December 14, 1984 (49 FR 48854). NHTSA believes that the issuance of model specifications and test procedures for breath alcohol ignition interlock devices would serve to encourage a degree of consistency among the States while at the same time provide sufficient flexibility for States to address their individual needs or legislative requirements. These model specifications and test procedures have been drafted in such a way to enable States to adopt them with minimal effort.

Interested parties were invited to

submit comments on or before June 24, 1991. Nine comments were received. They included responses from four interested agencies of the state government in California; the City Prosecutor from Phoenix, Arizona; Ms. Angela Joslin of Riverton, Illinois; Mr. S.A. Satya, the president of Autosense International, a BAIID manufacturer; and Dr. Donald Collier and Mr. Richard Freund, both former executives of Guardian Interlock, the other BAIID manufacturer. Dr. Collier and Mr. Freund responded as individuals at the time they wrote their responses, rather than as executives of Guardian Interlock. Four general issues were raised in the comments. They were: (1) The precision/accuracy requirements; (2) the rolling retest requirement; (3) tests at −20°C. to −40°C.; and (4) the calibration stability requirement. Some modifications have been made to the model specifications in response to these comments, as will be explained in more detail below. Additionally, a change has been made in the specifications for radio frequency and electromagnetic interference testing. The substance of this change is also summarized below.

(1) *The precision and accuracy requirements.* The comments received raised the question of whether the precision and accuracy requirements in the model specifications should be made less stringent by allowing for ±0.02% variation rather than a ±0.01% variation within which 90% of the tests must fall. The three commenters associated with BAIID manufacturers (Satya, Collier and Freund) all recommended a less stringent accuracy requirement, because, they argued, the real purpose of the BAIIDs is to prevent driving at high BACs. They claimed that high precision and accuracy requirements at low BACs would complicate the equipment and cause practical problems in their use, as there might be more false positive cases when used under field conditions. The agency agrees with these commenters that the principal purpose of the BAIID is to prevent a driver from operating a vehicle at illegal BACs, and consequently, agrees that it is appropriate to make the requirements slightly less stringent than initially proposed.

Rather than adopting the commenters' recommendations entirely, the agency has decided to reorganize the model specifications and create a two-tiered requirement in which we distinguish between testing under unstressed and stressed conditions. The stressed tests include any test protocol which imposes an environmental or use-related challenge on the BAIID, such as extreme temperatures, voltages, vibrations, or frequent usage. Under such stressed conditions, the model specifications, as adopted in this notice, allow for ±0.02% variation rather than the ±0.01% variation allowed under unstressed test protocols. Under unstressed conditions, the requirement remains the same as proposed, namely ±0.01%.

(2) *The Rolling Retest Requirement.* This item in the proposed model specifications attracted more comments than any other. The concerns raised revolved around two issues: Safety and cost for the manufacturer. The proposed specifications provided that rolling retests would be made at a random time within 5 to 30 minutes after the vehicle start and that a failure with the rolling retest would result ONLY in a recording of that failure on the internal recorder at the time of the failure. It would also lock a user out of the vehicle after five days unless the offender takes the vehicle to an installer for inspection within the five (5) day window. NHTSA believes the rolling retest is the only safe and reasonable way of countering the possibility that a substitute breath sample by another person might be used to circumvent the intent of the BAIID. Only the rolling retest appears to provide a method for controlling such illicit assistance curbside, at least until the time that manufacturers develop some more economical method for identifying the individual providing the sample for test.

In this notice, the agency has adopted the original rolling retest requirement without change, but has provided additional text to ensure that readers understand clearly why it is included and that it does not constitute a safety hazard.

(3) *Tests at −20* °C. to −40 °C. The responses from BAIID manufactures suggested that the technology could not perform adequately at −40 °C. and that use of the tests at these temperatures would have to be met by some system for warming the vehicle interior and sensor. There appears to have been a misreading of the model specifications, which provide that the manufacturer may disconnect the sensor head from the body of the ignition interlock device, so it can be taken to a warmer environment (e.g., indoors) in cold weather conditions. One respondent even suggested that the head can be warmed by being placed inside a coat or jacket against the body. It should be emphasized that the published model specifications do not require that the equipment operate with an internal temperature of −40 °C, but rather that provisions be made which permit it to operate when the ambient temperature is −40 °C. In other words, the head may be removed and warmed and subsequently put back on the −40 °C. device before the actual test is conducted. For completeness, NHTSA has added two temperature levels for testing (− 20°C. and +70 °C.) in the model specification.

(4) *Calibration Stability Requirement.* Respondents currently or previously associated with BAIID manufacturers objected to the requirement that the devices show the ability to hold calibration 15 days beyond the period set by the manufacturer. Instead, they recommended that the BAIID unit incorporate a circuit which would lock out the motorist if he/she did not bring a unit in for calibration within 7 days of a specified date. The agency agrees and has therefore revised the proposed model specifications accordingly.

Regarding RFI testing, a further agency review suggested the need for refinement of the proposed April 1991 requirement (sections 1.7.S, 1.7.T and 4.7). Based on this review, it became apparent to the agency that the best data regarding possible interference effects would be collected in an actual vehicle environment, rather than in a laboratory. Accordingly, the model specifications adopted here require in-vehicle testing for these RFI tests only. Furthermore, the testing specifications have been limited to cellular telephones (the instrument, if any, most likely to be a source of interference). In addition, greater detail has been included in the specifications to ensure the collection of useful data and to protect the laboratory personnel conducting the tests from excessive exposure to emissions from the transmitting cellular telephone.

NHTSA has also made some additional minor changes in wording and emphasis from the model specifications proposed in April 1991 in response to specific suggestions made by a number of the public commenters.

Federalism Assessment. The agency has analyzed this action under the principles and criteria of Executive Order 12612 and has determined that the action does not have any federalism implications that warrant the preparation of a federalism assessment.

In consideration of the foregoing, NHTSA issues the model specifications for breath alcohol ignition interlock devices, as set forth below.

Issued on April 1, 1992.

Michael B. Brownlee,

Associate Administrator, Traffic Safety Programs.

MODEL SPECIFICATIONS FOR BREATH ALCOHOL IGNITION INTERLOCK DEVICES

Purpose and Scope

The purpose of these specifications is to establish performance criteria and methods of testing for breath alcohol ignition interlock devices (BAIID). BAIIDs are breath alcohol sensing instruments designed to be mounted in an automobile and connected to the ignition key switching system in a way that prevents the vehicle from starting unless the driver first provides a breath sample. These devices contain an instrument to measure the alcohol content of a deep lung breath sample. If the measured breath alcohol concentration (BrAC) is at or above a set level the ignition is locked and the vehicle will not start. These devices are currently being used as a court sanction. Drivers convicted of Driving While Intoxicated (DWI) may be required to use these devices on their car under court supervision. These specifications are intended for use in certification testing of BAIID's used under court supervision.

Definitions

D1 Alcohol

Ethanol; ethyl alcohol: (C_2H_5OH).

D2 BrAC

Breath Alcohol Concentration (BrAC) is expressed in percent weight by volume (% w/v) based upon grams of alcohol per 210 liters of breath in accordance with the Traffic Laws Annotated, Section 11–902.1(a) (Supp. 1983). A BrAC of 0.10% w/v means 0.10 grams of alcohol per 210 liters of breath (similarly, the Blood Alcohol Concentration or BAC associated with a BrAC of .10% w/v means .10 grams of alcohol per 100 milliliters of blood; except for the difference in the referenced volume measure—210 liters of breath vs. 100 ml of blood—the referenced grams of ethanol are identical). Alcohol concentrations in either breath or in air mixtures can be expressed in milligrams of alcohol per liter of air (mg/l); to convert mg/l to units of percent weight by volume, multiply by 0.21.

D3 BAIID (Breath Alcohol Ignition Interlock Devices)

These interlock devices are designed to allow a vehicle ignition switch to start the engine when the BrAC test result is below the alcohol setpoint, while locking the ignition when the breath test result is at or above the alcohol setpoint.

D4 Alcohol Setpoint

The Alcohol Setpoint is the Breath Alcohol Concentration at which the BAIID is set to lock the ignition. It should be noted that the alcohol setpoint is the nominal lockpoint at which the BAIID is set at the time of calibration.

Ideally, there should be no occasions when a person with zero BAC is blocked from starting a vehicle engine due to the interlock.

Therefore, to help protect against the response of the alcohol sensor to vapors other than ethyl alcohol, such as tobacco smoke or mouthwash, and the natural production of gases by human subjects, some leeway is necessary at the low end. At the other extreme, a BAC of 0.5% w/v has been shown to produce evidence of behavioral impairment in some individuals, and in some parts of the country (e.g., Colorado and the District of Columbia) 0.05% w/v can be presumptive evidence of impairment and grounds for legal action. The setpoint must be between the limits of .00% and .05%.

With some known exceptions, use of a 0.025% w/v alcohol setpoint should minimize the possibility that users who have not recently ingested alcohol will have trouble starting their engines. A discussion of the rationale for selecting 0.025% can be found in section 4.1. State interlock program developers requiring use of these BAIIDs should be aware that even at BrACs which are lower than many states' mandated "legal limit," some drivers will already have their driving ability impaired.

D5 Breath Sample

The breath sample is normal expired human breath containing primarily alveolar air from the deep lung. See section 4.2 for a more detailed discussion.

D6 Fail-Safe

When the BAIID device cannot operate properly due to some condition (e.g., improper voltage, temperature exceeding operating range, dead sensor etc.) the BAIID will not permit the vehicle to be started.

D7 Tampering and Circumvention

D7.1 Tampering

An overt, conscious attempt to physically disable or otherwise disconnect the BAIID from its power source and thereby allow a person with a BrAC above the setpoint to start the engine.

D7.2 Circumvention

An overt, conscious attempt to bypass the BAIID whether by providing samples other than the natural unfiltered breath of the driver, or by starting the car without using the ignition switch, or any other act intended to start the vehicle without first taking and passing a breath test, and thus permitting a driver with a BrAC in excess of the alcohol setpoint to start the vehicle.

D8 Safety and Utility

D8.1 Safety Feature

Any specification related to insuring that the BAIID will prevent a driver with a BrAC above the alcohol setpoint from driving.

D8.2 Utility Feature

Any specification related to insuring that the BAIID will function reliably and not interfere with driving by operators whose BrAC's are below the alcohol setpoint.

D8.3 Optional Feature

Any specification that is not specifically recommended at this time but may be necessary to include at some future issuance of certification specifications. Non-inclusion at this time is due to lack of evidence that failure to include constitutes a significant problem. Also the optional feature may, if implemented, cause the cost and complexity of the interlock device to rise substantially.

D9 Certification Tests

Tests performed to check the compliance of a product with these specifications.

D10 Stress Tests

Any testing protocol which imposes on the BAIID an environmental or use-related challenge, such as extreme temperatures, voltages, vibrations, or frequent usage.

D11 Filtered Air Samples

Any human breath sample that has intentionally been altered so as to remove alcohol from it.

D12 Device

A breath alcohol ignition interlock device (BAIID).

D13 False Negative

A breath alcohol concentration determination that incorrectly permits a vehicle to be started when the driver's BrAC is at or above the setpoint.

D14 False Positive

A breath alcohol concentration determination that incorrectly prevents the vehicle from being started when the driver's BrAC is below the setpoint.

MODEL SPECIFICATIONS AND TEST REQUIREMENTS

1.0.S/T Safety Specifications (S) and Safety Tests (T)

1.1.S Dual Accuracy and Precision Limits (High End)

The accuracy and precision shall be determined as described in paragraphs 1.1.1.S to 1.1.4.S when tested in accordance with section 1.1.T.

The accuracy specifications for the BAIID will be different depending on the test interventions. Two conditions are recognized: unstressed and stressed.

1.1.1.S Baseline Accuracy in the Unstressed Condition

Following a calibration, and when tested at neutral ambient air temperature (10–30 °C), all BAIIDs shall lock the vehicle ignition 90% of the time when the true alcohol content of the breath sample is 0.01% w/v BrAC (0.01g ETOH/210 liters air) or more above the alcohol setpoint.

1.1.2.S Accuracy After One or More Stress Tests

Following any one or more Stress Tests in which the BAIID is subjected to conditions as specified in Definition D10, the BAIIDs shall lock the vehicle ignition 90% of the time when the true alcohol content of the breath sample is 0.02% w/v BrAC (0.02g ETOH/210 liters air) or more above the alcohol setpoint.

1.1.3.S Standard Deviation (Precision)

The accuracy requirement as specified in 1.1.1.S is equivalent to distributions of test results with a mean equal to the alcohol setpoint (e.g., 0.025% w/v), and a standard deviation equal to 0.0078% w/v BrAC. The accuracy requirement specified in 1.1.2.S is equivalent to a distribution of test results with a mean equal to the alcohol setpoint (e.g., 0.025% w/v) and a standard deviation equal to 0.0156%.

Accordingly, under 1.1.1.S, 0.01% w/v BrAC above the alcohol setpoint (90% criterion) is equal to approx. +1.28 standard deviations. Similarly, under 1.1.2.S 0.02% w/v BrAC above the alcohol setpoint (90%) criterion is equal to approx. +1.28 standard deviations. This value of standard deviation, derived from a table of cumulative normal probabilities can be regarded as equivalent to a one-tailed test of significance, and represent the maximum allowable imprecision under conditions of perfect accuracy. When there is analytic inaccuracy in addition to imprecision, the allowable standard deviation will be lower.

The stable criterion for all test purposes is set as 90% correct test outcomes at .01% w/v above the setpoint for Section 1.1.1.S and 90% correct outcomes for .02% w/v above the setpoint for Section 1.1.2.S.

1.1.4.S Proportions

The safety requirement must specify the proportion of tests at BrACs of .01% w/v or .02% w/v above the alcohol setpoint at which the ignition must be locked. The table below shows the 90% criterion for unstressed and post-stress testing.

TABLE 1.—TEST BRAC LEVEL AT WHICH THE IGNITION MUST BE LOCKED AT LEAST 90% OF THE TIME DEPENDING ON WHETHER TEST IS UNSTRESSED OR STRESSED

Alcohol setpoint	Test BrAC Level (% w/v)	
	Unstressed	Stressed
0.025% w/v[1]	0.035	0.045

[1] Recommended.

Because the values referenced for allowable error (e.g., 90% criterion) are derived from a standard table of probabilities, values could also be specified for any point along the hypothetical normal distribution with mean equal to the setpoint. For example, testing a 99.5% lock criterion (2.57 standard deviations) for the unstressed and stressed tests (by using 0.045% and 0.055% w/v solutions respectively) would have no practical value because a real test of the criterion would require at least 200 repetitions in order to reliably detect 1 failure. Therefore all testing as specified in 1.1.T is referenced to a 90% lock certainty, requiring, as will be noted below, 20 test repetitions for which there may be no more than 2 failures.

A matrix of safety test requirements as specified in Appendix A shall be required for full certification of an interlock device. Accuracy of thermometers used to monitor simulator temperature and the purity of alcohol used shall be traceable to the National Institute of Standards and Technology (formerly National Bureau of Standards). All test reports must clearly specify the equipment used, the manufacturer, model number and calibration dates.

A qualified testing laboratory, chosen by a state to conduct these certification tests, shall be capable of establishing their own procedures. For reference, however, Appendix B contains the list of equipment, setup procedures for testing, and a protocol for mixing alcohol test solutions.

1.1.T Accuracy/Precision Tests (High End)

Two sets of criteria apply to the test outcome, depending on whether the BAIID had recently been subjected to a stress test. Paragraph 1.1.1.T specifies the criteria for the unstressed tests, paragraph 1.1.2.T specifies the criteria for the stress tests.

All tests shall be conducted on two different BAIIDs. These will be referred to subsequently as Device A and Device B.

The testing shall be repeated 20 times on device A, and 20 times on device B. Two types of results shall be recorded: pass/fail, and a digital readout. The pass/fail information can be read from the user display on the front of the interlock unit. A three decimal place digital readout of the vapor alcohol concentration senses can be read from the BAIID display, if available, otherwise it shall be taken from an externally connected laboratory test instrument that monitors the BAIID's evaluation of the alcohol concentration of the introduced sample.

1.1.1.T Unstressed Accuracy/Precision Test Specifications (High End)

The baseline accuracy testing is conducted as a measure of the BAIID's ability to hold to or exceed a 90% accuracy criterion when a test solution is .01% w/v above the alcohol setpoint. Accuracy testing with this criterion shall be conducted at room temperature and initially precede all others to ensure that the fundamental operation of the BAIID is initially adequate under no-stress conditions.

If either BAIID fails to lock on more than two occasions in those twenty trials with an alcohol concentration of 0.01% w/v above the setpoint specification, then it has failed the no-stress accuracy test criterion of 90%.

1.1.2.T Stress Accuracy/Precision Test Specifications (High End)

This accuracy testing is conducted in conjunction with all subsequent Stress Tests to be specified in following paragraphs. This test protocol is a measure of the BAIID's ability to hold to or exceed a 90% accuracy criterion when a test solution is .02% w/v above the alcohol setpoint. This test shall be conducted at whatever temperature is called for by the test protocol utilizing the test criterion.

If either BAIID fails to lock on more than two occasions in those twenty trials with an alcohol concentration of 0.02% w/v above the setpoint specification, then it has failed the post-stress accuracy test criterion of 90%.

1.2S Breath Sampling Requirement

All BAIIDs must require that a minimum of 1.5 liters of breath be introduced through the mouthpiece and run through the instrument before the alcohol content is measured. Compliance with this requirement can be determined by testing in accordance with paragraph 1.2.T.

1.2.T Breath Sampling Requirement Tests

The specification stipulates at least 1.5 liters of air be introduced before sampling the alcohol concentration. To determine that the interlock device is sampling alveolar air, spirometric measurement shall be made on both devices A and B at both the minimum acceptable and maximum acceptable delivery pressures as specified by the manufacturer.

If the sampling head of the interlock device is incapable of being fitted with a spirometer at the outlet to collect and measure all of the vented sample, then this test may be conducted in an air tight laboratory box with a transparent viewing window. In such a case, place the interlock in the box (fitted with a power outlet as needed), connect the output of the simulator to the inlet of the interlock via an air-tight feed line, and install a fitting on the vent port in the wall of the box. Connect the spirometer to the vent port. Measure the volume of air escaping from the vent port as an index of the volume of air introduced into the interlock. Record the volume of air when the sample is accepted by the interlock device.

Alternatively, a plastic bag suitably outfitted may be used in place of the box. The suitability of this alternative shall be verified by using a large (one to three liter) calibration syringe to demonstrate that collected volume equals input volume.

Begin Stress Testing Protocols

1.3.S Calibration Stability

All BAIIDs must meet the accuracy requirements set in paragraph 1.1.2.S when tested in accordance with paragraph 1.1.2.T after having been operated according to paragraph 1.3.T for 7 days longer than the period of time specified by the manufacturer in their application for certification. Thus, if the manufacturer intends to require their BAIID be brought in for maintenance and calibration every 30 days, 45 days, or 60 days, this period of time plus 7 more days (or 37, 52, or 67 days respectively), would be used to determine whether the BAIID met the calibration stability requirement.

1.3.1.S Lockout After 7 Days Beyond Service Interval

A BAIID must prevent engine ignition if it has not been recalibrated for a period in excess of 7 days beyond the manufacturer's recommended service interval. A warning must precede lockout when the manufacturer's recommended interval has passed.

1.3.T Calibration Stability Test

After completing all other tests required under section 1, the BAIIDs shall be recalibrated and remain in a fixed location in the testing laboratory for the period of time specified by the manufacturer for regular maintenance and calibration, plus 7 days. The calibration stability testing should proceed under two conditions: alcohol-free and with alcohol present. For nine out of ten test days, the BAIIDs shall be run through 10 test cycles per day using a human breath sample known to contain no alcohol. On the tenth test day, ten tests shall be performed with a known concentration of 0.10% w/v ethanol delivered from a simulator.

The calibration stability regimen shall be repeated five days a week during this interval. For example, if a manufacturer's recommended calibration interval is 60 days, this will require approximately 10 weeks (60+7=67 days) of testing, a total of 500 calibration stability tests. At least 50 of those tests then would be conducted with alcohol. Practically this would involve testing with alcohol once every two weeks.

Before continuing to the next phase of stability testing, the protocol decribed in section 1.3.1.T should be evaluated.

Following the calibration stability regimen, the BAIIDs shall be retested according to the high end accuracy criteria as set forth in 1.1.2.S and the test procedures as set forth in 1.1.2.T. In addition, however, if the BAIIDs pass the accuracy/precision tests according to the criterion of 1.1.2.S (90% accuracy with a test solution .02% w/v above the setpoint), then the devices must then be recalibrated and be able to pass according to the criterion of 1.1.1.S (90% accuracy with a test solution .01% w/v above the setpoint).

1.3.1.T Evaluation of Lockout for Expiration of Service Interval

In the course of conducting the calibration stability regimen, the BAIID must be shown to prevent ignition if it has not been serviced. Determine that the warning signal alerts the user when the service interval expires. Determine that lockout ensues in 7 days.

Return to 1.3.T to continue with the recalibration phase of testing.

1.4.S Power

If the BAIID device is designed to be operated from a 12 Volt DC vehicle battery, then it shall meet the accuracy requirements specified in paragraphs 1.1.1.S to 1.1.4.S when operated within the normal range of automotive voltages of 11 to 16 Volts DC, when tested in accordance with paragraph 1.4.T.

1.4.T Power Test

If the submitted BAIID draws its power from the vehicle battery, then the device shall be subjected to accuracy testing at both the high and low voltages according to the following protocol.

Devices A and B shall be selected and supplied with 11 Volts DC power and then subjected to the test protocol as set forth in section 1.1.2.T for accuracy testing.

Devices A and B shall be selected and supplied with 16 Volts DC power and then subjected to the test protocol as set forth in section 1.1.2.T for accuracy testing.

1.5.S Temperature

1.5.1.S Operating Range

All BAIIDs shall meet the accuracy specifications in paragraphs 1.1.1.S to 1.1.4.S when operated within a temperature range of +85°C to −40°C (+185°F to −40°F) and when tested in accordance with paragraph 1.5.T for their ability to operate properly at low and at high temperatures.

1.5.2.S Note on Extreme Operating Range

The BAIID manufacturer may choose to meet the specifications for temperature extremes (−40°C and +85°C) by having the alcohol sensing unit be removable (e.g., so that it may be kept warm (cool) when the vehicle is expected to be subject to extremely cold (hot) temperatures).

If the removable alcohol test unit is not removed, and as a result is exposed to temperatures outside the manufacturer's recommended operating range, then the BAIID shall fail-safe or the ignition be rendered inoperable.

1.5.T Temperature Tests

The following tests cover both the challenging and extremely challenging operating ranges. See section 2.3.T for warm-up utility tests that can be

conducted in tandem with these temperature stress tests.

1.5.1.1.T −40°C.

Devices A and B shall be temperature stabilized for a period of 1 hr. in an environmental chamber set at −40°C. After the period of temperature stability elapses, the BAIIDs shall be subjected to an accuracy regimen as specified in section 1.1.2 T.

1.5.1.2.T −20°C.

Devices A and B shall be temperature stabilized for a period of 1 hr. in an environmental chamber set at −20°C. After the period of temperature stability elapses, the BAIIDs shall be subjected to an accuracy regimen as specified in section 1.1.2.T.

1.5.1.3.T +70°C.

Devices A and B shall be temperature stabilized for a period of 1 hr. in an environmental chamber set at +70°C. After the period of temperature stability elapses, the BAIIDs shall be subjected to an accuracy regimen as specified in section 1.1.2.T.

1.5.1.4.T +85°C.

Devices A and B shall be temperature stabilized for a period of 1 hr. in an environmental chamber set at +85°C. After the period of temperature stability elapses, the BAIIDs shall be subjected to an accuracy regimen as specified in section 1.1.2.T.

1.5.2.T Extreme Conditions Beyond Manufacturers Claimed Accuracy

If the BAIID manufacturer has chosen to meet the specifications for temperature extremes (−40°C and +85°C) by having the alcohol sensing unit be removable (e.g., so that it may be kept warm (cool) when the vehicle is expected to be subject to extremely cold (hot) temperatures), then the fixed or permanently installed portion of the BAIID only shall be exposed to the extreme temperature specification. Then, when the sampling head is reconnected to the device, the BAIID must meet the accuracy requirements as specified in paragraphs 1.1.1.S to 1.1.4.S when tested in accordance with paragraph 1.5.T. This testing shall be conducted promptly following reconnect so as not to allow the sensor to become equilibrated to the chamber temperature. Warming of the sensor is acceptable between trials if necessary to meet the specification.

If the sampling head is not removable and the temperature range within which the BAIID is claimed to operate properly is narrower than that provided for in paragraph 1.5.1.S then at the extreme temperatures outside the range specified by the manufacturer, the BAIID shall fail-safe.

1.6.S Vibration

All BAIIDs shall meet the accuracy requirements specified in paragraph 1.1.1.S to 1.1.4.S after they have been subjected to the vibration tests in accordance with paragraph 1.6.T.

1.6.T Vibration Stability Test

These tests are performed to determine BAIID fitness for the automotive environment. If the BAIID consists of more than one module, it will be necessary to shake each module separately. Before testing inspect housing thoroughly for cracks.

1.6.1.T Test 1

Subject device A to simple harmonic motion having an amplitude of .38 mm (0.015 in.) [total excursion of 0.76 mm (0.030 in.)] applied initially at a frequency of 10 Hz and increased at a uniform rate to 30 Hz in 2.5 minutes, then decreased at a uniform rate to 10 Hz in 2.5 minutes.

1.6.2.T Test 2

Subject device B to simple harmonic motion having an amplitude of 0.19 mm (0.0075 in.) [total excursion of 0.38 mm (0.015 in)] applied initially at a frequency of 30 Hz and increased at a uniform rate to 60 Hz in 2.5 minutes, then decreased at a uniform rate to 30 Hz in 2.5 minutes.

1.6.3.T Variations

Perform the vibration tests as described in paragraphs 1.6.1.T and 1.6.2.T in each of three directions, namely in the directions parallel to both axes of the base and perpendicular to the plane of the base.

1.6.4.T

Repeat the test protocol for accuracy as specified in 1.1.2.T for both BAIIDs. The BAIID shall meet the accuracy requirements as specified in section 1.1.2.S.

1.6.5.T

After the vibration regimen, inspect both BAIIDs to identify any cracks in the exterior casing and failures in the tamper-proof points of interface with the automotive environment. If cracks or failures are identified, then the test unit fails. The manufacturer shall be allowed to submit subsequent devices for this test phase, but no more than 1 of 6 shall be allowed to fail this phase.

1.7.S Radio Frequency (Electromagnetic) Interference (RFI)

Radio frequencies generated inside the vehicle have the potential to interrupt signal processing, or sample evaluation at the BAIID.

The BAIID shall be accurate according to the specifications set forth in Section 1.1.2.S. and tested according to Section 1.1.2.T when exposed to radio frequencies generated by common in-vehicle appliances, such as CB radios or cellular telephones.

It should be noted that full characterization of RFI susceptibility of BAIID is beyond the scope of this effort. The following protocol shall be implemented as a limited test for whether intentionally generated RFI interferes with BAIID performance.

1.7.T RFI Testing Protocol

In an actual vehicle in which a BAIID is installed, the sampling head of the BAIID shall be connected to the alcohol-air delivery tube in preparation for testing according to the specifications as set forth in Section 1.1.2.T. The sampling head of the BAIID shall be positioned so that it is adjacent to (within 2 cm), but not touching, any BAIID electronics processing unit which is mounted inside the vehicle on or under the dashboard.

The antenna of a transportable cellular telephone with an output power of not less than 3 watts shall be placed within 5 cm of the sampling head/box of the BAIID. A telephone number shall have been keyed into the cellular telephone. The alcohol sample shall be introduced into the BAIID concurrent with the issuance of a "send" signal to the telephone.

During each cycle while the BAIID is evaluating the alcohol sample, and while the telephone continues to transmit, the antenna of the telephone shall be positioned in one of three orthogonal (i.e. 90°) orientations in relation to the BAIID. All three orthogonal orientations shall be tested.

In order to ensure the safety of the individual conducting the tests, these tests shall not be run more than six (6) minutes in any given one hour period (see American National Standard Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 300 kHz to 100 GHz, approved by the American National Standards Institute on July 30, 1982). Additionally, it is an appropriate rule of thumb for the test lab personnel to make sure their eyes (as well as the rest of their bodies) are kept at a distance of at least 30 cms. from the transmitting antenna during the tests.

The performance of the BAIID shall be evaluated according to the criteria of 1.1.2.T. The performance of the data recorder shall be determined to accurately reflect the test results found on the user display of the BAIID.

1.8.S Tampering and Circumvention

The BAIID must provide a method to detect two classes of misuse, tampering and circumvention.

1.8.1.S Tampering

The BAIID must provide a secure method to detect and store the time and date of tampering attempts made by the following means:

1.8.1.1.S

• Interrupting the power source of the interlock device causing it to fail, or to fail to record ignition activity,

1.8.1.2.S

• Vehicle engine starts *not* preceded by a passed interlock test, except during the free restart interval as provided for in 1.9.S.

Information about unauthorized starts that are stored internally shall not be lost when the interlock device is disconnected from the vehicle battery.

l.8.2.S Circumvention

The BAIID must be able to detect, or protect against, illegitimate air samples introduced to the sampling head. Illegitimate samples may be delivered from the following sources:

1.8.2.1.S

• Non-human delivery sources of air samples such as balloons or compressed air containers,

1.8.2.2.S

• Human sources of air samples that are altered through filtration or other means after leaving the mouth,

1.8.2.3.S

• Human sources of air samples provided by anyone other than the driver of the vehicle. This specification does not imply the BAIID be able to detect a unique breath signature, but to preclude curbside assistance to an impaired driver, the BAIID shall require that a second breath test be required once a vehicle has been underway for at least 5 minutes but not more than 30 minutes.

The BAIID must detect or minimize these types of circumvention in accordance with the criteria as specified in paragraph 1.8.T.

1.8.T Tampering and Circumvention Tests

1.8.1.T Tampering

1.8.1.1.T Power loss

The BAIID shall be able to register any external (non-sealed) loss of power. Any attempt to disconnect the BAIID from the vehicle in which it is installed shall be recorded electronically. To conduct this test disconnect external 12 Volt DC power source to the Device A or B and determine that there is a record of power loss noted by the interlock device. This may be noted on a memory chip, or by another indicator which can be detected by the service technician.

1.8.1.2.T Circuit tampering

The BAIID shall be able to register any engine start (whether or not the ignition switch is turned ON) which occurs without passing the BrAC test. This test will require use of an installed BAIID. To conduct this test, it will be necessary to "hotwire" the engine. The procedure for doing this will vary with the type of engine. One example is to attach one end of a wire to the primary side of the ignition coil (coming from the distributor) and the other end to the vehicle battery's positive pole. Then short the appropriate terminals on the starter relay or starter motor to determine if the vehicle is able to be started. If the vehicle starts, shut it off and then repeat this test 3 times on either device A or B.

An interlock device ought to be capable of either preventing a vehicle from being successfully hotwired, or be capable of registering all such successfully completed bypasses of the interlock device. If the installed device fails to achieve either of these criteria and permits circuit tampering, then it fails this test phase.

1.8.2.T Circumvention

1.8.2.1.T Non-human samples

The BAIID shall be capable of detecting or failing 80% of the non-human breath samples introduced through one of the following:

• Mylar balloon.

• Rubber (toy) balloon.

• Compressed air (aerosol can or other source).

The balloons must be large enough to deliver the minimum volume requirement, 1.5 liters. The non-human circumvention test battery shall be conducted in accordance with section 1.1.T, except the sample introduced shall be alcohol-free air introduced through the three air sources identified above. These sources are exemplary and not necessarily the best or only sources suitable for this class of circumvention.

The devices A and B shall each be subjected to this circumvention testing. The criterion of failure in this case is more than two passed tests out of a series of 10. This is not a test of accuracy of alcohol detection, but a test of how well the BAIID can detect air samples that deviate from a normal breath sample.

1.8.2.2.T Filtered samples

BAIIDs shall be capable of detecting of failing 80% of the filtered samples when filtered by either dry or wet filtering systems such as the following:

• Commercial cat litter, silica gel.

• Heated water.

• Approx. 4 ft. or 1.5 meter long Tygon Tube (3/8 "i.d.).

The filtered sample circumvention test battery shall be conducted on both devices A and B in accordance with section 1.1.2.T. In this case all elements of the testing procedure as specified in 1.1.2.T. shall be identical except that the sample shall be filtered by interposing two different filtering systems, in separate tests, between the sample simulator and the interlock device. The dry filter can be composed of any tube packed with a suitable absorbent material, such as those identified above, but in doing so, the technician must keep in mind the constraints of absorbent capacity and the relationship between packing and blowability. For example a 2 ½ inch piece of cardboard tubing (¾ inch diameter) might be used. It might be packed with 12 ounces of commercial cat litter, each end of the tube being stopped with cotton wadding. The wet filter shall ideally consist of water heated to 34 °C in a capped cup fitted with inlet and outlet hoses. The filter device shall be made of common materials that are widely available. For example, a 6 oz. styrofoam coffee cup might be used with ¼ inch rubber or tygon tubing used for inlet and outlet hoses. In the case of use of the 4 ft. long Tygon tubing as a filter, the tube shall be chilled to 0 °C and attached securely to the BAIID mouthpiece before attempting to provide a sample.

1.8.2.3.T Rolling retest to thwart curbside assistance

After passing the test allowing the engine to start, the BAIID shall require a second test within a randomly variable interval ranging from 5 to 30 minutes. During the rolling retest, the retest setpoint shall be .02% w/v higher than the startup setpoint to preclude a false positive test result.

In order to alert the drive that a retest is to be required, a 3 minute warning light and/or tone shall come on. The driver would then have 3 minutes to restest. If the engine is intentionally or accidentally shutdown after the 3 min. warning but before retesting, the retest clock shall not be reset. Retesting takes priority over free restarts (see sect. 1.9). Test that the free restart is not operative when the BAIID is awaiting a rolling retest sample.

The consequences of a failure to take the retest, shall be threefold. First, the refusal to perform a rolling retest shall be flagged and recorded on the data recorder. Second, the BAIID shall warn the driver by a unique auditory or visual cue that the vehicle ignition will enter a lockout condition within a period of 5 days, and that the assignee shall report to the BAIID program monitor promptly. Third, the lockout shall proceed within 5 days.

A retest that is taken as required and subsequently failed shall result in an alert condition that is flagged on the data recorder. The BAIID assignee shall be signalled that the BAIID program monitor must be notified promptly of the violation, the automatic lockout shall proceed.

The test protocol shall determine that both devices A and B are capable of performing according to this specification.

1.9.S Sample-free restart

After a stall, a sample-free restart shall be possible for 2 minutes. This free restart does not apply, however, if the BAIID was awaiting a rolling retest that was not delivered.

1.9.T Sample Free Restart Test

The BAIID shall permit a free restart (no breath sample required) for 2 ±.25 min. Conduct six tests with an alcohol-free sample from either a human or non-human source. Three tests at 1.5 min, three at 2.5 min. Use devices A and B. The BAIIDs shall allow a start without requiring a sample for all of the first three tests, and fail to start without a sample on the subsequent three tests.

1.10.S Data Recording

An active monitoring program will require vehicle use information. A BAIID shall have the capability to record the nature of such use and the test outcomes during the stipulated period. The following kinds of information shall be recorded by the BAIID:

- Efforts to disable the unit.
- Date of vehicle use.
- Time of vehicle use.
- Pass/fail records.
- BrAC levels.
- Starting and stopping of vehicle engine.
- Service reminders issued (date).
- Date service performed.

1.10.T Data Recording Test

Perform test according to manufacturer's instructions. Determine whether readout is satisfactory and understandable. Test to be certain that the BAIID memory remains intact for multiple printouts if desired, or until the service technician chooses to reset/erase the memory.

2.0.S/T Utility Specifications (S) and Utility Tests (T)

2.1.S Dual Accuracy and Precision Limits (Low End)

The accuracy and precision for the utility specification shall be determined in a manner parallel to that described in paragraphs 1.1.1.S to 1.1.4.S except for the test solution of alcohol to be used in the simulator. In the case of the utility specification, as with the safety specification, there is a dual criterion depending on the existence of stress test protocols. No stress test protocols are specifically provided for here in conjunction with utility specifications, since these are not strictly highway safety question. Certifying authorities wishing to conduct stress-involved protocols for the utility specification could conduct them in a parallel fashion to those provided for and beginning in Section 1.3. Nonetheless, a parallel dual set of specifications is proposed here for States wishing to conduct such testing.

2.1.1.S Baseline Accuracy in the Unstressed Condition

All BAIIDs shall allow the ignition to remin locked no more than 10% of the time when the true alcohol content of the breath sample is 0.01% or more below the alcohol setpoint and testing is being conducted under ambient temperatures in the range of 10–30 °C in a newly recalibrated BAIID.

2.1.2.S Accuracy under Stress conditions

Under conditions of stress testing, the BAIIDs shall allow the ignition to remain locked no more than 10% of the time when the true alcohol content of the breath sample is 0.02% w/v or more below the alcohol setpoint.

2.1.3.S Standard Deviation (Precision)

Precision guidelines shall be parallel to those described in Section 1.1.3.S.

2.1.4.S Proportions

This is to specify the proportion of tests at BrACs of .01% w/v and .02% w/v below the alcohol setpoint at which the ignition must be unlocked. The table below shows the 90% criteria of accuracy for unstressed and post-stress testing.

TABLE 2.—TEST BRAC LEVEL AT WHICH THE IGNITION MUST BE UNLOCKED AT LEAST 90% OF THE TIME DEPENDING ON WHETHER TEST IS UNSTRESSED OR STRESSED

Alcohol setpoint	Test BrAC Level (percent w/v)	
	Unstressed	Stressed
0.025% w/v [1]	0.015	0.005

[1] Recommended.

2.1.T Accuracy Testing of Utility Specification (Dual criteria)

All utility tests shall be conducted on the two BAIIDs, devices A and B. Two sets of specifications can apply, but only one of these specifications, the baseline or unstressed protocol (2.1.1.T) is specifically utilized.

2.1.1.T Utility Accuracy Testing of Unstressed BAIID

The accuracy testing is conducted as a measure of the BAIID's ability to hold to or exceed a 90% accuracy criterion when a test solution is .01% w/v below the alcohol setpoint. This test shall be conducted at room temperature and precede all other utility tests to ensure that the fundamental operation of the BAIID is adequate under no-stress conditions after recent recalibration.

The test shall be repeated 20 times on device A, and 20 times of device B. Two types of results shall be recorded, pass/fail, and a digital readout representing the BAIID's evaluation of the alcohol concentration of the introduced sample.

If either BAIID locks more than twice in those twenty trials then it has failed the no-stress accuracy utility test criterion of 90%.

A failure to meet the accuracy criterion shall disqualify the BAIID.

2.1.2.T Utility Accuracy Testing of Stressed BAIIDs

If the certifying authority chooses to conduct tests of the utility specification for stressed BAIIDs, it is recommended that a protocol be followed that parallels those proposed for Stressed BAIIDs beginning in Section 1.3, and that the criteria for evaluation be .02% w/v below the setpoint for 90% unlocked accuracy.

2.2.S Clearance Rates

The BAIID shall permit a test within 3 minutes of a previous test at a BrAC<.05% w/v.

2.2.T Clearance Rate Test

The BAIID shall reset to zero and be ready for a retest within 3 minutes of a previous test at BrAC=.05% w/v.

Test adherence to this criterion by introducing a .05% w/v sample into devices A and B, activate a timer upon receipt of the test result, record the test result. Record the elapsed time before the BAIID indicates a "ready" condition. Repeat this three times for each BAIID.

2.3.S Warm Up

The BAIID shall be ready for operation within 5 minutes of being turned on at −20 °C (−4 °F).

2.3.T Warm Up Test

The warm up period during which the BAIID heats the sensing head shall require no more than 5 min at −20°C (−4°F).

This test can be conducted as part of the environmental chamber tests specified in section 1.5. After stabilization in the environmental chamber at −20°C for 4 hr. activate timer concurrent with activation of the BAIID. Record the time required before receiving a "ready" condition.

2.4.S User's Display

The BAIID shall provide certain types of informational feedback to the driver. These messages include: BAIID readiness for sample, test outcome, and warning messages.

2.4.T User Display Tests

2.4.1.T Operational Modes

Indicators must be plainly visible or clearly audible to the user denoting the following:

- Unit is ON.
- Unit is Ready for Test.
- Unit has Received Acceptable Sample.

2.4.2.T Outcome

Unit must plainly indicate the test results with minimum message of:

- Pass or Fail.

2.4.3.T Warnings

- Unit must be Serviced and Calibrated Soon.

2.5.S Temperature Package

To reach conformance with temperatures below −20 °C or above +70 °C, the manufacturer may make available a mechanism or procedure that can achieve the warm-up (cool-down) needs. This can be accomplished via removal of the sampling head from the vehicle for bringing inside the home, or via provision of a heating jacket, or other procedures.

2.5.T Low Temperature Package Tests

Evaluate manufacturers' proposed procedure for temperatures as low as −40 °C.

2.6.S Altitude

The manufacturer shall place a notice in the BAIID manual and on the device noting that the alcohol sensing unit is more sensitive to ethanol at higher altitudes, and that attempts to start at altitudes higher than that for which the BAIID is calibrated could result in a lockout even when the BrAC is lower than the alcohol setpoint.

2.6.T Altitude Test

The BAIID must provide some written notice to the user of the possibility of a lockout at higher altitude if it is unable to maintain accuracy to ground elevations up to 2.5 km.

3.0.S/T Optional Features Specifications (S) and Optional Features Tests (T)

3.1.S Optional BrAC Display

Knowledge of the relation between drinking and BrAC can be a useful educational tool for motivated users. Therefore it is suggested that states give consideration to whether a BAIID give a BrAC readout to the user—in addition to a mere pass/fail indication—after a test.

3.1.T Optional BrAC Display

Evaluate the adequacy of the display indicator which informs the user of the BrAC test result.

3.2.S Optional Sample Acceptability Criteria at Inlet

To improve circumvention protection, sample evaluation criteria as specified in 3.2.1.S and/or 3.2.2.S may be required. These criteria are noted as optional at this time, but may be necessary in order to eliminate the most commonly identified methods of circumvention. Further discussion can be found in Sec. 6.2.

3.2.1.S Optional Temperature Window of Sample

Imposing a criterion requiring the sample to fall in a range between 32–48 °C will improve rejection of bogus samples at neutral ambient temperatures. Other criteria may need to apply, however, when air temperatures fall outside the neutral range.

3.2.2.S Optional Minimal Pressure of Sample

Filtered samples may suffer pressures losses. A minimal pressure requirement of 12 inches of water will help screen out filtered samples.

3.2.T Optional Sample Acceptability Criteria Test

These optional features, if adopted, will have been tested in tandem with the circumvention test protocols in paragraphs 1.8.2.T. If the acceptability cfiteria are imcorporated into the design of the BAIID, it is expected that fewer bogus air samples will have resulted in a pass condition.

3.3.S Optional Smoke Protection

Tobacco smoke is known to produce false positive results on semiconductor type interlock devices. Smoke from burning fields, a common seasonal event in some rural areas, may similarly be a source of error. Protection of the sampling head from ambient smoke conditions may be necessary under some conditions.

3.3.T Optional Smoke Protection Test

To evaluate the potential of airborne smoke to interfere with the accurate sensing of alcohol, perform testing according to paragraph 1.1.T and/or 2.1.T (depending on the testing authority's interest in safety or utility concerns), in a chamber filled with smoke from burning vegetal substances or similar conditions.

3.4.S Optional Dust Protection

Fine dust can cause problems with electronic equipment by forming conductive bridges. However, of even greater concern with the interlock device is the ability of fine dust to absorb vapors. This is a specification that may be of concern in arid regions, or where there will be BAIIDs installed in construction vehicles. States subject to dust conditions may want to require some kind of a housing that protects the BAIIDs sampling head from exposure to powdery dust. Dust protection is incorporated in the Australian Standards of BAIIDs.

3.4.T Optional Dust Protection Test

If a test for dust protection is required by a state, the certification authority may want to follow the clearly specified test procedure in the Society of Automotive Engineers Recommended Environmental Practices For Electronic Equipment Design—J1211, page 20.122, Sect. 4.5.

3.5.S Optional CB Radio Alert Condition

Under conditions of a failure to take the required rolling retest, or a failure to pass a rolling retest (as provided for in paragraph 1.8.2.3.T), a signal could be transmitted over a restricted CB channel that can be monitored by the police which alerts nearby cruisers that an impaired driver is operating a motor vehicle. This optional feature can be regarded as support for the anti-circumvention feature as described in paragraphs 1.8.2.3.S and 1.8.2.3.T.

3.5.T Optional Alert Conditions Test

No test protocol is proposed.

4.0 Commentary on Safety Specifications

These specifications have been divided into safety and utility specifications. This distinction has been made in the Definitions Section D8. Safety issues are by far the more important and the majority of the testing is devoted to insuring the BAIIDs perform as expected under conditions of normal field use. It is expected that normal field use will involve a wide range of driving and outdoor conditions, as well as having a minimum of 5% of users trying to circumvent or tamper with the BAIID in order to drive while impaired.

The ethanol sensing technology that has been adapted to the automotive environment for BAIID devices is mostly based on the Tagucci semiconductor device. The semiconductor devices are not as specific or stable as evidential field use breath testers. However, the purpose of the BAIID is not to accurately measure in mg/ml the BAC of a driver, but to prevent the person with a high BAC from operating a motor vehicle. For this reason, the specification has allowed greated leeway in the accuracy test criteria, but has also included a protocol for circumvention protection. In the associated technical report strong recommendations are made for a central authority within each State to maintain authoritative programmatic control of the BAIID option.

4.1 Accuracy

With respect to accuracy, these specifications established a range of acceptable performance, especially under so-called "stress" conditions such as temperature extremes, virbration, power variability, etc. For this reason a "double standard" is proposed which is conditional on the recent stress exposure of a test unit. The reasoning for this is as follows.

First, a newly recalibrated BAIID that is not subjected to stress tests ought to be held to a higher standard than one which has been so subjected. Field experience with the installed units using semiconductor technology has shown that there is considerable average error (in the range up to 0.015% w/v) following 60 days of routine field use of a BAIID.

These specifications do not provide for accuracy testing under compound stresses, such as low temperature with low power at high altitude. Rather than proposing tests for compound stresses to accuracy here, the requirement for such tests should rest with the certifying authorities of the States who can best determine their unique situation evaluation requirements. Clearly, northern Rocky Mountain States would be more interested in combined high altitude and low temperature tests than would States in the southeast. Similarly, many questions have not been researched which may prove significant. For example, would a BAIID calibrated for use at high elevation be able to meet the accuracy specification when tested at the coldest temperatures at sea level? These questions are too specific for inclusion in national guidelines, but may be important regionally.

When measuring accuracy and precision of any instrument it should be understood that all measuring devices have a certain natural amount of dispersion of scores around a mean (average) true value. Because of this fluctuation, the setpoint of the interlock device needs to be clearly specified in a way that accommodates this natural variability. In this specification, the worst acceptable deviation under conditions of perfect accuracy have been identified. This allows for inaccuracy and imprecision to trade-off as long as the overall probability of error is lower than the constant specified.

The proposed specifications for interlock devices ostensibly acknowledge three lock points:

- the alcohol setpoint (the nominal lock),
- the virtual lock (90% certainty),
- the near absolute lock (99.5% certainty).

The alcohol setpoint is defined as the interlock device-measured BrAC value at which the ignition will lock.[1] That is, the alcohol setpoint is the BrAC value at which the interlock is set. Due to the inherent variability in these measuring devices, this nominal lockpoint will be the mean of a distribution of true blood or breath alcohol concentration values as determined by evidentiary BrAC equipment. Interlock imprecision is the deviation from that value. The higher the precision of the interlock, the smaller will be the dispersion of true BrAC values around the stipulated alcohol setpoint.

The virtual lock point will be the actual, or true BrAC above which the vehicle must fail to start 90% of the time. The difference between the setpoint and virtual lock values will be a gray area which reflects both imprecision and inaccuracy. The guideline specifies that there should be a maximum permissible standard deviation from the setpoint equal to 0.007% w/v BrAC under conditions of no-stress. Following stress protocols, the maximum permissible standard deviation under conditions of perfect accuracy if equal to .0156% w/v.

The third type of lockpoint is the near absolute lock point and is of theoretical interest only because many hundreds of repetitions would be needed to test it. The near absolute lockpoint is equivalent to +2.57 standard deviations in a normally distributed sample of trials where 99.5%, practically all, start attempts must fail. In the unstressed condition, this would be .02% w/v above the setpoint and .04% w/v above the setpoint in the stressed conditions. The implication of this is that for devices which are tested against the specification (even with its most lax accuracy standard), a person with a BAC equal to .65% w/v—still well below the legal limit of most States—would almost certainly be locked out.

Since the condition of virtual lock is defined operationally as 1.28 standard deviations above the alcohol setpoint, and the absolute lockpoint is 2.57 standard deviations above the setpoint, a brief explanation of standard deviation (sd) is relevant.

Standard Deviation—The standard deviation is a statistical measure of dispersion of a group of scores, it is also referred to as "sd," or "s." The standard deviation is the most common way to express fluctuation around a mean value. For example, repeated measurements with precise instruments result in a much smaller standard deviation than do repeated measures done on imprecise instruments. In the extreme case, if a BrAC measuring device correctly reads .020% w/v for all samples evaluated from a .020% test solution, the mean of the sample is .020%, and the standard deviation is zero.

The standard deviation is the square root of the average deviation of all scores from the mean. Most scientific, financial and programmable calculators

[1] This standard recommends that .025% w/v be chosen as the setpoint.

have a key dedicated to the calculation of the standard deviation. However, it can be hand calculated from the following formula.

$$\sqrt{\frac{\sum x^2 - \frac{(\sum x)^2}{n}}{n-1}}$$

The symbol Σ means to sum up.

That is, square all the raw values (x) and sum up those squares (e.g., Σx^2). Second, sum up all of the raw values and then square that number (e.g., (Σx^2)), and then divide that result by n. Then subtract the second value from the first value. Divide the answer by n-1. The result is the variance. To calculated the standard deviation, take the square root of the variance.

Example—The following 10 raw BrAC values have a mean of 0.0224, and a standard deviation of 0.0016.

.023	.022
.024	.025
.020	.020
.022	.023
.022	.023

If the nominal lock is set at .025% w/v, on average 9 of 10 times a vehicle ought to be able to start when the true BrAC is . 015%, and fail to start when true BrAC is .035%. Because of the instrument limitations, and because there is little evidence that drivers with a BrAC under .01% increase the risk of highway accidents, a nominal ignition lock less than .02% w/v is not warranted.

The State of California has allowed for a lockpoint at 0.03% w/v, the State of New York has specified a lockpoint of 0.02% w/v. The nominal setpoint in this specification is 0.025% w/v. The value 0.025% w/v is midway between 0 and 0.05% w/v, values which are arguably the extremes under which a vehicle always ought to start and never start, respectively. The true performance of the interlock devices will be somewhere between those extremes. However, because the first generation of BAIIDs are not up to the evidential standards for BrAC testing it would be unwise to demand feats of great precision and accuracy from them. The most important consideration in a successful interlock program is the ability of the BAIID to prevent a high BAC person from operating a vehicle, and minimize problems with lawful use of the vehicle, by the offender or family members. There are many reasons why such a wide band of acceptable performance should be adopted at this time. Among these reasons are the following:

- The BAIID will operate in environments with extreme variations, many which will be hostile to electronic sensing equipment,
- The BAIID will not be inspected or calibrated for up to two months even though receiving multiple daily usage,
- BAIID certification studies under controlled laboratory conditions have identified errors in excess of 0.015% under modest stress conditions,
- BAIID semiconductor devices are non-specific detectors of ethanol and can respond to cigarette smoke, various mouthwashes, some endogenously produced human compounds, and probably many things that haven't been identified as yet.

Having provided for a lenient specification with this first issuance of model specifications, it is expected that as the t be emphasized that precision and accuracy, while important, are less important than circumvention and tampering protection.

4.2 Breath or Blood Alcohol Estimation and Sample Requirements

The acronym BAC often refers to both *blood* alcohol concentration and *breath* alcohol concentration. In this document, breath alcohol concentration is designated as BrAC. Because alcohol (specifically ethanol: C_2H_5OH) possesses a high degree of solubility, it is capable of passing readily through biological membranes—such as the cells lining the blood capillaries and lungs—either as a liquid or as a vapor. The first concern in sampling the breath as a way to draw inferences about the blood concentration of alcohol is to be sure that the air sample is drawn from a region of the lungs where the alcohol vapor is in equilibrium with the blood concentration. This requires that the air come from deep within the lungs, so-called alveolar air, or deep lung air. Air from the upper lungs such as the bronchi contains less alcohol than deep, alveolar air.

Virtually all evidential BrAC measurement devices have blowing pressure and/or duration requirements intended to insure a deep lung sample. The purpose of this is to assure that the breath sample is in equilibrium with the circulating blood. Because of the gradual absorption of alcohol and the mixing action of the blood, the ethanol is equally distributed through the bloodstream.

The average vital capacity (exhalable air volume) of healthy adult male human lungs is approximately 4.5 liters of air, and approximately 0.5 liters is exchanged with each breath. The average woman's capacity and normal breath volumes are slightly lower, but the range of human vital capacities varies from 1.8 to 6 liters of air. To insure that the breath sample is alveolar air, the interlock device must require that a minimum of 1.5 liters of air be exhaled before sampling the air for alcohol content. This quantity is selected as a compromise.

4.3 Calibration Stability

The stability specification is added to assure that the performance criteria as noted in the accuracy specification (sec. 1.1.S) can be maintained during the normal duration that the interlock devices will be in use. Some types of breath sensing devices are inherently more stable than others and the stipulated period of stability will help to assure that a user's BAIID will not deviate from the specification during the inter-service interval. This is deemed necessary because considerable drift is possible in the current generation of BAIIDs after repeated use over time.

4.4 Power

The power specification was added to insure that BAIIDs are not prone to allowing a higher proportion of passed tests when the DC power to the BAIID varies within the normal automotive starting system's range of weak or undercharged to overcharged battery voltage conditions. The range stipulated in the specification (sec. 1.4.S) is based on the Society of Automotive Engineer Recommended Practice, Report of the Electronics Systems Committee, definition of the normal range of supply voltages in the automotive environment.

4.5 Temperature

The use of the electronic devices in extreme temperatures can pose a challenge to the capability of an instrument to hold to specifications of accuracy. Therefore, ambient temperatures that are apt to be encountered during a visit to any part of the U.S. should ideally be tested. For example, a resident of a warm southern state may have occasion to travel north in the winter, so when state authorities specify standards they should take into account environmental extremes not encountered inside their own state borders. In extreme temperature situations, the automobile can become a survival tool, so it is important that the interlock be capable of allowing a start under conditions of severe heat and cold when a driver has a permissible BrAC.

One special recommendation is noted in the guidelines for low temperatures. Some cities in Alaska and the north central states (especially, MN, ND, MI,

and MT) have *normal* January low temperature equal to or below the −20°C (−4°F) specification, record cold mornings have been as low as −40°C/F. Appropriately many northern states, and the Province of Alberta, have set −40°C as the lower test limit, while other states have set −20°C as the minimum test specification.

Given the reality of such cold temperatures, the specification as proposed here is −40°C, but the difference between −20° and −40° can place extreme demands on any electronic device, particularly one designed to sample alcohol vapor concentrations. For this reason, Section 1.5.2.S stipulates that manufacturers may make available some kind of provision, such as a prewarming device, that allows the interlock to be brought up to a warmer temperature before the driver attempts to use the BAIID. Manufacturers may also consider providing for a removable sensor head that can be stored in a warmer environment overnight. It is recommended that colder states *insist* on the manufacturers making some provision for cold weather. It should be noted that the SAE Recommended Practices for Electronic Equipment states that "thermal factors are probably the most pervasive environmental hazard to automotive electronic equipment." It identifies the normal vehicle interior heat range as −40°C−+85°C. This specification adopts the SAE range as the recommended range, while offering alternative strategies for compensating for these temperature extremes. Both real world use and testing should also accommodate the physical difficulties of measuring a vapor under such extreme conditions.

An interesting compromise solution to this trade-off between temperature and accuracy was rendered by Alberta which stipulated that if a BAIID was unable to meet the accuracy requirement at 40°C below zero when the samples tested ranged from .01 to .05% w/v ethanol, then the BAIID must be able to lockout 100% of 30 further trials when an ethanol sample concentration is increased to .08% for retest. This embodies an approach to interlock specifications similar to the one outlined here. That is, the specific accuracy of the BAIID, while important, is less critical than the ability of the BAIID to prevent the severely impaired person (e.g. above .08% BrAC) from operating a motor vehicle.

The specific design of the low temperature *fail-safe* mechanism can be left to the discretion of manufacturer. One example, however, is a temperature-sensitive switch that cuts out the ignition circuit when the sampling head temperature is below the operating range of the BAIID.

4.6 Vibration

Vibration is common in all automobiles, and the BAIID ought to be capable of performing after specifiable vibrational exposure. The standard specification for evidentiary breath testers is repeated here as a minimum vibration specification.

4.7 Radio Frequency and Electromagnetic Interference

The proliferation of electronic gadgetry installed inside vehicles in recent years is large and some may have the potential to emit electrical fields which could alter interlock signal processing. This potential problem was identified in 1982 when a few older evidential field breath test units operating in the vicinity of police communications equipment were found to have been disrupted.

The environment of the police cruiser, with its communications equipment, may be an atypical one for the vast majority of interlock users. However, the possibility remains that electromagnetic fields associated with typical cellular telephones or CB radios may contribute to error or malfunction of the BAIID.

The test procedures identified here are designed to assess whether the most commonly used in-vehicle appliances are going to alter the operation of the interlock.

4.8 Tampering and Circumvention

At the current state of development of interlock devices, tampering and circumvention protection is not fully developed. Much of the protection is based more on ensuring the inconvenience of tampering and circumvention rather than the impossibility of it. The highly motivated user generally can, with preplanning, override the standard protection schemes.

4.8.1 Tampering

The tampering protection is designed to prevent easy entry and alteration of the interlock devices, hot-wiring of vehicles, or other non-standard start efforts that seek to preclude a breath test as part of the ordinary startup.

The largest BAIID manufacturer uses a tamper seal on sensitive parts of the BAIID. This tamper seal is a type of sealing tape which apparently cannot be removed without destroying it or making it evident to the service person that entry was attempted. It may be, however, that such tape that could be duplicated and find its way onto an underground market. Conceivably there would be some value to producing a unique tape could not be easily reproduced. There is really no evidence that such a thing occurs now, and therefore it is premature to propose it in the specifications. Nonetheless, it may be of interest at some point.

4.8.2 Circumvention

The requirements for circumvention protection must acknowledge trade-offs between allowing unimpaired drivers to start their vehicles and preventing impaired drivers from doing so. Given the infancy of the technology, a balance of false negatives and false positives [2] needs to be struck that realistically accomplishes the intended purpose of the interlock devices for the majority of users. With that stipulation, the specifications note that 80% of the major known means of circumvention be locked out.

Human breath has an exit temperature close to 34°C (93°F), and is completely saturated with water. The range of pressures of exhaled air ranges up to about 30 inches of water. These and other characteristics of exhaled breath might at some point be usefully applied as restrictions placed on a sample to require that it fall within some range of acceptable elements of a breath signature so as to minimize circumvention from non-human sources. The specification as currently written is not ideal and should be made more stringent as the industry and the technology mature. The optional features as specified in 3.2.S, and discussed in 6.2 address this problem.

Filtration systems are capable of removing alcohol vapors from breath samples. Most filtering systems, however, also remove water vapor, change the temperature or pressure or otherwise change the human breath signature. These changes could be recorded as indices of attempts to use a filter to circumvent the BAIIDs.

The requirement of a rolling retest is directed toward preventing two types of offenses:

- Allowing a pedestrian, or other non-occupant of the moving vehicle, to give the initial breath sample to start the vehicle

[2] It should be noted that a false negative test is one which incorrectly allows the driver to start the car when the BAC equals or exceeds the setpoint. Conversely, a false positive test is one which prevents an engine start when a driver's BAC is legitimately below the alcohol setpoint.

• Preventing vehicle use by someone whose BrAC is still in an ascending phase

In this specification, the rolling retest setpoint criterion is recommended to be .02% w/v higher than the startup setpoint. This is done to reduce the basis for a measurement error claim because of the likely gravity of the consequent sanctions for a failed rolling retest, such as loss of driving privileges for an extended period of time.

It needs to be emphasized again, however, that when a rolling retest is failed there are no immediate sanctions proposed such as flashing lights or horns or other distractions. And therefore there are no threats to the safety of the driver or other motorists resulting from this test protocol. The consequence of failing or failing to take a required rolling retest are all delayed and only involve an auditory or visual cue to the driver. This cue signals the requirement that the user report immediately (within days) to the BAIID program manager and the service technician. The requirement of actually taking a rolling retest would be no more disruptive than routine in-car driving activities such as adjusting an air conditioner or tuning a radio dial. The drivers eyes need not be taken from the roadway.

For a further discussion of rolling retest see paragraph 6.5.

4.9 Free Restarts

The re-test limits were necessary in order to make provisions for mechanical or BrAC-related failures. When vehicles stall, particularly in traffic, or because of faulty mechanical or electrical systems, a quick restart should be available. A driver should not be penalized for having a malfunctioning vehicle. The grace period for restarts should be limited to 2 minutes—adequate time for a restart.

4.10 Data Recorder

A record of vehicle use and interlock test results are believed to be critical to accurate monitoring programs. When such monitoring programs are in place, and when they depend upon the durability and accuracy of a vehicle-use report such as one that can be provided from a memory chip internal to the interlock device, then provisions should be made for preserving the integrity of the data record upon loss of vehicle battery power. To achieve this result may require that the memory chip be provided with continuous internal power from a small battery, one not accessible without breaking a sealed compartment. In this way, a severely non-compliant user would be unable to erase all evidence of misuse from the data record in exchange for what could easily be interpreted as an honest power loss due to a dead battery (in devices that draw power from the vehicle battery). Without some sealed power circuit to the memory, the record would be lost. This is not necessarily the best solution, just one approach.

4.10.1 Recording Efforts to Disable Unit

Interlock units should alert the service technician to tampering attempts through some mechanism that is immediately detectable at the calibration check. Once a tampering attempt is discovered, the technician should examine the unit and all the critical wiring junctions. The attempt, and other pertinent evidence of tampering, should be submitted to court personnel on the appropriate forms.

4.10.2 Recording Vehicle Use

In order for court personnel to effectively monitor the appropriate use of the interlock, a hard-copy report generated by the unit at the time of calibration should contain items of information as noted in the specification.

4.10.2.1 Date

A record of the date demonstrates that the unit is being used by the client. Reports that show a consecutive number of days with no test taken should signal court personnel of an irregularity. The concern to be addressed is the possibility of a client driving a non-interlock equipped vehicle.

4.10.2.2 Time of Day

A record of the time of day along with the date shows the total number of tests taken on any given day and how many tests were taken in a row. This information is useful for evaluating client compliance. For example, a few failed tests with high BrAC followed within a few minutes by a pass could be evidence of circumvention. It is important for program monitors to have some kind of procedure, such as an algorithm that can read the data record, or simply to have BAIID recorders that can flag such occurrences. In the event that multiple tests are taken within a short period of time, the probation officer may need to question the client.

4.10.2.3 Pass Fail

A record of pass and fail attempts can provide a relatively accurate record of alcohol use and compliance. A record with no or few fail attempts could have several meanings, but a test with many fail attempts should be of concern to court personnel. If a client is expected to abstain from drinking, then the test results may be used as a confrontation tool.

4.10.2.4 BrAC Level

BrAC level documentation may be of interest to the probation officer or the alcohol counselor for examining the consumption pattern of the driver. A significant number of failed attempts combined with elevated BrACs demonstrates that the client is not meeting program goals. Many DWI programs for offenders require abstinence, so this information may be used in conjunction with self-reports, and may possibly be used as a means of confronting the client with their behavior.

4.10.2.5 Start and Stop

A record of start and stop times, and perhaps a record of miles traveled would allow for court personnel to observe if the vehicle had actually been driven when a test was successfully completed. Thus, if a client stopped at a bar to drink and left the vehicle idling, a lengthy trip with no miles driven would be recorded. Such a situation should "flag" court personnel to a possible circumvention attempt.

4.10.2.6 Service Reminder

It is recommended that the unit itself have the capability to warn the client of an upcoming calibration check. Such a provision has been stated previously in paragraph 2.4.3.T. A combination of a warning light and/or audible sound during the power-up sequence would be sufficient.

5.0 Commentary on Utility Specifications

5.1 Accuracy

The accuracy specification for utility specifications is important for the convenient operation of the interlock device. In all likelihood, a BAIID that easily passes the accuracy safety specification (high end) will also pass without difficulty the accuracy utility specification (low end). Nevertheless, the acceptability of an interlock program may be damaged if too many legitimate users with legal BACs are prevented from driving. Similarly there are certain climatic or personal safety occasions when any lockout of a zero BrAC driver would be unacceptable. Therefore, this may be of concern to the certifying authority.

Several of the States and/or Provinces have included in their standards a requirement to test for the contaminating influence of things such as mouthwash, coffee, tobacco breath, unburned hydrocarbons, and breath

mints. Some of these items are mentioned as complaints among users of the interlock devices in the California Pilot Program, also some of the State and Provincial testing programs have identified false positives particularly with mouthwashes, and tobacco smoke. The possible influence of these substances should not be regarded as a significant concern, however, when minor precautions are taken. While the influence of such substances on BrAC can be real when introduced in a concentrated, atypical fashion, their influence under normal use conditions should not be a serious concern. Since it is the driver who is inconvenienced by use of such interfering substances, it is in the driver's interest to avoid situations which give rise unnecessarily to false positives.

The type of alcohol-sensing technology used in a BAIID will influence the specificity of measurement. A passive fuel-cell device held in an engine exhaust stream measures about .01% w/v. The semiconductor technology is less specific, and may read higher. The ability of BAIIDs to correctly detect and reject non-ethanol contaminants is adequate but not perfect. It is for these reasons that the alcohol setpoint recommended for adoption not be set below .025% w/v.

On another matter, acetone, an exhalable product of starvation, diabetic ketosis, and a few other medical conditions, has a history of being cited as a source of false positive readings on breath-test devices for alcohol. These too, however, are well-known by forensic specialists as unlikely sources of error for fuel cell and infrared technologies.

5.2 Clearance Rates

The interlock devices should be promptly clear of residual breath alcohol after a failed start attempt. The BAIID should reset to zero and be ready for a retest within 3 minutes providing the BrAC from the previous test was less than or equal to 0.05% w/v. This stipulation is added because a very high reading due to either high true BrAC, or high mouth alcohol, would place an unreasonable burden on the BAIID possibly requiring the addition of a more costly purge blower. The added time that might be required to re-test a person with a BrAC in excess of .05% w/v ranks low in priority of concerns.

5.3 Warm-Up

The breath sample must be evaluated in a fairly constant environment, therefore some time must be allowed for the sampling head to stabilize.

5.4 User Display

As with all electronic devices that must interface with a human, the thoughtful presentation of information can mean the difference between nervous confusion and easy acceptance. In the case of the interlock device, certain pieces of information must be made crystal-clear to the user. As noted in the utility specification, these are: When to blow, when to wait, when to start the vehicle, when an extended lockout condition occurs, when to seek service. These basic functions should be clearly evident to a minimally-trained user.

5.5 Temperature Package

The specification of acceptable temperature extremes is a case where some compromises need to be made. The specification stipulates −40 °C to +85 °C. The range is regarded as the normative range for automobile exposure by the SAE, but forty degrees below zero is not conductive to vapor measurement, and there has been concern expressed that uncommonly high temperatures would require inclustion of costly circuit protections. These extremes are special conditions but they are also apt to occur.

Certification evaluation procedures should be designed around not only device compliance to the specification, but also the possibility of device's exposure to different problems, such as power and/or physical damage through mishandling. For example, at the low end, if a manufacturer allows a sampling head to be brought inside on chilly nights, there ought to be some provision made to ensure that it is safe from impact damage should it be dropped or mishandled.

The vehicle battery could conceivably be used as a source of power for a heating appliance, but this may impose extreme current demands upon batteries that must turn an engine at temperatures below −20 °C. An external portable power source of some kind might be a solution to this problem.

5.6 Altitude

In 1974 it was demonstrated that when a fixed volume of breath is obtained and analyzed at some ambient pressure, alcohol concentration is independent of barometric pressure. However, most of the current BAIIDs make use of a semiconductor sensor where the sensitivity to alcohol is a function of the oxygen concentration, and oxygen *does* decrease as altitude increases. As a result, as altitude goes up (and oxygen concentration goes down), measured BrAC increases.

Failure to meet a utility specification, however, is not a safety-related problem, but for residents of much of the non-coastal western U.S. it could be a source of some inconvenience. Two alternatives may be worthy of consideration.

On one hand, the manufacturer could conceivably adjust the basal sensitivity of the BAIID so that residents of cities above 5,000 feet, such as Salt Lake City, Denver, Flagstaff, Santa Fe etc. are able to start their vehicles without problems. Alternatively, states with high country may want to consider adopting an alcohol setpoint less restrictive than the minimal, such as .03% w/v, so that false positive problems are minimized from the beginning.

6.0 Commentary on Optional Features

6.1 BrAC Display

The manufacturer or the state's own information provided to the user ought to instruct the user on the meaning of BrAC values and the likely relation between quantity of alcohol consumed, BrAC, and the average decay time for a BrAC curve.

Inclusion of such information may well provide an educational service to the user/offender about the relationship between drinks consumed, time since drinking and BrAC.

6.2 Sample Accceptability Criteria

In a NHTSA Technical Report (DOT HS 807 333) issued November 1988, three BAIID manufactureres had their products evaluated at the Transportation Systems Center in Cambridge, MA. In general it was found that the device which requires a temperature criteron be met was most successful in preventing a pass condition following the introduction of air samples from non-human sources; the device which required a minimum pressure requirement be met was most successful in preventing a pass condition following the introduction of filtered samples.

An ideal unit might require a unique breath signature from each stipulated user, however, the costs of such technology could be prohibitive at this time. Nevertheless, a standard which provides for the breath physical characteristics, or other aspects of the stipulated users, could greatly reduce the attractiveness of circumvention strategies which are now generally quite easy to employ.

Protection from tampering and circumvention is the most challenging and potentially the most costly aspect of an interlock device.

6.3 Smoke

Tobacco smoke, or some constituents of tobacco smoke, increase the proportion of false positives detected by semiconductor type alcohol measuring devices. Other sources of smoke may well do likewise, and in the presence of high smoke environments, programs may be affected by this interference. States which have seasonal smoke from burning fields may want to adopt this element of certification testing.

6.4 Dust

Dust is a theoretical source of false negatives, the kind of error that might allow an elevated BrAC to go undetected due to absorption of the alcohol by the dust. Dust is incorporated in the Australian Standard and the certification tests there for invehicle alcohol devices require 5 hrs. exposure to dust. States which are prone to dust devils or dust storms may want to consider inclusion of a dust testing protocol in their standards.

6.5 Alert Conditions

The rolling retest has been adopted as countermeasure for two different types of circumvention as described in paragraph 3.8.2.

A subject of long discussion has been the proper consequences for a failure under conditions of a failed rolling retest. If an impaired driver is identified during a rolling retest there are few safe alternatives that would remove the driver from the road. These alternatives fall into the following general categories

- Alert the police and other drivers sharing the road via a conspicuous signal (lights, horns, etc.) This alternative was considered and rejected as a safety hazard.
- Alert the police via covert transmitted signal. This alternative is good from a safety perspective, but might at this time be difficult from a cost or programmatic perspective.
- Merely warn the driver at the time of the infraction with a unique auditory or visual cue, but upon failure prevent further use of the vehicle after a safe period (e.g., 5 days) has passed. This is the only practical alternative at this time.

Most efforts to warn the public at the time of a failed test using installed equipment such as lights and/or horns would add new safety hazards. The wiring of an additional less alarming signal (e.g., a single light source with a unique characteristic) that would be specific to a failied interlock test may be desirable but would add to costs to the BAIID and require public education costs as well.

If this class of circumvention were deemed prevalent enough to warrant the expense of a surveillance system, it may be that a low cost CB transmitter signal could be designed that would serve an alerting function. A specific signal, possibly one that sweeps across several frequencies, could alert nearby police cruisers or truckers. Alternatively, citizens could provide location and direction to police which, if capable of responding, could investigate.

One of the pervasive problems faced by interlock manufacturers is to design a device that finds a compromise between sophistication and affordability. The main problem of program evaluators is to honestly evaluate a BAIID program as it exists, not a program that may someday exist.

At this early phase in the development of BAIID technology, if the marriage of the device and the program to monitor the device is not thoughtfully conceived and controlled, the future of the technology may be forestalled, and the possiblity of a technical monitoring approach to alcohol-involved highway safety risks abruptly ended. The specification will need to evolve to a more ideal state if the BAIID devices and monitoring programs of today can be shown to warrant such additional development.

APPENDIX A

Certification Test Summary

Section	Test description	BAIID	Comment/purpose
1.1.1.T	Accuracy Tests for Safety Specification—Unstressed	A, B	Unstressed criterion is 90% accuracy at .01% w/v above setpoint; 20 tests, ≥18 must lock.
1.1.2.T	Accuracy Tests for Safety Specification—Stressed	A, B	Stressed criterion is 90% accuracy at .02% w/v above setpoint; 20 tests, ≥18 must lock.
1.2.T	Breath Sampling	A, B	Minimum sample of 1.5 L.
1.3.T	Calibration Stability	A, B	Shall be last test in the series, use daily for duration up to 10 weeks. Test according to ¶ 1.1.2.T at end, then recalibrate and test with ¶ 1.1.1.T.
1.3.1.T	Lockout Evaluation	A, B	BAIID must lockout if not serviced by 7 days after recommended service interval.
1.4.T	Power	A, B	11 and 16 VDC test followed by ¶ 1.1.2.T.
1.5.1.T	Temperature Ranges	A, B	Test according to ¶ 1.1.2.T at −40 °C, −20 °C, +70 °C, +85 °C.
1.5.2.T	Temperature Extremes, −40 °C and +85 °C	A, B	Test for manufacturer recommended exceptions to meeting the specification in extreme conditions.
1.6.1.T	Vibration 1	A	10 to 30 to 10 Hz, 5 min., .76mm displacement.
1.6.2.T	Vibration 2	B	30 to 60 to 30 Hz, 5 min., .38mm displacement.
1.6.3.T	Vibration 3	A, B	As above, 3 directions.
1.6.4.T	Vibration 4	A, B	Test by ¶ 1.1.2.T.
1.6.5.T	Post shake inspection	A, B	Search for damage.

APPENDIX A—Continued

Section	Test description	BAIID	Comment/purpose
1.7.T	RFI/EMI	A, B	5 cm from in-vehicle appliance, test with ¶ 1.1.2.T.
1.8.1.1.T	Tampering/Power loss	A, B	Test for interrupt detection.
1.8.1.2.T	Tampering/Circuit	A or B	Test for hotwire or push start detection ability on an installed device.
1.8.2.1.T	Circumvention/Non-human sample	A, B	80% correct criterion, test with ¶ 1.1.2.T.
1.8.2.2.T	Circumvention/Filtered samples	A, B	80% correct criterion, test with ¶ 1.1.2.T.
1.8.2.3.T	Circumvention/Rolling Retest	A or B	Test to determine retest conditions fulfill criteria of 1) retest interval, 2) failed lockout in 5 days.
1.9.T	Sample free restart	A, B	Test internal timer.
1.10.T	Data recorder	A, B	Evaluate output.
2.1.1.T	Accuracy/Precision for Utility Specification—Unstressed	A, B	Basic criterion is 90% correct pass for .01% w/v below setpoint; 20 tests, 18 or more must not lock.
2.1.2.T	Stressed Utility Tests	n/a	No tests proposed, if needed recommend .02% below setpoint at 90% accuracy criterion.
2.2.T	Clearance Rate Test	A, B	Reset time after .05%w/v.
2.3.T	Warm Up Test	A, B	Time to ready at −20 °C, also see test ¶ 1.5.1.T.
2.4.1.T	Display readability	A/B	Note.
2.4.2.T	Display user feedback	A/B	Note.
2.4.3.T	Display warnings	A/B	Note.
2.5.T	Low temperature provisions	A/B	Determine that a provision is made for extremes if criteria of ¶ 1.1.T not met −40 °C.
2.6.T	Altitude	A/B	Warn user.
3.1.T	BrAC readout	A/B	Optional.
3.2.T	Sample acceptability	A,B	Optional.
3.3.T	Smoke	A,B	Optional.
3.4.T	Dust	A,B	Optional.
3.5.T	Alert Conditions	A,B	Optional.

Appendix B

Equipment List

1. *Simulators,* such as National Draeger Mark IIA or comparable, must be used with care to avoid problems due to condensation in transfer lines and to prevent overpressure effects. They shall not be exposed to temperatures below about 20°C or above 34°C except for momentary use. Guidelines for preparation of alcohol solutions are available from the National Safety Council's Committee on Alcohol and Other Drugs. 444 North Michigan Avenue, Chicago, Illinois 60611.

2. *Thermometers* must be traceable to the National Institute of Standards and Technology (NIST). The thermometer used for checking the simulator shall be readable to 0.1°C.

3. *Alcohol,* ethanol, shall be U.S.P. reagent quality absolute or NIST Standard Reference Material.

4. *Temperature Chamber,* such as Thermotron FM35 CHM, may be walk-in type of bench top type.

5. *Shake Table* must be capable of vibrating load of about 4.5 kg (10 lb) through the specified schedule. It shall be programmable.

6. *DC power supply,* such as Hewlett Packard 6023 A or comparable, must be able to deliver the range of automotive voltages specified.

7. *Air syringes,* one 1L and one 3L for one class of spirometric measures.

8. *Spirometer,* approximately 9L capacity.

9. *Leak-tight box,* for collecting vented air, shall be large enough to accommodate BAIID and be fitted with suitable connections for spirometer, mouthpiece, and power to BAIID. Similarly outfitted plastic bag may be used if satisfactory seal and operation can be demonstrated using the air syringe and spirometer.

10. *Evidential breath tester,* such as CMI Intoxilyzer (infrared) and Lion Alcometer SD–2 (fuel cell). Both types may be desirable since the peak accuracy ranges differ.

11. *Hoses,* flexible, various diameters.

12. *Glassware,* class A volumetric for preparation of alcohol solutions.

[FR Doc. 92–7870 Filed 4–6–92; 8:45 am]

BILLING CODE 4910–59–M

Ninth Meeting of the Motor Vehicle Safety Research Advisory Committee

AGENCY: National Highway Traffic Administration (NHTSA), DOT.

ACTION: Meeting announcement.

SUMMARY: This notice announces the ninth meeting of the Motor Vehicle Safety Research Advisory Committee (MVSRAC). The Committee was established in accordance with the provisions of the Federal Advisory Committee Act to obtain independent advice on motor vehicle safety research. At this meeting the Committee will discuss trauma data linkage with the

States, special accident investigations, and door latch integrity. A status report on the recent activities of the Heavy Truck Subcommittee and recommendations of this Subcommittee regarding the evaluation of heavy vehicle brake system performance will also be presented.

DATE AND TIME: The meeting is scheduled to begin at 10:30 a.m. on Tuesday, April 28, 1992, and conclude at 4 p.m. that afternoon.

ADDRESSES: The meeting will be held in room 8334 of the U.S. Department of Transportation Building, which is located at 400 Seventh Street, SW, Washington, DC.

SUPPLEMENTARY INFORMATION: In May 1987, the Motor Vehicle Safety Research Advisory Committee was established. The purpose of the Committee is to provide an independent source of ideas for motor vehicle safety research. The MVSRAC will provide information, advice, and recommendations to NHTSA on matters relating to motor vehicle safety research, and provide a forum for the development, consideration and communication of motor vehicle safety research, as set forth in the MVSRAC Charter.

The meeting is open to the public, but attendance may be limited due to space availability. Participation by the public will be determined by the Committee Chairman.

A public reference file (Number 88–01) has been established to contain the products of the Committee and will be open to the public during the hours of 9:30 a.m. to 4 p.m. at the National Highway Traffic Safety Administration's Technical Reference Division in room 5108 at 400 Seventh Street, SW., Washington, DC 20590, telephone: (202) 366–2768.

FOR FURTHER INFORMATION CONTACT: Mary Coyle, Office of Research and Development, 400 Seventh Street, SW., room 6206, Washington, DC 20590, telephone: (202) 366–5926.

Issued on: April 1, 1992.

George L. Parker,

Chairman, Motor Vehicle Safety Research Advisory Committee.

[FR Doc. 92–7872 Filed 4–6–92; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 91–36; Notice 2]

Determination that Nonconforming 1989 Mercedes-Benz 230TE Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by the Administrator, NHTSA, that nonconforming 1989 Mercedes-Benz 230TE passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by the Administrator of NHTSA that 1989 Mercedes-Benz 230TE passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States that was certified by its manufacturer as complying with the safety standards, and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective as of the date of its publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) (the Act), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined:

"(I) That the motor vehicle * * * is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *."

Petitions for eligibility determinations may be submitted by manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. After it receives a petition, NHTSA publishes notice in the **Federal Register** to solicit comments from interested members of the public. Following close of the comment period, NHTSA reviews the petition and comments, and publishes its determination in the **Federal Register.**

G&K Automotive Conversion, Inc. of Anaheim, California (Registered Importer No. R–90–007) petitioned NHTSA for a determination that 1989 Mercedes-Benz 230TE (Model ID 124.083) passenger cars are eligible for importation into the United States. NHTSA published notice to solicit public comments on the petition on August 22, 1991 (56 FR 41719).

As stated in that notice, G&K claimed in its petition that the 1989 Mercedes-Benz 230TE is substantially similar to the 1989 Mercedes-Benz 300TE (Model ID 124.090), and it submitted information indicating that Mercedes-Benz of North America offered the 1989 Mercedes-Benz 300TE for sale in the United States. This model was manufactured by Daimler-Benz A.G. and was certified as conforming to all applicable Federal motor vehicle safety standards. The petitioner alleged that the 300TE and non-conforming 230TE model vehicles differ "mainly in engine size and minor options which go with it."

G&K submitted information with its petition intended to demonstrate that the 1989 model 230TE, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1989 model 300TE, or is capable of being readily modified to conform to those standards.

Specifically, G&K asserted that the noncertified 230TE is identical to the certified 300TE with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence, etc.*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluids*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials.*

G&K also claimed that the 1989 model 230TE is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) Installation of U.S.-model headlamp assemblies and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims*: Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors*: Replacement of the passenger's outside rear view mirror, which is convex but is not permanently marked with the statement "Objects in mirror are closer than they appear."

Standard No. 114 *Theft Protection*: Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number*: Installation of a VIN plate that can be read from the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems*: Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection*: Installation of a seat belt warning buzzer.

Standard No. 214 *Side Door Strength*: Installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity*: Installation of a rollover valve in the fuel tank vent line between the fuel and the evaporative emissions collection canister.

Additionally, G&K stated that the bumpers on the 1989 model 230TE must be reinforced to comply with the Bumper Standard found in 49 CFR part 581.

One comment was received in response to the notice, from Mercedes-Benz of North America, Inc. ("MBNA"), the U.S. subsidiary of the vehicle's original manufacturer. MBNA stated that it "strongly urges the agency to deny the petition." MBNA acknowledged that in some instances the 230TE can be "easily modified" to conform to Federal standards, but asserted that other modifications will require substantial changes to the vehicle's structural components. It presented arguments with respect to many of the Federal standards. NHTSA invited G&K to comment on these arguments. The discussion below presents MBNA's opinions, and G&K's responses:

Standard No. 103: MBNA took issue with G&K's assertion that the windshield defogging and defrosting systems are identical in the 230TE and 300TE. MBNA stated that three different such systems are available on the 230TE worldwide, and that only one of these, the automatic climate control system placed in U.S. market cars, is certified to meet the standard. In response, G&K stated that its model is equipped with this automatic climate control system.

Standard No. 105: MBNA stated that the 230TE does not have the required brake warning indicator lamp check function, requiring replacement of the instrument wiring and control circuits. G&K responded that the indicator lamp circuit is easily modified at low cost to check the lamp function by turning the key to the "on" position before activating the ignition.

Standard No. 106: MBNA stated that it has no replacement hoses that comply with the standard available as a spare part for the 230TE because of the differences between that vehicle and the U.S. model 300TE. In response, G&K advised NHTSA that it has examined a sample 230TE in its shop and found it to be equipped with hoses that bear the "DOT" symbol, signifying compliance with this standard.

Standard No. 108: MBNA states that the wiring harness of the 230TE does not have the capability to illuminate the side marker lamps and the high mounted stop lamp, and that major changes in the vehicle's wiring will therefore be necessary for compliance. In response, G&K stated that only minor changes must be made in the existing wiring harness to illuminate these additional lamps.

Standard No. 109: MBNA stated that although the tires on the 230TE may be marked with the "DOT" symbol, the requirements of part 574 *Tire Identification and Record Keeping* have not been met with respect to these vehicles. G&K responded that as registered importer, it preforms the tire record keeping functions required under part 574.

Standard No. 208: MBNA stated that the U.S. certified model 300TE that petitioner claims is substantially similar to the 230TE is designed to meet the standard only through the use of a supplemental restraint system that includes a driver side air bag and other components. MBNA further stated that the 230TE does not meet the passive restraint requirements, and that the structural and component modifications that would be necessary for it to do so would be so significant that they disqualify the 230TE from importation. G&K responded that because the 230TE to which its petition pertains is a 1989 model year vehicle, there is no requirement that it be equipped with passive restraints.

Standard No. 210: MBNA stated that the model 230TE has a different seat location to anchorage relationship than the U.S. model 300TE and that this relationship cannot be determined without "H" point measurements and detail drawings which are not available outside of Germany. As a consequence, MBNA asserted that the 230TE cannot be readily modified to meet this standard. G&K responded that it has compared the body parts of the two vehicles containing the seat belt anchorages and found them to be identical. It further characterized MBNA's argument regarding this matter as being vague, and challenged that company to present crash test data showing the effect that the asserted differences in the seat belt anchorages in the two vehicles would have on vehicle safety in the United States.

Standard No. 302: MBNA stated that the 230TE is equipped with upholstery which MBNA has not tested for compliance with the standard. MBNA further stated that contrary to G&K's initial claim, the German DIN standard to which the upholstery conforms is not identical to the U.S. standard because it does not specify a maximum burn rate. G&K responded that it consistently monitors interior materials for flammability in cars that it modified and, when compliance appears questionable, it treats the material with fire retardant. G&K further stated that the DIN standard does not specify a maximum burn rate because DIN officials disagreed with the wording of the U.S. standard with respect to this issue on the theory that "most anything will burn when subjected to a high enough temperature."

MBNA finally noted that G&K failed to address whether the 230TE meets the requirements of the theft prevention standard found in 49 CFR part 541. G&K responded that these requirements have no bearing on whether the 230TE is eligible for importation.

NHTSA has reviewed each of the issues that MBNA has raised regarding G&K's petition. NHTSA believes the additional of symbols, warning light indicators, and side marker lamps to be relatively simple modifications, as they have been performed on thousands of nonconforming vehicles imported over the years. As a consequence, the 230TE appears to be readily capable of being conformed to meet Standards 105 and 108.

With respect to Standards Nos. 103, 210, and 302, MBNA makes the argument that the 230TE is different from the 300TE, and has not been tested or certified to U.S. requirements. G&K

has addressed the comments with respect to each of these standards. The arguments of MBNA fall short of a convincing statement that the 230TE, in fact, does not comply, and, if this is the case, that the noncompliant state is not readily capable of being transformed into a compliant one. Agency experience with a wide variety of Mercedes-Benz models indicates that the requirements of these standards can be easily met by most vehicle modifiers, either by providing proof that the components or assemblies in question are identical to, or provide the performance of, these found in complying vehicles, or by modifying those items to meet these requirements.

As for Standard No. 106, MBNA avers that complying replacement brake hoses are not available for the 230TE, and because of this the vehicle is not substantially similar and cannot be readily modified. G&K's inspection of the vehicle indicates that the vehicle is already equipped with brake hoses that bear the DOT symbol. Therefore, the question of its capability of being modified does not arise. It is irrelevant to the Administrator's determination whether replacement brake hoses are available through authorized Mercedes-Benz spare parts departments.

MBNA's views with respect to Standard No. 109 are that the requirements of part 574 are not met. This argument is irrelevant; as G&K notes, it ignores the fact that Standard No. 109 imposes no recordkeeping requirement on the petitioner.

MBNA reserves its principal objection to petitioner's arguments with respect to Standard No. 208. It argues that the petitioner must certify compliance to the automatic restraint requirements of the standard, and that this potential modification is so significant that it disqualifies the vehicle from importation. MBNA bases its argument on the premise that the petitioner is required to conform a substantially similar vehicle to the standards in a manner identical to the vehicle being compared. NHTSA disagrees with this approach. All that the petitioner is required to do is to bring the 230TE into compliance with Standard No. 208 as it was in effect when the vehicle was manufactured. Thus, it is legally acceptable for petitioner to argue that the 230TE is readily capable of conformance to the non-automatic restraint specifications of Standard No. 208. NHTSA notes, however, that its views pertain to the individual 230TE as the subject of a petition, and that were the registered importer to be the importer of record for quantities of 1989 230TEs, a percentage of them would have to be equipped with automatic restraints in accordance with Standard No. 208 as it was in effect at the time the vehicles were manufactured.

In addition to the arguments with respect to the specific standards, MBNA presented two general views that NHTSA deems worthy of addressing. The first of these is the remark that modifications would be required affecting structural changes "that if done to a U.S. certified vehicle would require recertification under NHTSA regulations governing vehicle alterers." MBNA appears to equate this with a lack of capability of ready modification. Second, it states that because the 230TE is manufactured for many markets other than the U.S. "it is impossible for NHTSA to make an engineering determination that the vehicle is substantially similar without knowing for what country it was produced", and accordingly, any positive finding "must be limited to the country where the original vehicle analyzed by NHTSA was purchased."

As noted in its analyses of MBNA's arguments with respect to specific standards, NHTSA has found some of the comments speculative, and others unpersuasive. Further, it does not agree with either of MBNA's general arguments. Recertification of a vehicle is required by an alterer whose activities go beyond "in addition, substitution, or removal of readily attachable components such as mirrors or tire and rim assembles or minor finishing operations such as painting * * *." There is nothing in the legislative history of the 1988 Amendments that equates capability of ready conversion with readily attachable components. For example, given the complexity of contemporary headlighting and aiming systems, it is debatable whether such are "readily attachable components", yet NHTSA views conversion of a vehicle from one headlighting system to another as one which is readily capable of conformance. Finally, MBNA overlooks the requirement that registered importers must certify to the Administrator that the vehicles they process have been brought into compliance with the standards.

Nor does NHTSA believe that it is "impossible" to make engineering determinations without knowing for what country a vehicle was produced. It believes that all models within a line are substantially similar in structural design regarding integrity of the body, chassis, and seating. It further finds petitioner's arguments persuasive that the 1989 230TE is capable of being readily converted, within the meaning of the statute, to conform to all applicable Federal motor vehicle safety standards.

MBNA also argued, with respect to part 541—Theft Prevention Standard, that Model W124 is classified by NHTSA as a "high theft line", and that the registered importer must therefore inscribe the VIN on 14 vehicle parts of every 230TE imported. This remark is inaccurate because the W124 has not been *per se* classified as a high theft line. Models within that line such as the 260E do bear this classification, but no designation has been made of the 230TE. To the extent that MBNA seeks to include the 230TE under the W124 umbrella, it would appear to admit that the 230TE has the same body and chassis, or is otherwise similar in design within the meaning of "line" as that term is defined part 541. Compliance with part 541 is irrelevant to vehicle eligibility determinations. Part 541 is outside the requirements of the Federal Motor Vehicle Safety Standards and the National Traffic and Motor Vehicle Safety Act, and the capability of compliance with its requirements has no legal bearing on a determination of whether the 230TE is capable of ready conversion to safety standards.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the Form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP #2 (Model ID 124.083) is the vehicle eligibility number assigned to vehicles admissible under this notice of final determination. In the Notice of Final Determination that it published on September 26, 1991 (56 FR 48816) for the 1988 Mercedes Benz 230E, NHTSA identified the vehicle eligibility number for that vehicle as "VSA #66." That number (in the middle column of page 48819) was in error, and should be corrected to read "VSP #1 (Model ID 124.023)."

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1989 Mercedes-Benz 230TE (Model ID 124.083) is substantially similar to a 1989 Mercedes-Benz 300TE originally manufactured for importation into and sale in the United States, certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and is capable of being readily modified to conform to all

applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(iii); 49 CFR 593.8; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: April 1, 1992.

Jerry Ralph Curry,

Administrator.

[FR Doc. 92-7920 Filed 4-6-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: March 31, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0963.

Regulation ID Number: IA-146-81 Final.

Type of Review: Extension.

Title: Installment Method Reporting by Dealers in Personal Property; Change From Accrual to Installment Method Reporting

Description: These regulations describe the procedure in which dealers in personal property may adopt or change to the installment method of accounting from another method of accounting.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Responses: 50,000.

Estimated Burden Hours Per Respondent: 1.

Frequency of Response: Other (on occasion).

Estimated Total Reporting Burden: 50,000 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92-7938 Filed 4-6-92; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 67
Tuesday, April 7, 1992

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).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on April 9, 1992, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board Will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

A. New Business

1. Regulations

a. Update on Negotiated Rulemaking for the Assessment Regulations;

b. Regulations on Nondiscrimination in Lending (Final);

2. Prior Approvals.

a. CoBank Financially Related Services.

Closed Session*

A. New Business

1. Enforcement Actions

Dated: April 3, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92–8114 Filed 4–3–92; 2:10 pm]

BILLING CODE 6705–01–M

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting, Thursday, April 9, 1992

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, April 9, 1992, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Item No., Bureau, and Subject

1—Common Carrier—Title: Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards (CC Docket No. 91–115). Summary: The Commission will consider adoption of a *Report and Order and Request for Supplemental Comment* regarding the handling of credit card calls.

2—Common Carrier—Title: Billed Party Preference for O+ InterLATA Calls. Summary: The Commission will consider adoption of a *Notice of Proposed Rule Making* concerning a petition filed by Bell Atlantic regarding "billed party preference" routing for certain operator-assisted calls.

3—Common Carrier—Title: Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation (CC Docket No. 91–35). Summary: The Commission will consider adoption of a *Second Report and Order* prescribing a compensation amount and mechanism for competitive pay telephone owners that originate interstate access code calls.

4—Private Radio—Title: Amendment of Part 90 of the Commission's Rules Pertaining to End User and Mobile Licensing Information (RM–7407 and RM–7749). Summary: The Commission will consider adoption of a *Notice of Proposed Rule Making* regarding end user lists and mobile licensing modification matters.

5—Private Radio—Title: Amendment of Part 90 of the Commission's Rules to Eliminate Separate Licensing of End Users of Specialized Mobile Radio Systems. Summary: The Commission will consider adoption of a *Notice of Proposed Rule Making* concerning whether to eliminate end user licensing and certain reporting requirements for Specialized Mobile Radio Systems.

6—Managing Director Private Radio—Title: Amendment of Parts 1, 2, 21 and 74 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands (RM–7909). Summary: The Commission will consider adoption of a *Notice of Proposed Rule Making* concerning the processing of applications for use of frequencies in the Multipoint Distribution Service.

7—Mass Media Office of Engineering and Technology—Title: Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service (MM Docket No. 87–268). Summary: The Commission will consider adoption of a *Second Report and Order and Further Notice of Proposed Rule Making* concerning implementation of advanced television broadcasting service in this country.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632–5050.

Issued: April 2, 1992.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–8014 Filed 4–3–92; 10:03 am]

BILLING CODE 6712–01–M

DEPARTMENT OF ENERGY

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

DATE AND TIME: April 8, 1992, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 956th Meeting—April 8, 1992, Regular Meeting (10:00 a.m.)

CAH–1.
Project No. 7728–015, Robley Point Hydro Partners Limited Partnership

CAH–2.
Project No. 9840–007, Appomattox River Water Authority

CAH–3.
Project No. 9222–003, Niagara Mohawk Power Corporation

CAH–4.
Omitted

CAH–5.

*Session closed to the public—exempt pursuant to 5 U.S.C. 55b(c)(8) and (9).

Project Nos. 8433–012 and 013, Town of Londonderry, Windham, Wardsboro, Dummerston and Newfane, Vermont and Ball Mountain Corp.

CAH–6.
Project No. 3218–016, City of Orrville, Ohio
Project No. 4474–024, Borough of Cheswick, Pennsylvania and Allegheny Valley North Council of Governments
Project No. 4675–014, Borough of Charleroi, Pennsylvania, Washington County Board of Commissioners, and Pennsylvania Renewable Resources, Inc.
Project No. 6901–014, City of New Martinsville, West Virginia
Project No. 6902–028, City of New Martinsville, West Virginia
Project No. 6939–016, City of Jackson, Ohio
Project No. 7041–013, Potter Township, Pennsylvania
Project No. 7307–011, City of Grafton, West Virginia
Project Nos. 7568–010 and 7909–011, County of Allegheny, Pennsylvania
Project No. 7660–014, Borough of Point Marion, Pennsylvania
Project No. 8908–015, Borough of Brownsville, Pennsylvania, Washington County Board of Commissioners, and Pennsylvania Renewable Resources, Inc.
Project No. 8990–012, Noah Corporation
Project No. 9042–015, Gallia Hydro Partners

CAH–7.
Project No. 4669–027, Rancho Riata Hydro Partners, Inc.

CAH–8.
Docket No. E–9530–004, Pyramid Lake Paiute Tribe of Indians v. Sierra Pacific Power Company Project Nos. 4161–000, 4162–000, 4163–000, 4164–000, and 6436–000, Sierra Pacific Power Company

CAH–9.
Project No. 1417–036, Central Nebraska Public Power and Irrigation District Project No. 1835–066, Nebraska Public Power District

CAH–10.
Project Nos. 9086–002 and 021, Northwest Power Company

Consent Agenda—Electric

CAE–1.
Docket Nos. ER92–143–000 and EL92–21–000, Florida Power & Light Company

CAE–2.
Docket Nos. ER92–323–000 and ER92–324–000, Appalachian Power Company

CAE–3.
Docket No. EL91–2–001, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

CAE–4.
Docket Nos. ER76–205–011 and ER79–150–019, Southern California Edison Company

CAE–5.
Docket Nos. ER92–236–003 and EL92–13–002, Delmarva Power & Light Company

CAE–6.
Docket No. ER92–183–001, Florida Power Corporation

CAE–7.
Docket Nos. ER86–645–005, ER87–140–003, ER87–159–002 and ER87–160–002, Boston Edison Company

CAE–8.
Docket No. ER91–195–004, Western Systems Power Pool

CAE–9.
Docket No. ER92–33–001, Cincinnati Gas and Electric Company

CAE–10.
Docket No. FA85–71–007, Central Illinois Public Service Company

CAE–11.
Docket No. ER90–159–002, South Carolina Electric & Gas Company

CAE–12.
Docket No. EF92–5171–000, United States Department of Energy—Western Area Power Administration (Salt Lake City Area Integrated Projects)

CAE–13.
Docket No. EL90–42–000, Ohio Power Company v. American Municipal Power-Ohio, Inc.; City of Dover, Ohio; City of Orrville, Ohio; City of St. Marys, Ohio; and City of Shelby, Ohio
Docket No. EL91–1–000, American Municipal Power-Ohio, Inc.; City of Dover, Ohio; City of Orrville, Ohio; City of St. Marys, Ohio; City of Shelby, Ohio; and City of Hamilton, Ohio v. Ohio Power Company and American Electric Power Company, Inc.

Consent Agenda—Oil and Gas

CAG–1.
Docket No. RP92–140–000, Transwestern Pipeline Company

CAG–2.
Docket No. RP89–48–016, Transwestern Pipeline Company

CAG–3.
Docket Nos. TA92–2–31–000, 001 and TA91–2–31–007, Arkla Energy Resources, a division of Arkla, Inc.

CAG–4.
Docket Nos. TA92–1–2–003 and TQ92–1–2–003, East Tennessee Natural Gas Company

CAG–5.
Docket Nos. RP92–137–000 and RP92–108–000, Transcontinental Gas Pipe Line Corporation

CAG–6.
Docket No. RP92–91–000, Columbia Gas Transmission Corporation

CAG–7.
Docket No. RP92–139–000, Northern Border Pipeline Company

CAG–8.
Docket No. RP91–203–008, Tennessee Gas Pipeline Company

CAG–9.
Docket No. RP91–210–007, Tennessee Gas Pipeline Company

CAG–10.
Docket No. RP91–212–004, Stingray Pipeline Company

CAG–11.
Docket Nos. RP92–3–003 and RP90–108–017, *et al.*, Columbia Gas Transmission Corporation
Docket Nos. RP92–2–003 and RP90–107–014, *et al.*, and
Docket No. RP91–161–007, Columbia Gulf Transmission Company

CAG–12.
Omitted

CAG–13.
Docket No. RP92–83–001, Trunkline Gas Company

CAG–14.
Docket No. RP92–18–002, El Paso Natural Gas Company

CAG–15.
Docket No. RP92–84–001, Panhandle Eastern Pipe Line Company

CAG–16.
Docket No. TQ91–7–24–004, Equitrans, Inc.

CAG–17.
Docket Nos. TA92–1–17–002 and TM92–5–17–001, Texas Eastern Transmission Corporation

CAG–18.
Omitted

CAG–19.
Docket Nos. RP87–62–012, 013, and RP86–148–008, Pacific Gas Transmission Company

CAG–20.
Omitted

CAG–21.
Omitted

CAG–22.
Omitted

CAG–23.
Omitted

CAG–24.
Docket No. PL91–2–001, Interstate Natural Gas Pipeline Rate Design

CAG–25.
Omitted

CAG–26.
Omitted

CAG–27.
Docket Nos. RP89–242–000 and ST88–291–000, Tennessee Gas Pipeline Company

CAG–28.
Omitted

CAG–29.
Docket No. PR92–3–000, Southeastern Natural Gas Company

CAG–30.
Docket No. RM83–47–000, Petition of the Process Gas Consumers Group and The American Iron and Steel Institute for the Institution of Rulemaking Proceedings to Investigate and Establish Rules Relating to the Importation of Natural Gas
Docket No. RM83–54–000, Petition of the State of Louisiana Requesting Re-Evaluation of Policy Requiring Rate Base Treatment of Prepayments Made Under Take-or-Pay Contracts
Docket No. RM84–10–000, Market Ordering Conditions in Certificates Issued Under 18 C.F.R. Parts 157 and 284
Docket No. RM85–1–175, Regulation of Natural Gas Pipeline After Partial Wellhead Decontrol
Docket No. RM86–10–000, Procedures for Pipeline Recovery of Take-or-Pay Payments, Take-or-Pay Buy-outs and Contract Reformation Costs
Docket No. RM88–2–000, Generic Approach to Affiliated Entities Test
Docket No. RM88–20–000, Five-Year Take-or-Pay Make-up Provisions in Natural Gas Producer Pipeline Contracts
Docket No. RM88–30–000, Rulemaking to Amend 18 C.F.R. §§ 154.38 and 201.31(b)
Docket No. RM88–24–000, In the Matter of Natural Gas Supply Association

Docket No. RM89–3–000, Petition of the Process Gas Consumers Group, *et al.* for Rulemaking on Cost Allocation and Rate Design
Docket No. RM89–11–000, Petition of the Producer Associations for Statement of Policy on Rate Design

CAG–31.
Docket Nos. RP90–119–010 and RP91–119–006, Texas Eastern Transmission Corporation

CAG–32.
Docket Nos. CP89–1582–000, 002, RP89–49–000, 010, RP90–14–000, RP86–136–000, 007, 023 and CP90–1567–000, National Fuel Gas Supply Corporation

CAG–33.
Omitted

CAG–34.
Docket No. PR91–12–000, Louisiana Intrastate Gas Corporation

CAG–35.
Omitted

CAG–36.
Docket No. GP92–9–000, Arkansas Oil and Gas Commission, Tight Formation Determination, Arkansas–2, Docket No. JD92–01180T

CAG–37.
Docket No. GP92–7–000, Pike County Citizens for Justice v. Ashland Exploration, Inc.

CAG–38.
Docket No. CP91–2315–002, Boston Gas Company

CAG–39.
Docket No. CP91–2394–001, Questar Pipeline Company

CAG–40.
Docket No. CP78–124–019, Northern Border Pipeline Company

CAG–41.
Docket No. CP91–1314–002, Amerada Hess Corporation

CAG–42.
Docket No. CP88–557–002, Koch Hydrocarbon Company

CAG–43.
Docket Nos. CP89–634–014 and RP92–25–002, Iroquois Gas Transmission System, L.P.

CAG–44.
Docket No. CP91–1618–001, Tennessee Gas Pipeline Company

CAG–45.
Docket No. CP92–426–000, South Georgia Natural Gas Company

CAG–46.
Docket No. CP92–404–000, Columbia Gas Transmission Corporation

CAG–47.
Docket No. CP92–355–000, Tennessee Gas Pipeline Company

CAG–48.
Docket No. CP92–299–000, Indiana Utilities Corporation

CAG–49.
Docket No. CP91–2704–000, Blue Lake Gas Company
Docket No. CP91–2705–000, ANR Pipeline Company
Docket No. CP91–2730–000, ANR Storage Company

CAG–50.
Docket No. CP92–171–00, Texas Gas Transmission Corporation

CAG–51.
Docket Nos. CI63–195–001, CI63–901–001, CI64–984–001, CI64–994–001, CI64–995–001, CI64–996–001, CI64–997–001, CI64–1003–001, CI64–1005–001, CI64–1007–001, CI64–1008–001, CI64–1014–001, CI64–1025–001, CI62–463–001, CI62–557–001, CI62–1135–001, CI63–282–001, G–6306–001, G–12834–001, G–18623–001, G–19973–001, G–20564–001, G–6669–001, G–14800–001, G–20154–001, CI63–651–001, CI65–506–001, CI65–1159–001, CI66–142–001, CI66–429–001, CI66–822–001, CI66–1261–001, CI68–1038–001, CI68–1192–001, CI68–1345–001, CI69–313–001, CI70–48–001, CI70–781–001, CI73–154–001, CI73–196–001, CI63–195–001, CI65–1159–001, CI75–643–001, CI75–661–001, CI75–662–001, CI75–704–001, CI76–42–001, CI76–103–001, CI77–745–001, CI78–391–001, CI84–49–000, CI85–676–000 and CI85–677–000, Tenneco Oil Company, TOC-Rocky Mountains Inc., and Amoco Production Company

CAG–52.
Docket No. CP92–183–000, Panhandle Eastern Pipe Line Company

CAG–53.
Docket No. CP90–1978–000, Panhandle Eastern Pipe Line Company
Docket No. CP91–1589–000, Phillips 66 Natural Gas Company

CAG–54.
Omitted

CAG–55.
Docket No. CP92–308–000, Green Canyon Pipe Line Company

CAG–56.
Docket No. CP92–246–000, Peoples natural Gas Company, Division of UtiliCorp United Inc. v. Williams Natural Gas Company and Vulcan Chemicals Division of Valcan Materials Company

CAG–57.
Docket Nos. RP92–74–001 and RP92–143–000, South Georgia Natural Gas Company

CAG–58.
Docket No. MG88–51–004, Transcontinental Gas Pipe Line Corporation

CAG–59.
Docket No. CP89–2107–000, Arkla Energy Resources, Inc.
Docket Nos. CP89–5–000 and 002, CNG Transmission Corporation
Docket Nos. CP88–332–000 and 014, El Paso Natural Gas Company
Docket Nos. CP88–546–000 and 004, Equitrans, Inc.
Docket Nos. CP89–1179–000 and 001, Kentucky-West Virginia Gas Company
Docket Nos. CP88–312–000 and 007, Natural Gas Pipeline Company of America
Docket Nos. CP88–2–000 and 010, Northern Natural Gas Company
Docket Nos. CP89–834–000 and 003, Panhandle Eastern Pipe Line Company
Docket Nos. CP88–473–000 and 004, Southern Natural Gas Company
Docket Nos. CP89–759–000 and 001, Transcontinental Gas Pipe Line Corporation
Docket Nos. CP88–99–000 and 012, Transwestern Pipeline Company
Docket Nos. CP90–235–000 and 001, Williams Natural Gas Company
Docket Nos. CP90–2275–000 and 001, ANR Pipeline Company
Docket No. CP92–220–000, Carnegie Natural Gas Company
Docket No. CP88–25–000, KN Energy, Inc.
Docket Nos. CP90–869–000, Northwest Pipeline Corporation

Hydro Agenda

H–1
Omitted

H–2
Docket No. EL85–42–001, Guy M. Carlson. Order on Rehearing and Late Intervention.

H–3
Project No. 7267–004, Joseph M. Keating. Order on License Application.

Electric Agenda

E–1
Docket Nos. EL87–51–000 and 001, Cajun Electric Power Cooperative, Inc. v. Gulf States Utilities Company
Docket Nos. ER88–477–000 and 001, Gulf States Utilities Company. Order on Rehearing and Initial Decision.

E–2
Docket Nos. EC90–10–006, ER90–143–006, ER90–144–007, ER90–145–006 and EL90–9–006, Northeast Utilities Service Company (Re Public Service Company of New Hampshire). Order on Rehearing.

E–3.
Docket No. EC88–2–008, Utah Power & Light Company, PacifiCorp and PC/UP&L Merging Corporation. Order on Rehearing.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
(A)
Docket No. RM91–11–000, Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations
Docket No. RM87–34–005, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol. Final Rule.

(B)
Docket No. CP90–134–002, Algonquin Gas Transmission Company
Docket No. RP88–45–021, Arkla Energy Resources
Docket No. CP86–311–008, CNG Transmission Corporation
Docket No. RP86–186–000, *et al.*, Columbia Gas Transmission Corporation
Docket No. CP90–1292–003, East Tennessee Natural Gas Company
Docket No. RP89–50–021, Florida Gas Transmission Company
Docket No. CP90–406–005, High Island Offshore System
Docket No. CP89–2047–006, Kern River Gas Transmission Company
Docket No. CP89–174–001, Midwestern Gas Transmission Company
Docket No. CP89–1–014, Mojave Pipeline Corporation
Docket No. CP89–1580–003, Northwest Pipeline Corporation
Docket No. CP90–187–003, Oklahoma-Arkansas Pipeline Company

Docket No. RP89–73–009, Pelican Interstate Gas System
Docket No. CP88–136–028, Texas Eastern Transmission Corporation
Docket No. CP88–686–007, Texas Gas Transmission Corporation
Docket No. CP88–328–008, Transcontinental Gas Pipe Line Corporation
Docket No. RP91–197–002, United Gas Pipeline Company
Docket No. CP90–1874–000, U–T Offshore System
Docket No. CP90–272–007, Viking Gas Transmission Company
Docket No. CP90–706–003, Wyoming Interstate Company, Ltd. Order on Existing Capacity Assignment and Capacity Release Certificates.

(C)
Docket Nos. CP88–433–002, 003, and 004, El Paso Natural Gas Company
Docket Nos. RP89–48–011, 013, 105, CP89–1126–001, 002, RP89–222–005, 006, RP89–254–004, 005, CP88–133–002, 003 and CP89–886–003, Transwestern Pipeline Company
Docket No. TA91–1–86–000, Pacific Gas Transmission
Docket No. CP91–2466–000, Windward Energy & Marketing Company and Pacific Gas & Electric Company. Order on Rehearing Concerning Capacity Brokering.

PR–2.

(A)
Docket Nos. RP88–262–018, 019, CP89–917–007, TA89–1–28–007, TA90–1–28–005, RP88–88–011, 012 and RP91–229–002, Panhandle Eastern Pipe Line Company. Opinion No. 369–A and Order on Rehearing.

(B)
Docket No. RP91–229–003, Panhandle Eastern Pipe Line Company. Order on Rate Design.

(C)
Docket Nos. RP91–229–000 and 001, Panhandle Eastern Pipe Line Company. Order on Rehearing.

(D)
Dockert Nos. RP87–103–012 and CP90–1050–000, Panhandle Eastern Pipe Line Company. Order on Rehearing.

PR–3.
Docket Nos. RP86–119–018, RP88–191–027, RP89–30–003, RP90–122–005, RP91–29–010, RP91–167–996, RP88–228–033, RP88–249–006, RP89–29–003, RP89–149–005, RP89–149–005, RP89–242–004, CP87–115–005, CP89–470–003, TA84–2–9–019, TA85–1–9–011, TA89–1–9–001, TA90–1–9–005, TA91–1–9–003, RP91–16–002, CP87–103–008, RP91–210–000 and CP91–3135–001, Tennessee Gas Pipeline Company. Order on Rehearing and Settlement.

II. Producer Matters

PF–1.
Reserved

III. Pipeline Certificate Matters

PC–1.
Reserved

Dated: April 1, 1992.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92–7996 Filed 4–2–92; 4:35 pm]

BILLING CODE 6717–01–M

FEDERAL ELECTION COMMISSION.

"FEDERAL REGISTER" NUMBER: 92–7764.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, April 9, 1992, 10:00 a.m., Meeting Open to the Public.

The Following Item Is Added to the Agenda:

Rulemaking Petition filed by Congressman William Thomas.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

Delores Harris,

Administrative Assistant.

[FR Doc. 92–8115 Filed 4–3–92; 3:00 pm]

BILLING CODE 6715–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, April 13, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., 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: April 3, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–8116 Filed 4–3–92; 3:01 pm]

BILLING CODE 6210–01–M

INTERSTATE COMMERCE COMMISSION

Commission Conference

TIME AND DATE: 10:00 a.m., Tuesday, April 14, 1992.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, N.W., Washington, DC. 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Docket No. AB 43 (Sub-No. 154X), *Illinois Central Railroad Company—Abandonment Exemption—In St. Tammany Parish, LA.*

Finance Docket No. 28905 (Sub-No. 22), *CSX Corporation—Control—Chessie System, Inc. and Seaboard Coast Line Industries, Inc.* and Finance Docket No. 29430 (Sub-No. 20), *Norfolk Southern Corporation—Control—Norfolk and Western Railway Company and Southern Railway Company.*

CONTACT PERSONS FOR MORE INFORMATION: Alvin H. Brown or A. Dennis Watson, Office of External Affairs, Telephone: (202) 927–5350, TDD: (202) 927–5721.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–8055 Filed 4–3–92; 12:16 pm]

BILLING CODE 7035–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: April 16, 1992 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda of future meetings.
2. Minutes.
3. Ratification List.
4. Petitions and complaints.
5. Inv. 731–TA–525 (Final) (Nepheline syenite from Canada)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 205–2000.

Dated: March 31, 1992.

Kenneth R. Mason,

Secretary.

[FR Doc. 92–8067 Filed 4–3–92; 12:21 pm]

BILLING CODE 7020–02–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, April 14, 1992.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20024.

STATUS: The first two items are open to the public. The last item is closed under Exemption 10 of the Government in Sunshine Act.

MATTERS TO BE CONSIDERED:

5333A—Marine Accident Report: Capsizing and Sinking of the Fish Processing Vessel *Aleutian Enterprise*, in the Bering Sea, March 22, 1990

5689—Recommendations to FAA: Replacement of Obsolete Transformer Coils and Rotating Magnets in Certain Bendix Magnetos and Periodic Inspection and Overhaul of All Aircraft Magnetos
5695—Opinion and Order: Administrator v. Miller, Docket SE–9768; disposition of Administrator's appeal

NEWS MEDIA CONTACT: Telephone (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: April 3, 1992.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 92–8054 Filed 4–3–92 1:43 pm]

BILLING CODE 7533–01–M

SECURITIES AND EXCHANGE COMMISSION:

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of April 6, 1992.

A closed meeting will be held on Tuesday, April 7, 1992, at 3:30 p.m. An open meeting will be held on Friday, April 10, 1992, at 9:00 a.m., in Room 1C30.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, April 7, 1992, at 3:30 p.m., will be:

Opinion.
Litigation matters.
Institution of injunctive actions.
Settlement of injunctive actions.
Settlement of administrative proceedings of an enforcement nature.
Institution of administrative proceedings an enforcement nature.

The subject matter of the open meeting scheduled for Friday, April 10, 1992, at 9:00 a.m., will be:

Consideration of whether to adopt rules governing information to be provided by broker-dealers to customers in connection with transactions in penny stocks. These rules arise pursuant to directives contained in the Securities Enforcement Remedies and Penny Stock Enforcement Act of 1990. The Commission proposed for public comment rules concerning these matters in Securities Exchange Act Release No. 29092 (April 17, 1991), 56 FR 19165. For further information, please contact John Ramsay at (202) 504–2512.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Steve Luparello at (202) 272–2100.

Dated: April 2, 1992.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–7995 Filed 4–2–92; 4:32 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 57, No. 67
Tuesday, April 7, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 81, 176, 177, and 184

[Docket No. 92N-0089]

Food and Color Additives; Generally Recognized as Safe Substances; Technical Amendments

Correction

In rule document 92-7106 beginning on page 10615 in the issue of Friday, March 27, 1992, make the following correction:

On page 10615, in the third column, in the heading **EFFECTIVE DATES**, "March 27, 1991." should read "March 27, 1992."

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-017-4212-10; CACA 16951]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; CA

Correction

In notice document 92-4491, beginning on page 6736 in the issue of Thursday, February 27, 1992, make the following correction:

On page 6736, in the third column, in the land description, under " T. 4N., R. 25E.", in the next line, "W½SE¼SW¼;" should read "W½SW¼SW¼;".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-274-AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

Correction

In proposed rule document 92-6255 beginning on page 9392 in the issue of Wednesday, March 18, 1992, make the following corrections:

§ 39.13 [Corrected]

1. On page 9394, in the first column, in § 39.13(g)(1), the second sentence was printed incorrectly, and should read: "Repairs using blind fasteners must be repetitively inspected for loose or missing fasteners at intervals not to exceed 3,000 flight cycles following installation, and replaced with protruding head solid fasteners within 10,000 flight cycles following installation."

2. On the same page, in the same column, in § 39.13(g)(2):

a. In the second line, "but" should read "must".

b. In the third line, "fastnerships" should read "fasteners".

BILLING CODE 1505-01-D

federal register

Tuesday
April 7, 1992

Part II

Office of Personnel Management
Office of Government Ethics

5 CFR Parts 735, 2633, and 2634

Financial Disclosure, Qualified Trusts, And Certificates Of Divestiture For Executive Branch Employees; Interim Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR PART 735

OFFICE OF GOVERNMENT ETHICS

5 CFR Parts 2633 and 2634

RIN 3209-AA00

Financial Disclosure, Qualified Trusts, and Certificates of Divestiture For Executive Branch Employees

AGENCY: Office of Government Ethics and Office of Personnel Management.
ACTION: Interim rule with request for comments.

SUMMARY: This interim regulation implements provisions of the Ethics Reform Act of 1989 ("the Reform Act") and related legislation pertaining to executive branch employees which modified public financial disclosure requirements and amended the availability of and procedures for certification of qualified blind and diversified trusts.

Additionally, subpart I of part 2634 of this interim regulation establishes, effective October 5, 1992, a revised system of confidential (nonpublic) financial disclosure reporting for certain midlevel employees of the executive branch, pursuant to the Reform Act and Executive Order 12674. Once subpart I becomes effective, this regulation will delete the current executive branch confidential reporting regulation at 5 CFR part 735, subpart D and § 735.106, and agencies' implementing regulations will then be superseded. Agencies should carefully review existing regulations which they may have on both public and confidential financial disclosure to determine whether revocation or modification is required.

DATES: Interim rule effective April 7, 1992, except that subpart I of part 2634 and the amendments to part 735 are not effective until October 5, 1992. Public comments on all aspects of this regulation are welcome and must be received on or before June 8, 1992.

ADDRESSES: Comments on this interim regulation should be sent to the Office of Government Ethics, suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, Attention: G. Sid Smith. Any comments on the reporting requirements in this regulation (as specified below in the "Paperwork Reduction Act" discussion) should also be filed with the Office of Management and Budget, in accordance with the Paperwork Reduction Act. Copies of the various reporting forms noted in the discussion below can be obtained by contacting the Office of Government Ethics.

FOR FURTHER INFORMATION CONTACT: G. Sid Smith, Office of Government Ethics, telephone (202/FTS) 523–5757, FAX (202/FTS) 523–6325.

SUPPLEMENTARY INFORMATION: This document promulgates as interim procedural rule which revises both the public and confidential financial disclosure systems for executive branch employees, pursuant to title I of the Ethics in Government Act of 1978 (Pub. L. 95–521, as amended) ("the Act"). The rule also provides, in the case of executive branch employees, for: (1) Certification of qualified blind trusts pursuant to section 102(f)(3) of the Act; (2) certification of qualified diversified trusts pursuant to section 102(f)(4)(B) of the Act; and (3) approval of eligible persons to act as independent fiduciaries with respect to qualified trusts pursuant to section 102(f)(3)(A) of the Act. Further, the rule implements for the executive branch a new limitation on the reporting requirement for "excepted investment funds" pursuant to new section 102(f)(8) of the Act. These changes are occasioned by the enactment of section 202 of the Ethics Reform Act of 1989 (Pub. L. 101–194) ("the Reform Act"), which amended the Act, along with the 1990 technical amendments (Pub. L. 101–280) and changes in 1991 to the value of gifts required to be disclosed (Pub. L. 102–90); and section 201(d) of Executive Order 12674 of April 12, 1989, as modified by Executive Order 12731 of October 17, 1990.

Synopsis of Changes

The rules revised by this part 2634 of 5 CFR pertain to both the public confidential financial disclosure systems of the executive branch, except as specifically indicated otherwise in the regulatory text. Accordingly, in addition to the specific changes noted below, each subpart of the former part 2634 of 5 CFR has also been modified, as appropriate, to encompass both systems.

Subparts A (general provisions) and B (persons required to file public reports) of this revised part 2634 reflect minor revisions to the Act, which were made by the Reform Act and the technical amendments thereto. Additionally, the Office of Government Ethics has made some modifications to promote understanding.

The major changes to the former part 2634 are contained in subpart C of this regulation, which pertains to contents of disclosure reports. For purposes of the public disclosure system, the Reform Act modified income categories of amounts and thresholds for reporting, categories of amounts for assets, transactions, and liabilities, aggregation rules for gifts, and exceptions for reporting items such as assets of certain investment funds, pension plans, and Government income; these changes have been incorporated herein. Because of the detailed requirements of the Act and a decision to model the confidential system on the public system, subpart C has been simplified by providing a separate section for each substantive reporting classification and consolidating all relevant information therein. Additionally, the rules on reporting qualified blind and diversified trusts and excepted trusts were moved from former subpart D (on qualified trust establishment and administration) to subpart C, for completeness of the disclosure requirement section.

Revised subpart D reflects amendments made by the Reform Act which expand the availability of qualified diversified trusts to all executive branch employees. Other changes reflect standard practice relating to the integrity of the blind trust program. For example, diversification rules applicable to qualified diversified trusts have been modified to align with the diversification standards for excepted investment funds and the standards which are normally used by trust administrators. Revised subpart E (on qualified trust revocations), which was formerly subpart I, was moved to directly follow new subpart D (on certification of qualified trusts). The former subpart E was deleted; its waiver provisions were moved to other related sections and the limitations on outside earned income were deleted, as they are no longer contained in the financial disclosure provisions of the Act. Outside earned income limits are now reflected in a new part 2636 of this title 5, CFR (see 56 FR 1721–1730 (Jan. 17, 1991)).

Subpart F of this regulation reflects only minor changes from the prior rule on procedures for filing, review, custody and access concerning public reports. Its procedures are also being made applicable to the confidential system, except for the provisions on public availability.

Subpart G on penalties includes a new provision for a late filing fee in the case of public financial disclosure statements, which was established by the Reform Act. Procedures for collecting the fee are set forth in detail for agency guidance. The Office of Government Ethics may waive this fee where appropriate, and procedures for seeking a waiver have been incorporated.

Subpart H contains only minor technical changes to the requirements for ethics agreements.

Subpart I establishes the revised system of confidential financial disclosure reporting and contains special rules uniquely applicable to it. Because of its extensive historical background, a detailed explanation follows below.

Subpart J, not published herein, implements section 502 of the Reform Act (26 U.S.C. 1043) by establishing procedures for issuance of Certificates of Divestiture. That subpart was separately published as an interim rule in 1990 and is not being republished in this rulemaking document (see 55 FR 14407–14409, Apr. 18, 1990).

The Confidential Disclosure System

The modern system of confidential executive branch financial disclosure has existed for the past quarter century, dating back to the authority conferred under prior Executive Order 11222 of 1965 as implemented by 5 CFR part 735, subpart D.

Under the Ethics in Government Act of 1978, as amended in 1985, and Executive Order 12565 (now revoked) of September 1986, the Office of Government Ethics issued a proposed confidential reporting regulation in the **Federal Register** on December 2, 1986 (51 FR 43359–43365), with provision for a 60-day public comment period. On February 3, 1987, the initial comment period was extended an additional 30 days in order to provide ample time for submission of views (52 FR 3251). OGE received about 40 comment letters from various Federal agencies and one Federal employee labor union. The many comments included various significant criticisms of the proposed confidential reporting system, which would have differed substantially from the public reporting system. In response to those comments, the changes in statutes and Executive orders, and its own rethinking, OGE has dropped the concept of a confidential reporting system not based generally on the public system.

Instead, this interim rule provides for a revised system of confidential reports for the executive branch in light of the new public financial disclosure law under the Reform Act and new statutory and Executive order authority conferred upon OGE. See section 107 of the Act (5 U.S.C. app.) and section 201(d) of Executive Order 12674, as revised by Executive Order 12731. The Office of Government Ethics is now the supervising ethics office for the executive branch, having become a separate executive agency in October 1989, apart from the Office of Personnel Management. (See 54 FR 50229–50231 (Dec. 5, 1989).)

Uniform Executive Branch Confidential Financial Disclosure System Modeled on the Public Financial Disclosure System

After careful reconsideration, the Office of Government Ethics has determined, particularly given the Governmentwide trend toward uniformity in ethics rules, that a uniform system of confidential midlevel employee reporting will best serve the needs of conflict detection and resolution for executive departments and agencies. The new confidential financial disclosure reporting system is modeled after the public financial disclosure system of the executive branch under new title I of the Act, as set forth in the remainder of this revised part 2634; however, it will be less extensive in several important respects, as discussed below. Generally, all of the definitions of terms, exclusions, thresholds, and the scope of disclosures for the filer, spouse, and dependent children that are applicable to the public reports will apply for confidential reports. However, the new confidential report system, like the current one, will not require disclosure of values or certain items such as asset transactions, and it will not require termination reports.

Core items required in the confidential financial disclosure reports will include: interests in property (assets) over $1,000 in value ($5,000 for financial institution accounts); sources of income over $200 (over $1,000 for a spouse's earned income other than honoraria); gifts or reimbursements from one source aggregating $250 or more, excluding gifts of $100 or less; and liabilities over $10,000. Additional core reporting requirements include positions held outside the Federal Government and private employment agreements and arrangements. As with employees required to file public reports, new entrants required to file confidential reports need not disclose any gifts or reimbursements, and incumbent confidential filers need not report pre-Government-service gifts or reimbursements.

Certain information required to be disclosed by public filers is not considered integral to the confidential system and therefore will not be required of confidential filers. These differences recognize the less intrusive philosophy of the nonpublic confidential system, as well as a balancing of the utility of certain information against the administrative review burdens inherent in such a broad-based filing program. Thus, asset transaction information and separate identification of sources of compensation for services exceeding $5,000 (see § 2634.907) will not be required, unless an agency justifies a need for such data and obtains OGE approval for collection. The substance of that information is adequately revealed through other disclosure requirements under this part 2634. Significantly, no indications of values or amounts will be shown on the confidential reports (see § 2634.907). Furthermore, termination reports will not be required (see § 2634.908).

Unlike the present system, which only requires disclosure of financial interests existing on the filing date, data will be required for an entire twelve month reporting period (§ 2634.908). New entrant confidential reports covering the preceding twelve months are to be filed within 30 days of entering a designated position, unless within the previous 30 days the employee held another position requiring the filing of a confidential or public report or the employee already filed a confidential report for the new position prior to appointment (§ 2634.903(b)). Annual incumbent confidential reports will be required of any confidential filer who serves in a designated position for more than 60 days the twelve month period ending September 30, and will be due October 31 immediately following that period (§ 2634.903(a)). Agencies can grant extensions of time to file of up to 90 days (§ 2634.903(d)).

This new interim regulation also describes the purpose and policies behind executive branch confidential financial reporting, including the nonpublic treatment thereof (§ 2634.901); provides direction for the transition to the new system (§ 2634.902); recites criteria to be used by executive agencies in determining which of their employee positions require the filing of confidential reports (§ 2634.904) and which positions can be excluded from reporting (§ 2634.905); provides for a standard reporting form, to be issued separately from this regulation (see §§ 2634.601 and 2634.907); and establishes filing procedures (§ 2634.909). This interim regulation makes applicable to confidential reports the same general provisions which apply to public reports under this part 2634 on review and custody, treatment of ethics agreements, and other procedural matters. Penalty provisions for delinquent or deficient filers also apply, except for the late filing fee. Future application of the late filing fee to confidential filers is being studied by OGE.

Definition of Confidential Filer

After careful reflection, OGE has decided to provide for confidential reporting, as proposed in December 1986, by covered agency employee positions at GS–15 (or equivalent) and below, without any general GS–13 floor as under the current system (see current 5 CFR 735.403). In many agencies, certain employees in positions below the GS–13 level do have significant involvement in contracting and the other specified functions (see below). Hence, in order to protect the integrity of the Government and avoid conflict situations, employee positions classified at the GS–15 level and below (without a floor) should be subject to reporting if they involve the types of duties specified in this regulation, as determined by the agency.

The interim rule requires confidential filing by those executive branch employees who hold positions at the pay levels specified above which have been determined by their agencies to involve duties requiring personal and substantial participation through the making of decisions or the exercise of significant judgment in one or more of these Government actions: (i) Contracting or procurement; (ii) administering or monitoring grants, subsidies, licenses or other benefits; (iii) regulating or auditing any non-Federal entity; or (iv) performing other activities having a direct and substantial economic effect on a non-Federal entity (see § 2634.904(a)(1)). Also covered are other employees at the specified pay levels with sensitive duties requiring reporting as determined by the agencies (see § 2634.904(a)(2)), special Government employees (SGE's) as defined in 18 U.S.C 202(a) (see § 2634.904(b)), public report filers if agencies obtain approval from OGE after determining that they need a confidential supplment from such filers containing information that is more extensive than the information on their public forms (§ 2634.904(c)), and certain employees excluded from public filing if those employees nonetheless meet a criterion for confidential filing (§ 2634.904(d)). Finally, various commenting agencies objected to a provision contained in the December 1986 proposed rule that would have included law enforcement among the enumerated duties requiring confidential reporting for a position. The Office of Government Ethics has dropped law enforcement from the enumerated duties, only citing it as an example of the type of additional duty that an agency may consider when it decides whether to designate a position for filing (see § 2634.904(a)(2)).

Thus, except for SGE's and supplemental public filers, substantiality of involvement in sensitive Government duties as enumerated in this interim rule will be the touchstone for inclusion in the revised executive branch confidential reporting system. The rule provides for exclusion of employees in positions otherwise requiring reporting, either individually or by class, if agencies determine that the criteria in § 2634.905 are met. In that regard, OGE is restoring to this interim regulation an additional ground for exclusion from filing not included in the December 1986 proposal—substantial degree of supervision and review to which the employees are subject (see § 2634.905(b)(1)). Other grounds for exclusion are that the particular duties of the employee or class of employees make the likelihood of a conflict of interest remote or any potential adverse effect on the integrity of the Government inconsequential; and that the employees are subject to an alternative procedure approved by OGE that is adequate to prevent conflicts. Hypothetical examples of employees who are required to file, as well as those who need not file, confidential financial disclosure reports are provided in §§ 2634.904 and 2634.905.

Special Rules

The interim rule envisions that a standard form will be used for confidential financial disclosure reports. This interim rule and the separately adopted standard report form will elicit only information that is deemed necessary to administer the criminal conflict of interest laws, administrative standards of conduct applicable to executive branch agencies, and related agency-specific ethics restrictions. Agencies may issue supplemental regulations, subject to OGE approval, for collection of additional information, if required to carry out the agency's authorized activities and any specific constraints of law or regulation (see §§ 2634.103, 2634.601 and 2634.901).

Superseded Rules

Since this interim rule will also, when effective with respect to subpart I on October 5, 1992, supersede subpart D of 5 CFR part 735 and 5 CFR 735.106 of the OPM regulations, the Office of Personnel Management is concurring in and co-signing this rulemaking document. Executive agency regulations based on those provisions will also be superseded at that time.

Additionally, this interim rule will, when effective, supersede 5 CFR part 2633, which had been reserved by OGE for the separate publication of a new rule for confidential financial disclosure prior to the decision to publish that rule as subpart I to part 2634.

Administrative Procedure Act

Pursuant to section 553(b) of title 5 of the United States Code, the Director of the Office of Government Ethics has found good cause for waiving the general notice of proposed rulemaking and the 30-day delay in effectiveness. Because it is essential to the administration of the executive branch ethics program that this implementing regulation become effective as soon as possible, the notice and delay in effectiveness are being waived as impracticable, unnecessary, and contrary to the public interest (except for subpart I and the related removal by OPM of portions of 5 CFR 735, which will not be effective for 180 days). However, this is an interim rule with provision for a 60-day comment period. The Office of Government Ethics will review any comments received during the comment period, and consider any modifications to this rule which appear warranted.

Executive Order 12291, "Federal Regulation"

The Office of Government Ethics has determined that this is not a major rule as defined under section 1(b) of Executive Order 12291.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant economic impact on a substantial number of small entities, because it only affects Federal employees and a very limited number of former employees.

Paperwork Reduction Act

There are five categories of information collection requirements in this regulation for the executive branch, each with its own related reporting form(s)/certificate(s) or model document(s), which are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. chapter 35). The regulatory citations for these five categories, together with identification of the forms used for their implementation, are as follows:

i. Public financial disclosure reporting—Subpart C, §§ 2634.301–2634.311, and § 2634.601 (implementing form: SF 278, already approved by OMB

under the Paperwork Reduction Act and assigned OMB control number 3209–0001);

ii. Future confidential financial disclosure reporting—§§ 2634.601, 2634.907 and 234.908 (implementing form under development, not yet approved by OMB under the Paperwork Reduction Act; there will be a future **Federal Register** notice of public availability for comment when that draft form is submitted to OMB for paperwork reduction approval);

iii. Obtaining access to public financial disclosure reports—§ 2634.603(c) (implementing form: OGE Form 201, already approved by OMB under the Paperwork Reduction Act and assigned OMB control number 3209–0002);

iv. Qualified trust administration—§§ 2634.401(d)(2), 2634.403(b)(11), 2634.404(c)(11), 2634.406(a)(3) & (b) and 2634.408 and appendixes A & B of part 2634 (the two implementing forms, the Certificate of Independence and Certificate of Compliance, are codified respectively in the cited appendixes); and

v. Qualified trust drafting—§§ 2634.401(c)(1)(i) & (d)(2) 2634.403(b), 2634.404(c) and 2634.408 (the six implementing forms are the (A) Model Qualified Blind Trust Provisions, (B) Model Qualified Blind Trust Provisions (For Use in the Case of an Irrevocable Pre-Existing Trust), (C) Model Qualified Diversified Trust Provisions, (D) Model Qualified Diversified Trust Provisions (Hybrid Version), (E) Model Qualified Diversified Trust Provisions (For Use in the Case of Multiple Fiduciaries), and (F) Model Qualified Diversified Trust Provisions (For Use in the Case of a Pre-Existing Irrevocable Trust).

The Office of Government Ethics is seeking OMB approval of the two trust certificates listed in item # iv. above, as well as the six model trust drafts listed in item # v. above. Persons who want to review these documents for purposes of commenting on them to OMB (as well as OGE) can obtain copies from the Office of Government Ethics by contacting it as provided in the "Addresses" and "For Further Information Contact" blocks above in this preamble.

The total annual public reporting burden for all of these requirements indicated below includes only figures for private citizen nominees and other filers processed by or employed at OGE, not for the entire executive branch. Further, the burden is based on the amount of time imposed on private citizens, not on all filers (most of whom are current Federal employees). The estimates shown are for the total number of executive branch filers; the percentage of those filers who are private citizens (either those who file nominee/new entrant reports prior to joining the Government or those who file termination reports after leaving Government); the number of OGE-processed private citizen reports; and finally the hours of burden imposed for the latter. These estimates are based on OGE's survey of executive departments and agencies' ethics programs for calendar year 1990 and other currently available information. The total OGE-processed, private citizen reporting burden is 4,188 hours. The figures are broken down into the five above-listed categories of information collections as follows:

i. Public Financial Disclosure Reports (SF 278's): Total filers (executive branch): 19,000; Private citizen filers (5%): 950; OGE-processed reports (private citizens): 280; OGE burden hours (3 hours/report): 840;

ii. Future Confidential Financial Disclosure Reports (standard form under development): Total filers (executive branch): 227,000; Private citizen filers (10%): 22,700; OGE-processed reports (private citizens): 10; OGE burden hours (1.5 hours/report): 15;

iii. Access Form for SF 278's (OGE Form 201's or executive agency equivalent forms): Total filers (executive branch): 1,470; Private citizen filers (95%): 1,397; OGE-processed requests (private citizens): 360; OGE burden hours (3 minutes/request): 18;

iv. Trust Certificates:

A. Certificate of Independence: Total filers (executive branch): 10; Private citizen filers (100%): 10; OGE-processed certificates (private citizens): 10; OGE burden hours (20 minutes/certificate): 3.

B. Certificate of Compliance: Total filers (executive branch): 35; Private citizen filers (100%): 35; OGE-processed certificates (private citizens): 35; OGE burden hours (20 minutes/certificate): 12; and

v. Model Qualified Trust Drafts:

A. Model Qualified Blind Trust Draft: Total filers (executive branch): 10; Private citizen filers (100%—trustees): 10; OGE-processed drafts (private citizens): 10; OGE burden hours (100 hours/draft): 1,000.

B. Model Qualified Diversified Trust Draft: Total filers (executive branch): 15; Private citizen filers (100%—trustees): 15; OGE-processed drafts (private citizens): 15; OGE burden hours (100 hours/draft): 1,500.

C.–F. The four remaining model qualified trust drafts for modified blind and diversified trusts each involves: Total filers (executive branch): 2; Private citizen filers (100%—trustees): 2; OGE-processed drafts (private citizens): 2; OGE burden hours (100 hours/draft): 200, multiplied by four (4 different drafts): 800.

As required by the Paperwork Reduction Act, the Office of Government Ethics is submitting to OMB a request that it approve these information collection requirements in the regulation and in the forms themselves, where not previously approved. Copies of the forms specified in items i, iii, iv, and v above are available upon request from OGE. (See the "**ADDRESSES**" and "**FOR FURTHER INFORMATION CONTACT**" blocks above.) The future form noted in item ii is still under development. Because all of these reporting requirements, except for the future confidential financial disclosure report requirements noted in item ii, are ongoing information collections necessary to proper administration of the executive branch financial disclosure system under title I of the Ethics in Government Act, OMB has granted its provisional approval for the continued collection of all of the information specified. Once final, formal OMB approval is granted under the Paperwork Reduction Act, OGE will amend this regulation to indicate the OMB control number in the pertinent provisions of this regulation, and to indicate those numbers on the forms noted in items iv and v above. (The other forms either already have formal OMB paperwork clearance, see items i and iii above, or have yet to be implemented, see item ii above).

Agencies, organizations, and individuals desiring to submit comments for consideration by OMB on these information collection requirements should address them to the Office of Information and Regulatory Affairs, Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Mr. Joseph Lackey.

List of Subjects in 5 CFR Parts 735 and 2634

Administrative practice and procedure, Certificates of divestiture, Conflict of interest, Financial disclosure, Government employees, Penalties, Privacy, Reporting and recordkeeping requirements, and Trusts and trustees.

Approved: February 4, 1992.

Stephen D. Potts,

Director, Office of Government Ethics.

Approved: February 19, 1992.

Constance B. Newman,

Director, Office of Personnel Management.

Accordingly, for the reasons set forth in the preamble and effective on the

dates indicated therein, the Office of Personnel Management is amending 5 CFR part 735 and the Office of Government Ethics is removing 5 CFR part 2633 and amending 5 CFR part 2634, as follows:

CHAPTER I—OFFICE OF PERSONNEL MANAGEMENT

PART 735—EMPLOYEE RESPONSIBILITIES AND CONDUCT

1. The authority citation for part 735 is revised to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); sec. 502(a) of E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

2. Part 735 is amended by removing § 735.106 and all of subpart D thereof (§§ 735.401–735.412) and redesignating § 735.107 as § 735.106.

CHAPTER XVI—OFFICE OF GOVERNMENT ETHICS

PART 2633—[REMOVED]

1. Under the authority of title IV of the Ethics in Government Act of 1978, part 2633 is removed.

PART 2634—EXECUTIVE BRANCH FINANCIAL DISCLOSURE, QUALIFIED TRUSTS, AND CERTIFICATES OF DIVESTITURE

2. The authority citation for part 2634 is revised to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

3. In part 2634, subparts A through I, appendixes A and B, and the part heading are revised and appendix C is added to read as follows:

Subpart A—General Provisions

Sec.

2634.101 Authority.
2634.102 Purpose and overview.
2634.103 Executive agency supplemental regulations.
2634.104 Policies.
2634.105 Definitions.

Subpart B—Persons Required to File Public Financial Disclosure Reports

2634.201 General requirements, filing dates, and extensions.
2634.202 Public filer defined.
2634.203 Persons excluded by rule.
2634.204 Employment of sixty days or less.
2634.205 Special waiver of public reporting requirements.

Subpart C—Contents of Reports

2634.301 Interests in property.
2634.302 Income.
2634.303 Purchases, sales, and exchanges.
2634.304 Gifts and reimbursements.
2634.305 Liabilities.
2634.306 Agreements and arrangements.
2634.307 Outside positions.
2634.308 Reporting periods and contents of public financial disclosure reports.
2634.309 Spouses and dependent children.
2634.310 Trusts, estates, and investment funds.
2634.311 Special rules.

Subpart D—Qualified Trusts

2634.401 General considerations.
2634.402 Special notice for advice-and-consent nominees.
2634.403 Qualified blind trusts.
2634.404 Qualified diversified trusts.
2634.405 Certification of trusts.
2634.406 Independent trustees.
2634.407 Restrictions on fiduciaries and interested parties.
2634.408 Special filing requirements for qualified trusts.

Subpart E—Revocation of Trust Certificates and Trustee Approvals

2634.501 Purpose and scope.
2634.502 Definitions.
2634.503 Determinations.

Subpart F—Procedure

2634.601 Report forms.
2634.602 Filing of reports.
2634.603 Custody of and access to public reports.
2634.604 Custody of and denial of public access to confidential reports.
2634.605 Review of reports.
2634.606 Updated disclosure of advice-and-consent nominees.
2634.607 Advice and opinions.

Subpart G—Penalties

2634.701 Failure to file or falsifying reports.
2634.702 Breaches by trust fiduciaries and interested parties.
2634.703 Misuse of public reports.
2634.704 Late filing fee.

Subpart H—Ethics Agreements

2634.801 Scope.
2634.802 Requirements.
2634.803 Notification of ethics agreements.
2634.804 Evidence of compliance.
2634.805 Retention.

Subpart I—Confidential Financial Disclosure Reports

2634.901 Policies of confidential financial disclosure reporting.
2634.902 Transition to the new confidential financial disclosure reporting system.
2634.903 General requirements, filing dates, and extensions.
2634.904 Confidential filer defined.
2634.905 Exclusions from filing requirements.
2634.906 Review of confidential filer status.
2634.907 Report contents.
2634.908 Reporting periods.
2634.909 Procedures, penalties, and ethics agreements.

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Appendix A to Part 2634—Certificate of Independence

Appendix B to Part 2634—Certificate of Compliance

Appendix C to Part 2634—Privacy Act and Paperwork Reduction Act Notices for Appendixes A and B

Subpart A—General Provisions

§ 2643.101 Authority.

The regulation in this part is issued pursuant to the authority of title I of the Ethics in Government Act of 1978, (Pub. L. 95–521, as amended) ("the Act") as modified by the Ethics Reform Act of 1989 (Pub. L. 101–194, as amended by Pub. L. 101–280) ("the Reform Act"); section 502 of the Reform Act; and section 201(d) of Executive Order 12674 of April 12, 1989, as modified by Executive Order 12731 of October 17, 1990.

§ 2634.102 Purpose and overview.

(a) This regulation supplements and implements title I of the Act and section 201(d) of Executive Order 12674 (as modified by Executive Order 12731) with respect to executive branch employees, by setting forth more specifically the uniform procedures and requirements for financial disclosure and for the certification and use of qualified blind and diversified trusts. Additionally, this regulation implements section 502 of the Reform Act by establishing procedures for executive branch personnel to obtain Certificates of Divestiture, which permit deferred recognition of capital gain in certain instances.

(b) The rules in this part govern both the public and confidential (nonpublic) financial disclosure systems, except as otherwise indicated. Subpart I of this part contains special rules unique to the confidential disclosure system.

§ 2634.103 Executive agency supplemental regulations.

(a) This regulation is intended to provide uniformity for executive branch financial disclosure systems. However, an agency may, subject to the prior written approval of the Office of Government Ethics, issue supplemental regulations implementing this part, if necessary to address special or unique agency circumstances. Such regulations:

(1) Shall be consistent with the Act, Executive Orders 12674 and 12731, and this part; and

(2) Shall impose no additional reporting requirements on either public or confidential filers, unless specifically authorized by the Office of Government Ethics as supplemental confidential reporting.

Note: Supplemental regulations will not be used to satisfy the separate requirement of 5 U.S.C. App. (Ethics in Government Act of 1978, Section 402(d)(1)) that each agency have established written procedures on how to collect, review, evaluate, and, where appropriate, make publicly available, financial disclosure statements filed with it.

(b) Requests for approval of supplemental regulations under paragraph (a) of this section shall be submitted in writing to the Office of Government Ethics, and shall set forth the agency's need for any proposed supplemental reporting requirements. See § 2634.901 (b) and (c).

(c) Agencies should review all of their existing financial disclosure regulations to determine which of those regulations must be modified or revoked in order to conform with the requirements of this part. Any amendatory agency regulations shall be processed in accordance with paragraphs (a) and (b) of this section.

§ 2634.104 Policies.

(a) Title I of the Act requires that high-level Federal officials disclose publicly their personal financial interests, to ensure confidence in the integrity of the Federal Government by demonstrating that they are able to carry out their duties without compromising the public trust. Title I also authorizes the Office of Government Ethics to establish a confidential (nonpublic) financial disclosure system for less senior executive branch personnel in certain designated positions, to facilitate internal agency conflict-of-interest review.

(b) Public and confidential financial disclosure serves to prevent conflicts of interest and to identify potential conflicts, by providing for a systematic review of the financial interests of both current and prospective officers and employees. These reports assist agencies in administering their ethics programs and providing counseling to employees.

(c) Financial disclosure reports are not net worth statements. Financial disclosure systems seek only the information that the President, Congress, or OGE as the supervising ethics office for the executive branch has deemed relevant to the administration and application of the criminal conflict of interest laws, other statutes on ethical conduct or financial interests, and Executive orders or regulations on standards of ethical conduct.

(d) Nothing in the Act or this part requiring reporting of information or the filing of any report shall be deemed to authorize receipt of income, honoraria, gifts, or reimbursements; holding of assets, liabilities, or positions; or involvement in transactions that are prohibited by law, Executive order or regulation.

(e) The provisions of title I of the Act and this part requiring the reporting of information shall supersede any general requirement under any other provision of law or regulation on the reporting of information required for purposes of preventing conflicts of interest or apparent conflicts of interest. However, the provisions of title I and this part shall not supersede the requirements of 5 U.S.C. 7342 (the Foreign Gifts and Decorations Act).

(f) This regulation is intended to be gender-neutral; therefore, use of the terms he, his, and him include she, hers, and her, and vice versa.

§ 2634.105 Definitions.

For purposes of this part:

(a) *Act* means, the Ethics in Government Act of 1978 (Pub. L. 95–521, as amended), as modifed by the Ethics Reform Act of 1989 (Pub. L. 101–194, as amended).

(b) *Agency* means, any executive agency as defined in 5 U.S.C. 105 (any executive department, Government corporation, or independent establishment in the executive branch), any military department as defined in 5 U.S.C. 102, and the Postal Service and the Postal Rate Commission. It does not include the General Accounting Office.

(c) *Confidential filer* for the definition of "confidential filer," see § 2634.904.

(d) *Dependent child* means, when used with respect to any reporting individual, any individual who is a son, daughter, stepson, or stepdaughter and who:

(1) Is unmarried, under age 21, and living in the household of the reporting individual; or

(2) Is a dependent of the reporting individual within the meaning of section 152 of the Internal Revenue Code of 1986, 26 U.S.C. 152.

(e) *Designated agency ethics official* means, the primary officer or employee who is designated by the head of an agency to administer the provisions of title I of the Act and this part within an agency, and in his absence the alternate who is designated by the head of the agency. The term also includes a delegate of such an official, unless otherwise indicated. See subpart B of part 2638 of this chapter on the appointment and additional responsibilities of a designated agency ethics official and alternate.

(f) *Executie branch* means, any agency as defined in paragraph (b) of this section and any other entity or administrative unit in the executive branch.

(g) *Filer* is used interchangeably with "reporting individual," and may refer to a "confidential filer" as defined in paragraph (c) of this section, a "public filer" as defined in paragraph (m) of this section, or a nominee or candidate as described in § 2634.201.

(h) *Gift* means, a payment, advance, forbearance, rendering, or deposit of money, or anything of value, unless consideration of equal or greater value is received by the donor, but does not include:

(1) Bequests and other forms of inheritance;

(2) Suitable mementos of a function honoring the reporting individual;

(3) Food, lodging, transportation, and entertainment provided by a foreign government within a foreign country or by the United States Government, the District of Columbia, or a State or local government or political subdivision thereof;

(4) Food and beverages which are not consumed in connection with a gift of overnight lodging;

(5) Communications to the offices of a reporting individual, including subscriptions to newspapers and periodicals; or

(6) Consumable products provided by home-State businesses to the offices of the President or Vice President, if those products are intended for consumption by persons other than the President or Vice President.

(i) *Honorarium* means, a payment of money or anything of value for an appearance, speech, or article. For guidance on the propriety of receiving honoraria, see part 2636 of this subchapter.

(j) *Income* means, all income from whatever source derived. It includes but is not limited to the following items: earned income such as compensation for services, fees, commissions, salaries, wages and similar items; gross income derived from business (and net income if the individual elects to include it); gains derived from dealings in property including capital gains; interest; rents; royalties; dividends; annuities; income from the investment portion of life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; and income from an interest in an estate or trust. The term includes all income items, regardless of whether they are taxable for Federal income tax purposes, such as interest on municipal bonds. Generally, income means "gross income" as determined in conformity with the Internal Revenue

Service principles at 26 CFR 1.61–1 through 1.61–15 and 1.61–21.

(k) *Personal hospitality of any individual* means, hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of or on property or facilities owned by that individual or his family.

(l) *Personal residence* means, any real property used exclusively as a private dwelling by the reporting individual or his spouse, which is not rented out during any portion of the reporting period. The term is not limited to one's domicile; there may be more than one personal residence, including a vacation home.

(m) *Public filer.* For the definition of "public filer," see § 2634.202.

(n) *Reimbursement* means, any payment or other thing of value received by the reporting individual (other than gifts, as defined in paragraph (h) of this section) to cover travel-related expenses of such individual, other than those which are:

(1) Provided by the United States Government, the District of Columbia, or a State or local government or political subdivision thereof;

(2) Required to be reported by the reporting individual under 5 U.S.C. 7342 (the Foreign Gifts and Decorations Act); or

(3) Required to be reported under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434) (relating to reports of campaign contributions).

Note: Payments which are not made to the individual are not reimbursements for purposes of this part. Thus, payments made to the filer's employing agency to cover official travel-related expenses do not fit this definition of reimbursement. For example, payments being accepted by the agency pursuant to statutory authority such as 31 U.S.C. 1353, as implemented by 41 CFR part 304–1, are not considered reimbursements under this part 2634, because they are not payments received by the reporting individual. On the other hand, travel payments made to the employee by an outside entity for private travel are considered reimbursements for purposes of this part. Likewise, travel payments received from certain nonprofit entities under authority of 5 U.S.C. 4111 are considered reimbursements, even though for official travel, since that statute specifies that such payments must be made to the individual directly (with prior approval from the individual's agency).

(o) *Relative* means an individual who is related to the reporting individual, as father, mother, son, daughter, brother, sister, uncle, aunt, great uncle, great aunt, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or who is the grandfather or grandmother of the spouse of the reporting individual, and shall be deemed to include the fiance or fiancee of the reporting individual.

(p) *Reporting individual* is used interchangeably with "filer," and may refer to a "confidential filer" as defined in § 2634.904, a "public filer" as defined in § 2634.202, or a nominee or candidate as described in § 2634.201.

(q) *Reviewing official* means the designated agency ethics official or his delegate, the Secretary concerned, the head of the agency, or the Director of the Office of Government Ethics.

(r) *Secretary concerned* has the meaning set forth in 10 U.S.C. 101(8) (relating to the Secretaries of the Army, Navy, Air Force, and for certain Coast Guard matters, the Secretary of Transportation); and, in addition, means:

(1) The Secretary of Commerce, in matters concerning the National Oceanic and Atmospheric Administration;

(2) The Secretary of Health and Human Services, with respect to matters concerning the Public Health Service; and

(3) The Secretary of State with respect to matters concerning the Foreign Service.

(s) *Special Government employee* has the meaning given to that term by the first sentence of 18 U.S.C. 202(a): an officer or employee of an agency who is retained, designated, appointed, or employed to perform temporary duties, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days, either on a full-time or intermittent basis.

(t) *Value* means a good faith estimate of the fair market value if the exact value is neither known nor easily obtainable by the reporting individual without undue hardship or expense. In the case of any interest in property, see the alternative valuation options in § 2634.301(e).

For gifts and reimbursements, see § 2634.304(e).

Subpart B—Persons Required To File Public Financial Disclosure Reports

§ 2634.201 General requirements, filing dates, and extensions.

(a) *Incumbents.* A public filer as defined in § 2634.202 of this subpart who, during any calendar year, performs the duties of his position of office, as described in that section, for a period in excess of 60 days shall file a public financial disclosure report containing the information prescribed in subpart C of this part, on or before May 15 of the succeeding year.

Example 1. An SES official commences performing the duties of his position on November 15. He will not be required to file an incumbent report for that calendar year.

Example 2. An employee, who is classified at GS–15, is assigned to fill an SES position in an acting capacity, from October 15 through December 31. Having performed the duties of a covered position for more than 60 days during the calendar year, he will be required to file and incumbent report.

(b) *New entrants.* (1) Within 30 days of assuming a public filer position or office described in § 2634.202 of this subpart, an individual shall file a public financial disclosure report containing the information prescribed in subpart C of this part.

(2) However, no report shall be required if the individual:

(i) Has, within 30 days prior to assuming such position, left another position or office for which a public financial disclosure report under the Act was required to be filed; or

(ii) Has already filed such a report as a nominee or candidate for the position.

Example: Y, an employee of the Treasury Department who has previously filed reports in accordance with the rules of this section, terminates employment with that Department on January 12, 1991, and begins employment with the Commerce Department on February 10, 1991, in a Senior Executive Service position. Y is not a new entrant since he has assumed a position described in § 2634.202 of this subpart within thirty days of leaving another position so described. Accordingly, he need not file a new report with the Commerce Department.

Note: While Y did not have to file a new entrant report with the Commerce Department, that Department should request a copy of the last report which he filed with the Treasury Department, so that Commerce could determine whether or not there would be any conflicts or potential conflicts in connection with Y's new employment. Additionally, Y will have to file an incumbent report covering the 1990 calendar year, in accordance with paragraph (a) of this section, due not later than May 15, 1991, with Commerce, which should provide a copy to Treasury so that both may review it.

(c) *Nominees.* (1) At any time after a public announcement by the President or President-elect of his intention to nominate an individual to an executive branch position, appointment to which requires the advice and consent of the Senate, such individual may, and in any event within five days after the transmittal of the nomination to the Senate shall, file a public financial

disclosure report containing the information prescribed in subpart C of this part.

(2) This requirement shall not apply to any individual who is nominated to a position as:

(i) An officer of the uniformed services; or

(ii) A Foreign Service Officer.

Note: Although the statute, 5 U.S.C. app. (Ethics in Government Act of 1978, section 101(b)(1)), exempts uniformed service officers only if they are nominated for appointment to a grade or rank for which the pay grade is 0–6 or below, the Senate confirmation committees have adopted a practice of exempting all uniformed service officers, unless otherwise specified by the committee assigned.

(3) Section 2634.605(c) provides expedited procedures in the case of individuals described in paragraph (c)(1) of this section. Those individuals referred to in paragraph (c)(2) of this section as being exempt from filing nominee reports shall file new entrant reports, if required by paragraph (b) of this section.

(d) *Candidates.* A Candidate (as defined in section 301 of the Federal Election Campaign Act of 1971, 2 U.S.C. 431) for nomination or election to the office of President or Vice President (other than an incumbent) shall file a public financial disclosure report containing the information prescribed in subpart C of this part, in accordance with the following:

(1) Within 30 days of becoming a candidate on or before May 15 of the calendar year in which the individual becomes a candidate, whichever is later, but in no event later than 30 days before the election; and

(2) On or before May 15 of each successive year an individual continues to be a candidate. However, in any calendar year in which an individual continues to be a candidate but all elections relating to such candidacy were held in prior calendar years, the individual need not file a report unless he becomes a candidate for a vacancy during that year.

Example. P became a candidate for President in January 1991. P will be required to file a public financial disclosure report on or before May 15, 1991. If P had become a candidate on June 1, 1991, he would have been required to file a disclosure report within 30 days of that date.

(e) *Termination of employment.* (1) On or before the thirtieth day after termination of employment from a public filer position or office described in § 2634.202 of this subpart, an individual shall file a public financial disclosure report containing the information prescribed in subpart C of this part.

(2) However, if within 30 days of such termination the individual assumes employment in another position or office for which a public report under the Act is required to be filed, no report shall be required by the provisions of this paragraph. See the related *Example* in paragraph (b) of this section.

(f) *Extensions.* The reviewing official may, for good cause shown, grant to any public filer or class thereof an extension of time for filing which shall not exceed 45 days. The Director of the Office of Government Ethics, for good cause shown, may grant an additional extension of time which shall not exceed 45 days. The employee shall set forth specific reasons for such additional extension, which shall be forwarded to the Director through the reviewing official. The reviewing official shall also submit his comments on the request. (For extensions on *confidential* financial disclosure reports, see § 2634.903(d).)

§ 2634.202 Public filer defined.

The term *public filer* includes:

(a) The President;

(b) The Vice President;

(c) Each officer or employee in the executive branch, including a special Government employee as defined in 18 U.S.C. 202(a), whose position is classified above GS–15 of the General Schedule prescribed by 5 U.S.C. 5332, or the rate of basic pay for which is fixed, other than under the General Schedule, at a rate equal to or greater than 120% of the minimum rate of basic pay for GS–15 of the General Schedule; each member of a uniformed service whose pay grade is at or in excess of 0–7 under 37 U.S.C. 201; and each officer or employee in any other position determined by the Director of the Office of Government Ethics to be of equal classification;

(d) Each employee who is an administrative law judge appointed pursuant to 5 U.S.C. 3105;

(e) Any employee not otherwise described in paragraph (c) of this section who is in a position in the executive branch which is excepted from the competitive service by reason of being of a confidential or policymaking character, unless excluded by virtue of a determination under § 2634.203 of this subpart;

(f) The Postmaster General, the Deputy Postmaster General, each Governor of the Board of Governors of the United States Postal Service and each officer or employee of the United States Postal Service or Postal Rate Commission whose basic rate of pay is equal to or greater than 120% of the minimum rate of basic pay for GS–15 of the General Schedule;

(g) The Director of the Office of Government Ethics and each agency's primary designated agency ethics official;

(h) Any civilian employee not otherwise described in paragraph (c) of this section who is employed in the Executive Office of the President (other than a special Government employee, as defined in 18 U.S.C. 202(a)) and holds a commission of appointment from the President; and

(i) Anyone whose employment in a position or office described in paragraphs (a) through (h) of this section has terminated, but who has not yet satisfied the filing requirements of § 2634.201(e) of this subpart.

Note: References in this section and in §§ 2634.203 and 2634.904 to position classifications have been adjusted to reflect elimination of General Schedule classifications GS–16, GS–17, and GS–18 by the Federal Employees Pay Comparability Act of 1990, as incorporated in section 529 of Public Law 101–509.

§ 2634.203 Person excluded by rule.

(a) *In general.* Any individual or group of individuals described in § 2634.202(e) of this subpart (relating to positions of a confidential or policy-making character) may be excluded by rule from the public reporting requirements of this subpart when the Director of the Office of Government Ethics determines, in his sole discretion, that such exclusion would not affect adversely the integrity of the Government or the public's confidence in the integrity of the Government.

(b) *Exclusion determination.* The determination required by paragraph (a) of this section has been made for the following group of individuals who, therefore, may be excluded from the public reporting requirements of this subpart, pursuant to the procedures in paragraph (c) of this section: Individuals in any position classified at GS–15 of the General Schedule or below, or the rate of basic pay for which is less than 120% of the minimum rate of basic pay fixed for GS–15, who have no policy-making role with respect to agency programs. Such individuals may include chauffeurs, private secretaries, stenographers, and others holding positions of a similar nature whose exclusion would be consistent with the basic criterion set forth in paragraph (a) of this section. See § 2634.904(d) for possible coverage by confidential disclosure rules.

(c) *Procedure.* (1) The exclusion of any individual from reporting requirements

pursuant to this section will be effective as of the time the employing agency files with the Office of Government Ethics a list and description of each position for which exclusion is sought, and the identity of any incumbent employees in those positions. Exclusions should be requested prior to due dates for the reports which such employees would otherwise have to file. A subsequent list or description showing any additions to or deletions from the original submissions, or a statement that no changes have been made, must be filed annually with the Office of Government Ethics on or before May15.

(2) If the Office of Government Ethics finds that one or more positions has been improperly excluded, it will advise the agency and set a date for the filing of the report.

§ 2634.204 Employment of sixty days or less.

(a) *In general.* Any public filer or nominee who, as determined by the official specified in this paragraph, is not reasonably expected to perform the duties of an office or position described in § 2634.201(c) or § 2634.202 of this subpart for more than 60 days in any calendar year shall not be subject to the reporting requirements of § 2634.201 (b), (c), or (e) of this subpart. This determination will be made by:

(1) The designated agency ethics official or Secretary concerned, in a case to which the provisions of § 2634.201 (b) or (e) of this subpart (relating to new entrant and termination reports) would otherwise apply; or

(2) The Director of the Office of Government Ethics, in a case to which the provisions of § 2634.201(c) of this subpart (relating to nominee reports) would otherwise apply.

(b) *Alternative reporting.* Any new entrant who is exempted from filing a public financial report under paragraph (a) of this section and who is a special Government employee is subject to confidential reporting under § 2634.903(b). See § 2634.904(b).

(c) *Exception.* If the public filer or nominee actually performs the duties of an office or position referred to in paragraph (a) of this section for more than 60 days in a calendar year, the public report otherwise required by:

(1) Section 2634.201 (b) or (c) of this subpart (relating to new entrant and nominee reports) shall be filed within 15 calendar days after the sixtieth day of duty; and

(2) Section 2634.201(e) of this subpart (relating to termination reports) shall be filed as provided in that paragraph.

§ 2634.205 Special waiver of public reporting requirements.

(a) *General rule.* In unusual circumstances, the Director of the Office of Government Ethics may grant a request for a waiver of the public reporting requirements under this subpart for an individual who is reasonably expected to perform, or has performed, the duties of an office or position for fewer than 130 days in a calendar year, but only if the Director determines that:

(1) The individual is a special Government employee, as defined in 18 U.S.C. 202(a), who performs temporary duties either on a full-time or intermittent basis;

(2) The individual is able to provide services specially needed by the Government;

(3) It is unlikely that the individual's outside employment or financial interests will create a conflict of interest; and

(4) Public financial disclosure by the individual is not necessary under the circumstances.

(b) *Procedure.* (1) Requests for waivers must be submitted to the Office of Government Ethics, via the requester's agency, within 10 days after an employee learns that he will hold a position which requires reporting and that he will serve in that position for more than 60 days in any calendar year, or upon serving in such a position for more than 60 days, whichever is earlier.

(2) The request shall consist of:

(i) A cover letter which identifies the individual and his position, states the approximate number of days in a calendar year which he expects to serve in that position, and requests a waiver of public reporting requirements under this section;

(ii) An enclosure which states the reasons for the individual's belief that the conditions of paragraphs (a) (1) through (4) of this section are met in the particular case; and

(iii) The report otherwise required by this subpart B, as a factual basis for the determination required by this section. The report shall bear the legend at the top of page 1: "CONFIDENTIAL: WAIVER REQUEST PENDING PURSUANT TO 5 CFR 2634.205."

(3) The agency in which the individual serves shall advise the Office of Government Ethics as to the justification for a waiver.

(4) In the event a waiver is granted, the report shall not be subject to the public disclosure requirements of § 2634.603; however, the waiver request cover letter shall be subject to those requirements. In the event that a waiver is not granted, the confidential legend shall be removed from the report, and the report shall be subject to public disclosure; however, the waiver request cover letter shall not then be subject to public disclosure.

Subpart C—Contents of Reports

§ 2634.301 Interests in property.

(a) *In general.* Each financial disclosure report filed pursuant to this part, whether public or confidential, shall include a brief description of any interest in property held by the filer at the end of the reporting period in a trade or business, or for investment or the production of income, having a fair market value in excess of $1,000. In the case of public financial disclosure reports, the report shall designate the category of value of the property in accordance with paragraph (d) of this section. Each item of real and personal property shall be disclosed separately. Note that for Individual Retirement Accounts (IRA's), brokerage accounts, trusts, mutual or pension funds and other entities with portfolio holdings, each underlying asset must be separately disclosed, unless the entity qualifies for special treatment under § 2634.310 of this subpart.

(b) *Types of property reportable.* Subject to the exceptions in paragraph (c) of this section, examples of the types of property required to be reported include, but are not limited to:

(1) Real estate;

(2) Stocks, bonds, securities, and futures contracts;

(3) Livestock owned for commercial purposes;

(4) Commercial crops, either standing or held in storage;

(5) Antiques or art held for resale or investment;

(6) Beneficial interests in trusts and estates;

(7) Deposits in banks or other financial institutions;

(8) Pensions and annuities;

(9) Mutual funds;

(10) Accounts or other funds receivable; and

(11) Capital accounts or other asset ownership in a business.

(c) *Exceptions.* The following property interests are exempt from the reporting requirements under paragraphs (a) and (b) of this section:

(1) Any personal liability owed to the filer, spouse, or dependent child by a spouse, or by a parent, brother, sister, or child of the filer, spouse, or dependent child;

(2) Personal savings accounts (defined as any form of deposit in a bank, savings and loan association, credit

union, or similar financial institution) in a single financial institution or holdings in a single money market mutual fund, aggregating $5,000 or less in that institution or fund;

(3) A personal residence of the filer or spouse, as defined in § 2634.105(1); and

(4) Financial interests in any retirement system of the United States (including the Thrift Savings Plan) or under the Social Security Act.

(d) *Valuation categories.* The valuation categories specified for property items on public financial disclosure reports are as follows:

(1) Not more than $15,000;

(2) Greater than $15,000 but not more than $50,000;

(3) Greater than $50,000 but not more than $100,000;

(4) Greater than $100,000 but not more than $250,000;

(5) Greater than $250,000 but not more than $500,000;

(6) Greater than $500,000 but not more than $1,00,000; and

(7) Greater than $1,000,000.

(e) *Valuation of interests in property.* A good faith estimate of the fair market value of interests in property may be made in any case in which the exact value cannot be obtained without undue hardship or expense to the filer. Fair market value may also be determined by:

(1) The purchase price (in which case, the filer should indicate date of purchase);

(2) Recent appraisal;

(3) The assessed value for tax purposes (adjusted to reflect the market value of the property used for the assessment if the assessed value is computed at less than 100 percent of that market value);

(4) The year-end book value of nonpublicly traded stock, the year-end exchange value of corporate stock, or the face value of corporate bonds or comparable securities;

(5) The net worth of a business partnership;

(6) The equity value of an individually owned business; or

(7) Any other recognized indication of value (such as the last sale on a stock exchange).

Example 1. An official has a $4,000 savings account in Bank A. His spouse has a $2,500 certificate of deposit issued by Bank B and his dependent daughter has a $200 savings account in Bank C. The official does not have to disclose the deposits, as the total value of the deposits in any one bank does not exceed $5,000. Note, however, that the source, and if he is a public filer the amount, of interest income from any bank is required to be reported under § 2634.302(b) of this subpart if it exceeds the reporting threshold for income. See § 2634.309 of this subpart for disclosure coverage of spouses and dependent children.

Example 2. Public filer R has a collection of post-impressionist paintings which have been carefully selected over the years. From time to time, as new paintings have been acquired to add to the collection, R has made sales of both less desirable works from his collection and paintings of various schools which he acquired through inheritance. Under these circumstances, R must report the value of all the paintings he retains as interests in property pursuant to this section, as well as income from the sales of paintings pursuant to § 2634.302(b) of this subpart. Recurrent sales from a collection indicate that the collection is being held for investment or the production of income.

Example 3. A reporting individual has investments which her broker holds as an IRA and invests in stocks, bonds, and mutual funds. Each such asset having a fair market value in excess of $1,000 at the close of the reporting period must be separately listed, and also the value must be shown if she is a public filer. See § 2634.311(c) of this subpart for attachment of brokerage statements in lieu of listing, in the event of extensive holdings. Note that for a mutual fund held in this IRA investment account, its underlying assets must also be separately detailed, unless it qualifies as an excepted investment fund, pursuant to § 2634.310 of this subpart.

§ 2634.302 Income.

(a) *Noninvestment income.* (1) Each financial disclosure report filed pursuant to this part, whether public or confidential, shall disclose the source, type, and in the case of public financial disclosure reports the actual amount or value, of earned or other noninvestment income in excess of $200 from any one source which is received by the filer or has accrued to his benefit during the reporting period, including:

(i) Salaries, fees, commissions, wages and any other compensation for personal services (other than from United States Government employment);

(ii) Retirement benefits (other than from United States Government employment, including the Thrift Savings Plan, or from Social Security;

(iii) Any honoraria, and the date services were provided, including payments made or to be made to charitable organizations on behalf of the filer in lieu of honoraria; and

(iv) Any other noninvestment income, such as prizes, awards, or discharge of indebtedness.

Note: In calculating the amount of an honorarium, subtract any actual and necessary travel expenses incurred by the recipient and one relative. For example, if such expenses are paid or reimbursed by the honorarium source, they shall not be counted as part of the honorarium payment; if the expenses are paid or reimbursed by the individual receiving the honorarium, the amount of honorarium shall be reduced by the amount of such expenses.

Example 1. An official is a participant in a retirement plan of Coastal Airlines. Pursuant to such plan, the official and his spouse receive passage on some Coastal flights without charge, and they receive passage on other flights at a discounted fare. The difference between what Coastal charges members of the public generally and what the official and his spouse are charged for a particular flight is deemed income in-kind and must be disclosed by this reporting individual if it exceeds the $200 threshold.

Example 2. An official serves on the board of directors at a bank, for which he receives a $500 fee each calendar quarter. He also receives an annual fee of $1,500 for service as trustee of a private trust. In both instances, such fees received or earned during the reporting period must be disclosed, and if he is a public filer the actual amount must be shown.

(2) In the case of payments in lieu of honoraria made on or after January 1, 1991, the individual shall also file a separate confidential report of charitable recipients, in accordance with part 2636 of this chapter.

(b) *Investment income.* Each financial disclosure report filed pursuant to this part, whether public or confidential, shall disclose:

(1) The source and type of investment income, characterized as dividends, rents, interest, capital gains, or income from qualified or excepted trusts or excepted investment funds (see § 2634.310 of this subpart), which is received by the filer or accrued to his benefit during the reporting period, and which exceeds $200 in amount or value from any one source. Examples include, but are not limited to, income derived from real estate, collectible items, stocks, bonds, notes, copyrights, pensions, mutual funds, the investment portion of life insurance contracts, loans, and personal savings accounts (as defined in § 2634.301(c)(2) of this subpart). Note that for entities with portfolio holdings, such as Individual Retirement Accounts (IRA's), brokerage accounts, trusts, and mutual or pension funds, each underlying source of income must be separately disclosed, unless the entity qualifies for special treatment under § 2634.310 of this subpart. For public financial disclosure reports, the amount or value of income from each reported source shall also be disclosed and categorized in accordance with the following table:

(i) Not more than $1,000;

(ii) Greater than $1,000 but not more than $2,500;

(iii) Greater than $2,500 but not more than $5,000;

(iv) Greater than $5,000 but not more than $15,000;

(v) Greater than $15,000 but not more than $50,000;

(vi) Greater than $50,000 but not more than $100,000;

(vii) Greater than $100,000 but not more than $1,000,000; and

(viii) Greater than $1,000,000.

(2) The source, type, and in the case of public financial disclosure reports the actual amount or value, of gross income from a business, distributive share of a partnership, joint business venture income, payments from an estate or an annuity or endowment contract, or any other items of income not otherwise covered by paragraphs (a) or (b)(1) of this section which are received by the filer or accrued to his benefit during the reporting period and which exceed $200 from any one source.

Example 1. An official rents out a portion of his residence. He receives rental income of $600 from one individual for four months and $1,200 from another individual for the remaining eight months of the year covered by his incumbent financial disclosure report. He must identify the property, specify the type of income (rent), and if he is a public filer indicate the category of the total amount of rent received. (He must also disclose the asset information required by § 2634.301 of this subpart.)

Example 2. A reporting individual has three savings accounts with Bank A. One is in his name and earned $85 in interest during the reporting period. One is in a joint account with his spouse and earned $120 in interest. One is in his name and his dependent daughter's name and earned $35 in interest. Since the aggregate interest income from this source exceeds $200, the official must disclose the name of the bank, the type of income, and if he is a public filer, the category of the total amount of interest earned from all three accounts. (He must also disclose the accounts as assets under § 2634.301 of this subpart if, in the aggregate, they total more than $5,000 in that bank.)

Example 3. An official has an ownership interest in a fast-food restaurant, from which she receives $10,000 in annual income. She must specify on her financial disclosure report the type of income, such as partnership distributive share or gross business income, and if she is a public filer indicate the actual amount of such income. (Additionally, she must describe the business and categorize its asset value, pursuant to § 2634.301 of this subpart).

§ 2634.303 Purchases, sales, and exchanges.

(a) *In general.* Except as indicated in § 2634.308(b) of this subpart, each public financial disclosure report filed pursuant to subpart B of this part shall include a brief description, the date and value (using the categories of value in § 2634.301(d) of this subpart) of any purchase, sale, or exchange by the filer during the reporting period, in which the amount involved in the transaction exceeds $1,000:

(1) Of real property, other than a personal residence of the filer or spouse, as defined in § 2634.105(1) of this part; and

(2) Of stocks, bonds, commodity futures, mutual fund shares, and other forms of securities.

(b) *Exceptions.* (1) Any transaction solely by and between the reporting individual, his spouse, and dependent children need not be reported under paragraph (a) of this section.

(2) Transactions involving Treasury bills, notes, and bonds; money market mutual funds or accounts; and personal savings accounts (as defined in § 2634.301(c)(2) of this subpart) need not be reported when occurring at rates, terms, and conditions available generally to members of the public. Likewise, transactions involving portfolio holdings of trusts and investment funds described in § 2634.310 (b) and (c) of this subpart need not be reported.

(3) Any transaction which occurred at a time when the reporting individual was not a Federal Government officer or employee need not be reported under paragraph (a) of this section.

Example 1. An official sells her personal residence in Virginia for $100,000 and purchases a personal residence in the District of Columbia for $200,000. She need not report the sale of the Virginia residence or the purchase of the D.C. residence.

Example 2. An official sells his beach home in Maryland for $50,000. Because he has rented it out for one month every summer, it does not qualify as a personal residence. He must disclose the sale under this section and any capital gain over $200 realized on the sale under § 2634.302 of this subpart.

Example 3. An official sells a ranch to his dependent daughter. The official need not report the sale because it is a transaction between the reporting individual and a dependent child; however, any capital gain, except for that portion attributable to a personal residence, is required to be reported under § 2634.302 of this subpart.

Example 4. An official sells an apartment building and realizes a loss of $100,000. He must report the sale of the building if the sale price of the property exceeds $1,000; however, he need not report anything under § 2634.302 of this subpart, as the sale did not result in a capital gain.

§ 2634.304 Gifts and reimbursements.

(a) *Gifts.* Except as indicated in §§ 2634.308(b) and 2634.907(a), each financial disclosure report filed pursuant to this part, whether public or confidential, shall contain the identity of the source, a brief description, and in the case of public financial disclosure reports the value, of all gifts aggregating $250 or more in value which are received by the filer during the reporting period from any one source. For in-kind travel-related gifts, include a travel itinerary, dates, and nature of expenses provided.

(b) *Reimbursements.* Except as indicated in §§ 2634.308(b) and 2634.907(a), each financial disclosure report filed pursuant to this part, whether public or confidential, shall contain the identity of the source, a brief description (including a travel itinerary, dates, and the nature of expenses provided), and in the case of public financial disclosure reports the value, of any travel-related reimbursements aggregating $250 or more in value, which are received by the filer during the reporting period from any one source.

Note: The $250 threshold in paragraphs (a) and (b) of this section will increase if the definition of minimal value under the Foreign Gifts and Decorations Act ever exceeds $250. Section 314(a) of Public Law 102–90 established the threshold for financial disclosure of gifts and reimbursements as "more than the minimal value as established by section 7342(a)(5) of title 5, United States Code, or $250, whichever is greater."

(c) *Exclusions.* Reports need not contain any information about gifts and reimbursements to which the provisions of this section would otherwise apply which are received from relatives (see § 2634.205(o)) or during a period in which the filer was not an officer or employee of the Federal Government. Additionally, any food, lodging, or entertainment received as "personal hospitality of any individual," as defined in § 2634.105(k), need not be reported. See also exclusions specified in the definitions of gift and reimbursement, at § 2634.105(h) and (n).

(d) *Aggregation exception.* Any gift or reimbursement with a fair market value of $100 or less need not be aggregated for purposes of the reporting rules of this section. However, the acceptance of gifts, whether or not reportable, is subject to the restrictions imposed by Executive Order 12674, as modified by Executive Order 12731, and the implementing regulations on standards of ethical conduct.

Note: The aggregation exception for gifts or reimbursements with a fair market value of $100 or less will increase if the definition of minimal value under the Foreign Gifts and Decorations Act ever exceeds $250. Section 314(a) of Public Law 102–90 established the aggregation exception for "any gift with a fair market value of $100 or less, as adjusted at the same time and by the same percentage as the minimal value is adjusted" above $250 pursuant to 5 U.S.C. 7342(a)(5).

Example 1. An official accepts a print, a pen and pencil set, and a letter opener from a community service organization he has worked with solely in his private capacity. He determines, in accordance with paragraph

(e) of this section, that these gifts are valued as follows:
Gift 1—Print: $150
Gift 2—Pen and pencil set: $105
Gift 3—Letter opener: $20

The official must disclose Gifts 1 and 2, since together they aggregate $250 or more in value from the same source. Gift 3 need not be aggregated, because its value does not exceed $100.

Example 2. An official receives the following gifts from a single source:
1. Dinner for two at a local restaurant—$120.
2. Round-trip taxi fare to meet donor at the restaurant—$25.
3. Dinner at donor's city residence—(value uncertain).
4. Round-trip airline transportation and hotel accommodations to visit Epcot Center in Florida–$400.
5. Weekend at donor's country home, including duck hunting and tennis match—(value uncertain).

The official need only disclose Gift 4. Gift 1 falls within the exception in § 2634.105(h) for food and beverages not consumed in connection with a gift of overnight lodging. Gifts 3 and 5 need not be disclosed because they fall within the exception for personal hospitality of an individual. Gift 2 need not be aggregated and reported, because its value does not exceed $100.

Example 3. An official receives free tickets from an outside source for himself and his spouse to attend an awards banquet at a local club. The value of each ticket is $130. Even though this is a gift which exceeds the $250 threshold amount for disclosure, the official need not report it, because of the exception in § 2634.105(h) for food and beverages not consumed in connection with a gift of overnight lodging.

Note: Prior to accepting this gift of tickets, the individual should consult ethics officials at his agency to determine whether standards of conduct rules will permit acceptance, depending on whether or not the donor is a prohibited source and the exact nature of the event.

Example 4. An official is asked to speak at an out-of-town meeting on a matter which is unrelated to her official duties and her agency. The round-trip airfare exceeds $250. If the official pays for the ticket and is then reimbursed by the organization to which she spoke, she must disclose this reimbursement under paragraph (b) of this section. If the organization simply provided the ticket, that must be disclosed as a gift under paragraph (a) of this section.

(e) *Valuation of gifts and reimbursements.* The value to be assigned to a gift or reimbursement is its fair market value. For most reimbursements, this will be the amount actually received. For gifts, the value should be determined in one of the following manners:

(1) If the gift has been newly purchased or is readily available in the market, the value shall be its retail price. The filer need not contact the donor, but may contact a retail establishment selling similar items to determine the present cost in the market.

(2) If the term is not readily available in the market, such as a piece of art, a handmade item, or an antique, the filer may make a good faith estimate of the value of the item.

(3) The term readily available in the market means that an item generally is available for retail purchase in the metropolitan area nearest to the official's residence.

Example 1. Items such as a pen and pencil set, letter opener, leather case or engraved pen are generally available in the market and can be determined by contacting stores which sell like items and ascertaining the retail price of each.

Example 2. The value of a dinner at a restaurant can either be the actual cost of the reported dinners or the approximate value, based on the posted fare of the restaurant. The filer need not ask to see the check.

Note: The market value of a ticket entitling the holder to attend an event which includes food, refreshments, entertainment or other benefits is the face value of the ticket, which may exceed the actual cost of the food and other benefits.

(f) *Waiver rule in the case of certain gifts*—(1) *In general.* In unusual cases, a gift as defined in § 2634.105(h) need not be aggregated under this section by public filers, if the Director of the Office of Government Ethics receives a written request for and issues a waiver, after determining that:

(i) Both the basis of the relationship between the grantor and the grantee and the motivation behind the gift are entirely personal; and

(ii) No countervailing public purpose requires public disclosure of the nature, source, and value of the gift.

(2) *Public disclosure of waiver request.* If approved, the cover letter requesting the waiver shall be subject to the public disclosure requirements in § 2634.603 of this part.

(3) *Procedure.* A public filer seeking a waiver under this paragraph shall submit a request to the Office of Government Ethics, through his agency. The request shall be made by a cover letter which identifies the filer and his position and which states that a waiver is requested under this section. On an enclosure to the cover letter, the filer shall set forth:

(i) The identity and occupation of the donor;

(ii) A statement that the relationship between the donor and the filer is entirely personal in nature; and

(iii) A statement that neither the donor nor any person or organization who employs the donor or whom the donor represents, conducts or seeks business with, engages in activities regulated by, or is directly affected by action taken by, the agency employing the filer. If the proceding statement cannot be made without qualification, the filer shall indicate those qualifications, along with a statement demonstrating that he plays no role in any official action which might directly affect the donor or any organization for which the donor works or serves as a representative.

§ 2634.305 Liabilities.

(a) *In general.* Each financial disclosure report filed pursuant to this part, whether public or confidential, shall identify and include a brief description of the filer's liabilities over $10,000 owed to any creditor at any time during the reporting period, and the name of the creditors to whom such liabilities are owed. For public financial disclosure reports, the report shall designate the category of value of the liabilities in accordance with § 2634.301(d) of this subpart, using the greatest amount owed to the creditor during the period.

(b) *Exceptions.* The following are not required to be reported under paragraph (a) of this section:

(1) Personal liabilities owed to a spouse or to the parent, brother, sister, or child of the filer, spouse, or dependent child;

(2) Any mortgage secured by a personal residence of the filer or his spouse;

(3) Any loan secured by a personal motor vehicle, household furniture, or appliances, provided that the loan does not exceed the purchase price of the item which secures it; and

(4) Any revolving charge account with an outstanding liability which does not exceed $10,000 at the close of the reporting period.

Example. An incumbent official has the following debts outstanding at the end of the calendar year:
1. Mortgage on personal residence—$80,000.
2. Mortgage on rental property—$50,000.
3. VISA Card—$1,000.
4. Master Card—$11,000.
5. Loan balance of $15,000, secured by family automobile purchased for $16,200.
6. Loan balance of $10,500, secured by antique furniture purchased for $8,000.
7. Loan from parents—$20,000.

The loans indicated in items 2, 4, and 6 must be disclosed. Loan 1 is exempt from disclosure under paragraph (b)(2) of this section because it is secured by the personal residence. Loan 3 need not be disclosed under paragraph (b)(4) of this section because it is considered to be a revolving charge account with an outstanding liability that does not exceed $10,000 at the end of the reporting period. Loan 5 need not be

disclosed under paragraph (b)(3) of this section because it is secured by a personal motor vehicle which was purchased for more than the value of the loan. Loan 7 need not be disclosed because the creditors are persons specified in paragraph (b)(1) of this section.

§ 2634.306 Agreements and arrangements.

Each financial disclosure report filed pursuant to this part, whether public or confidential, shall identify the parties to and the date of, and shall briefly describe the terms of, any agreement or arrangement of the filer in existence at any time during the reporting period with respect to:

(a) Future employment;

(b) A leave of absence from employment during the period of the reporting individual's Government service;

(c) Continuation of payments by a former employer other than the United States Government; and

(d) Continuing participation in an employee welfare or benefit plan maintained by a former employer.

§ 2634.307 Outside positions.

(a) *In general.* Each financial disclosure report filed pursuant to this part, whether public or confidential, shall identify all positions held at any time by the filer during the reporting period, as an officer, director, trustee, general partner, proprietor, representative, executor, employee, or consultant of any corporation, company, firm, partnership, trust, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution other than the United States.

(b) *Exeptions.* The following need not be reported under paragraph (a) of this section:

(1) Positions held in any religious, social, fraternal, or political entity; and

(2) Positions solely of an honorary nature, such as those with an emeritus designation.

§ 2634.308 Reporting periods and contents of public financial disclosure reports.

(a) *Incumbents.* Each public financial disclosure report filed pursuant to § 2634.201(a) shall include on the standard form prescribed by the Office of Government Ethics consistent with subpart F of this part and in accordance with instructions issued by that Office, a full and complete statement of the information required to be reported according to the provisions of subpart C of this part, for the preceding calendar year (or for any portion of that year not already covered by a new entrant or nominee report filed under paragraph (b) or (c) of § 2634.201), and, in the case of §§ 2634.306 and 2634.307, for the additional period up to the date of filing.

(b) *New entrants, nominees, and candidates.* Each public financial disclosure report filed pursuant to § 2634.201(b), (c), or (d) shall include, on the standard form prescribed by the Office of Government Ethics consistent with subpart F of this part and in accordance with instructions issued by that Office, a full and complete statement of the information required to be reported according to the provisions of subpart C of this part, except for § 2634.303 (relating to purchases, sales, and exchanges of certain property) and § 2634.304 (relating to gifts and reimbursements). The following special rules apply:

(1) *Interests in property.* For purposes of § 2634.301 of this subpart, the report shall include all interests in property specified by that section which are held on or after a date which is fewer than thirty-one days before the date on which the report is filed.

(2) *Income.* For puposes of § 2634.302 of this subpart, the report shall include all income items specified by that section which are received or accrued during the period beginning on January 1 of the preceding calendar year and ending on the date on which the report is filed, except as otherwise provided by § 2634.606 relating to updated disclosure for nominees.

(3) *Liabilities.* For purposes of § 2634.305 of this subpart, the report shall include all liabilities specified by that section which are owed during the period beginning on January 1 of the preceding calendar year and ending fewer than thirty-one days before the date on which the report is filed.

(4) *Agreements and arrangements.* For purposes of § 2634.306 of this subpart, the report shall include only those agreements and arrangements which still exist at the time of filing.

(5) *Outside positions.* For purposes of § 2634.307 of this subpart, the report shall include all such positions held during the preceding two calendar years and the current calendar year up to the date of filing.

(6) *Certain sources of compensation.* Except in the case of the President, the Vice President, or a candidate referred to in § 2634.201(d), the report shall also identify the filer's sources of compensation which exceed $5,000 during either of the preceding two calendar years or during the current calendar year up to the date of filing, and shall briefly describe the nature of the duties performed or services rendered by the reporting individual for each such source of compensation. Information need not be reported, however, which is considered confidential as a result of a privileged relationship, established by law, between the reporting individual and any person. The report also need not contain any information with respect to any person for whom services were provided by any firm or association of which the reporting individual was a member, partner, or employee, unless such individual was directly involved in the provision of such services.

Example. A nominee who is a partner or employee of a law firm and who has worked on a matter involving a client from which the firm received over $5,000 in fees during a calendar year must report the name of the client only if the value of the services rendered by the nominee exceeded $5,000. The name of the client would not normally be considered confidential.

(c) *Termination reports.* Each public financial disclosure report filed under § 2634.201(e) shall include, on the standard form prescribed by the Office of Government Ethics consistent with subpart F of this part and in accordance with instructions issued by that Office, a full and complete statement of the information required to be reported according to the provisions of subpart C of this part, for the period beginning on the last date covered by the most recent public financial disclosure report filed by the reporting individual under this part, or on January 1 of the preceding calendar year, whichever is later, and ending on the date on which the filer's employment terminates.

§ 2634.309 Spouses and dependent children.

(a) *Special disclosure rules.* Each report required by the provisions of either subpart B or subpart I of this part shall also include the following information with respect to the spouse or dependent children of the reporting individual:

(1) Income. For purposes of § 2634.302 of this subpart:

(i) With respect to a spouse, the source but not the amount of items of earned income (other than honoraria) which exceed $1,000 from any one source; and if items of earned income are derived from a spouse's self-employment in a business or profession, the nature of the business or profession but not the amount of the earned income;

(ii) With respect to a spouse, the source, and for a public financial disclosure report the actual amount or value, of any honoraria received by or accrued to the spouse (or payments made or to be made to charity on the

spouse's behalf in lieu of honoraria) which exceed $200 from any one source, and the date on which the services were provided; and

(iii) With respect to a spouse or dependent child, the type and source, and for a public financial disclosure report the amount or value (category or actual amount, in accordance with § 2634.302 of this subpart), of all other income exceeding $200 from any one source, such as investment income from interests in property (if the property itself is reportable according to § 2634.301 of this subpart).

Example 1. The spouse of a filer is employed as a teller at Bank X and earns $23,000 per year. The report must disclose that the spouse is employed by Bank X. The amount of the spouse's earnings need not be disclosed, either on a public or confidential financial disclosure report.

Example 2. The spouse of a reporting individual is self-employed as a pediatrician. The report must disclose that he is a physician, but need not disclose the amount of income, either on a public or confidential financial disclosure report.

(2) *Gifts and reimbursements.* For purposes of § 2634.304 of this subpart, gifts and reimbursements received by a spouse or dependent child which are not received totally independent of their relationship to the filer.

(3) *Interests in property, transactions, and liabilities.* For purposes of §§ 2634.301, 2634.303 (applicable only to public filers), and 2634.305 of this subpart, all information concerning property interests, transactions, or liabilities referred to by those sections of a spouse or dependent child, unless the following three conditions are satisfied:

(i) The filer certifies that the item represents the spouse's or dependent child's sole financial interest or responsibility, and that the filer has no specific knowledge regarding that item;

(ii) The item is not in any way, past or present, derived from the income, assets or activities of the filer; and

(iii) The filer neither derives, nor expects to derive, any financial or economic benefit from the item.

Note: One who prepares a joint tax return with his spouse will normally derive a financial or economic benefit from assets held by the spouse, and will also be charged with knowledge of such items; therefore he could not avail himself of this exception. Likewise, a trust for the education of one's minor child normally will convey a financial benefit to the parent. If so, the assets of the trust would be reportable on a financial disclosure statement.

(b) *Exception.* For reports filed as a new entrant, nominee, or candidate under § 2634.201(b), (c), or (d), or as a new entrant under § 2634.908(b), no information regarding gifts and reimbursements or transactions is required for a spouse or dependent child.

(c) *Divorce and separation.* A reporting individual need not report any information about:

(1) A spouse living separate and apart from the reporting individual with the intention of terminating the marriage or providing for permanent separation;

(2) A former spouse or a spouse from whom the reporting individual is permanently separated; or

(3) Any income or obligations of the reporting individual arising from dissolution of the reporting individual's marriage or permanent separation from a spouse.

§ 2634.310 Trusts, estates, and investment funds.

(a) *In general.* (1) Except as otherwise provided in this section, each financial disclosure report shall include the information required by this subpart or subpart I of this part about the holdings of and income from the holdings of any trust, estate, investment fund or other financial arrangement from which income is received by, or with respect to which a beneficial interest in principal or income is held by, the filer, his spouse, or dependent child.

(2) No information, however, is required about a nonvested beneficial interest in the principal or income of an estate or trust. A vested interest is a present right or title to property, which carries with it an existing right of alienation, even though the right to possession or enjoyment may be postponed to some uncertain time in the future. This includes a future interest when one has a right, defeasible or indefeasible, to the immediate possession or enjoyment of the property, upon the ceasing of another's interest. Accordingly, it is not the uncertainty of the time of enjoyment in the future, but the uncertainty of the right of enjoyment (title and alienation), which differentiates a "vested" and a "nonvested" interest.

(b) *Qualified trusts and excepted trusts.* (1) A filer should not report information about the holdings of or income from holdings of, any qualified blind trust (as defined in § 2634.403) or any qualified diversified trust (as defined in § 2634.404). For a qualified blind trust, a public financial disclosure report shall disclose the category of the aggregate amount of the trust's income attributable to the beneficial interest of the filer, his spouse, or dependent child in the trust. For a qualified diversified trust, a public financial disclosure report shall disclose the category of the aggregate amount of income with respect to such a trust which is actually received by the filer, his spouse, or dependent child, or applied for the benefit of any of them.

(2) In the case of an excepted trust, a filer should indicate the general nature of its holdings, to the extent known, but will not otherwise need to report information about the trust's holdings or income from holdings. The category of the aggregate amount of income from an excepted trust which is received by or accrued to the benefit of the filer, his spouse, or dependent child shall be reported on public financial disclosure reports. For purposes of this part, the term "excepted trust" means a trust:

(i) Which was not created directly by the filer, spouse, or dependent child; and

(ii) The holding or sources of income of which the filer, spouse, or dependent child have no specific knowledge through a report, disclosure, or constructive receipt, whether intended or inadvertent.

(c) *Excepted investment funds.* (1) No information is required under paragraph (a) of this section about the underlying holdings of or income from underlying holdings of an *excepted investment fund* as defined in paragraph (c)(2) of this section, except that the fund itself shall be identified as an interest in property and/or a source of income. Public financial disclosure reports must also disclose the category of value of the fund interest held; aggregate amount of income from the fund which is received by or accrued to the benefit of the filer, his spouse, or dependent child; and value of any transactions involving shares or units of the fund.

(2) For purposes of financial disclosure reports filed under the provisions of this part, an "excepted investment fund" means a widely held investment fund (whether a mutual fund, regulated investment company, common trust fund maintained by a bank or similar financial institution, pension or deferred compensation plan, or any other investment fund), if:

(i)(A) The fund is publicly traded or available; or

(B) The assets of the fund are widely diversified; and

(ii) The filer neither exercises control over nor has the ability to exercise control over the financial interests held by the fund.

(3) A fund is widely diversified if it holds no more than 5% of the value of its portfolio in the securities of any one issuer (other than the United States Government) and no more than 20% in

any particular economic or geographic sector.

§ 2634.311 Special rules.

(a) *Political campaign funds.* Political campaign funds, including campaign receipts and expenditures, need not be included in any report filed under this part. However, if the individual has authority to exercise control over the fund's assets for personal use rather than campaign or political purposes, that portion of the fund over which such authority exists must be reported.

(b) *Certificates of Divestiture.* Each public financial disclosure report required by the provisions of this part shall identify those sales which have occurred pursuant to a Certificate of Divestiture during the period covered by such report. See subpart J of this part for the rules relating to the issuance of such Certificates.

(c) *Reporting standards.* (1) In lieu of entering data on a schedule of the report form designated by the Office of Government Ethics, a filer may attach to the reporting form a copy of a brokerage report, bank statement, or other material, which, in a clear and concise fashion, readily discloses all information which the filer would otherwise have been required to enter on the schedule.

(2) In lieu of reporting the category of amount or value of any item listed in any public financial disclosure report filed pursuant to this part, a filer may report the actual dollar amount of such item.

Subpart D—Qualified Trusts

§ 2634.401 General considerations.

(a) *Statutory standards governing qualified trusts*—(1) *Types of qualified trusts and their relationshp to conflict of interest laws.* The Ethics in Government Act of 1978 created, and provided special public financial disclosure requirements for, two types of qualified trusts, It was envisioned that the use of those trusts by Government employees would reduce the real and apparent conflicts of interest which might arise between the financial interests held by those employees (or attributable to them) and their official responsibilities.

(i) *Interested party* means a Government employee, his spouse, any minor or dependent child, and their representatives in any case in which the employee, spouse, or child has a beneficial interest in the principal or income of a trust proposed for certification or certified.

(ii) *Qualified blind trust.* The most universally adaptable qualified trust is the qualified blind trust, defined in § 2634.403 of this subpart. A trust is considered to be "blind" only with regard to those trust assets about which no interested party has knowledge. When an interested party originally places assets in trust, that party still possesses knowledge about those assets. Those original assets remain financial interests of the Government official for purposes of 18 U.S.C. 208 or for any other Federal conflict of interest statutes or regulations, until the trustee notifies the official either that a particular original asset has been disposed of or that the asset's value is less than $1000. If the trustee sells or disposes of original trust assets and then uses the proceeds to acquire new trust holdings, or if the trustee reinvests trust income to acquire new trust holdings, a "blind" trust exists for those new holdings because the interested parties possess no information about the newly acquired assets. The holdings of a "blind" trust are not classified as financial interests of the Government official for purposes of 18 U.S.C. 208 or for any other Federal conflict of interest statutes or regulations.

(iii) *Qualified diversified trust.* The second type of qualified trust established by the Act is the qualified diversified trust, defined in § 2634.404 of this subpart. Among other requirements, a trust is considered to be "diversified" if it can be demonstrated, to the satisfaction of the Director of the Office of Government Ethics, pursuant to § 2634.404(b), that the trust assets comprise a widely diversified portfolio of readily marketable securities, and do not initially include the securities of any entities having substantial activities in the same area as the Government official's primary area of responsiblity. The trust holdings are never classified as financial interests of the Government official for purposes of 18 U.S.C. 208 or for any other Federal conflict of interest statutes or regulations.

(2) *Independence of trustees and other fiduciaries.* Under the Act and § 2634.406 of this subpart, those entities that are authorized by the Act or by the trust instrument to manage the assets of, and to control and administer, either a qualified blind or a qualified diversified trust must be independent, in fact and in appearance, from those parties who hold beneficial interests in the trust.

(i) The independence of trustees is facilitated by limiting the entities which may serve in this capacity to certain financial institutions.

(ii) In addition to the trustee, the Act extends the independence requirement to other entities which manage trust assets or administer the trust, including officers and employees of the trustee, any other entity designated in the trust instrument to perform fiduciary duties on behalf of the trust, and the officers and employees of any other entity that is involved in the management or control of the trust, such as investment counsel, investment advisers, accountants, or tax preparers and their assistants.

(iii) Those entities governed by the Act will be considered "independent" for purposes of this subpart if, among other requirements, the entities are not affiliated with, associated with, related to, or subject to the control or influence of, any of the parties that hold a beneficial interest in the trust.

(3) *Communications betweeen trust administrators and interested parties.* For purposes of Federal ethics laws, the most important feature of those qualified trusts that are recognized under the Act is the separation which those trusts foster between parties with beneficial interests in the trust and entities which manage trust assets and administer the trust instrument. Once a qualified trust has been certified, the beneficiaries and their representatives are expressly prohibited from commenting directly to the trustee about matters relating to asset management and trust holdings, or to trust administration and activities. Likewise, the trustee must make investment decisions for the trust without consulting, or being controlled by, interested parties, and the trustee is prohibited from informing interested parties directly about trust activities, except to the limited extent required under the Act. The Act requires the trustee to provide trust beneficiaries with certain standard periodic reports. Beyond receipt of these standard reports, trust beneficiaries are prohibited from actively attempting to obtain, and from passively but knowningly obtaining, directly or indirectly, any additional information which the Act prohibits beneficiaries from obtaining, including information about trust holdings and activities. Finally, instruments creating qualified trusts must require interested parties and trustees to make all permissible communications relating to the trust and to its assets in writing, with the prior written approval of the Director of the Office of Government Ethics. Sections 2634.403–2634.405 and 2634.407 of this subpart contain standards implementing these restrictions.

(4) *Trust and beneficiary taxes.* For tax purposes, because a trust is a separate entity distinct from its beneficiaries, a trustee must file an annual fiduciary tax return for the trust (IRS Form 1041). In addition, the trust

beneficiaries must report income received from the trust on their individual tax returns. The Act establishes special filing procedures to be used by the trustee and trust beneficiaries in order to maintain the substantive separation between trust beneficiaries and trust administration. For beneficiaries of qualified blind trusts, the trustee sends a Schedule K–1 form summarizing trust income in appropriate categories to enable the beneficiaries to file individual tax returns. For beneficiaries of qualified diversified trusts, the statute requires the trustee to file the individual tax returns on behalf of the trust beneficiaries. The beneficiaries must transmit to the trustee materials concerning taxable transactions and occurrences outside of the trust, pursuant to the requirements in each trust instrument which detail this procedure.

(b) *Policy considerations and objectives underlying the qualified trust program.* (1) Prior to enactment of the Act's qualified trust provisions, there was no accepted definition of a properly formulated blind or diversified trust. However, there was general agreement that the use of blind or diversified trusts often reduced the potential for conflicts of interest. If Government employees do not know the exact identity, nature, and extent of their financial interests, then the employees cannot be influenced in the performance of their official duties by those interests. Their official actions, under these circumstances, should be free from collateral attack arising out of real or apparent conflicts of interest. Therefore, the most significant objective to be achieved through the use of a blind trust is the lack of knowledge, or actual "blindness," by a Government official with respect to the holdings in his trust. The same goal may be achieved through the use of a diversified trust, if that trust holds securities from different issuers in different economic sectors, and if the trust's interest in any one issuer is limited. Under these conditions, it is unlikely that official actions taken by the Government employee who holds a beneficial interest in the trust would affect individual securities to such a degree that the overall value of the trust's portfolio would be materially enhanced. Thus, wide diversification is tantamount to actual "blindness."

(2) Because, for the trusts certified under the provisions of this subpart D, the Government official is or will become blind to the identity and nature of his actual trust holdings, the reporting requirements of section 102(f)(1) of the Act and subparts C or I of this part, which generally require Government filers to disclose the contents of a trust's portfolio, do not apply. See § 2634.310 of this part. Further, as discussed in paragraphs (a)(1) (ii) and (iii) of this section, 18 U.S.C. 208 and other Federal conflict of interest laws do not generally apply to the holdings of qualified trusts, except in the case of the original assets transferred to a qualified blind trust until notice that a particular original asset has been disposed of or that the asset's value is below $1,000.

(c) *Qualified trust provisions of the regulation.* This subpart D prescribes standards which implement the statutory requirements and policy objectives underlying the Act's qualified blind and diversified trust provisions. The Office of Government Ethics will apply the standards of this subpart to specific cases.

(1) Classification as a qualified trust. In order to be classified as a qualified trust for purposes of the Act, blind and diversified trusts must satisfy the following three requirements:

(i) *The trust document must conform to announced standards.* As provided under § 2634.403(b) for blind trusts and § 2634.404(c) for diversified trusts, the trust document must conform to the model trust instruments which are drafted and distributed by the Office of Government Ethics for use by interested parties when drafting their trust arrangements. Prior to certifying a trust under § 2634.405 of this subpart, as discussed in paragraph (c)(1)(iii) of this section, the Office of Government Ethics must approve every proposed trust document. In addition to other required provisions, the trust instrument must contain language which implements the communications restrictions discussed in paragraph (a)(3) of this section. By requiring interested parties, trustees, and other signatories to the trust instrument to include communications provisions, these regulations compel the signatories diligently to safeguard against inadvertent disclosures of precluded information to the interested parties.

(ii) *Truly independent fiduciaries.* As discussed in paragraph (a)(2) of this section, the fiduciaries in charge of administering and managing the assets of a qualified trust must be actually and apparently independent of the parties who hold beneficial interests in the trust, and of their representatives. To ensure such independence, § 2634.406 of this subpart limits the range of permissible fiduciaries. Before a trust may be classified as a qualified blind or diversified trust, the Director of the Office of Government Ethics must conclude, in his judgment, that the trust fiduciaries named in the trust instrument satisfy the standards for independence contained in § 2634.406 of this subpart.

(iii) *Certification by the Office of Government Ethics.* Before a trust may be classified as a qualified blind or diversified trust, the Director of the Office of Government Ethics must certify, in accordance with the standards and procedures established in § 2634.405 of this subpart, that the trust meets the requirements of section 102(f) of the Act and of this subpart, that certification is in the public interest, and that certification is consistent with the policies established by these provisions and by other applicable laws and regulations. This certification is essential so that the Office can ensure, in advance that the proposed trust arrangement satisfies the established standards.

(2) Certification of pre-existing trusts. Normally, those trusts certified as qualified trusts by the Director of the Office of Government Ethics under § 2634.405 of this subpart are newly created trust arrangements, formulated in accordance with established standards by representatives of the interested parties in consultation with the Office of Government Ethics. However, the Director may certify a pre-existing trust as a qualified blind or qualified diversified trust under § 2634.403 (blind) or § 2634.404 (diversified) if he determines that such action is appropriate and is sufficient to ensure compliance with applicable laws and regulations. The pre-existing trust proposed for certification must meet both the generally applicable trust requirements, and several special requirements contained in § 2634.405(c) of this subpart, including that all of the parties to the original trust agree to administer the trust in accordance with the requirements of this subpart. The pro-existing trust may be certified only if all of the conditions of this subpart are fulfilled, and if the requisite confidentially can be assured with respect to the trust.

(3) Reporting requirements. Once a trust is classified as a qualified blind or qualified diversified trust in the manner discussed under paragraph (c)(1) of this section, § 2634.310(b) applies less inclusive financial disclosure requirements to the trust assets.

(4) Sanctions and enforcement. Section 2634.702 provides civil sanctions which apply to any Government official or trust fiduciary who violates his obligations under the Act, its implementing regulations, or the trust instrument. In addition, the Office of

Government Ethics has authority under the Act to impose appropriate administrative or other sanctions. Subpart E of this part delineates the procedure which must be followed with respect to the revocation of trust certificates and trustee approvals.

(d) *Drafting and implementation of the qualified trust instrument.* (1) The overview of the qualified trust program contained in this section cannot anticipate every concern or question, or discuss every scenario which might arise in the course of formulating and implementing a qualified trust instrument. The Office of Government Ethics should be contacted by an interested party or by his professional representatives if the Act, the implementing regulations, and the trust instrument itself do not provide guidance in a particular instance.

(2) No trust will be considered "qualified" for purposes of the Act until the Office of Government Ethics certifies the trust prior to execution. The Office of Government Ethics makes available to attorneys model trust agreements for use in drafting proposed trust agreements which are to be submitted to the Office for certification. Attorneys are cautioned to consider each model provision in light of the circumstances presented by the particular case, and to modify provisions to the extent that such modifications are necessary or appropriate. Attorneys should not rely uncritically upon the language of the model agreements. However, many of the model provisions implement the minimum requirements which must be contained in any trust instrument certified by the Office. Certificates of Independence for fiduciaries must be executed in the form indicated in appendix A of this part.

(3) The Office of Government Ethics does not draft trust instruments for use in individual cases. However, its staff is always willing to cooperate with attorneys and to make its experience available to them in developing appropriate trust instruments which satisfy applicable Federal laws, Executive orders and regulations. If the use of a qualified trust is contemplated in a particular case, it is strongly recommended that the interested parties or their representatives contact the Office of Government Ethics as early as possible.

(4) Prior to trust certification, prospective trustees or their representatives should schedule with the staff of the Office of Government Ethics an appointment for an orientation to the specialized requirements and procedures which have been established by the Act and the regulations with respect to qualified trust administration.

§ 2634.402 Special notice for advice-and-consent nominees.

(a) *In general.* In any case in which the establishment of a qualified diversified trust is contemplated with respect to a reporting individual whose nomination is being considered by a Senate committee, that individual shall inform the committee of the intention to establish a qualified diversified trust at the time of filing a financial disclosure report with the committee.

(b) *Applicability.* The rule of this section is not applicable to members of the uniformed services or Foreign Service officers. The special notice requirement of this section shall not preclude an individual from seeking the certification of a qualified blind trust or qualified diversified trust after the Senate has given its advice and consent to a nomination.

§ 2634.403 Qualified blind trusts.

(a) *Definition.* A *qualified blind trust* is a trust in which the filer, his spouse, or his minor or dependent child has a beneficial interest, which is certified pursuant to § 2634.405 of this subpart by the Director of the Office of Government Ethics, and which includes in the trust instrument in the provisions required by paragraph (b) of this section, and has an independent trustee as defined in § 2634.406 of this subpart. See section 102(f)(3) of the Act.

(b) *Required provisions.* The instrument which establishes a blind trust must adhere substantively to model drafts circulated by the Office of Government Ethics, and must provide that:

(1) The primary purpose of the blind trust is to confer on the independent trustee and any other designated fiduciary the sole responsibility to administer the trust and to manage trust assets without the participation by, or the knowledge of, any interested party. This includes the duty to decide when and to what extent the original assets of the trust are to be sold or disposed of and in what investments the proceeds of sale are to be reinvested;

(2) The trustee and any other designated fiduciary in the exercise of their authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;

(3) None of the assets initially placed in the trust's portfolio shall include assets the holding of which by any interested party would be prohibited by the Act, by the implementing regulations, or by any other applicable Federal law, Executive order, or regulation;

(4) Any portfolio asset transferred to the trust by an interested party is free of any restriction with respect to its transfer or sale, except as fully described in schedules attached to the trust instrument, and as approved by the Director of the Office of Government Ethics;

(5) During the term of the trust, the interested parties shall not pledge, mortgage, or otherwise encumber their interests in the property held by the trust;

(6) The trustee shall promptly notify the filer and the Director of the Office of Government Ethics when any particular asset transferred to the trust by an interested party has been completely disposed of or when the value of that asset is reduced to less than $1,000;

(7) The trustee or his designee shall prepare the trust's income tax return. Under no circumstances shall the trustee or any other designated fiduciary disclose publicly, or to any interested party, the trust's tax return, any information relating to that return except for a summary of trust income in categories necessary for an interested party to complete his individual tax return, or any information which might specifically identify current trust assets, or those assets which have been sold or disposed of from trust holdings, other than information relating to the sale or disposition of original trust assets under paragraph (b)(6) of this section;

(8) An interested party shall not receive any report on trust holdings and sources of trust income, except that the trustee shall, without identifying specifically any asset or holding:

(i) Report quarterly the aggregate market value of the assets representing the interested party's interest in the trust;

(ii) Report the net income or loss of the trust, and any other information necessary to enable the interested party to complete his individual income tax return; and

(iii) Report annually, for purposes of section 102(a)(1)(B) of the Act, the aggregate amount of the trust's income attributable to the interested party's beneficial interest in the trust, categorized in accordance with § 2634.302(b);

(9) There shall be no direct or indirect communication with respect to the trust between an interested party and the independent trustee or any other designated fiduciary with respect to the trust unless:

(i) Such communication is in writing, with the prior written approval of the

Director of the Office of Government Ethics and is filed with the Director in accordance with § 2634.408(c) of this subpart; and

(ii) It relates only:

(A) To the request for a distribution from the trust, which does not specify whether the distribution shall be made in cash or in kind;

(B) To the general financial interest and needs of the interested party including, but not limited to, a preference for maximizing current income or long-term capital appreciation;

(C) To notification of the trustee by the interested party that the interested party is prohibited by subsequently applicable statute, Executive order, or regulation from holding an asset, and to directions to the trustee that the trust shall not hold that asset; or

(D) To instructions to the trustee to sell all of an asset which was initially placed in the trust by an interested party, and which, in the determination of the filer creates a real or apparent conflict due to duties subsequently assumed by the filer (but the filer is not required to give such directions);

Note: By the terms of paragraph (c)(C)(vi) of section 102(f) of the Act, communications which solely consist of requests for distributions of cash or other unspecified assets of the trust are not required to be in writing. Further, there is no statutory mechanism for pre-screening of proposed communications. However, experience of the Office of Government Ethics over the years dictates the necessity of prohibiting any oral communications between the trustee and an interested party with respect to the trust and pre-screening all proposed written communications, to prevent inadvertent prohibited communications and preserve confidence in the Federal qualified trust program. Accordingly, under its authority pursuant to paragraph (3)(D) of section 102(f) of the Act, the Office of Government Ethics will not approve proposed trust instruments which do not contain language conforming to this policy, except in unusual cases where compelling necessity is demonstrated to the Director, in his sole discretion.

(10) The interested parties shall not take any action to obtain, and shall take reasonable action to avoid receiving, information with respect to the holdings and the sources of income of the trust, including a copy of any trust tax return filed by the trustee, or any information relating to that return, except for the reports and information specified in paragraphs (b)(6) and (b)(8) of this section;

(11) An independent trustee and any other designated fiduciary shall file, with the Director of the Office of Government Ethics by May 15th following any calendar year during which the trust was in existence, a properly executed Certificate of Compliance in the form prescribed in appendix B to this part. In addition, the independent trustee and such fiduciary shall maintain and make available for inspection by the Office of Government Ethics, as it may from time to time direct, the trust's books of account and other records and copies of the trust's tax returns for each taxable year of the trust;

(12) Neither the trustee nor any other designated fiduciary shall knowingly and willfully, or negligently:

(i) Disclose to any interested party any information regarding the trust that may not be disclosed pursuant to title I of the Act, the implementing regulations, or the trust instrument;

(ii) Acquire any holding the ownership of which is prohibited by, or not in accordance with, the terms of the trust instrument;

(iii) Solicit advice from any interested party with respect to the trust, if such solicitation is prohibited by title I of the Act, the implementing regulations, or the trust instrument; or

(iv) Fail to file any document required by title I of the Act or by this part;

(13) An interested party shall not knowingly and willfully, or negligently:

(i) Solicit or receive any information regarding the trust that may not be disclosed pursuant to title I of the Act, the implementing regulations, or the trust instrument; or

(ii) Fail to file any document required by title I of the Act or by this part;

(14) No person, including investment counsel, investment advisers, accountants, and tax preparers, may be employed or consulted by an independent trustee or any other designated fiduciary to assist in any capacity to administer the trust or to manage and control the trust assets, unless the following four conditions are met:

(i) When any interested party learns about such employment or consultation, the person must sign the trust instrument as a party, subject to the prior approval of the Director of the Office of Government Ethics;

(ii) Under all the facts and circumstances, the person is determined pursuant to the requirements for eligible entities under § 2634.406 of this subpart to be independent of any interested party with respect to the trust arrangement;

(iii) The person is instructed by the independent trustee of other designated fiduciary not to disclose publicly or to any interested party information which might specifically identify current trust assets which have been sold or disposed of from trust holdings, other than information relating to the sale or disposition of original trust assets under paragraph (b)(6) of this section; and

(iv) The person is instructed by the trustee or other designated fiduciary to have no direct communication with respect to the trust with any interested party, and to make all indirect communications with respect to the trust only through the trustee, pursuant to paragraph (b)(9) of this section;

(15) The trustee shall not acquire by purchase, grant, gift, exercise of option, or otherwise, without the prior written approval of the Director of the Office of Government Ethics, securities, cash, or other property from any interested party;

(16) The existence of any banking or other client relationship between any interested party and an independent trustee or any other designated fiduciary shall be disclosed in schedules attached to the trust instrument, and no other such relationship shall be instituted unless that relationship is disclosed to the Director of the Office of Government Ethics; and

(17) The independent trustee and any other designated fiduciary shall be compensated in accordance with schedules annexed to the trust instrument.

§ 2634.404 Qualified diversified trusts.

(a) *Definition.* A *qualified diversified trust* is any trust in which the filer, his spouse, or his minor or dependent child has a beneficial interest, which is certified pursuant to § 2634.405 of this subpart by the Director of the Office of Government Ethics, which has a portfolio as specified in paragraph (b) of this section, and which includes in the trust instrument the provisions required by paragraph (c) of this section and has an independent trustee as defined in § 2634.406 of this subpart. See section 102(f)(4)(B) of the Act.

(b) *Required portfolio*—(1) *Standards for initial assets.* It must be established, to the satisfaction of the Director of the Office of Government Ethics, that the initial assets of the trust proposed for certification comprise a widely diversified portfolio of readily marketable securities. The reporting individual or other interested party shall provide the Director with a detailed list of the securities proposed for inclusion in the portfolio, specifying their fair market values and demonstrating that these securities meet the requirements of this paragraph. The initial trust portfolio may not contain securities of issuers having substantial activities in the reporting individual's primary area

of responsibility. If requested by the Director, the designated agency ethics official for the reporting individual's employing agency shall certify whether the proposed portfolio meets this standard.

(2) *Diversification standards.* For purposes of paragraph (b)(1) of this section, a portfolio will be widely diversified if:

(i) The value of the securities concentrated in any particular or limited industrial, economic or geographic sector is no more than twenty percent of the total; and

(ii) The value of the securities of any single issuer (other than the United States Government) is no more than five percent of the total.

(3) *Marketability standard.* For purposes of paragraph (b)(1) of this section, a security will be readily marketable if:

(i) Daily price quotations for the security appear regularly in newspapers of general circulation; and

(ii) The trust holds the security in a quantity that does not unduly impair liquidity.

(c) *Required provisions.* The instrument which establishes a diversified trust must adhere substantively to model drafts circulated by the Office of Government Ethics, and must provide that:

(1) The primary purpose of the diversified trust is to confer on the independent trustee and any other designated fiduciary the sole responsibility to administer the trust and to manage trust assets without the participation by, or the knowledge of, any interested party. This includes the duty to decide when and to what extent the original assets of the trust are to be sold or disposed of and in what investments the proceeds of sale are to be reinvested;

(2) The trustee and any other designated fiduciary in the exercise of their authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;

(3) The trust's initial assets shall comprise a widely diversified portfolio of readily marketable securities, in accordance with the principles of paragraph (b) of this section, and the trustee shall not acquire additional securities in excess of the diversification standards;

(4) Any portfolio asset transferred to the trust by an interested party is free of any restriction with respect to its transfer or sale, except as fully described in schedules attached to the trust instrument, and as approved by the Director of the Office of Government Ethics;

(5) During the term of the trust, the interested parties shall not pledge, mortgage, or otherwise encumber their interests in the property held under the trust;

(6) None of the assets initially placed in the trust's portfolio shall consist of securities of issuers having substantial activities in the reporting individual's primary area of Federal responsibility;

(7) The trustee or designée shall prepare the trust's income tax return and, on behalf of any interested party, the personal income tax returns and similar tax documents which may contain information relating to the trust. Under no circumstances shall the trustee or any other designated fiduciary disclose publicly or to any interested party, any of the returns prepared by the trustee or his designee, any information relating to those returns, or any information which might specifically identify current trust assets, or those assets which have been sold or disposed of from trust holdings;

(8) An interested party shall not receive any report on trust holding and sources of trust income, except that the trustee shall, without identifying specifically any asset or holding:

(i) Report quarterly the aggregate market value of the assets representing the interested party's interest in the trust; and

(ii) Report annually, for purposes of section 102(a)(1)(B) of the Act, the aggregate amount actually distributed from the trust to such interested party, or applied for the party's benefit;

(9) There shall be no direct or indirect communication with respect to the trust between an interested party and the independent trustee or any other designated fiduciary unless:

(i) Such communication is in writing, with the prior written approval of the Director of the Office of Government Ethics and is filed with the Director in accordance with § 2634.408(c) of this subpart; and,

(ii) It relates only:

(A) To the request for a distribution from the trust, which does not specify whether the distribution shall be made in cash or in kind;

(B) To the general financial interest and needs of the interested party including, but not limited to, a preference for maximizing current income or long-term capital appreciation; or

(C) To information, documents, and funds concerning income tax obligations arising from sources other than the property held in trust, which are required by the trustee to enable him to file, on behalf of an interested party, the personal income tax returns and similar tax documents which may contain information relating to the trust:

Note: By the terms of paragraph (3)(C)(vi) of section 102(f) of the Act, communications which soley consist of requests for distributions of cash or other unspecified assets of the trust are not required to be in writing. Further, there is no statutory mechanism for pre-screening of proposed communications. However, experience of the Office of Government Ethics over the years dictates the necessity of prohibiting any oral communications between the trustee and an interested party with respect to the trust and pre-screening all propose written communications, to prevent inadvertent prohibited communications and preserve confidence in the Federal qualified trust program. Accordingly, under its authority pursuant to paragrapy (3)(D) of section 102(f) of the Act, the Office of Government Ethics will not approve proposed trust instruments which do not contain language conforming to this policy, except in unusual cases where compelling necessity is demonstrated to the Director, in his sole discretion.

(10) The interested parties shall not seek to obtain, and shall take reasonable action to avoid receiving, information with respect to trust holdings and sources of trust income, including a copy of any tax return filed by the trustee, or any information relating to that return, except for the reports and information specified in paragraph (c)(8) of this section;

(11) An independent trustee and any other designated fiduciary shall file, with the Director of the Office of Government Ethics, by May 15 following any calendar year during which the trust was in existence, a properly executed Certificate of Compliance in the form prescribed in appendix B to this part. In addition, the independent trustee and any other designated fiduciary shall maintain and make available for inspection by the Office of Government Ethics, as it may from time to time direct, the trust's books of account and other records and copies of the trust's tax returns for each taxable year of the trust;

(12) Neither the trustee nor any other designated fiduciary shall knowingly and willfully, or negligently:

(i) Disclose to any interested party any information regarding the trust that may not be disclosed pursuant to title I of the Act, the implementing regulations, or the trust instrument;

(ii) Acquire any holding the ownership of which is prohibited by, or not in accordance with, the terms of the trust instrument;

(iii) Solicit advice from any interested party with respect to the trust, if such

solicitation is prohibited by title I of the Act, the implementing regulations, or the trust instrument; or

(iv) Fail to file any document required by title I of the Act or by this part;

(13) An interested party shall not knowingly and willfully, or negligently:

(i) Solicit or receive any information regarding the trust that may not be disclosed pursuant to title I of the Act, the implementing regulations, or the trust instrument; or

(ii) Fail to file any document required by title I of the Act or by this part;

(14) No person, including investment counsel, investment advisers, accountants, and tax preparers, may be employed or consulted by an independent trustee or any other designated fiduciary to assist in any capacity to administer the trust or to manage and control the trust assets, unless, the following four conditions are met:

(i) When an interested party learns about such employment or consultation, the person must sign the trust instrument as a party, subject to the prior approval of the Director of the Office of Government Ethics;

(ii) Under all the facts and circumstances, the person is determined pursuant to the requirements for eligible entities under § 2634.406 of this subpart to be independent of any interested party with respect to the trust arrangement;

(iii) The person is instructed by the independent trustee or other designated fiduciary not to disclose publicly or to any interested party information which might specifically identify current trust assets or those assets which have been sold or disposed of from trust holdings; and

(iv) The person is instructed by an independent trustee or other designated fiduciary to have no direct communication with respect to the trust with any interested party, and to make all indirect communications with respect to the trust only through the trustee, pursuant to paragraph (c)(9) of this section;

(15) The trustee shall not acquire by purchase, grant, gift, exercise of option, or otherwise, without the prior written approval of the Director of the Office of Government Ethics, any securities, cash, or other property from any interested party;

(16) The existence of any banking or other client relationship between any interested party and an independent trustee or other designated fiduciary shall be disclosed in schedules attached to the trust instrument, and no other such relationship shall be instituted unless that relationship is disclosed to the Director of the Office of Government Ethics; and

(17) The independent trustee and any other designated fiduciary shall be compensated in accordance with schedules annexed to the trust instrument.

(d) *Personal income tax returns.* In the case of a trust to which this section applies, the trustee shall be given power of attorney to prepare, and shall file, on behalf of any interested party, the personal income tax returns and similar tax documents which may contain information relating to the trust. Appropriate Internal Revenue Service power of attorney forms shall be used for this purpose.

§ 2634.405 Certification of trusts.

(a) *Standards.* Before a trust may be classified as a qualified blind or a qualified diversified trust, under the provisions of § 2634.403 or § 2634.404 of this subpart, respectively, the trust must be certified by the Director of the Office of Government Ethics.

(1) A trust will be certified for purposes of this subpart only if:

(i) It is established to the Director's satisfaction that the requirements of section 102(f) of the Act and this subpart have been met;

(ii) Certification is in the public interest; and

(iii) Certification is consistent with the policies established by the Act, this subpart and other applicable laws and regulations.

(2) Certification will not be granted in any case in which, in the Director's sole judgment, such action would not be appropriate because of the ready availability of other remedies, the lack of any substantive ethical concern which would warrant the establishment of a qualified trust, or the nature or negligible value of the assets proposed for a trust's initial portfolio.

(b) *Certification procedures.* The interested parties or their representatives should first consult the staff of the Office of Government Ethics concerning the appropriateness of, and requirements for, certification in the particular case. In order to assure timely trust certification, the interested parties shall be responsible for the expeditious submission to the Office of all required documents and responses to requests for information, including a statement that any interested party who will be a party to a certified trust instrument has read and understands the overview of executive branch qualified trusts in § 2634.401(a) of this subpart. Certification shall be indicated by a letter from the Director to the interested parties or their representatives.

(c) *Certification of pre-existing trusts.* In addition to the normally applicable rules of this subpart D, other considerations apply to pre-existing trusts. Generally, in the case of a pre-existing trust whose terms do not permit amendments satisfying the rules of this subpart, all of the relevant parties (including the reporting individual, any other interested parties, the trustee of the pre-existing trust, and all of its other parties and beneficiaries) will be required pursuant to section 102(f)(7) of the Act to enter into an umbrella agreement specifying that the pre-existing (underlying) trust will be administered in accordance with the provisions of this subpart. A parent or guardian may execute the umbrella agreement on behalf of a required participant who is a dependent child. The umbrella agreement will be certified as a qualified trust if all requirements of this subpart are fulfilled under conditions where required confidentiality with respect to the trust can be assured. A copy of the underlying trust instrument, and a list of its assets at the time the umbrella agreement is certified as a qualified trust (categorized as to value in accordance with § 2634.301(d)), shall be filed with the executed umbrella trust instrument as specified by § 2634.408(a)(1)(i) of this subpart.

(d) *Review of certification.* The Office of Government Ethics shall maintain a program to assess, on a frequent basis, the appropriateness of any trust certification which has been granted.

(e) *Revocation of certification and modification of trust instrument.* Certification of a trust may be revoked pursuant to the rules of subpart E of this part. The terms of a qualified trust may not be revoked or amended, except with the prior written approval of the Director, and upon a showing of necessity and appropriateness.

§ 2634.406 Independent trustees.

(a) *Standards.* (1) The term *independent trustee* means any entity referred to in paragraph (a)(2) of this section which, under all the facts and circumstances, is determined by the Director of the Office of Government Ethics and in the Director's sole discretion, to be independent of any interested party with respect to a trust proposed for certification under this subpart. The term includes, unless the context indicates otherwise, in addition to the party to a trust instrument who is designated to serve as trustee, those parties who are designated to perform fiduciary duties. Approval of a proposed trustee or other designated fiduciary

shall be granted only if it is established to the Director's satisfaction that the requirements of section 102 of the Act and this subpart have been met, and that approval in the case is in the public interest and consistent with the policies established by those provisions and other applicable laws and regulations.

(2) Eligible entities. Eligibility to serve as a trustee or other fiduciary under this section is limited to a financial institution (not a person), not more than 10 percent of which is owned or controlled by a single individual, which is:

(i) A bank, as defined in 12 U.S.C. 1841(c); or

(ii) An investment adviser, as defined in 15 U.S.C. 8Ob–2(a)(11).

Note: By the terms of paragraph (3)(A)(i) of section 102(f) of the Act, an individual who is an attorney, a certified public accountant, a broker, or an investment advisor is also eligible to serve as an independent trustee. However, experience of the Office of Government Ethics over the years dictates the necessity of limiting service as a trustee or other fiduciary to the financial institutions referred to in this paragraph, to maintain effective administration of trust arrangements and preserve confidence in the Federal qualified trust program. Accordingly, under its authority pursuant to paragraph (3)(D) of section 102(f) of the Act, the Office of Government Ethics will not approve proposed trustees or other fiduciaries who are not financial institutions, except in unusual cases where compelling necessity is demonstrated to the Director, in his sole discretion.

(3) Requirements. No eligible entity shall be determined to be an independent trustee under this section unless:

(i) That entity is independent of and unassociated with any interested party so that it cannot be controlled or influenced in the administration of the trust by any interested party; and

(ii) That entity is not and has not been affiliated with any interested party, and is not a partner of, or involved in any joint venture or other investment or business with, any interested party; and

(iii) Any director, officer, or employee of such entity:

(A) Is independent of and unassociated with any interested party so that such director, officer, or employee cannot be controlled or influenced in the administration of the trust by any interested party;

(B) Is not and has not been employed by any interested party, not served as a director, officer, or employee of any organization affiliated with any interested party, and is not and has not been a partner of, or involved in any joint venture or other investment with, any interested party; and

(C) Is not a relative of any interested party.

(b) *Approval procedures.* (1) Appropriate documentation to establish, pursuant to the requirements of paragraph (a)(3) of this section, the independence of a proposed trustee or any other person to be designated in a trust instrument to perform fiduciary duties shall be submitted to the Office of Government Ethics in writing, including the Certificate of Independence in the form prescribed in appendix A of this part. The existence of any other banking or client relationship between an interested party and a proposed trustee or other designated fiduciary must be disclosed in such documentation, and may be subject to discontinuance as a condition of approval.

(2) The Director shall indicate approval of a proposed trustee, and of any other person designated in the trust instrument to perform fiduciary duties, including those of an investment adviser, by reporting such approval in writing to the interested parties or to their representatives.

(c) *Review of approval.* The Office of Government Ethics shall maintain a program to assess, on a frequent basis, the appropriateness of any approval which has been granted under this section.

(d) *Revocation of approval.* Approval of a trustee or any other designated fiduciary may be revoked pursuant to the rules of subpart E of this part.

§ 2634.407 Restrictions on fiduciaries and interested parties.

(a) *Restrictions applicable to trustees and other fiduciaries.* Any trustee or any other designated fiduciary of a qualified trust shall not knowingly or negligently:

(1) Disclose any information to an interested party with respect to the trust that may not be disclosed under title I of the Act, the implementing regulations or the trust instrument;

(2) Acquire any holding:

(i) Directly from an interested party without the prior written approval of the Director; or

(ii) The ownership of which is prohibited by, or not in accordance with, title I of the Act, the implementing regulations, the trust instrument, or with other applicable statutes and regulations;

(3) Solicit advice from any interested party with respect to such trust, which solicitation is prohibited by title I of the Act, the implementing regulations, or the trust instrument; or

(4) Fail to file any document required by the implementing regulations or the trust instrument.

(b) *Restrictions applicable to interested parties.* An interested party to a qualified trust shall not knowingly or negligently:

(1) Solicit or receive any information about the trust that may not be disclosed under title I of the Act, the implementing regulations or the trust instrument; or

(2) Fail to file any document required by this subpart or the trust instrument.

§ 2634.408 Special filing requirements for qualified trusts.

(a) *The interested party.* In the case of any qualified trust, the Government employee or other interested party shall:

(1) *Execution of the trust.* Within thirty days after the trust is certified under § 2634.405 of this subpart by the Director of the Office of Government Ethics, file with the Director a copy of:

(i) The executed trust instrument of the trust (other than those provisions which relate to the testamentary disposition of the trust assets); and

(ii) A list of the assets which were transferred to the trust, categorized as to value of each asset in accordance with § 2634.301(d).

(2) *Transfer of assets.* Within thirty days of transferring an asset, other than cash, to a qualified trust, file a report with the Director of the Office of Government Ethics, which identifies and briefly describes each asset, categorized as to value in accordance with § 2634.301(d).

(3) *Dissolution of the trust.* Within thirty days of the dissolution of a qualified trust:

(i) File a report of the dissolution with the Director of the Office of Government Ethics; and

(ii) File with the Director a list of assets of the trust at the time of the dissolution, categorized as to value in accordance with § 2634.301(d).

(b) *Trustees and other designated fiduciaries.* An independent trustee of a qualified trust, and any other person designated in the trust instrument to perform fiduciary duties, shall file, with the Director of the Office of Government Ethics by May 15th following any calendar year during which the trust was in existence, a properly executed Certificate of Compliance in the form prescribed by appendix B of this part. In addition, an independent trustee and other fiduciaries shall maintain and make available for inspection by the Office of Government Ethics, as it may from time to time direct, the trust's books of account and other records and copies of the trust's tax returns for each taxable year of the trust.

(c) *Written communications.* All communications between an interested party and the trustee of a qualified trust must, under this subpart, have the prior written approval of the Director of the Office of Government Ethics. After such an approved written communication (including those communications described in § 2634.403(b)(9) or § 2634.404(c)(9) of this subpart) has been transmitted, the person initiating the communication shall file a copy of the communication within five days of its date, with the Director of the Office of Government Ethics.

(d) *Public access.* Any document filed under the requirements of paragraph (a) of this section by a public filer, nominee, or candidate shall be subject to the public disclosure requirements of § 2634.603. Any document (and the information contained therein) inspected under the requirements of paragraph (b) of this section (other than a Certificate of Compliance), or filed under the requirements of paragraph (c) of this section, shall be exempt from the public disclosure requirements of § 2634.603, and shall not be disclosed to any interested party.

Subpart E—Revocation of Trust Certificates and Trustee Approvals

§ 2634.501 Purpose and scope.

(a) *Purpose.* This subpart establishes the procedures of the Office of Government Ethics for enforcement of the qualified blind trust, qualified diversified trust, and independent trustee provisions of title I of the Ethics in Government Act of 1978, as amended, and the regulation issued thereunder (subpart D of this part).

(b) *Scope.* This subpart applies to all trust certifications and trustee approvals pursuant to §§ 2634.405(a) and 2634.406(a), respectively.

§ 2634.502 Definitions.

For purposes of this subpart (unless otherwise indicated):

(a) *Senior Attorney* means the Office of Government Ethics employee designated as the manager of the qualified trust program.

(b) *Trust restrictions* means the applicable provisions of title I of the Ethics in Government Act of 1978, subpart D of this part, and the trust instrument.

§ 2634.503 Determinations.

(a) Where the Senior Attorney concludes that violations or apparent violations of the trust restrictions exist and may warrant revocation of trust certification or trustee approval previously granted under § 2634.405 or § 2634.406 of this subpart, the Senior Attorney may, pursuant to the procedure specified in paragraph (b) of this section, conduct a review of the matter, and may submit findings and a recommendation concerning final action to the Director of the Office of Government Ethics.

(b) Review procedure. (1) In his review of the matter, the Senior Attorney shall perform such examination and analysis of violations or apparent violations as he deems reasonable.

(2) The Senior Attorney shall provide an independent trustee and, if appropriate, the interested parties, with:

(i) Notice that revocation of trust certification or trustee approval is under consideration pursuant to the procedures in this subpart;

(ii) A summary of the violation or apparent violations which shall state the preliminary facts and circumstances of the transactions or occurrences involved with sufficient particularity to permit the recipients to determine the nature of the allegations; and

(iii) Notice that the recipients may present evidence and submit statements on any matter in issue within ten business days of the recipient's actual receipt of the notice and summary.

(c) Determination. (1) In making determinations with respect to the violations or apparent violations under this section, the Director of the Office of Government Ethics shall consider the findings and recommendations of final action submitted by the Senior Attorney under paragraph (a) of this section, as well as the written record of review compiled under paragraph (b) of this section.

(2) If the Director finds a violation or violations of the trust restrictions he may, as he deems appropriate:

(i) Issue an order revoking trust certification or trust approval;

(ii) Resolve the matter through any other remedial action within the Director's authority;

(iii) Order further examination and analysis of the violation or apparent violation; or

(iv) Decline to take further action.

(3) If an order of revocation is issued, the parties to the trust instrument shall be expeditiously notified in writing. The notice shall state the basis for the revocation, and shall inform the parties either that the trust is no longer a qualified blind or qualified diversified trust for any purpose under Federal law; or that the independent trustee may no longer serve the trust in any capacity, and must be replaced by a successor, who is subject to the prior written approval of the Director; or both where appropriate.

Subpart F—Procedure

§ 2634.601 Report forms.

(a) The Office of Government Ethics provides, through the Federal Supply Service of the General Services Administration, two standard forms for financial disclosure reporting: the SF 278 (Public Financial Disclosure Report) for reporting the information described in subpart B of this part on executive branch public disclosure; and the SF_____ (Confidential Financial Disclosure Report) for reporting the information described in subpart I of this part on executive branch confidential disclosure.

(b) Subject to the prior written approval of the Director of the Office of Government Ethics, an agency may require employees to file additional confidential financial disclosure forms which supplement either or both of the standard forms referred to in paragraph (a) of this section, if necessary because of special or unique agency circumstances. The Director may approve such agency forms when, in his opinion, the supplementation is shown to be necessary for a comprehensive and effective agency ethics program to identify and resolve conflicts of interest. See §§ 2634.103 and 2634.901.

(c) Reports concerning payments made to charitable organizations in lieu of honoraria shall also be filed on the separate standard form provided in conjunction with part 2636 of this chapter, and in accordance with the procedures specified therein.

§ 2634.602 Filing of reports.

(a) Except as otherwise provided in this section, the reporting individual shall file financial disclosure reports required under this part with the designated agency ethics official or his delegate at the agency where the individual is employed, or was employed immediately prior to termination of employment, or in which he will serve. Detailees shall file with their primary agency. Reports are due at the times indicated in § 2634.201 of subpart B (public disclosure) or § 2634.903 of subpart I (confidential disclosure) of this part, unless an extension is granted pursuant to the provisions of subparts B or I of this part.

(b) The President, the Vice President, any independent counsel, and persons appointed by independent counsel under 28 U.S.C. chapter 40, shall file the public financial disclosure reports required

under this part with the Director of the Office of Government Ethics.

(c) (1) Each agency receiving the public financial disclosure reports required to be filed under this part by the following individuals shall transmit copies to the Director of the Office of Government Ethics:

(i) The Postmaster General;

(ii) The Deputy Postmaster General;

(iii) The Governors of the Board of Governors of the United States Postal Service;

(iv) The designated agency ethics official;

(v) Employees of the Executive Office of the President who are appointed under 3 U.S.C. 105(a)(2)(A) or (B) or 3 U.S.C. 107(a)(1)(A) or (b)(1)(A)(i), and employees of the Office of Vice President who are appointed under 3 U.S.C. 106(a)(1)(A) or (B); and

(vi) Officers and employees in, and nominees to, offices or positions which require confirmation by the Senate, other than members of the uniformed services.

(2) Prior to transmitting a copy of a report to the Director of the Office of Government Ethics, the designated agency ethics official or his delegate shall review that report in accordance with § 2634.605 of this subpart, except for his own report, which shall be reviewed by the agency head or by a delegate of the agency head.

(3) For nominee reports, the Director of the Office of Government Ethics shall forward a copy to the Senate committee that is considering the nomination. (See § 2634.605(c) of this subpart for special procedures regarding the review of such reports.)

(d) The Director of the Office of Government Ethics shall file his financial disclosure report with his Office, which shall make it immediately available to the public in accordance with this part.

(e) Candidates for President and Vice President identified in § 2634.201(d), other than an incumbent President or Vice President, shall file their financial disclosure reports with the Federal Election Commission, which shall review and send copies of such reports to the Director of the Office of Government Ethics.

(f) Members of the uniformed services identified in § 2634.202(c) shall file their financial disclosure reports with the Secretary concerned, or his delegate.

§ 2634.603 Custody of and access to public reports.

(a) Each agency shall make available to the public in accordance with the provisions of this section those public reports filed with the agency by reporting individuals described under subpart B of this part.

(b) This section does not require public availability of those reports filed by:

(1) Any individual in the Central Intelligence Agency, the Defense Intelligence Agency, or the National Security Agency, or any individual engaged in intelligence activities in any agency of the United States, if the President finds or has found that, due to the nature of the office or position occupied by that individual, public disclosure of the report would, by revealing the identity of the individual or other sensitive information, compromise the national interest of the United States. Individuals referred to in this paragraph who are exempt from the public availability requirement may also be authorized, notwithstanding § 2634.701, to file any additional reports necessary to protect their identity from public disclosure, if the President finds or has found that such filings are necessary in the national interest; or

(2) An independent counsel whose identity has not been disclosed by the Court under 28 U.S.C chapter 40, or any person appointed by that independent counsel under such chapter.

(c) Each agency shall, within thirty days after any public report is received by the agency, permit inspection of the report by, or furnish a copy of the report to, any person who makes written application as provided by agency procedure. Agency reviewing officials and the support staffs who maintain the files, the staff of the Office of Government Ethics, and Special Agents of the Federal Bureau of Investigation who are conducting a criminal inquiry into possible conflict of interest violations need not submit an application. The agency may utilize Office of Government Ethics Form 201 for such applications. An application shall state:

(1) The requesting person's name, occupation, and address;

(2) The name and address of any other person or organization on whose behalf the inspection or copy is requested; and

(3) The requesting person is aware of the prohibitions on obtaining or using the report set forth in paragraph (f) of this section.

(d) Applications for the inspection of or copies of public reports shall also be made available to the public throughout the period during which the report itself is made available, utilizing the procedures in paragraph (c) of this section.

(e) The agency may require a reasonable fee, established by agency regulation, to recover the direct cost of reproduction or mailing of a public report, excluding the salary of any employee involved. A copy of the report may be furnished without charge or at a reduced charge if the agency determines that waiver or reduction of the fee is in the public interest. The criteria used by an agency to determine when a fee will be reduced or waived shall be established by regulation. Agency regulations contemplated by paragraph (e) of this section do not require approval pursuant to § 2634.103.

(f) It is unlawful for any person to obtain or use a public report:

(1) For any unlawful purpose;

(2) For any commercial purpose, other than by news and communications media for dissemination to the general public;

(3) For determining or establishing the credit rating of any individual; or

(4) For use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

Example 1. The deputy general counsel of Agency X is responsible for reviewing the public financial disclosure reports filed by persons within that agency. The agency personnel director, who does not exercise functions within the ethics program, wishes to review the disclosure report of an individual within the agency. The personnel director must file an application to review the report. However, the supervisor of an official with whom the deputy general counsel consults concerning matters arising in the review process need not file such an application.

Example 2. A state law enforcement agent is conducting an investigation which involves the private financial dealings of an individual who has filed a public financial disclosure report. The agent must complete a written application in order to inspect or obtain a copy.

Example 3. A financial institution has received an application for a loan from an official which indicates her present financial status. The official has filed a public financial disclosure statement with her agency. The financial institution cannot be given access to the disclosure form for purposes of verifying the information contained on the application.

(g) (1) Any public report filed with an agency or transmitted to the Director of the Office of Government Ethics under this section shall be retained by the agency, and by the Office of Government Ethics when it receives a copy. The report shall be made available to the public for a period of six years after receipt. After the six-year period, the report shall be destroyed unless needed in an ongoing investigation, except that in the case of an individual who filed the report pursuant to § 2634.201(c) as a nominee and was not subsequently confirmed by the Senate, or who filed the report

pursuant to § 2634.201(d) as a candidate and was not subsequently elected, the report, unless needed in an ongoing investigation, shall be destroyed one year after the individual either is no longer under consideration by the Senate or is no longer a candidate for nomination or election to the Office of President or Vice President. See also the OGE/GOVT–1 Governmentwide executive branch Privacy Act system of records (available for inspection at the Office of Government Ethics), as well as any applicable agency system of records.

(2) For purposes of paragraph (g)(1) of this section, in the case of a reporting individual with respect to whom a trust has been certified under subpart D of this part, a copy of the qualified trust agreement, the list of assets initially placed in the trust, and all other publicly available documents relating to the trust shall be retained and made available to the public until the periods for retention of all other reports of the individual have lapsed under paragraph (g)(1) of this section.

§ 2634.604 Custody of and denial of public access to confidential reports.

(a) Any report filed with an agency under subpart I of this part shall be retained by the agency for a period of six years after receipt. After the six-year period, the report shall be destroyed unless needed in an ongoing investigation. See also the OGE/GOVT–2 Governmentwide executive branch Privacy Act system of records (available for inspection at the Office of Government Ethics), as well as any applicable agency system of records.

(b) The reports filed pursuant to subpart I of this part are confidential. No member of the public shall have access to such reports, except pursuant to the order of a Federal court or as otherwise provided under the Privacy Act. See 5 U.S.C. 552a and the DGE/Govt–2 Privacy Act system of records (and any applicable agency system); 5 U.S.C. app. (Ethics in Government Act of 1978, section 107(a)); sections 201(d) and 502(b) of Executive Order 12674, as modified by Executive Order 12731; and § 2634.901(d).

§ 2634.605 Review of reports.

(a) *In general.* The designated agency ethics official shall normally serve as the reviewing official for reports submitted to his agency. That responsibility may be delegated, except in the case of certification of nominee reports required by paragraph (c) of this section. See also § 2634.105(q). He shall note on any report or supplemental report the date on which it is received. Except as indicated in paragraph (c) of this section, all reports shall be reviewed within 60 days after the date of filing. Reports reviewed by the Director of the Office of Government Ethics shall be reviewed within 60 days from the date on which they are received by that Office. Final certification in accordance with paragraph (b)(2) of this section may, of necessity, occur later, where additional information is being sought or remedial action is being taken under this section.

(b) *Responsibilities of reviewing officials*—(1) *Initial review.* The reviewing official may request an intermediate review by the filer's supervisor. In the case of a filer who is detailed to another agency for more than 60 days during the reporting period, the reviewing official shall obtain an intermediate review by the agency where the filer served as a detailee. After obtaining any intermediate review or determining that such review is not required, the reviewing official shall examine the report to determine, to his satisfaction that:

(i) Each required item is completed; and

(ii) No interest or position disclosed on the form violates or appears to violate:

(A) Any applicable provision of chapter 11 of title 18, United States Code;

(B) The Act, as amended, and the implementing regulations;

(C) Executive Order 12674, as modified by Executive Order 12731, and the implementing regulations; or

(D) Any other agency-specific statute or regulation which governs the filer.

(2) *Signature by reviewing official.* If the reviewing official determines that the report meets the requirements of paragraph (b)(1) of this section, he shall certify it by signature and date. The reviewing official need not audit the report to ascertain whether the disclosures are correct. Disclosures shall be taken at "face value" as correct, unless there is a patent omission or ambiguity or the official has independent knowledge of matters outside the report. However, a report which is signed by a reviewing official certifies that the filer's agency has reviewed the report, and that the reviewing official has concluded that each required item has been completed and that on the basis of information contained in such report the filer is in compliance with applicable laws and regulations noted in paragraph (b)(1)(ii) of this section.

(3) *Requests for, and review based on, additional information.* If the reviewing official believes that additional information is required, he shall request that it be submitted by a specified date. This additional information shall be made a part of the report. If the reviewing official concludes, on the basis of the information disclosed in the report and any additional information submitted, that the report fulfills the requirements of paragraph (b)(1) of this section, the reviewing official shall sign and date the report.

(4) *Compliance with applicable laws and regulations.* If the reviewing official concludes that information disclosed in the report may reveal a violation of applicable laws and regulations as specified in paragraph (b)(1)(ii) of this section, the official shall:

(i) Notify the filer of that conclusion;

(ii) Afford the filer a reasonable opportunity for an oral or written response; and

(iii) Determine, after considering any response, whether or not the filer is then in compliance with applicable laws and regulations specified in paragraph (b)(1)(ii) of this section. If the reviewing official concludes that the report does fulfill the requirements, he shall sign and date the report. If he determines that it does not, he shall:

(A) Notify the filer of the conclusion;

(B) Afford the filer an opportunity for personal consultation if practicable;

(C) Determine what remedial action under paragraph (b)(5) of this section should be taken to bring the report into compliance with the requirements of paragraph (b)(1)(ii) of this section; and

(D) Notify the filer in writing of the remedial action which is needed, and the date by which such action should be taken.

(5) *Remedial action.* (i) Except in unusual circumstances, which must be fully documented to the satisfaction of the reviewing official, remedial action shall be completed not later than three months from the date on which the filer received notice that the action is required.

(ii) Remedial action may include, as appropriate:

(A) Divestiture of a conflicting interest (see subpart J of this part);

(B) Resignation from a position with a non-Federal business or other entity;

(C) Restitution;

(D) Establishment of a qualified blind or diversified trust under the Act and subpart D of this part;

(E) Procurement of a waiver under 18 U.S.C. 208(b)(1) or (b)(3);

(F) Preparation of a written instrument of recusal (disqualification); or

(G) Voluntary request by the filer for transfer, reassignment, limitation of duties, or resignation.

(6) *Compliance or referral.* (i) If the filer complies with a written request for remedial action under paragraph (b)(4) of this section, the reviewing official shall indicate, in the comment section of the report, what remedial action has been taken. The official shall also sign and date the report.

(ii) If the filer does not comply by the designated date with the written request for remedial action transmitted under paragraph (b)(4) of this section, the reviewing official shall, in the case of a public filer under subpart B of this part, notify the head of the agency and the Office of Government Ethics, for appropriate action. Where the filer is in a position in the executive branch (other than in the uniformed services or the Foreign Service), appointment to which requires the advice and consent of the Senate, the Director of the Office of Government Ethics shall refer the matter to the President. In the case of the Postmaster General or Deputy Postmaster General, the Director of the Office of Government Ethics shall recommend to the Governors of the Board of Governors of the United States Postal Service the action to be taken. For confidential filers, the reviewing official will follow agency procedures.

(c) *Expedited procedure in the case of individuals appointed by the President and subject to confirmation by the Senate.* In the case of a report filed by an individual described in § 2634.201(c) who is nominated by the President for appointment to a position that requires the advice and consent of the Senate:

(1) The Executive Office of the President shall furnish the applicable financial disclosure report form to the nominee. It shall forward the completed report to the designated agency ethics official at the agency where the nominee is serving or will serve, or it may direct the nominee to file the completed report directly with the designated agency ethics official.

(2) The designated agency ethics official shall complete an accelerated review of the report, in accordance with the standards and procedures in paragraph (b) of this section. If that official concludes that the report reveals no conflict of interest under applicable laws and regulations, the official shall:

(i) Attach to the report a description (when available) of the position to be filled by the nominee;

(ii) Personally certify the report by signature, and date the certification;

(iii) Write an opinion letter to the Director of the Office of Government Ethics, personally certifying that there is no unresolved conflict of interest under applicable laws and regulations, and discussing:

(A) Any actual or apparent conflicts of interest that were detected during the review process; and

(B) The resolution of those real or apparent conflicts, including any specific commitment, ethics agreement entered under the provisions of subpart H of this part, or other undertaking by the nominee to resolve any such conflicts. A copy of any commitment, agreement, or other undertaking which is reduced to writing shall be sent to the Director, in accordance with subpart H of this part; and

(iv) Deliver the letter and the report to the Director of the Office of Government Ethics, within three working days after the designated agency ethics official receives the report.

Note: The designated agency ethics official's certification responsibilities in § 2634.605(c) are nondelegable and must be accomplished by him personally, or by the agency's alternate designated agency ethics official, in his absence. See § 2638.203 of this chapter.

(3) The Director of the Office of Government Ethics shall review the report and the letter from the designated agency ethics official. If the Director is satisfied that no unresolved conflicts of interest exist, then the Director shall sign and date the report form. The Director shall then submit the report with a letter to the appropriate Senate committee, expressing the Director's opinion whether, on the basis of information contained in the report, the nominee has complied with all applicable conflict laws and regulations.

(4) If, in the case of any nominee or class of nominees, the expedited procedure specified in this paragraph cannot be completed within the time set forth in paragraph (c)(2)(iv) of this section, the designated agency ethics official shall inform the Director. When necessary and appropriate, the Director may modify the rule of that paragraph for a nominee or a class of nominees with respect to a particular department or agency.

§ 2634.606 Updated disclosure of advice-and-consent nominees.

(a) *General rule.* Each individual described in § 2634.201(c) who is nominated by the President for appointment to a position that requires advice and consent of the Senate, shall, at or before the commencement of the first Senate committee hearing to consider the nomination, submit to the committee an amendment to the report previously filed under § 2634.201(c) and transmit copies of the amendment to the designated agency ethics official referred to in § 2634.605(c)(1) of this subpart and to the Office of Government Ethics, which shall update, through the period ending no more than five days prior to the commencement of the hearing, the disclosure of information required with respect to receipt of:

(1) Outside earned income; and

(2) Honoraria, as defined in § 2634.105(i).

(b) *Additional certification.* In each case to which this section applies, the Director of the Office of Government Ethics shall, at the request of the committee considering the nomination, submit to the committee an opinion letter of the nature described in § 2634.605(c)(3) of this subpart concerning the updated disclosure. If the committee requests such a letter, the expedited procedure provided by § 2634.605(c) of this subpart shall govern review of the updated disclosure, which shall be deemed a report filed for purposes of that paragraph.

§ 2634.607 Advice and opinions.

To assist employees in avoiding situations in which they might violate applicable financial disclosure laws and regulations:

(a) The Director of the Office of Government Ethics shall render formal advisory opinions and informal advisory letters on generally applicable matters, or on important matters of first impression. See also subpart C of part 2638 of this chapter. The Director shall insure that these advisory opinions and letters are compiled, published, and made available to agency ethics officials and the public. Good faith reliance on such opinions shall provide a defense to any penalty or sanction provided by this part for fact situations indistinguishable in all material aspects from those in the opinion.

(b) Designated agency ethics officials will offer advice and guidance to employees as needed, to assist them in complying with the requirements of the Act and this part on financial disclosure.

Subpart G—Penalties

§ 2634.701 Failure to file or falsifying reports.

(a) *Referral of cases.* The head of each agency, each Secretary concerned, or the Director of the Office of Government Ethics, as appropriate, shall refer to the Attorney General the name of any individual when there is reasonable cause to believe that such individual has willfully failed to file a public report or information required on such report, or has willfully falsified any information (public or confidential) required to be reported under this part.

(b) *Civil action.* The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully falsifies or who knowingly and willfully fails to file or report any information required by filers of public reports under subpart B of this part. The court in which the action is brought may assess against the individual a civil penalty in any amount, not to exceed $10,000, as provided by section 104 of the Act.

(c) *Criminal action.* An individual may also be prosecuted under criminal statutes for supplying false information on any financial disclosure report.

(d) *Administrative remedies.* The President, the Vice President, the Director of the Office of Government Ethics, the Secretary concerned, the head of each agency, and the Office of Personnel Management may take appropriate personnel or other action in accordance with applicable law or regulation against any individual for failing to file public or confidential reports required by this part, for filing such reports late, or for falsifying or failing to report required information. This may include adverse action under 5 CFR part 752, if applicable.

§ 2634.702 Breaches by trust fiduciaries and interested parties.

(a) The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully violates the provisions of § 2634.407 of this part. The court in which the action is brought may assess against the individual a civil penalty in any amount, not to exceed $10,000, as provided by section 102(f)(6)(C)(i) of the Act.

(b) The Attorney General may bring a civil action in any appropriate United States district court against any individual who negligently violates the provisions of § 2634.407. The court in which the action is brought may assess against the individual a civil penalty in any amount, not to exceed $5,000, as provided by section 102(f)(6)(C)(ii) of the Act.

§ 2634.703 Misuse of public reports.

The Attorney General may bring a civil action against any person who obtains or uses a report filed under this part for any purpose prohibited by section 105(c)(1) of the Act, as incorporated in § 2634.603(f). The court in which the action is brought may assess against the person a penalty in any amount, not to exceed $10,000, as provided by section 105 of the Act. This remedy shall be in addition to any other remedy available under statutory or common law.

§ 2634.704 Late filing fee.

(a) *In general.* In accordance with section 104(d) of the Act, any reporting individual who is required to file a public financial disclosure report by the provisions of this part shall remit a late filing fee of $200 to the appropriate agency, payable to the U.S. Treasury, if such report is filed more than thirty days after the later of:

(1) The date such report is required to be filed pursuant to the provisions of this part; or

(2) The last day of any filing extension period granted pursuant to § 2634.201(f).

(b) *Exceptions.* (1) The Director of the Office of Government Ethics may waive the late filing fee if he determines that the delay in filing was caused by extraordinary circumstances which made the delay reasonably necessary.

(2) Any request for a waiver of this filing fee provision must be made in writing and submitted with supporting documentation to the designated agency ethics official. That official shall review the request, and then forward it, with an opinion on the merits, to the Office of Government Ethics.

(c) *Procedure.* (1) The designated agency ethics official shall maintain a record of the due dates for all public reports which the employees of that agency must file, along with the new filing dates under extensions which have been granted. Each report received by the agency shall be marked with the date of receipt. For any report which has not been received by the end of the period specified in paragraph (a) of this section, the agency shall advise the delinquent filer, in writing, that:

(i) Because his financial disclosure report is more than thirty days overdue, a $200 late filing fee will become due at the time of filing, by reason of section 104(d) of the Act and § 2634.704;

(ii) The filer is directed to remit to the agency, with the completed report, the $200 fee, payable to the United States Treasury;

(iii) If the filer fails to remit the $200 fee when filing his late report, it shall be subject to agency debt collection procedures; and

(v) If extraordinary circumstances exist that would justify a request for a fee waiver, pursuant to paragraph (b) of this section, such request and supporting documentation must be submitted immediately.

(2) Upon receipt from the reporting individual of the $200 late filing fee, the collecting agency shall note the payment in its records, and shall then forward the money to the U.S. Treasury for deposit as miscellaneous receipts, in accordance with 31 U.S.C. 3302 and section 8030.30 of Volume 1 of the Treasury Financial Manual. If payment is not forthcoming, agency debt collection procedures shall be utilized, which may include salary or administrative offset, initiation of a tax refund offset, or other authorized action.

(d) *Late filing fee not exclusive remedy.* The late filing fee is in addition to other sanctions which may be imposed for late filing. See § 2634.701 of this subpart.

(e) *Confidential filers.* The late filing fee does not apply to confidential filers. Late filing of confidential reports will be handled administratively under § 2634.701(d) of this subpart.

Subpart H—Ethics Agreements

§ 2634.801 Scope.

This subpart applies to ethics agreements made by any reporting individual under either subpart B or I of this part, to resolve potential or actual conflicts of interest.

§ 2634.802 Requirements.

(a) *Ethics agreement defined.* The term *ethics agreement* shall include, for the purposes of this subpart, any oral or written promise by a reporting individual to undertake specific actions in order to alleviate an actual or apparent conflict of interest, such as:

(1) Preparation of a written instrument for recusing (disqualifying) the individual from one or more particular matters or categories of official action;

(2) Divestiture of a financial interest;

(3) Resignation from a position with a non-Federal business or other entity;

(4) Procurement of a waiver pursuant to 18 U.S.C. 208(b)(1) or (b)(3); or

(5) Establishment of a qualified blind or diversified trust under the Act and subpart D of this part.

(b) *Time limit.* The ethics agreement shall specify that the individual must complete the action which he or she has agreed to undertake within a period not to exceed three months from the date of the agreement (or of Senate confirmation, if applicable). Exceptions to the three-month deadline can be made in cases of unusual hardship, as determined by the Office of Government Ethics, for those ethics agreements which are submitted to it (see § 2634.803 (a), (b), or (c) of this subpart), or by the designated agency ethics official for all other ethics agreements.

Example. An official of the ABC Aircraft Company is nominated to a Department of Defense position requiring the advice and consent of the Senate. As a condition of assuming the position, the individual has agreed to divest himself of his ABC Aircraft

stock which he recently acquired while he was an officer with the company. However, the Securities and Exchange Commission prohibits officers of public corporations from deriving a profit from the sale of stock in the corporation in which they hold office within six months of acquiring the stock, and direct that any such profit must be returned to the issuing corporation or its stock holders. Since meeting the usual three-month time limit specified in this subpart for satisfying an ethics agreement might entail losing any profit that could be realized on the sale of this stock, the nominee requests that the limit be extended beyond the six-month period imposed by the Commission. Written approval would have to be obtained from the Office of Government Ethics to extend the customary three-month period.

§ 2634.803 Notification of ethics agreements.

(a) *Nominees to positions requiring the advice and consent of the senate.* (1) In the case of a nominee referred to in § 2634.201(c), the designated agency ethics official shall include with the report submitted to the Office of Government Ethics any ethics agreement which the nominee has made.

(2) A designated agency ethics official shall immediately notify the Office of Government Ethics of any ethics agreement of a nominee which is made or becomes known to the designated agency ethics official after the submission of the nominee's report to the Office of Government Ethics. This requirement includes an ethics agreement made between a nominee and the Senate confirmation committee. The nominee shall immediately report to the designated agency ethics official any ethics agreement made with the committee.

(3) The Office of Government Ethics shall immediately apprise the designated agency ethics official and the Senate confirmation committee of any ethics agreements made directly between the nominee and the Office of Government Ethics.

(b) *Incumbents in positions requiring the advice and consent of the Senate.* In the case of a position which required the advice and consent of the Senate, the designated agency ethics official shall keep the Office of Government Ethics apprised of any ethics agreements which the incumbent makes, or which become known to the designated agency ethics official during the incument's term in his position.

(c) *Designated agency ethics officials not holding advice-and-consent positions, and employees of the Offices referred to in § 2634.602(c)(1)(v).* A designated agency ethics official who has entered into a ethics agreement, and who is neither a nominee to, nor an incumbent in, a position which requires the advice and consent of the Senate, as well as each employee of the Executive Office of the President or the Office of the Vice President who is referred to in § 2634.602(c)(1)(v), shall include with his initial financial disclosure report submitted to the Office of Government Ethics any ethics agreement undertaken by such official or employee. He shall also apprise the Office of Government Ethics promptly of any subsequent ethics agreement.

(d) *Other reporting individuals.* Other reporting individuals desiring to enter into ethics agreement may do so with the designated agency ethics official for the employee's agency. Where an ethics agreement has been made with someone other than the designated agency ethics official, the officer or employee involved shall promptly apprise the designated agency ethics official of the agreement.

§ 2634.804 Evidence of compliance.

(a) *Requisite evidence of action taken.* (1) For ethics agreements of nominees to positions requiring the advice and consent of the Senate, evidence of any action taken to comply with the terms of such ethics agreements shall be submitted by the designated agency ethics official, upon receipt of the evidence, to the Office of Government Ethics and to the Senate confirmation committee.

(2) For ethics agreements of incumbents in positions which required the advice and consent of the Senate, evidence of any action taken to comply with the terms of such ethics agreements shall be submitted promptly by the designated agency ethics official to the Office of Government Ethics. A designated agency ethics official or an employee referred to in § 2634.803(c) of this subpart who is neither a nominee to, nor an incumbent in, an advice-and-consent position, must also promptly send evidence of any action taken to comply with the terms of an ethics agreement to the Office of Government Ethics.

(3) In the case of all other reporting individuals, evidence of any action taken to comply with the terms of an ethics agreement must be sent promptly to the designated agency ethics official.

(b) The following materials and any other appropriate information constitute evidence of the action taken:

(1) *Recusal* A copy of any recusal instrument listing and describing the specific matters or subjects to which the recusal applies, a statement of the method by which the agency will enforce the recusal, and a list of the positions of those agency employees involved in the enforcement (i.e., the individual's immediate subordinates and supervisors).

Example. A new employee of a Federal safety board owns stock in Nationwide Airlines. She has entered into an ethics agreement to recuse herself from participating in any accident investigations involving that company's aircraft until such time as she can complete a divestiture of the asset. She must give a copy of the recusal instrument to her immediate subordinates and supervisors, and to the designated agency ethics official. The employee has also agreed to recuse herself from any particular matter (as that term is used in 18 U.S.C. 208) that might arise with respect to any of her present or future holdings. There is no requirement to execute a recusal instrument for this type of general recusal, because it is simply a promise to abide by the terms of the statute.

(2) *Divestiture or resignation.* Written notification that the divestiture or resignation has occurred.

(3) *Waivers.* A copy of any waivers issued pursuant to 18 U.S.C. 208(b)(1) or (b)(3) and signed by the appropriate supervisory official.

(4) *Blind or diversified trusts.* Information required by subpart D of this part to be submitted to the Office of Government Ethics for its certification of any qualified trust instrument. If the Office of Government Ethics does not certify the trust, the designated agency ethics official and, as appropriate, the Senate confirmation committee should be informed immediately.

§ 2634.805 Retention

Records of ethics agreements and actions described in this subpart shall be maintained with the individual's financial disclosure report at the agency and additionally, in the case of filers described in paragraphs (a), (b), and (c) of § 2634.803 of this subpart, at the Office of Government Ethics.

Subpart I—Confidential Financial Disclosure Reports

§ 2634.901 Policies of confidential financial disclosure reporting.

(a) The confidential financial reporting system set forth in this subpart is designed to complement the public reporting system established by title I of the Act. High-level officials in the executive branch are required to report certain financial interests publicly to ensure that every citizen can have confidence in the integrity of the Federal Government. It is equally important in order to guarantee the efficient and honest operation of the Government that other, less senior, executive branch employees, whose Government duties involve the exercise of significant discretion in certain sensitive areas,

report their financial interests and outside business activities to their employing agencies, to facilitate the review of possible conflicts of interest. These reports assist an agency in administering its ethics program and counseling its employees. Such reports are filed on a confidential basis.

(b) The confidential reporting system seeks from employees only that information which is relevant to the administration and application of criminal conflict of interest laws, administrative standards of conduct, and agency-specific statutory and program-related restrictions. The basic content of the reports required by § 2634.907 of this subpart reflects that certain information is generally relevant to all agencies. However, depending upon an agency's authorized activities and any special or unique circumstances, additional information may be necessary. In these situations, and subject to the prior written approval of the Director of the Office of Government Ethics, agencies may formulate supplemental reporting requirements by following the procedures of §§ 2634.103 and 2634.601(b).

(c) This subpart also allows an agency to request, on a confidential basis, additional information from persons who are already subject to the public reporting requirements of this part. The public reporting requirements of the Act address Governmentwide concerns. The reporting requirements of this subpart allow agencies to confront special or unique agency concerns. If those concerns prompt an agency to seek more extensive reporting from employees who file public reports, it may proceed on a confidential, nonpublic basis, with prior written approval from the Director of the Office of Government Ethics, under the procedures of §§ 2634.103 and 2634.601(b).

(d) The reports filed pursuant to this subpart are specifically characterized as "confidential," and are required to be withheld from the public, pursuant to section 107(a) of the Act. Section 107(a) leaves no discretion on this issue with the agencies. See also § 2634.604. Further, Executive Order 12674 as modified by Executive Order 12731 provides, in section 201(d), for a system of nonpublic (confidential) executive branch financial disclosure to complement the Act's system of public disclosure. The confidential reports provided for by this subpart contain sensitive commercial and financial information, as well as personal privacy-protected information. These reports and the information which they contain are, accordingly, exempt from being released to the public, under exemptions 3 (A) and (B), 4, and 6 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(3) (A) and (B), (b)(4), and (b)(6). Additional FOIA exemptions may apply to particular reports or portions of reports. Agency personnel shall not publicly release the reports or the information which these reports contain, except pursuant to an order issued by a Federal court, or as otherwise provided under applicable provisions of the Privacy Act (5 U.S.C. 552a), and in the OGE/GOVT–2 Governmentwide executive branch Privacy Act system of records, as well as any applicable agency records system. If an agency statute requires the public reporting of certain information and, for purposes of convenience, an agency chooses to collect that information on the confidential report form filed under this subpart, only the special statutory information may be released to the public, pursuant to the terms of the statute under which it was collected.

(e) Executive branch agencies hire or use the paid and unpaid services of many individuals on an advisory or other less than full-time basis as special Government employees. These employees may include experts and consultants to the Government, as well as members of Government advisory committees. It is important for those agencies that utilize such services, and for the individuals who provide the services, to anticipate and avoid real or apparent conflicts of interest. The confidential financial disclosure system promotes that goal, with special Government employees among those required to file confidential reports.

(f) For additional policies and definitions of terms applicable to both the public and confidential reporting systems, see §§ 2634.104 and 2634.105.

§ 2634.902 Transition to the new confidential financial disclosure reporting system.

(a) The new confidential financial disclosure reporting system for executive branch departments and agencies established by this subpart will become effective on October 5, 1992. Until this subpart becomes effective, each executive agency shall continue to comply with its current regulations governing confidential statements regarding employment and financial interests, as promulgated under prior Executive Order 11222, and 5 CFR part 735, § 735.106 and subpart D, and as preserved by the savings clause of section 502(a) of Executive Order 12674 as modified by Executive Order 12731.

(b) To the extent feasible, agencies should strive to eliminate overlaps between, or gaps in, reporting periods as the transition to the new confidential reporting system takes place. However, the reporting periods prescribed under the new system, once effective, must be followed.

(c) Once effective, this new subpart and any other portions of this part applicable to confidential reports will supersede 5 CFR 735.106, all of subpart D of part 735 of 5 CFR, and any implementing agency regulations thereunder. See also §§2634.103 and 2634.601 and § 2634.901 of this subpart concerning requests for new special supplemental agency regulations and forms, where necessary.

(d) As required by applicable law and Executive order, the confidential statements regarding employment and financial interests which were collected and retained under existing confidential financial disclosure reporting systems shall continue to be held in confidence. See section 107(a)(2) of the Act, as effective January 1, 1991 (as well as former section 207(a)(2) thereof, which was effective through December 31, 1990), section 502(b) of Executive Order 12674 as modified by Executive Order 12731 (and the prior ethics Executive Orders 11222 and 12565), and § 2634.901(d) of this subpart.

§ 2634.903 General requirements, filing dates, and extensions.

(a) *Incumbents.* A confidential filer who holds a position or office described in § 2634.904 of this subpart and who performs the duties of that position or office for a period in excess of 60 days during the twelve-month period ending September 30 (including more than 60 days in an acting capacity) shall file a confidential report containing the information prescribed in §§ 2634.907 and 2634.908 of this subpart on or before October 31 immediately following that period. For confidential filers under § 2634.904(c) of this subpart, consult agency supplemental regulations.

(b) *New entrants.* (1) Not later than 30 days after assuming a new position or office described in § 2634.904 of this subpart (which also encompasses the reappointment or redesignation of a special Government employee, including one who is serving on an advisory committee), a confidential filer shall file a confidential report containing the information prescribed in §§ 2634.907 and 2634.908 of this subpart. For confidential filers under § 2634.904(c) of this subpart, consult agency supplemental regulations.

(2) However, no report shall be required if the individual:

(i) Has, within 30 days prior to assuming his position, left another position or office referred to in § 2634.904 of this subpart or in § 2634.202, and has previously satisfied the reporting requirements applicable to that former position, but a copy of the report filed by the individual while in that position should be made available to the appointing agency, and the individual must comply with any agency requirement for a supplementary report for the new position;

(ii) Has already filed such a report in connection with consideration for appointment to the position. The agency may request that the individual update such a report if more than six months has expired since it was filed.

(3) Notwithstanding the filing deadline prescribed in paragraph (b)(1) of this section, agencies may at their discretion, require that prospective entrants into positions described in § 2634.904 of this subpart file their new entrant confidential financial disclosure reports prior to serving in such positions, to insure that there are no insurmountable ethics concerns. Additionally, a special Government employee who has been appointed to serve on an advisory committee shall file the required report before any advice is rendered by the employee to the agency, or in no event, later than the first committee meeting.

(c) *Advisory committee definition.* For purposes of this subpart, the term *advisory committee* shall have the meaning given to that term under section 3 of the Federal Advisory Committee Act (5 U.S.C. app). Specifically, it means any committee, board, commission, council, conference, panel, task force, or other similar group which is established by statute or reorganization plan, or established or utilized by the President or one or more agencies, in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government. Such term includes any subcommittee or other subgroup of any advisory committee, but does not include the Advisory Commission on Intergovernmental Relations, the Commission on Government Procurement, or any committee composed wholly of full-time officers or employees of the Federal Government.

(d) *Extensions.* The agency reviewing official may, for good cause shown, grant to any employee or class of employees a filing extension or several extensions totaling not more than 90 days.

§ 2634.904 Confidential filer defined.

The term *confidential filer* includes:

(a) Each officer or employee in the executive branch whose position is classified at GS–15 or below of the General Schedule prescribed by 5 U.S.C. 5332, or the rate of basic pay for which is fixed, other than under the General Schedule, at a rate which is less than 120% of the minimum rate of basic pay for GS–15 of the General Schedule; each officer or employee of the United States Postal Service or Postal Rate Commission whose basic rate of pay is less than 120% of the minimum rate of basic pay for GS–15 of the General Schedule; each member of a uniformed service whose pay grade is less than O–7 under 37 U.S.C. 201; and each officer or employee in any other position determined by the designated agency ethics official to be of equal classification; if:

(1) The agency concludes that the duties and responsibilities of the employee's position require that employee to participate personally and substantially through decision or the exercise of significant judgment, in taking a Government action regarding:

(i) Contracting or procurement;

(ii) Administering or monitoring grants, subsidies, licenses, or other federally conferred financial or operational benefits;

(iii) Regulating or auditing any non-Federal entity; or

(iv) Other activities in which the final decision or action will have a direct and substantial economic effect on the interests of any non-Federal entity; or

(2) The agency concludes that the duties and responsibilities of the employee's position require the employee to file such a report to avoid involvement in a real or apparent conflict of interest, and to carry out the purposes behind any statute, Executive order, rule, or regulation applicable to or administered by that employee. Positions which might be subject to a reporting requirement under this subparagraph include those with duties which involve investigating or prosecuting violations of criminal or civil law.

Example 1. A contracting officer drafts the requests for proposals for data processing equipment of significant value which is to be purchased by his agency. He works with substantial independence of action. The contracting officer should be required to file a confidential financial disclosure report.

Example 2. An agency environmental engineer inspects a manufacturing plant to ascertain whether the plant complies with a permit to release a certain effluent into a nearby stream. Any violation of the permit standards may result in civil penalties for the plant, and in criminal penalties for the plant's management based upon any action which they took to create the violation. If the agency engineer determines that the plant does not meet the permit requirements, he can require the plant to terminate release of the effluent until the plant satisfies the permit standards. Because the engineer exercises substantial discretion in regulating the plant's activities, and because his final decisions will have a substantial economic effect on the plant's interests, the engineer should be required to file a confidential financial disclosure report.

(b) Unless required to file public financial disclosure reports by subpart B of this part, all executive branch special Government employees as defined in 18 U.S.C 202(a) and § 2634.105(s), including those who serve on advisory committees. The term special Government employees does not include an advisory committee member who serves only as a representative of an industry of other outside entity or who is already a Federal employee.

Example 1. A consultant to an agency periodically advises the agency regarding important foreign policy matters. The consultant must file a confidential report if he is retained as a special Government employee and not an independent contractor.

Example 2. An advisory committee member (who is not a private group representative) attends four committee meetings every year to provide advice to an agency about pharmaceutical matters. No compensation is received by the committee member, other than travel expenses. The advisory committee member must file a confidential disclosure report, since she is a special Government employee.

(c) Each public filer referred to in § 2634.202 on public disclosure who is required by agency regulations issued in accordance with § 2634.907(b) of this subpart to file a supplemental confidential financial disclosure report which contains information that is more extensive than the information required in the reporting individual's public financial disclosure report under this part.

(d) Any employee who, notwithstanding his exclusion from the public financial reporting requirements of this part by virtue of a determination under § 2634.203, is covered by the criteria of paragraph (a) of this section.

§ 2634.905 Exclusions from filing requirements.

Any individual or class of individuals, including special Government employees, described in § 2634.904 of this subpart, may be excluded from all or a portion of the confidential reporting requirements of this subpart, when the agency head or designee determines that:

(a) The duties of a position make remote the possibility that the incumbent will be involved in a real or apparent conflict of interest;

(b) The duties of a position involve such a low level of responsibility that the submission of a confidential financial disclosure report is unnecessary because of:

(1) The substantial degree of supervision and review over the position; or

(2) The inconsequential effect of any potential conflict on the integrity of the Government; or

(c) The use of an alternative procedure approved in writing by the Office of Government Ethics is adequate to prevent possible conflicts of interest.

Example 1. An agency special Government employee who is a draftsman prepares the drawings to be used by an agency in soliciting bids for construction work on a bridge. Because he is not involved in the contracting process associated with the construction, the likelihood that his actions will create a conflict of interest is remote. The draftsman need not be required by the agency to file a confidential financial disclosure report.

Example 2. An investigator is principally assigned as the field agent to investigate alleged violations of conflict of interest laws. The investigator works under the direct supervision of an agent-in-charge. The agent-in-charge reviews all of the investigator's work product and then uses those materials to prepare the agency's report which is submitted under his own name. The agency may decide not to require the investigator to file a confidential disclosure report.

Example 3. A nonsupervisory auditor at an agency is regularly assigned to cases involving possible loan improprieties by financial institutions. Prior to undertaking each enforcement review, the auditor reviews the file to determine if she, her spouse minor or dependent child, or any general partner, organization in which she serves as an officer, director, trustee, employee, or general partner, or organization with which she is negotiating or has an agreement or an arrangement for future employment, or a close friend or relative is a subject of the investigation, or will be in any way affected by the investigation. Once she determines that there is no such relationship, she signs and dates a certification which verifies that she has reviewed the file and has determined that no conflict of interest exists. She then files the certification with the head of her auditing division at the agency. On the other hand, if she cannot execute the certification, she informs the head of her auditing division. In response, the division will either reassign the case or review the conflicting interest to determine whether a waiver would be appropriate. This alternate procedure, if approved by the Office of Government Ethics in writing, will suffice for a conflict of interest review. Therefore, the agency may exclude the auditor from filing a confidential disclosure report under this subpart.

§ 2634.906 Review of confidential filer status.

The head of each agency, or an officer designated by the head of the agency for that purpose, shall review any complaint by an individual that his position has been improperly determined by the agency to be one which requires the submission of a confidential financial disclosure report pursuant to this subpart. A decision by the agency head or designee regarding the complaint shall be final.

§ 2634.907 Report contents.

(a) Other than the reports of confidential filers described in § 2634.904(c), each confidential financial disclosure report filed pursuant to § 2634.903 of this subpart shall include on the standard form prescribed by the Office of Government Ethics (see § 2634.601 of subpart F of this part) and in accordance with instructions issued by the Office, a full and complete statement of information required to be reported according to the provisions of subpart C of this part, (except for those provisions in subpart C requiring the reporting of the amounts or values of any item), with respect to the following:

(1) *Interests in property.* All the interests in property specified by § 2634.301;

(2) *Income.* All the income items specified by § 2634.302;

(3) *Gifts and reimbursements.* All gifts and reimbursements specified by § 2634.304 (except that new entrants, as described in § 2634.903(b) of this subpart, need not report any information on gifts and reimbursements);

(4) *Liabilities.* All liabilities specified by § 2634.305;

(5) *Agreements and arrangements.* All agreements and arrangements specified by § 2634.306; and

(6) *Outside positions.* All outside positions specified by § 2634.307.

(b) For reports of confidential filers described in § 2634.904(c) of this subpart, each supplemental confidential financial disclosure report shall include only the supplemental information:

(1) Which is more extensive than that required in the reporting individual's public financial disclosure report under this part; and

(2) Which has been approved by the Office of Government Ethics for collection by the agency concerned, as set forth in supplemental agency regulations and forms, issued under §§ 2634.103 and 2634.601(b) (see § 2634.901 (b) and (c) of this subpart).

§ 2634.908 Reporting periods.

(a) *Incumbents.* Each confidential financial disclosure report filed under § 2634.903(a) of this subpart shall include on the standard form prescribed by the Office of Government Ethics and in accordance with instructions issued by the Office, a full and complete statement of the information required to be reported according to the provisions of this subpart for the preceding twelve months ending September 30, or for any portion of that period not covered by a previous confidential or public financial disclosure report filed under this part.

(b) *New entrants.* Each confidential financial disclosure report filed under § 2634.903(b) of this subpart shall include, on the standard form prescribed by the Office of Government Ethics and in accordance with instructions issued by the Office, a full and complete statement of the information required to be reported according to the provisions of this subpart for the preceding twelve months from the date of filing.

§ 2634.909 Procedures, penalties, and ethics agreements.

(a) The provisions of subpart F of this part govern the filing procedures and forms for, and the custody and review of, confidential disclosure reports filed under this subpart.

(b) For penalties and remedial action which apply in the event that the reporting individual fails to file, falsifies information, or files late with respect to confidential financial disclosure reports, see subpart G of this part.

(c) Subpart H of this part on ethics agreements applies to both the public and confidential reporting systems under this part.

* * * * *

Appendix A to Part 2634—Certificate of Independence

The Certificate of Independence required by § 2634.406(b) shall be executed as follows:

Certificate of Independence

With respect to the trust of _____ (Settlor), which has been submitted to the Office of Government Ethics for certification pursuant to the Ethics in Government Act of 1978 (Pub. L. 95–521, as amended), the undersigned proposed [Trustee] [_____] of such trust is a financial institution which is eligible to serve in such fiduciary capacity in accordance with section 102(f)(3)(A) of such Act:

FIRST: The undersigned is (check one)—

( ) a bank, as defined in 12 U.S.C. 1841(c), or

( ) an investment adviser, as defined in 15 U.S.C. 80b–2(a)(11),

not more than 10 percent of which is owned or controlled by a single individual.

SECOND: The undersigned—

(1) Is independent of and unassociated with any interested party so that the undersigned cannot be controlled or

influenced in the administration of the trust by any interested party; and

(2) is not and has not been affiliated with any interested party, and is not a partner of, or involved in any joint venture or other investment or business with any interested party.

THIRD: Any director, officer, or employee of the undersigned—

(1) Is independent of and unassociated with any interested party so that such director, officer, or employee cannot be controlled or influenced in the administration of the trust by any interested party;

(2) Is not and has not been employed by any interested party, nor a director, officer, or employee of any organization affiliated with any interested party, and is not and has not been a partner of, or involved in any joint venture or other investment or business with, any interested party; and

(3) Is not a relative of any interested party.

FOURTH: The undersigned certifies that the statements contained herein are true, complete and correct to the best of such undersigned's knowledge and belief.

Date_____
(firm)_____
By:_____
(title)_____
Approved by_____
Director, Office of Government Ethics
Date_____

Note: See Appendix C of this part for Privacy Act and Paperwork Reduction Act notices.

Appendix B to Part 2634—Certificate of Compliance

The Certificate of Compliance required by 2634.408(b) shall be executed as follows:

Certificate of Compliance

With respect to the qualified blind trust (qualified diversified trust) of_____ (Settlor), the undersigned, the approved [Trustee] [_____] of such trust, pursuant to 5 CFR 2634.406, has served in such fiduciary capacity during the calendar year [or for the period beginning_____ and ending_____] and is eligible to continue in such capacity by virtue of the following:

FIRST: The undersigned (and any director, officer, or employee) has not knowingly or negligently, and will not—

(A) disclose any information to an interested party with respect to the trust that may not be disclosed pursuant to title I of the Act, the implementing regulations (including 5 CFR 2634.403(b)(12)(i) for a qualified blind trust, and 5 CFR 2634.404(c)(12)(i) for a qualified diversified trust), or the trust instrument;

(B) acquire any holding the ownership of which is prohibited by, or not in accordance with, applicable statute, regulation, or the terms of the trust instrument;

(C) solicit advice from any interested party with respect to such trust, which solicitation is prohibited by title I of the Act, the implementing regulations (including 5 CFR 2634.403(b)(12)(iii) for a qualified blind trust and 5 CFR 2634.404(c)(12)(iii), for a qualified diversified trust), or the trust instrument;

(D) fail to file any document required by title I of the Act, the implementing regulations (including 5 CFR 2634.408(b) and (c)), or the trust instrument; or

(E) violate or fail to comply with any provision or requirement of title I of the Act, the implementing regulations, or the trust instrument.

SECOND: The undersigned (and any director, officer, or employee) will not knowingly or negligently engage in the above-mentioned activities.

THIRD: The undersigned certifies that the statements contained herein are true, complete and correct to the best of such undersigned's knowledge and belief.

Date_____
(firm)_____
By:_____
(title)_____

Note: See Appendix C of this part for Privacy Act and Paperwork Reduction Act notices.

Appendix C to Part 2634—Privacy Act and Paperwork Reduction Act Notices for Appendixes A and B

Privacy Act Statement

Section 102(f) of the Ethics in Government Act of 1978 as amended (the "Ethics Act") (5 U.S.C. App.) and subpart D of 5 CFR part 2634 of the regulations of the Office of Government Ethics (OGE) require the reporting of this information for the administration of qualified trusts under the Ethics Act. The primary use of the information on this certificate is for review by Government officials of OGE and the agency of the Government employee for whom the trust is established to determine compliance with applicable Federal laws and regulations as regards qualified trusts. Additional disclosures of the information on this certificate may be made:

(1) to any requesting person in accordance with the access provisions of section 105 of the Ethics Act;

(2) to a Federal, State or local law enforcement agency if the disclosing agency becomes aware of a violation or potential violation of law or regulation;

(3) to a court or party in a court or Federal administrative proceeding if the Government is a party or in order to comply with a subpoena;

(4) to a source when necessary to obtain information relevant to a conflict of interest issue;

(5) to the National Archives and Records Administration or the General Services Administration in records management inspections;

(6) to the Office of Management and Budget during legislative coordination on private relief legislation; and

(7) in response to a discovery request or for the appearance of a witness in a pending judicial or administrative proceeding, if the information is relevant to the subject matter.

Knowing or willful falsification of information on this certificate or failure to file or report information required to be reported under title I of the Ethics Act and 5 CFR part 2634 of the OGE regulations may lead to disqualification as a trustee or other fiduciary as well as possible disqualification of the underlying trust itself. Knowing and willful falsification of information required under the Ethics Act and the regulations may also subject you to criminal prosecution.

Public Burden Information

This collection of information is estimated to take an average of twenty minutes per response.

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Tuesday
April 7, 1992

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary

24 CFR Part 571

Community Development Block Grants for Indian Tribes and Alaskan Native Villages; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 571

[Docket No. R-92-1530; FR-2880-I-02]

RIN 2506-AB12

Community Development Block Grants for Indian Tribes and Alaskan Native Villages

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule amends the regulations governing the Community Development Block Grant Program for Indian Tribes and Alaskan native villages. The amendments incorporate new policies and procedures. The Department received many comments from commenters who were upset that they would not have an opportunity to consult with the field office on the regulation and Notice of Fund Availability (NOFA). As a result of these comments, HUD has decided to issue an interim rule. The interim rule will enable the Department to distribute funds as quickly as possible, but will also enable tribes and Alaskan native villages to meet with representatives of the HUD field offices after one funding round to allow additional suggestions for modification of the regulation before it is issued in final form.

DATES: Effective date: June 8, 1992. Comment due date: November 18, 1992.

FOR FURTHER INFORMATION CONTACT: Stephen M. Rhodeside, Assistant Director for the Indian Community Development Block Grant Program, State and Small Cities Division, Office of Block Grant Assistance, room 7184, Department of Housing and Urban Development, 451 Seventh Street SE., Washington, DC 20410. (202) 708-1322. TDD (202) 708-2565. (These are not toll-free numbers.)

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title.

A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

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 and have been assigned OMB control number 2506.0043.

Background

Section 105 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235) ("Reform Act") as amended by the Cranston-Gonzalez National Affordable Housing Act ("NAHA"), amended title I of the Housing and Community Development Act of 1974 ("Act"), by transferring the authority for making grants to Indian Tribes from the section 107 discretionary fund to the allocation and distribution of funds provisions of Section 106 of the Act. Under section 106, as so amended, one percent of the title I appropriation, excluding the amounts appropriated for use under section 107, is allocated for grants to Indian Tribes. The allocated amount is to be distributed to Indian Tribes on a competitive basis in accordance with selection criteria "contained in a regulation promulgated by the Secretary after notice and public comment." The Department issued the proposed rule on June 21, 1991 to comply with the requirement for publication for comment. The Department is now issuing an interim final rule, to give the public an additional opportunity to comment on the rule after it has been in effect for one round of competition. This will allow the public to see how the rule works in conjunction with the Notice of Fund Availability (NOFA).

Section 102 of the Reform Act requires the Secretary to publish in the **Federal Register** a NOFA regarding assistance. In addition to announcing the availability of funds, the NOFA will further define application procedures and selection criteria. The NOFA will replace the regional rating and ranking guides which formerly were contained in the selection criteria.

Section 571.602—Relocation and Acquisition

Section 571.602 describes applicable relocation and real property acquisition policies, including those implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA). Under the government-wide URA rule at 49 CFR part 24, any person (family, individual, business, nonprofit organizations, or farm) displaced on or after April 2, 1989 as a direct result of acquisition, rehabilitation or demolition for a project assisted under this part is entitled to URA relocation assistance. The acquisition of real property for a project assisted under this part is also subject to the URA. The URA policies are described in HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition.

The Department of Housing and Urban Development (HUD) received just over 100 individual comments from 23 sources on the proposed Indian Community Development Block Grant (ICDBG) regulation. HUD received 18 letters from tribes, 3 from federal agencies, and the remainder from regional and private organizations. General comments are discussed first, followed by specific comments.

Most of the comments HUD received addressed two broad issues. The General Comments section of this preamble discusses these issues. The specific comments and the Department's responses are discussed under "Specific Comments," according to the section where they appear in the interim regulation.

General Comments

Many comments centered on the proposed rule's limits on applicants' involvement in developing selection criteria and in the pre-award process. The commenters believed it would be detrimental to tribes and villages to keep them from consulting with HUD field staff, developing selection criteria, commenting on the Notice of Fund Availability (NOFA) and submitting supplemental information. The second major concern of commenters related to application submission requirements. First, they asked about whether applicants could improve their applications by submitting supplemental information. Second, they expresed concern about a new HUD policy that applications be received by the field office, rather than postmarked, by a certain date. Finally, commenters suggested that applicants could not develop and submit an application within 30 days of NOFA publication.

Two recently enacted statutes changed the Indian Community Development Block (ICDBG) program selection process: the Cranston-Gonzalez National Affordable Housing Act of 1990 (NAHA) and the HUD Reform Act of 1989. NAHA requires the Secretary of HUD to promulgate a regulation containing selection criteria used to award funds in competitive

programs. The Reform Act restricts the disclosure of information about HUD programs and discretionary funds. The proposed ICDBG rule contained changes reflecting the NAHA and Reform Act requirements. The NAHA requirement presented HUD with serious time constraints because the Department had to publish a proposed regulation for comment before developing and publishing the regulation and NOFA.

Section 103 of the Reform Act prohibits HUD officers or employees from disclosing, during the selection process, information used in arriving at a decision to award assistance. In accordance with the Department's regulations, the NOFA contains the selection criteria used to rate ICDBG applications. HUD is committed to involving the public in this process to the extent practicable. First, in order to publish a fair and coherent NOFA, HUD Headquarters consulted extensively with HUD OIP field offices throughout the NOFA's development. Since the OIP field offices are in frequent contact with the tribes within their jurisdiction, they were able to provide Headquarters with information on how various NOFA provisions would be received by ICDBG applicants. Second, HUD is publishing an interim regulation, rather than a final regulation, to facilitate additional future revisions based on public comments. Finally, after the NOFA and regulation have been published and the selection process has been completed, HUD field staff will hold public meetings to get suggestions on how to improve the NOFA.

Like the current regulation, the interim rule permits HUD field staff to provide general technical assistance. For example, HUD field staff may clarify program requirements and review the procedures required to process an application. In addition, the field staff may answer general questions posed by the tribes at a public meeting.

HUD received several comments about the requirement that following application submission, tribes will not be allowed to submit additional information to improve the application. This requirements has not been changed. It merely expands on § 571.302(b) of the current regulation, which allows applicants to submit only that information requested by the field office to help clarify the application. HUD's regulations at 24 CFR 4.105(b)(3) allow authorized employees, during the selection process, to contact applicants to seek clarification of the terms of an applicant's submission. HUD policy requires each NOFA to include a cure period for technical deficiencies of at least 14 calendar days. Any deficiency that can be cured (e.g., the submission of a missing certification) cannot affect the rating of the application in either a positive or negative way.

Another concern of many commenters was the new requirement that applications be received by the field office, rather than postmarked, by a certain date. Commenters explained that remote tribes and villages can only rely on the mail service to postmark, not to deliver their applications, by a certain date. Taking into account these comments, HUD has decided that applications may be mailed provided that they are postmarked no later than midnight on the deadline date. If the application is physically delivered to a HUD Office of Indian Programs, the application must be received by close of business on the submission date stated in the NOFA. For the current funding round, HUD will allow 105 days from the date of the NOFA for submission of applications. This should be an adequate amount of time for all applicants.

Several commenters were concerned that 30 days is insufficient time to prepare an application. The regulation states, however, that Headquarters will publish a NOFA in the **Federal Register** at least 30 days before a deadline for application submission. The NOFA being issued with this regulation requires applications to be submitted no later than 105 days after the date of its publication.

Specific Comments

Section 571.4—Definitions

In response to comments about the ambiguity of the definition of program beneficiaries, this section will define "very low income beneficiary" as a beneficiary whose income does not exceed 50 percent of the area median.

Paragraph (j) defines "low- and moderate-income" beneficiary as a family, household, or individual whose income does not exceed 80 percent of the median income for the area in which it is located. The following paragraph outlines the method the Department uses to calculate the median income for any area.

If the potential beneficiary is located in a metropolitan area, area median income is based on the metropolitan area's median income. If the potential beneficiary is located in a nonmetropolitan area, the area median income is based on the median income of the county in which the beneficiary is located, or the median income of the entire nonmetropolitan area of the State in which the beneficiary is located, whichever is higher. HUD will use published Section 8 income limits to determine whether a beneficiary is low- and moderate-income.

One commenter recommended that the definition of low- and moderate-income beneficiary in paragraph (j) not apply to infrastructure projects. The commenter argued that low- and moderate-income residents would be deprived of badly needed services because some residents have higher incomes. The definition in paragraph (j) is the standard CDBG definition of low- and moderate-income beneficiary. Infrastructure projects tend to be area benefit activities, which must serve an area where at least 51 percent of the residents are low- and moderate-income persons. Therefore, some non low- and moderate-income residents can benefit from CDBG funded infrastructure as long as at least 41 percent of the area residents are low- and moderate-income persons.

Paragraph (j) also states that applicants must include and identify tribal or village income distributions. One commenter suggested that such distributions can be infrequent, amounts may vary significantly, and counting them as income could hurt tribes already struggling to improve their economic base. The Department will determine on a case-by-case basis whether a tribal or village distribution constitutes income. For instance, HUD will not consider distributions to be income in cases where they are infrequent.

Section 571.6—Technical Assistance

For additional discussion of this section, see "General Comments," above.

One commenter suggested including in this section a provision for environmental review training. The Department will endeavor to provide such training to applicants, but believes it is inappropriate to include such a provision in the regulation.

Section 571.100—General

Paragraph (b)(1) has been changed to give the Assistant Secretary final authority to determine grant ceilings for each field office. Field offices will still recommend the ceilings for this jurisdiction. The reason for this change was to ensure that grant ceilings are appropriate on a national level. This section now formally states that field offices have different ceilings for different size tribes. This incorporates existing practice into the regulations.

The authority to set grant ceilings for imminent threat grants has been left

with the field. This provision now appears in § 571.400(c).

Section 571.101—Regional Allocation of Funds

Paragraph (c) states that population data will be used to allocate funds. Commenters asked which data sources HUD would use to count native populations. HUD will use Census data. HUD recognizes that Census data on Indian and Alaskan native populations may be incomplete or inaccurate. However, these are the only data that are consistently available, and they are reasonably representative when aggregated by region. HUD encourages tribes and villages to use their own survey or other locally collected data in their project applications, if they believe these to be more reliable.

Section 571.102—Recaptures

This new section will outline the Department's policy on recaptured and undistributed funds. HUD may recapture funds from grantees that fail to meet statutory or regulatory program requirements or that receive funds determined to be unneeded. HUD also may have undistributed (i.e., unobligated) funds. The Assistant Secretary for Community Planning and Development will determine the use of these funds on a case-by-case basis. Recaptured and undistributed funds will remain with the field office in the region from which they came, unless there is an overriding reason to redistribute the funds outside the region.

Section 571.201—Primary and National Objections

Paragraph (a) will be clarified by adding that at least 70 percent of single purpose grant funds must be used for activities that benefit low- and moderate-income persons. This provision increases the required percentage from 51 to 70 percent. Several commenters thought that the 70 percent represented a change in the definition of "low- and moderate-income," from 80 percent to 70 percent of the area median. The definition of low- and moderate-income has not changed.

Section 571.300—Application Requirements

The comments of this section centered on the need to maintain tribes' involvement in the NOFA process. The reasons for limiting public input in developing selection criteria are discussed in detail under "General Comments."

Commenters also expressed a concern about what they perceived as a short amount of time to submit applications after publications of the NOFA. As discussed under "General Comments," the regulation gives applicants at least 30 days to submit their applications to the field office. (The NOFA that is being issued with this regulation gives applicants a much longer time in which to prepare their applications. The first sentence in paragraph (b) was deleted, because the application submission deadline will be established by Headquarters, since the NOFA will be issued on a national basis.

Paragraph (a) will be clarified by adding a statement that applications cannot request funds in excess of the grant ceiling.

Section 571.301—Screening and Review of Applications

HUD policy requires that applications be received, rather than postmarked, by a certain date. This HUD policy has been modified to allow that ICDBG program applications may be mailed, provided that they are postmarked no later than midnight on the deadline date.

Many commenters objected to the contents of paragraph (d), which outlines the kinds of information applicants may submit after they have submitted their application. Section 103 of the HUD Reform Act and 24 CFR part 4, the regulation implementing the Act, outline these requirements. For further discussion of the Reform Act and regulatory requirements, see "General Comments."

Two commenters requested that the final regulation include an appeals process. The Department notes that an informal appeals process already exists. To contest a field office's decision, an applicant should appeal to the Regional Administrator, and finally to Headquarters, about actions taken which the complainant believes are unjustified. Moreover, § 571.302(f) contains a provision for procedural error. If a procedural error by the field office in the current year's competition resulted in rejection of an application, that when corrected would have meant funding for an otherwise eligible applicant, HUD may fund that applicant from the next funding competition.

The requirement that at least 70 percent of the grant funds be used to benefit low- and moderate-income persons has been added to the screening requirements in § 571.301(a) so that the field will not have to rate and rank an unfundable application.

Section 571.302—Selection Process

The preamble to the proposed rule incorrectly labeled § 571.302(a)(2)(ii)(B) as "support of other HUD-assisted projects" as a new performance criterion. The correct title of this subparagraph is "Housing assistance."

The last sentence that allowed for separate competition based on size has been removed from paragraph (b)(1). Since paragraph (c) provides that all projects will be ranked against each other according to the point totals they receive, the provision allowing separate competition based on size was meaningless.

In reference to § 571.302(a)(2)(ii)(B) *Housing assistance*, commenters indicated that applicants should not be held accountable for individuals' spending habits. In order to relieve the applicant of such accountability, the first sentence of § 571.302(a)(2)(ii)(B) has been changed to place responsibility on the applicant, who " * * * must not take actions to impede the provision of housing assistance for low- and moderate-income persons." Actions to impede the provision of housing assistance include the consistent refusal of tribal courts to evict IHA tenants for the nonpayment of rent.

Several commenters believed it inappropriate to link CDBG assistance to the applicant's past performance in providing housing assistance. HUD is holding the applicant accountable for the tribe's or village's past performance, not for the housing authority's past performance. The Department believes that it is appropriate to link CDBG awards and housing requirements, and it does so in the Entitlement and State CDBG programs (e.g., grantees must certify that they will affirmatively further fair housing). One commenter suggested publishing selection criteria in the final rule, rather than in a NOFA. This suggestion has two drawbacks. First, the inclusion of selection criteria will make the regulation extremely complex and bulky (as the NOFA is rather lengthy). More importantly, publishing selection criteria in a NOFA gives HUD more flexibility to change the criteria in subsequent NOFA's as a result of public comments and experience with program administration.

Each field office will select two or more tiebreakers from the list in § 571.302(d). The field offices' choices will be listed in the NOFA. One commenter suggested that applicants be involved in choosing tiebreakers. Tiebreakers are like selection criteria; therefore, including the public in choosing tiebreakers would violate section 103 of the Reform Act, which prohibits HUD officers or employees from disclosing, during the selection process, information used in arriving at the decision to award assistance. For

further discussion of this provision of the Reform Act, see "General Comments."

Section 571.303—Housing Rating Category

The first paragraph of this section states that the applicant shall provide assistance only to tenants/homeowners whose payments are current, or who are current in a repayment agreement with HUD. One commenter noted the difficulty in obtaining current payment information. The Department expects the applicant to obtain the most recent payment information it can from the Indian Housing Authority (IHA). Note that the field office may grant exceptions to this requirement on a case-by-case basis.

One commenter questioned HUD's authority to require a certification from the applicant that it will use project funds to rehabilitate or construct units, or to provide direct home ownership assistance only where tenants/homeowners are current in their payments. The regulation has been clarified to state that HUD is not requiring a certification; it is requiring the applicant to make an assurance. The Definitions section of the NOFA defines "assure" as the applicant stating its intent to comply with the requirement.

Four changes were made to clarify paragraph (a) *Housing rehabilitation component.* First, (a)(1)(i) will read: "The percentage of CDBG funds committed * * * ". Second, (a)(1)(ii) will be deleted, based on comments that a proposed project staffing plan is difficult if not impossible to develop prior to grant award. Third, (a)(1)(ii) will read: "The degree to which the applicant's selection criteria gives priority * * * ". Finally, (a)(2)(ii) will read: "Post-rehabilitation maintenance policies," based on comments that it is difficult if not impossible to measure the quality of such policies at the time of application review.

Section 571.303(a)(3) permits applicants to use other government funds to leverage CDBG funds. One commenter assumed other government funds meant Housing Improvement Program funds from the Bureau of Indian Affairs. Leverage amounts include, but are not limited to such funds. The definition section of the NOFA further defines "leverage."

One change was made to § 571.303(a)(2)(vi), which will read: "A plan for any infrastructure needed to support housing to be developed." (This includes a conditional commitment.) This change was based on comments that applicants often cannot obtain a financial commitment before the actual award of funds.

Two commenters stated that new housing construction (paragraph (c)) should not be CDBG-eligible activity, since other federal funds are available for new construction. The commenters suggested that the CDBG program should be used to fund activities that other programs do not. New housing construction continues to be an eligible activity under the limited circumstances provided for in subpart C of the Community Development Block Grant Regulations.

Two commenters opposed the use of CDBG funds for direct homeownership assistance. The National Affordable Housing Act of 1990 made direct home ownership assistance an eligible CDBG activity under section 105(a)(20) of the Housing and Community Development Act. The NOFA contains a detailed discussion of the new provision.

Note that ICDBG funds will provide new housing construction and direct homeownership assistance only where no other sources of funding can meet the needs of the household(s) to be served. This is a threshold requirement for both of these categories.

Direct homeownership assistance requirements now appear in paragraph (c)(2). These requirements were taken out of paragraph (c)(1) to respond to comments that paragraph (c)(1) was confusing because it referred to both new housing construction and direct homeownership assistance.

Section 571.304—Community Facilities

This category will consist solely of community facilities. Public services components of applications will be rated separately. (See discussion under § 571.306.)

The selection criterion set out in § 571.304(a)(2)(iii), and in (b)(2)(iii), that projects serve "a substantial number of low- and moderate-income persons," will be deleted. As a result, paragraphs (a)(1) and (b)(1) each will be worth 60 points; paragraphs (a)(2) and (b)(2) each will be worth 30 points.

This change responds in part to comments that national selection criteria will not be sensitive to regional differences. The national system has not been eliminated, however, because section 102 of the Reform Act requires HUD to publish selection criteria, and HUD Headquarters is best positioned to publish criteria applicable on a national level.

Commenters asked HUD to define the term "neediest." The NOFA will provide examples or define terms such as "neediest," which appears in paragraph (a)(1)(ii).

Paragraphs (a)(1) (iii) and (iv) will be combined, based on comments that rating them as separate factors would be redundant. Projects awarded points for providing infrastructure that does not currently exist or no longer functions adequately to meet current needs most likely would receive points for addressing a health or safety problem.

Paragraphs (b)(1)(iv) and (b)(1)(v) will be combined, based on comments that rating them as separate factors would give too much weight to each factor. Projects may be awarded points for meeting an essential community development need or for addressing a health or safety problem.

According to commenters, rating on the basis of whether a building provides multiple uses or multiple benefits (§ 571.304(b)(1)(iii)) would exclude facilities offering one service around the clock (e.g., a hospital/health clinic). This paragraph will be changed to read: "Provide multiple uses or multiple benefits, or have services available 24 hours a day."

Section 571.305—Economic Development Rating Category

Many commenters asked for a definition of "excessive" as it relates to the need for grant assistance. This requirement will be deleted. Applicants will be required to demonstrate the need for grant assistance by providing a determination that the assistance is appropriate to implement an economic development project. The first paragraph will also state that the applicant, in order to receive assistance, must document financial need, public benefit and that the proposed business has a reasonable likelihood of succeeding. The ICDBG program has limited resources; therefore, the Department has modified these requirements to target the neediest tribes and most needed projects and to assure that ICDBG funds do not go to projects that do not need ICDBG assistance.

Commenters also asked for a definition of "excessive" as it relates to a project's cash flow. The regulation no longer uses excessive in this context.

Based on comments on the importance of each element listed in paragraph (a)(1), they will be rated separately, and numbered (1) through (3) in the regulation. Paragraph (4) is "Viability of the business." If an application is proposing a start-up or expansion of a microenterprise, it will be rated according to criteria in paragraph (5), "Viability of the microenterprise." Finally, paragraph (6) covers leveraging.

Paragraph (b) is titled: "Permanent full-time equivalent job creation" to clarify how to calculate full-time jobs.

Paragraphs (b)(3) and (b)(4) have been combined, based on comments that employer commitment to provide training opportunities is a component of job quality.

Paragraph (c)(1) has been changed from "Use, improve, and expand members' special skills * * *." to "Use, improve, or expand members' special skills * * *". This change is intended to allow economic development projects to receive points if the tribal members' special skills are utilized in the economic development project. (The "and" promised to make it too difficult for tribes to receive points for this factor.)

One commenter suggested that the regulation is unfair in providing special opportunities for public housing residents. This rating factor addresses one of Secretary Kemp's six priorities for HUD: Empower the poor through resident management and homesteading. This factor encourages applicants to provide opportunities for residents of federally assisted housing to improve their economic situation while possibly improving their units.

Based on comments that the ICDBG program should encourage repayment of CDBG assistance, paragraph (c)(5) has been added to provide points for reuse of project funds for other CDBG activities that meet a national objective. To accommodate this change, paragraph (a), Project Viability, has been reduced from 60 to 55 points and paragraph (c), Additional Considerations, will be increased to 15 points.

Section 571.306—Public Services

Although public services activities may comprise no more than 15 percent of the total grant award, rating them separately gives applicants the opportunity to provide needed services that are unrelated to the primary activity. This approach responds to the concern that the public service project itself should be viable. In the past, services were funded as a component of a facilities application, without regard to their merits.

Commenters argued that the selection criterion of serving "a substantial number of low- and moderate-income persons" discriminated against small tribes, whose projects might serve a substantial percentage, but never a substantial number of low-and moderate-income persons. This criterion has been removed and replaced by paragraph (b)(iii), which reads: "an innovative approach to the delivery of the service(s)." This will recognize innovative methods of resolving public service problems.

Paragraph (c)(iii) of proposed § 571.304 has been eliminated, as it restates the public service eligibility requirements of § 570.201(e)(1).

Section 571.307—Funding Process

Section 571.307(b)(2) of the current regulation gives successful applicants at least 30 days to provide supporting documentation at the request of the field office, prior to execution of the grant agreement. Section 571.306(b)(2) of the proposed rule changed the requirement to an amount of time to be specified by the field office, between 15 and 30 calendar days. Many commenters suggested retaining the 30-day period because of the difficulty of preparing and submitting such information in less time. The interim rule reestablishes the 30-day requirement.

Section 571.308—Program Amendments

Based on a comment that the $10,000 amendment limit for addressing all parts of the previous rating cycle is too low, the final regulation will contain a $25,000 limit. This will save applicants from preparing excessive paperwork to justify relatively small amendments.

Section 571.400—Criteria for Funding

One commenter suggested changing paragraph (b) to allow applicants to receive CDBG funds even if other funding sources are available. The purpose of this section is to provide funding for imminent threats where no other sources of funds are available. If other funding sources are available, there is no need to use these funds. Imminent threats are urgent needs, such as houses lost in a flood or recent contamination of the water supply, which is threatening a community's health and safety.

Section 571.403—Availability of Funds

A change has been made to give field offices the flexibility of either using remaining imminent threat funds to fund projects from the previous fiscal year or the new fiscal year. Previously all remaining funds had to be used as part of the new allocation of funds.

Section 571.502—Force Account Construction

One commenter asked for clarification of the conditions under which HUD may require a grantee to submit information related to force accounts. HUD may require the grantee to provide the information listed in paragraph (a), only when HUD cannot obtain the information itself.

Section 571.503—Indian Preference Requirements

One commenter suggested giving tribal, or at least local preference for training and employment, and in the award of contracts and subcontracts. This section gives priority to Indian organizations and Indian-owned enterprises. In an effort to retain the most qualified, most reasonably priced organization, grantees are required to advertise for bids or proposals. Of course, tribes may ensure that any tribal or local Indian organization is aware of any contracting activity. A grantee may advertise for non-Indian organizations and enterprises only if it is not satisfied with the response to its advertisements.

Section 571.505—Program Income

This new section addresses questions about the applicability of 24 CFR 570.504 to the Indian block grant program. The provisions of § 570.504(b) apply to all program income received prior to grant closeout. After closeout, any income received from the disposition of real property, or repayments of loans outstanding at the time of closeout, will not be governed by the provisions of this part, except that such income must be used for activities that are eligible and that meet a national objective. All other program income received after closeout will not be subject to the provisions outlined above.

Section 571.603—Labor Standards

The Secretary continues to waive the provisions of Section 110 of the Act (Labor Standards). The Department invites public comment on whether this waiver should remain in effect.

Section 571.604—Citizen Participation

One commenter noted that the proposed rule requires one tribal resolution certifying that the applicant has met the citizen participation requirements, and suggested that no additional resolutions be required. The NOFA requires applicants to submit current resolutions to ensure that the tribe has a commitment to comply with the requirements set forth in the regulation.

Other Matters

National Environmental Policy Act

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which 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 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Executive Order 12291

This rule would not constitute a "major rule" as that term is defined in section 1(d) of Executive Order 12291 on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indictes that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs of prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect 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.

Regulatory Flexibility

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule establishes criteria for funding eligible receipients among Indian Tribes and has no impact on small entities.

Semiannual Agenda

This rule was listed as Item No. 1462 in the Department's Semiannual Agenda of Regulations published on October 21, 1991 (56 FR 53380, 53419) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule would not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the Sates, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. While the rule has some direct effects on States and political subdivisions, those effects are limited to direct implementation of instructions contained in statutes governing the grant program. Given the lack of discretion in the Department to refrain from implementing these statutory instructions, further analysis of federalism concerns would serve no useful purpose.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule would not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order.

Drug-Free Workplace Certification

The Drug-Free Workplace Act of 1988 requires grantees of Federal agencies to certify that they will provide drug-free workplaces. Thus, each potential recipient must certify that it will comply with drug-free workplace requirements in accordance with 24 CFR part 24, subpart F.

Registration of Consultants

Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a mangement action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in appendix A of the rule.

Any questions regarding the rule should be directed to Arnold J. Haiman, Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–3815; TDD: (202) 708–1112. (These are not toll-free numbers.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

Prohibition of Advance Disclosure of Funding Decisions

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of the applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

The catalog of Federal Domestic Assistance program number is 14.223.

The collection of information requirements contained in this rule were submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980 and approved under OMB Control Number 2506–0043. Sections 571.300, 571.307, 571.500, 571.502, 571.504, and 571.700 of this rule have been determined by the Department to contain collection of information requirements. Additional comment on these information collection requirements is welcome as a part of public comment on the interim rule.

List of Subjects in 24 CFR Part 571

Alaska, Community development block grants, Grant programs—housing and community development, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 571 is revised to read as follows:

PART 571—COMMUNITY DEVELOPMENT BLOCK GRANTS FOR INDIAN TRIBES AND ALASKAN NATIVE VILLAGES

Subpart A—General Provisions

Sec.

571.1 Applicability and scope.
571.2 Program objectives.
571.3 Nature of program.

Sec.

571.4 Definitions.
571.5 Eligible applicants.
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Subpart B—Allocation of Funds

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Subpart D—Single Purpose Grant Application and Selection Process

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571.500 General.
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571.502 Force account construction.
571.503 Indian preference requirements.
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571.505 Program income.

Subpart G—Other Program Requirements

571.600 General.
571.601 Nondiscrimination.
571.602 Relocation and acquisition.
571.603 Labor standards.
571.604 Citizen participation.
571.605 Environment.
571.606 Conflict of interest.

Subpart H—Program Performance

571.700 Reports to be submitted by grantee.
571.701 Review of recipient's performance.
571.702 Corrective and remedial actions.
571.703 Reduction or withdrawal of grant.
571.704 Other remedies for noncompliance.

Authority: Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General Provisions

§ 571.1 Applicability and scope.

The policies and procedures described in this part apply only to grants to eligible Indian Tribes and Alaskan native villages under the Community Development Block Grant (CDBG) program for Indian Tribes and Alaskan native villages.

§ 571.2 Program objectives.

The primary objective of the Indian CDBG (ICDBG) Program and of the community development program of each grantee covered under this Act is the development of viable Indian and Alaskan native communities, including decent housing, a suitable living environment, and economic opportunities, principally for persons of low- and moderate-income. The Federal assistance provided in this part is for the support of community development activities which further this objective. This assistance is not to be used to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of this assistance.

§ 571.3 Nature of program.

The ICDBG Program is competitive in nature. The demand for funds far exceeds the amount of funding available. Therefore, selection of eligible applicants for funds will reflect consideration of the relative adequacy of applications in addressing locally determined need. Applicants for funding must have the administrative capacity to undertake the community development activities proposed, including the systems of internal control necessary to administer these activities effectively without fraud, waste, or mismanagement.

§ 571.4 Definitions.

Act means title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.).

Chief executive officer means the elected official or legally designated official who has the prime responsibility for the conduct of the affairs of an Indian Tribe or Alaskan native village.

Eligible Indian populations means the most accurate and uniform population data available from reliable sources for Indian Tribes and Alaskan native villages eligible under this part.

Extent of overcrowded housing means the number of housing units with 1.01 or more persons per room, based on data compiled and published by the United States Bureau of the Census Available from the latest census referable to the same point or period of time.

Extent of poverty means the number of persons whose incomes are below the poverty level, based on data compiled and published by the United States Bureau of the Census referable to the same point or period in time and the latest reports from the Office of Management and Budget.

Field offices means the HUD Offices of Indian Programs or other HUD field offices having responsibility for the Indian CDBG Program.

HUD means the Department of Housing and Urban Development.

ICDBG Program means the Indian Community Development Block Grant Program.

Identified service area means:

(1) A geographic location within the jurisdiction of a Tribe (but not the entire jurisdiction) designated in comprehensive plans, ordinances, or other local documents as a service area;

(2) The Bureau of Indian Affairs (BIA) service area, including residents of areas outside the geographic jurisdiction of the Tribe; or

(3) The entire area under the jurisdiction of a Tribe which has a population of members of under 10,000.

Low- and moderate-income beneficiary means a family, household, or individual whose income does not exceed 80 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger households or families. However, the Secretary may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low household or family incomes. In reporting income levels to HUD, the applicant must include and identify the distributions of Tribal or village income to families, households, or individuals.

Secretary means the Secretary of HUD.

Tribal government, Tribal governing body or *Tribal council* means the recognized governing body of an Indian Tribe or Alaskan native village.

Tribal resolution means the formal manner in which the Tribal government expresses its legislative will in accordance with its organic documents. In the absence of such organic documents, a written expression adopted pursuant to Tribal practices will be acceptable.

URA means the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended.

Very low income beneficiary means a family, household, or individual whose income does not exceed 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger households or families. However, the Secretary may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low household or family incomes. In reporting income levels to HUD, the

applicant must include and identify the distributions of Tribal or village income to families, households, or individuals.

§ 571.5 Eligible applicants.

(a) Eligible applicants are any Indian Tribe, band, group, or nation, including Alaskan Indians, Aleuts, and Eskimos, and any Alaskan native village of the United States which is considered an eligible recipient under title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) or which had been an eligible recipient under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221). Eligible recipients under the Indian Self-Determination and Education Assistance Act will be determined by the Bureau of Indian Affairs and eligible recipients under the State and Local Fiscal Assistance Act of 1972 are those that have been determined eligible by the Department of the Treasury, Office of Revenue Sharing.

(b) Tribal organizations which are eligible under title I of the Indian Self-Determination and Education Assistance Act may apply on behalf of any Indian Tribe, bank, group, nation, or Alaskan native village eligible under that act for funds under this part when one or more of these entities have authorized the Tribal organization to do so through concurring resolutions. Such resolutions must accompany the application for funding. Eligible Tribal organizations under title I of the Indian Self-Determination and Education Assistance Act will be determined by the Bureau of Indian Affairs.

(c) Only eligible applicants shall receive grants. However, eligible applicants may contract or otherwise agree with non-eligible entities such as States, cities, counties, or other organizations to assist in the preparation of applications and to help implement assisted activities.

(d) To apply for funding in a given fiscal year, an applicant must be eligible as an Indian Tribe or Alaskan native village, as provided in paragraph (a) of this section, or as a Tribal organization, as provided in paragraph (b) of this section, by the application submission date.

§ 571.6 Technical Assistance.

On an annual basis, each field office will provide technical assistance to eligible applicants for these purposes:

(a) To provide eligible applicants with information on how to apply for funds and how grants will be selected and awarded; and

(b) To inform eligible applicants of changes in the program.

§ 571.7 Waivers.

The Secretary may waive any requirement of this part not required by law whenever it is determined that undue hardship will result from applying the requirement, and where application of the requirement would adversely affect the purposes of the Act.

Subpart B—Allocation of Funds

§ 571.100 General.

(a) *Types of grants.* Two types of grants are available under the Indian CDBG Program.

(1) *Single purpose grants* provide funds for one or more single purpose projects consisting of an activity or set of activities designed to meet a specific community development need. This type of grant is awarded through competition with other single purpose projects.

(2) *Imminent threat grants* alleviate an imminent threat to public health or safety that requires immediate resolution. This type of grant is awarded only after a field office determines that such conditions exist and if funds are available for such grants.

(b) *Size of grants*—(1) *Ceilings.* Each field office may recommend grant ceilings for single purpose grant applications. Field offices have the option of recommending different ceilings for different size tribes (e.g. tribes 5,000+ will have one ceiling and tribes with less than 5,000 will have a smaller ceiling.) Single purpose grant ceilings for each field office shall be established in the NOFA.

(2) *Individual grant amounts.* In determining appropriate grant amounts to be awarded, the field office may take into account the size of the applicant, the level of demand, the scale of the activity proposed relative to need and operational capacity, the number of persons to be served, the amount of funds required to achieve project objectives and the administrative capacity of the applicant to complete the activities in a timely manner. Projects that do not meet a serious need to the applicant, or projects that do not have an impact on the need identified in the application will not be funded.

§ 571.101 Regional allocation of funds.

(a) Except as provided in paragraph (b) of this section, funds will be allocated to the field offices responsible for the program on the following basis:

(1) Each field office will be allocated $500,000 as a base amount, to which will be added a formula share of the balance of the Indian CDBG Program funds, as provided in paragraph (a)(2) of this section.

(2) The amount remaining after the base amount is allocated will be allocated to each field office based on the most recent data available from reliable sources referable to the same point or period in time, as follows:

(i) Forty percent (40%) of the funds will be allocated based upon each field office's share of the total eligible Indian population;

(ii) Forty percent (40%) 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 (20%) of the funds will be allocated based upon each field office's share of the total extent of overcrowded housing among the eligible Indian population.

(b) If funds are set aside by statute for a specific purpose in any fiscal year, the formula in paragraph (a) of this section will apply unless otherwise specified in the law, or unless it is determined that the formula is inappropriate to accomplish the purpose, in which case the Secretary may establish other criteria to determine an allocation formula for distributing funds to the field offices.

(c) Data used for the allocation of funds will be based upon the Indian population of those Tribes and villages that are determined to be eligible ninety (90) days before the beginning of each fiscal year.

§ 571.102 Recaptures.

(a) After the rating and ranking process is completed, use of funds that the field office obtains from recapture of obligated funds from grantees that fail to meet statutory or regulatory requirements, or return of unneeded funds, will be determined by the Assistant Secretary on a case-by-case basis. The funds may be used to fund the highest ranking unfunded project, an imminent threat, or other uses as determined by the Assistant Secretary.

(b) Undistributed funds (funds that are unobligated at the conclusion of the rating and ranking process) will be treated the same as recaptured funds.

(c) Recaptured and undistributed funds will remain with the field office that they came from unless the Assistant Secretary determines there is an overriding reason to redistribute the funds outside of the field office's jurisdiction.

Subpart C—Eligible Activities

§ 571.200 General.

The eligibility requirements of part 570, subpart C of this chapter—Eligible

Activities—apply to grants under this part, except for those provisions which are specifically stated as applying only to the Entitlement Cities or Small Cities-HUD administered programs, and with the modifications stated in this subpart.

§ 571.201 Primary and national objectives.

(a) Not less than 70 percent of the funds of each single purpose grant must be used for activities that benefit low- and moderate-income persons under the criteria set forth in § 570.08(a) of this chapter. In determining the percentage of funds used for such activities, the provisions of § 570.200(a)(3) (i), (iv), and (v) of this chapter shall apply. The requirements of this paragraph do not apply to imminent threat grants funded under Subpart E of this part.

(b) In addition to the requirement of paragraph (a) of this section, each activity must meet one of the national objectives pursuant to the criteria set forth in § 570.208 of this chapter.

§ 571.202 Nonprofit organizations.

Tribal-based nonprofit organizations replace neighborhood-based nonprofit organizations under § 570.204(c)(1) of this chapter. A Tribal-based nonprofit organization is an association or corporation duly organized to promote and undertake community development activities on a not-for-profit basis within an identified service area.

§ 571.203 Administrative costs.

(a) For purposes of this part, technical assistance costs associated with developing the capacity to undertake a specific funded program activity are not considered administrative costs. Therefore, these costs are not included in the twenty percent limitation on planning and administration stated in part 570, subpart C of this chapter.

(b) Technical assistance costs cannot exceed ten percent of the total grant award. As used in this part, *technical assistance* means the transfer of skills and knowledge in planning, developing, and administering the CDBG program to eligible Indian CDBG recipients who need them in order to undertake a specific funded program activity.

Subpart D—Single Purpose Grant Application and Selection Process

§ 571.300 Application requirements.

(1) *General.* Applications are required for assistance under this part. An applicant shall submit only one application, which may not total more than the grant ceiling. An application may include an unlimited number of eligible projects, e.g., housing or public facilities. Each project within a single purpose grant application will be rated separately, i.e., according to the rating category under which it fits. Field offices will fund the highest ranking projects from all applications, up to the grant ceiling. Applications shall include projects which can be completed within a reasonable period of time (generally not more than two years).

(b) *Application information.* Headquarters shall publish a Notice of Funding Availability (NOFA) in the **Federal Register** not less than 30 days before the deadline(s) for application submission. The NOFA will provide more details regarding:

(1) Information about the availability of funds;

(2) A description of the forms and procedures for completing an application and the field offices' deadlines. Such description shall be designed to help eligible applicants apply for the funds; and

(3) The criteria used to select applications.

(c) *Demographic data.* Applicants may submit data that are unpublished and not generally available in order to meet the requirements of this section. The applicant must certify that:

(1) Generally available, published data are substantially inaccurate or incomplete;

(2) Data provided have been collected systematically and are statistically reliable;

(3) Data are, to the greatest extent feasible, independently verifiable; and

(4) Data differentiate between reservation and BIA service area populations when applicable.

(d) *Costs incurred by applicant.* (1) Notwithstanding any provision in part 570 of this title, HUD will not reimburse or recognize any costs incurred before submission of the single purpose grant application to HUD.

(2) Also, HUD will not normally reimburse or recognize costs incurred before HUD approval of the application for funding. However, under unusual circumstances, the field office may consider and approve written requests to recognize and reimburse costs incurred after submission of the application where failure to do so would impose undue hardship on the applicant. Such authorization will be made only before the costs are incurred and where the requirements for reimbursement have been met in accordance with 24 CFR 58.22 and with the understanding that HUD has no obligation whatsoever to approve the application or to reimburse the applicant should the application be disapproved.

(e) *Publication of community development statement.* Applicants for single purpose grants shall prepare and publish or post the community development statement portion of their application according to the citizen participation requirements of § 571.604.

(f) *Application components.* The NOFA will provide more detail about the application components outlined in this paragraph. Applicants for single purpose grants shall submit an application to the appropriate field office in a form prescribed by HUD. The application shall include:

(1) Standard form 424;

(2) Community development statement which includes:

(i) A brief description or an updated description of community development needs;

(ii) A brief description of proposed projects to address needs, including scope, magnitude, and method of implementing a project; and

(iii) Cost information by project, including specific activity costs, administration, planning, and technical assistance, total HUD share, and amount of other funds by sources; and

(iv) Components that address the relevant selection criteria.

(3) A map showing project location, if appropriate; and

(4) Certification in the form of an official Tribal resolution that citizen participation requirements of § 571.604 have been met.

(5) As required by section 102(b) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235), applicants that reasonably expect to receive more than $200,000 of funding from HUD during the fiscal year must provide the following information:

(i) Other related assistance that is expected to be made available for the project by the Federal government, State government, unit of local government, Tribe, Alaskan native village, or any agency or instrumentality of the above.

(ii) Name and pecuniary interest of any person who has a pecuniary interest in the project or activities for which the applicant is seeking assistance. Persons with a pecuniary interest in the project include but are not limited to developers, contractors, and consultants involved in the application for assistance or the planning, development and implementation of the project or activities. Residency of an individual in housing for which assistance is being sought is not considered a pecuniary interest.

During the period that the application is pending, or the project is open, the applicant shall update the aforementioned disclosure within 30 days of any substantial change.

(Approved by the Office of Management and Budget under OMB Control No. 2506–0043)

§ 571.301 Screening and review of applications.

(a) *Criteria for acceptance.* Each field office will initially screen applications for single purpose grants. Applications failing this initial screening shall be rejected and returned to the applicants unrated. Field Offices will accept applications if:

(1) The application is postmarked no later than midnight on the submission date, if mailed;

(2) The applicant is eligible;

(3) The proposed activities are eligible;

(4) They contain substantially all the components specified in §571.300(f); and

(5) At least 70% of the grant funds are used to benefit low and moderate income persons, in accordance with the requirements of § 571.201(a).

(b) *Demographic data.* HUD will review and accept demographic data provided by an applicant if, in HUD's determination the data are of the quality described in § 571.300(c). Where demographic data provided by an applicant are unacceptable, HUD will use the best available data at its disposal.

(c) *Grant ceiling.* HUD will review applications for compliance with grant ceilings that are established by the NOFA.

(d) *Information submitted on request.* A field office shall notify applicants in writing of any technical deficiencies in their applications. Applicants will have 14 calendar days from the date of the field office notification to correct any technical deficiencies. A technical deficiency is an error or oversight which, if corrected, would not alter, in either a positive or negative fashion, the review and rating of the application. The field office also may request information to resolve ambiguities in the application and may, in its discretion, request that an applicant submit information that may help to clarify an application that, in the field office's view, contains information that is inconsistent with known facts or data. Periodic NOFAs may further define technical deficiencies and the circumstances under which additional information will be requested. Applicants may submit only the information requested by HUD. Applicants may not submit information that will enhance a project's rating, and a new project(s) may not be substituted for one(s) proposed in the original application. The field office shall disqualify applicants that fail to submit the information requested if the field office determines that the applicant failed to meet the threshold requirements or failed to show compliance with requirements of this part, or if the field office determines that the information on-hand is insufficient to make a rating decision.

§ 571.302 Selection process.

(a) *Threshold requirements.* In order for applications that have passed the initial screening tests of §571.301 to be rated and ranked, field offices must determine that the following requirements have been met:

(1) *Community development appropriateness.*

(i) The costs are reasonable;

(ii) The project(s) is appropriate for the intended use; and

(iii) The project is usable or achievable (generally within a two-year period).

If in the judgment of the field office, available data indicate that the proposed project(s) costs are unreasonable, is inappropriate for the intended use, or is not usable generally within two years, the field office shall determine that the applicant has not met this threshold requirement, and shall reject such project(s) from further consideration.

(2) *Capacity and performance.* The applicant has the capacity to undertake the proposed program. Additionally, applicants that previously have participated in the Indian CDBG Program must have performed adequately or, in cases of previously documented deficient performance, the applicant must have taken appropriate corrective action to improve its performance.

(i) *Capacity.* The applicant possesses, or will acquire, the managerial, technical, or administrative staff necessary to carry out the proposed projects. If the field office determines that the applicant does not have or cannot obtain the capacity to undertake the project(s), such project(s) will be rejected from further consideration.

(ii) *Performance*—(A) *Community development.* Performance determinations are made through the field office's normal monitoring process. Applicants that have been advised in writing of negative findings on previous grants, for which a schedule of corrective actions has been established, will not be considered for funding if they are behind schedule as of the deadline date for filing applications.

(B) *Housing assistance.* The applicant has not taken actions to impede the provision or operation of assisted housing for the low- and moderate-income members of the Tribe or Village. If inadequate performance is found, the applicant shall be rejected from further consideration.

(C) *Audits.* An applicant that has an outstanding ICDBG obligation to HUD that is in arrears, or one that has not agreed to a repayment schedule, will be disqualified from the current and subsequent competitions until the obligations are current. An applicant whose response to an audit finding is overdue or unsatisfactory will be disqualified from the current and subsequent competitions until the applicant has taken final action necessary to close the audit finding(s). The field office director may provide exceptions to this disqualification requirement in cases where the applicant has made a good faith effort to clear non-monetary audit findings. In no instance, however, shall an exception be provided when funds are due HUD, unless a satisfactory arrangement for repayment of the debt has been made, and payments are current.

(b) *Applications rating system.* (1) Applications that meet the threshold requirements established in paragraph (a) of this section will be rated competitively within each field office's jurisdiction.

(2) Periodic NOFAs will further weight and define the rating factors contained in this subpart. Each field office will rate applications on the basis of their responsiveness to the factors contained in this subpart and in the periodic NOFAs.

(3) In addition to meeting the requirements of this section, which apply to all applications, the field office will examine each project submitted to determine in which one of the four rating categories set out in § 571.303 through § 571.306 the project most appropriately belongs. The project then will be rated on the basis of the criteria identified in the rating category component to which the project has been assigned. The total points for a rating component is 100, which is the maximum any project can receive.

(4) Due to the statutory 15 percent cap on public services activities, applicants may not receive single purpose grants solely to fund public services activities. However, any application may contain a public services component for up to 15 percent of the total grant. This component may be unrelated to the application's other component(s). If an application does not receive full funding, the public services allocation will be proportionately reduced to comprise no more than 15 percent of the total grant award.

(c) *Final ranking.* All projects will be ranked against each other according to

the point totals they receive, regardless of the rating category or component under which the points were received. Projects will be selected for funding based on this final ranking, to the extent that funds are available. If the field office determines that an insufficient amount of money is available to adequately fund a project, it may decline to fund that project and fund the next highest ranking project or projects for which adequate funds are available. HUD may select, in rank order, additional projects for funding if one of the higher ranking projects is not funded, or if additional funds become available.

(d) *Ties.* Field offices shall approve projects involved in a tie that can be fully funded over those that cannot be fully funded. Only when such approval does not resolve a tie, shall the field office resort to one or more of the methods listed below ("tiebreakers"). Each field office's choice(s) of tiebreaker(s) will be published in the NOFA that is issued before each funding competition.

(1) The applicant that has not received a block grant over the longest period of time.

(2) The applicant that has received the fewest CDBG dollars since the inception of the program.

(3) The application that benefits the most low- and moderate-income persons.

(4) The application that benefits the highest percentage of low- and moderate-income persons.

(5) The applicant with the fewest projects that can be funded in the current year's competition.

(6) The applicant with the fewest active grants.

(e) *Competition documentation.* Field offices shall make available for public inspection each application and all related documentation and information, including letters of support, that indicate the basis on which the award was made or denied. Each field office shall make this documentation available for a period of at least five years starting 30 days from the date on which the award is made.

(f) *Procedural error.* If a field office makes a procedural error in the application and selection process that, when corrected, will result in awarding sufficient points to warrant funding of an otherwise eligible applicant, HUD may fund that applicant in the next year without further competition.

(g) *Setaside selection of projects.* If funds have been set aside by statute for a specific purpose in any fiscal year, other criteria pertinent to the setaside may be used to select projects for funding from the setaside.

§ 571.303 Housing rating category.

The "housing rating" category consists of three components: housing rehabilitation; land to support new housing; and new housing construction/direct homeownership assistance. Housing rehabilitation and new housing construction/direct homeownership assistance consist of three parts: Project need and design; planning and implementation; and leveraging. Land to support new housing consists of two parts: project need; and planning and implementation. Housing projects will be assigned to the appropriate component for rating and may receive a maximum of 100 points. In those instances where a Tribe has established or joined an Indian Housing Authority (IHA) and has obtained housing assistance from HUD, its compliance with the resolution set out in article VIII of HUDs Model Tribal Ordinance will be a performance consideration under § 571.302. The applicant shall assure that it will use project funds to rehabilitate or construct units or to provide direct homeownership assistance only where the tenant's/homeowner's payments are current or the tenant/homeowner is current in a repayment agreement that is subject to approval by the field office. The field office may grant exceptions, on a case-by-case basis, to the requirement that beneficiaries be current to permit housing rehabilitation, new construction, or direct homeownership assistance in emergency situations.

(a) *Housing rehabilitation component.* All applicants for housing rehabilitation grants shall adopt rehabilitation standards and rehabilitation policies, prior to submitting an application.

(1) Project need and design (45 points). The field office will consider the following when reviewing each application:

(i) The percentage of CDBG funds committed to bring the housing up to standard condition, as defined by the applicant.

(ii) The degree to which the applicant's participant selection criteria gives priority to the neediest households.

(iii) Documentation of project need.

(2) Planning and implementation (45 points). The field office will consider the following when reviewing each application:

(i) Rehabilitation policies, including adopted rehabilitation standards, rehabilitation selection criteria, and project planning documents.

(ii) Post-rehabilitation maintenance policies.

(iii) Quality of cost estimates.

(iv) Cost effectiveness of the rehabilitation program.

(3) Leveraging (10 points). Applicants must provide documentation of the amount and source of additional funds. This should include private contributions, including equity and loans, applicant funding, and other governmental funding.

(b) *Land to support new housing component.* (1) Project need (40 points). The field office will consider the amount of land that the applicant already has that is available and suitable for new housing. (Applicants that have suitable land available will rate poorly on this factor.)

(2) Planning and implementation (60 points). The field office will consider the following when reviewing each application:

(i) Suitability of land to be acquired.

(ii) Housing resources that are committed at the time of project application.

(iii) Availability/accessibility of supportive services and employment opportunities.

(iv) Commitment that families will move into the new housing.

(v) Land can be taken into trust or provisions have been made for taxes and fees.

(vi) Plan for any infrastructure needed to support housing to be developed. (If needed infrastructure exists, maximum points will be awarded.)

(vii) Extent to which the proposed site meets the applicant's needs.

(c) *New Housing construction/direct homeownership assistance component.* (1) New housing construction can only be implemented through a nonprofit organization that is eligible under § 571.202 or is otherwise eligible under § 570.207(b)(3) of this chapter. If an applicant plans to build housing covered by mortgage insurance under section 248 of the National Housing Act, the field office will not consider the provisions of paragraphs (c)(3)(i)(A) and (B) and (c)(4)(iv) of this section when rating the proposal. The remaining subparts will be weighted so that section 248 projects may receive a maximum of 100 points. All applicants for new housing construction grants shall adopt by current tribal resolution, construction standards and construction policies, prior to submitting an application. All applications for new housing construction grants must document that:

(i) no other housing is available in the immediate reservation area that is

suitable for the household(s) to be assisted; and

(ii) No other sources can meet the needs of the household(s) to be served; and

(iii) Rehabilitation of the unit occupied by the household to be housed is not economically feasible; or

(iv) The household to be housed currently is in an overcrowded unit (sharing unit with other household(s)); or

(v) The household to be housed has no current residence.

(2) If an applicant plans to provide direct homeownership assistance under section 907 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625) to low- and moderate-income homebuyers who will occupy existing units, the field office will not consider the provisions of paragraphs (c)(3)(i)(A) and (B) and (c)(4)(iv) of this section when rating the proposal. The remaining subparts will be weighted so that direct homeownership assistance projects may receive a maximum of 100 points. All applications for direct homeownership assistance grants must contain the following documentation:

(i) No other sources can meet the needs of the household(s) to be served; and

(ii) Rehabilitation of the unit occupied by the household to be assisted is not economically feasible; or

(iii) The household to be assisted currently is in an overcrowded unit (sharing unit with other household(s)); or

(iv) The household to be assisted has no current residence.

(3) Project need and design (45 points). The field office will consider the following when reviewing each application:

(i) The applicant:

(A) Either is not a member of an IHA, or the umbrella IHA to which it belongs has not provided assistance to the applicant in a substantial period of time; or

(B) Has not received HUD Public and Indian Housing new construction or modernization assistance in a substantial period of time due to a lack of funds.

(ii) Adopted housing construction policies and plan.

(iii) Beneficiary identification (all households are low- and moderate-income). The households to be served have documented needs for housing assistance that cannot be met from other sources.

(4) Planning and implementation (45 points). The field office will consider the following when reviewing each application:

(i) Occupancy standards.

(ii) Site acceptability, including consideration of land control, access, utilities, infrastructure, physical characteristics, and whether the site is held in trust.

(iii) Energy conservation design.

(iv) Housing survey.

(v) Cost effectiveness.

(5) Leveraging (10 points). Applicants must provide documentation of the amount and sources of additional funds. This should include private contributions including equity and loans, applicant funding, and other governmental funding.

§ 571.304 Community facilities rating category.

The "community facilities rating" category consists of two components: Infrastructure, such as water, sewer or roads; and buildings, such as a community center or child care facility. Each component consists of three parts: Project need and design; planning and implementation; and leveraging. Community facilities projects will be assigned to the appropriate component for rating and may receive a maximum of 100 points.

(a) *Infrastructure component.* (1) Project need and design (60 points). The project will accomplish the following:

(i) Meet an essential community development need.

(ii) Benefit the neediest segment of the population.

(iii) Provide infrastructure that currently does not exist either within or outside the community or reservation, or replace an existing facility that no longer functions adequately to meet the current needs, or eliminate or substantially reduce a health or safety problem.

(2) Planning and implementation (30 points). The applicant will show:

(i) A viable plan for maintenance and operation.

(ii) An appropriate and effective design, scale and cost.

(3) Leveraging (10 points). The application must contain documentation of the amount and sources of additional funds.

(b) *Buildings component.* (1) Project need and design (60 points). The project will accomplish the following:

(i) Benefit the neediest segment of the population to the greatest extent possible.

(ii) Provide a building that currently does not exist either within or outside (nearby) the community or reservation or replace an existing facility that no longer functions adequately to meet the current needs.

(iii) Provide multiple uses, multiple benefits or have services available 24 hours a day.

(iv) Meet an essential community need *or* eliminate or reduce a health or safety problem.

(2) Planning and implementation (30 points). The application will show:

(i) A viable plan for maintenance and operation.

(ii) An appropriate and effective design, scale, and cost.

(3) Leveraging (10 points). The application must contain documentation of the amount and sources of additional funds.

§ 571.305 Economic development rating category.

(a) The economic development rating category has only one component, consisting of three parts: project viability; permanent full-time job creation; and additional considerations. Economic development projects may receive a maximum of 100 points.

(b) Economic development assistance may be provided only when a financial analysis is done which shows that the assistance to the business does not exceed the level of financial assistance needed to make the project financially feasible, public benefit commensurate with the assistance to the business can reasonably be expected to result from the assisted project, and the project has a reasonable chance of success.

(c) In making this determination, for example, if the analysis of the financial information indicates an ability to repay the assistance, a grant would not be warranted if the financial assistance is going to a nongovernmental entity.

(1) *Project viability* (55 points). The application will be rated on the adequacy and quality of the following subparts:

(i) Market Analysis.

(ii) Management capacity.

(iii) Organization.

(iv) Viability of the business; or

(v) Viability of the microenterprise.

(vi) Leveraging.

(2) *Permanent full-time equivalent job creation* (30 points). The application will be rated on the adequacy and quality of the following subparts:

(i) CDBG cost per job.

(ii) CDBG cost per job targeted to low- and moderate-income persons.

(iii) Quality of jobs targeted to low- and moderate-income persons or employer commitment to provide training opportunities.

(3) *Additional considerations* (15 points). The project will accomplish one or more of the following:

(i) Use, improve, or expand members' special skills.

(ii) Provide spin-off benefits beyond the initial economic development benefits.

(iii) Provide special opportunities for residents of federally assisted housing.

(iv) Provide benefits to other businesses owned by Indians or Alaskan natives.

(v) Provide for reuse of project funds for other CDBG eligible activities that meet a national objective through repayment of CDBG assistance to the grantee or use of the profits of the tribally owned business.

§ 571.306 Public services rating category.

(a) Project need and design (45 points). The project will accomplish the following:

(1) Meet an essential community need.

(2) Benefit the neediest segment of the population.

(3) Eliminate or substantially reduce a health or safety problem.

(b) Planning and implementation (45 points). The application will show:

(1) A viable plan for continuing provision of the service(s).

(2) An appropriate and effective design, scale and cost.

(3) An innovative approach to the delivery of the service(s).

(c) Leveraging (10 points). The application must contain documentation of the amount and sources of additional funds.

§ 571.307 Funding process.

(a) *Notification.* Field offices will notify applicants of the actions taken regarding their applications. Grant amounts offered may reflect adjustments made by the field offices in accordance with § 571.100(b).

(b) *Pre-award requirements.* (1) Upon notification by HUD of successfully competing for a grant, the applicant shall submit, on forms prescribed by HUD, the following:

(i) Implementation schedule.

(ii) Certifications.

(iii) Cost information, if changes have occurred or if the field office has adjusted the original grant request.

(2) Successful applicants also may be required to provide supporting documentation concerning the management, maintenance, operation, or financing of proposed projects before a grant agreement can be executed. Applicants will be given at least thirty (30) calendar days, to respond to such requirements. In the event that no response or an insufficient response is made within the prescribed time period, the field office may determine that the applicant has not met the requirements and the grant offer may be withdrawn. The field offices shall require supporting documentation in those instances where:

(i) Specific questions remain concerning the scope, magnitude, timing, or method of implementing the project; or

(ii) The applicant has not provided information verifying the commitment of other resources required to complete, operate, or maintain the proposed project.

(3) Grant amounts allocated for applicants unable to meet pre-award requirements will be offered to the next highest ranking unfunded project.

(4) New projects may not be substituted for those orginally proposed in the application.

(c) *Grant award.* (1) As soon as HUD determines that the applicant has complied with the pre-award requirements and nothing has come to the attention of the field office which would alter the threshold determinations under § 571.302, the grant will be awarded. These regulations (*i.e.*, 24 CFR part 571) become part of the grant agreement.

(2) All grants shall be conditioned upon the completion of all environmental obligations and approval of release of funds by HUD in accordance with the requirements of part 58 of this title and, in particular, subpart J of part 58 of this title, except as otherwise provided in:

(i) Section 58.33, "Emergencies";

(ii) Section 58.34, "Exempt activities"; or

(iii) Section 58.22, "Activities," excepted from limitations on the commitment of funds and which are reimbursable under subpart C of part 570 of this chapter.

(3) HUD may impose other grant conditions where additional actions or approvals are required prior to the use of funds and such as:

(i) Pending site and neighborhood standards approval for a proposed housing project, if applicable;

(ii) Pending HUD approval of the use of Tribal work forces for construction or renovation activities in accordance with § 571.502; or

(iii) Pending receipt of other agencies' funding commitments required for the project. If the required conditions are not met within the prescribed time, HUD may unilaterally rescind the grant award.

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§ 571.308 Program amendments.

(a) Grantees shall request prior HUD approval for all program amendments involving the alteration of existing activities that will significantly change the scope, location, objective, of class or beneficiaries of the approved activities, as originally described in the application.

(b) Amendment requests shall include the information required under § 571.300(f) (1) and (4), as well as any changes to the information requested under § 571.300(f) (2), (3) and (5).

(1) Amendments of $25,000 or more shall address all the rating parts and subparts of the last rating cycle. Approval is subject to the following:

(i) A rating equal to or greater than the lowest rating received by a funded project during the last rating cycle;

(ii) Capability to complete promptly the modified or new activities;

(iii) Compliance with the requirements of § 571.604 of this part for citizen participation; and

(iv) The preparation of an amended or new environmental review in accordance with part 58 of this title, if there is a significant change in the scope or location of approved activities.

(2) Amendments of less than $25,000 shall be approved subject to meeting the requirements of paragraphs (b)(1) (ii), (iii), and (iv) of this section.

(3) Amendments which address imminent threats to health and safety shall be reviewed and approved in accordance with the requirements of subpart E of this part.

(c) If a program amendment fails to be approved and the original project is no longer feasible, the grant funds proposed for amendment shall be returned to HUD.

Subpart E—Imminent Threat Grants

§ 571.400 Criteria for funding.

The following criteria apply to requests for assistance under this subpart:

(a) In response to requests for assistance, the field office may make funds available under this subpart to applicants to alleviate or remove imminent threats to health or safety that require an immediate solution. The urgency and immediacy of the threat shall be independently verified prior to the approval of an application. Funds may only be used to deal with imminent threats that are not of a recurring nature and which represent a unique and unusual circumstance, and which impact on an entire service area.

(b) Funds to alleviate imminent threats may be granted only if the applicant can demonstrate to the satisfaction of HUD that other local or

Federal funding sources cannot be made available to alleviate the threat.

(c) Field offices will establish grant ceilings for imminent threat applications.

§ 571.401 Application process.

(a) *Letter to proceed.* The field office may issue the applicant a letter to proceed to incur costs to alleviate imminent threats to health and safety only if the assisted activities do not alter environmental conditions and are for temporary or permanent improvements limited to protection, repair, or restoration actions necessary only to control or arrest the effects of imminent threats or physical deterioration. Reimbursement of such costs is dependent upon HUD approval of the application.

(b) *Applications.* Applications shall be submitted in accordance with § 571.300(f). Applications which meet the requirement of this section may be approved by the field office without competition in accordance with the applicable requirements of § 571.307.

§ 571.402 Environmental review.

In accordance with 24 CFR 58.34(a)(8), grants for imminent threat to health or safety are exempt from some or all of the environmental review requirements of part 58 of this title, to the extent provided in that section.

§ 571.403 Availability of funds.

Field offices may set aside up to 15 percent of their allocation of funds under this part for imminent threat grants. The only funds reserved for imminent threat are those set aside by the field office each year. A field office may not retain imminent threat funds after the date upon which it receives its allocation for the succeeding fiscal year. Field Offices will use any imminent threat funds remaining to either fund the highest ranking unfunded project from the previous fiscal year or will use the funds as if they are a part of the new allocation of funds. Field offices must correctly indicate, however, the fiscal year the residual funds were originally allocated when the funds are awarded to applicants.

Subpart F—Grant Administration

§ 571.500 General.

The requirements of part 570, subpart J of this chapter Grant Administration—apply to grants under this part except for those provisions that are specifically stated as applying to the Entitlement Cities or Small Cities-HUD administered programs, and with the modifications stated in this subpart.

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§ 571.501 Designation of public agency.

One or more Tribal departments or authorities may be designated by the chief executive officer of an Indian Tribe or Alaskan native village as the operating agency to undertake activities assisted under this part. The Indian Tribe or Alaskan native village itself, however, shall be the applicant. Designation of an operating agency does not relieve the Indian Tribe or Alaskan native village of its responsibility to assure that the program will be administered in accordance with all HUD requirements, including these regulations.

§ 571.502 Force account construction.

(a) The use of Tribal work forces for construction or renovation activities performed as part of the activities funded under this part shall be approved by HUD before the start of project implementation. In reviewing requests for an approval of force account construction or renovation, HUD may require that the grantee provide the following:

(1) Documentation to indicate that it has carried out or can carry out successfully a project of the size and scope of the proposal;

(2) Documentation to indicate that it has obtained or can obtain adequate supervision for the workers to be utilized;

(3) Information showing that the workers to be utilized are, or will be, listed on the Tribal payroll and are employed directly by a unit, department or other governmental instrumentality of the Tribe or village.

(b) Any and all excess funds derived from the force account construction or renovation activities shall accrue to the grantee and shall be reprogrammed for other activities eligible under this part in accordance with § 571.308(b) or returned to HUD promptly.

(c) Insurance coverage for force account workers and activities shall, where applicable, include workman's compensation, public liability, property damage, builder's risk, and vehicular liability.

(d) The grantee shall specify and apply reasonable labor performance, construction, or renovation standards to work performed under the force account.

(e) The contracting and procurement standards set forth in 24 CFR 85.36 apply to material, equipment, and supply procurement from outside vendors under this section, but not to other activities undertaken by force account. HUD may approve alternative requirements in lieu of bonding if compliance with the bonding requirements specified in § 85.36(h) of this title is determined by HUD to be infeasible or incompatible with the Indian preference requirements set forth in § 571.503.

(Approved by the Office of Management and Budget under OMB Control No. 2506–0043)

§ 571.503 Indian preference requirements.

(a) *Applicability.* HUD has determined that grants under this part are subject to 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:

(1) Preference and opportunities for training and employment shall be given to Indians, and

(2) Preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.

(b) *Definitions.* Indian organizations and Indian-owned economic enterprises include both of the following:

(1) Any economic enterprise as defined in section 3(e) of the Indian Financing Act of 1974 (Pub. L. 93–262); that is, "any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit provided that such Indian ownership and control shall constitute not less than 51 percent of the enterprise"; and

(2) Any "Tribal organizations" as defined in section 4(c) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638); that is, "the recognized governing body of any Indian Tribe; any legally established organization of Indians which is controlled, sanctioned or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organizations and which includes the maximum participation of Indians in all phases of its activities."

(c) *Preference in administration of grant.* To the greatest extent feasible, preference and opportunities for training and employment in connection with the administration of grants awarded under this part shall be given to Indians and Alaskan natives.

(d) *Preference in contracting.* To the greatest extent feasible, grantees shall give preference in the award of contracts for projects funded under this part to Indian organizations and Indian-owned economic enterprises.

(1) Each grantee shall:

(i) Advertise for bids or proposals limited to qualified Indian organizations and Indian-owned enterprises; or

(ii) Use a two-stage preference procedure, as follows:

(A) *Stage 1.* Invite or otherwise solicit Indian-owned economic enterprises to submit a statement of intent to respond to a bid announcement limited to Indian-owned firms.

(B) *Stage 2.* If responses are received from more than one Indian enterprise found to be qualified, advertise for bids or proposals limited to Indian organizations and Indian-owned economic enterprises; or

(iii) Develop, subject to HUD field office one-time approval, the grantee's own method of providing preference.

(2) If the grantee selects a method of providing preference that results in fewer than two responsible qualified organizations or enterprises submitting a statement of intent, a bid or a proposal to perform the contract at a reasonable cost, then the grantee shall:

(i) Re-bid the contract, using any of the methods described in paragraph (d)(1) of this section; or

(ii) Re-bid the contract without limiting the advertisement for bids or proposals to Indian organizations and Indian-owned economic enterprises; or

(iii) If one approvable bid is received, request field office review and approval of the proposed contract and related procurement documents, in accordance with 24 CFR 85.36, in order to award the contract to the single bidder.

(3) Procurements that are within the dollar limitations established for small purchases under 24 CFR 85.36 need not follow the formal bid procedures of paragraph (d) of this section, since these procurements are governed by the small purchase procedures of 24 CFR 85.36. However, a grantee's small purchase procurement shall, to the greatest extent feasible, provide Indian preference in the award of contracts.

(4) All preferences shall be publicly announced in the advertisement and bidding solicitation and the bidding documents.

(5) A grantee, at its discretion, may require information of prospective contractors seeking to qualify as Indian organizations or Indian-owned economic enterprises; however, this information need not be submitted to HUD. Grantees may require prospective contractors to include the following information prior to submitting a bid or proposal, or at the time of submission:

(i) Evidence showing fully the extent of Indian ownership, control, and interest;

(ii) Evidence of structure, management and financing affecting the Indian character of the enterprise, including major subcontracts and purchase agreements; materials or equipment supply arrangements; and management salary or profit-sharing arrangements; and evidence showing the effect of these on the extent of Indian ownership and interest; and

(iii) Evidence sufficient to demonstrate to the satisfaction of the grantee that the prospective contractor has the technical, administrative, and financial capability to perform contract work of the size and type involved.

(6) The grantee shall incorporate the following clause (referred to as the section 7(b) clause) in each contract awarded in connection with a project funded under this part:

(i) The work to be performed under this contract is on a project subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) (Indian Act). Section 7(b) requires that to the greatest extent feasible:

(A) preferences and opportunities for training and employment shall be given to Indians;

(B) Preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.

(ii) The parties to this contract shall comply with the provisions of section 7(b) of the Indian Act.

(iii) In connection with this contract, the contractor shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned economic enterprises, and preferences and opportunities for training and employment to Indians and Alaskan natives.

(iv) The contractor shall include this section 7(b) clause in every subcontract in connection with the project, and shall, at the direction of the grantee, take appropriate action pursuant to the subcontract upon a finding by the grantee or HUD that the subcontractor has violated the section 7(b) clause of the Indian Act.

(e) *Additional Indian preference requirements.* A grantee may, with prior HUD approval, provide for additional Indian preference requirements as conditions for the award of, or in the terms of, any contract in connection with a project funded under this part. The additional Indian preference requirements shall be consistent with the objectives of the section 7(b) clause of the Indian Act and shall not result in a significantly higher cost or greater risk of non-performance or longer period of performance.

§ 571.504 Grant closeout procedure.

Within 90 days of the date that HUD determines the grant has met the criteria for closeout, the grantee shall submit to HUD a completed Financial Status Report (SF–269). In addition, the requirements of § 570.509 of this chapter, Grant closeout procedures, apply to the ICDBC program where applicable.

(Approved by the Office of Management and Budget under OMB Control No. 2506-0043)

§ 571.505 Program income.

(a) The provisions of 24 CFR 570.504(b) apply to all program income received prior to grant closeout.

(b) Income received after closeout from the disposition of real property or repayments of loans outstanding at the time of closeout will not be governed by the provisions of this part, except that such income shall be used for activities that meet one of the national objectives in 24 CFR 570.208 and the eligibility requirements described in section 105 of the Act.

(c) All other program income received after closeout will not be governed by the provisions of this part.

Subpart G—Other Program Requirements

§ 571.600 General.

The following requirements of 24 CFR part 570, subpart K—Other Program Requirements—apply to grants under this part.

(a) Section 570.605 National Flood Insurance Program.

(b) Section 570.608 Lead-based paint.

(c) Section 570.609 Use of debarred, suspended, or ineligible contractors or subrecipients.

(d) Section 570.610 Uniform administrative requirements and cost principles. Non-federally recognized tribes shall follow the requirements of 24 CFR part 85 and OMB Circulars A–87 and A–128.

[Copies of OMB Circulars may be obtained from E.O.P. Publications, room 2200, New Executive Office Building, Washington, DC 20503, telephone (202) 395–7332. (This is not a toll-free number.) There is a limit of two free copies.]

§ 571.601 Nondiscrimination.

(a) Under the authority of section 107(e)(2) of the Act, the Secretary waives the requirement that recipients comply with section 109 of the Act except with respect to the prohibition of discrimination based on age, sex, or against an otherwise qualified handicapped individual.

(b) A recipient shall company with the provisions of title II of Public Law 90–284 (24 U.S.C. 1301—the Indian Civil Rights Act) in the administration of a program or activity funded in whole or in part with funds made available under

this part. For purposes of this section, "program or activity" is defined as any function conducted by an identifiable administrative unit of the recipient; and "funded in whole or in part with funds made available under this part" means that community development funds in any amount have been transferred by the recipient to an identifiable administrative unit and disbursed in a program or activity.

§ 571.602 Relocation and acquisition.

(a) *General policy for minimizing displacement.* Consistent with the other goals and objectives of this part, grantees shall assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(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 housing costs (e.g., 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, safe and habitable dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the repairs; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A displaced person (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) 42 U.S.C. 4601–4655) and implementing regulations at 49 CFR part 24.

(d) *Acquisition of real property.* The acquisition of real property for an assisted activity is subject to 49 CFR part 24, subpart B. Whenever the grantee does not have the authority to acquire the real property through condemnation, it shall:

(1) Before discussing the purchase price, inform the owner:

(i) Of the amount it believes to be the fair value of the property. Such amount shall be based upon one or more appraisals prepared by a qualified appraiser. However, this provision does not prevent the grantee from accepting a donation or purchasing the real property at less than its fair market value.

(ii) That it will be unable to acquire the property if negotiations fail to result in an amicable agreement.

(2) Request HUD approval of the proposed acquisition price before executing a firm commitment to purchase the property. The grantee shall include with its request a copy of the appraisal(s) and, when applicable, a justification for any proposed acquisition payment that exceeds the fair market value of the property. HUD will promptly review the proposal and inform the grantee of its approval or disapproval.

(e) *Appeals.* A person who disagrees with the grantee's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the grantee. A person who is dissatisfied with the grantee's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(f) *Responsibility of grantee.* (1) The grantee shall certify that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section, (*i.e.,* provide assurance of compliance as required by 49 CFR part 24). The grantee shall ensure such compliance notwithstanding any third party's contractual obligation to the grantee to comply with these provisions.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. However, such assistance may also be paid for with funds available to the grantee from any other source.

(3) The grantee shall maintain records in sufficient detail to demonstrate compliance with this section.

(g) *Displaced person.* (1) For purposes of this section, the term "displaced person" means any person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves his or her personal property from real property, permanently, as a direct result of rehabilitation, demolition, or acquisition for a project assisted under this part. This includes any permanent, involuntary move for an assisted project, including any permanent move from real property that is made:

(i) After notice by the grantee or property owner to move permanently from the property, if the move occurs on or after the date of the submission of an application for financial assistance by the grantee to HUD that is later approved for the project.

(ii) Before the date of the submission of the application requesting assistance, if either HUD or the grantee determines that the displacement directly resulted from acquisition, rehabilitation, or demolition for the assisted project.

(iii) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:

(A) The tenant moves after execution of the agreement between the grantee and HUD and the move occurs before the tenant is provided written notice offering him or her 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 monthly rent and estimated average monthly utility costs that do not exceed the greater of

(*1*) the tenant's monthly rent and estimated average monthly utility costs before the agreement; or

(*2*) 30 percent of gross household income; or

(B) The tenant is required to relocate temporarily, does not return to the building/complex, and either

(*1*) the tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation; or

(*2*) other conditions of the temporary relocation are not reasonable; or

(C) 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.

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person moved into the property after the submission of the application for financial assistance to HUD and, before signing a lease or commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that the person would not qualify as a

"displaced person" or for any assistance provided under this section as a result of the project;

(ii) The person is not displaced, as defined under 49 CFR 24.2(g)(2).

(iii) The grantee determines the person is not displaced as a direct result of acquisition, rehabilitation, or demolition for an assisted project. To exclude a person on this basis, HUD must concur in that determination.

(3) A grantee may ask HUD, at any time, to determine whether a specific displacement is or would be covered under this section.

(h) *Initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a person displaced as a direct result of rehabilitation or demolition of the real property, the term "initiation of negotiations" means the execution of the agreement covering the rehabilitation or demolition.

§ 571.603 Labor standards.

In accordance with the authority under section 107(e)(2) of the Act, the Secretary waives the provisions of section 110 of the Act (Labor Standards) with respect to this part, including the requirement that laborers and mechanics employed by the contractor or subcontractor in the performance of construction work financed in whole or in part with assistance received under this part be paid wages at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act.

§ 571.604 Citizen participation.

(a) In order to permit residents of Indian Tribes and Alaskan native villages to examine and appraise the applicant's application for funds under this part, the applicant shall follow traditional means of resident involvement which, at the least, include the following:

(1) Furnishing residents with information concerning the amounts of funds available for proposed community development and housing activities and the range of activities that may be undertaken.

(2) Holding one or more meetings to obtain the views of residents on community development and housing needs. Meetings shall be scheduled in ways and at times that will allow participation by residents.

(3) Developing and publishing or posting a community development statement in such a manner as to afford affected residents an opportunity to examine its contents and to submit comments.

(4) Affording residents an opportunity to review and comment on the applicant's performance under any active community development block grant.

(b) Prior to submission of the application to HUD, the applicant shall certify by an official Tribal resolution that it has met the requirements of paragraph (a) of this section, and

(1) considered any comments and views expressed by residents and, if it deems it appropriate, modified the application accordingly, and

(2) made the modified application available to residents.

(c) No part of the requirement under paragraph (a) of this section shall be construed to restrict the responsibility and authority of the applicant for the development of the application and the execution of the grant. Accordingly, the citizen participation requirements of this section do not include concurrence by any person or group in making final determinations on the contents of the application.

§ 571.605 Environment.

In order to assure that the policies of the National Environmental Policy Act of 1969 and other provisions of Federal law which further the purposes of that act (as specified in 24 CFR 58.5) are most effectively implemented in connection with the expenditure of block grant funds, the recipient shall comply with the Environment Review Procedures for the Community Development Block Grant Program (24 CFR part 58). Upon completion of the environmental review, the recipient shall submit a certification and request for release of funds for particular projects in accordance with 24 CFR part 58.

§ 571.606 Conflict of interest.

(a) *Applicability.* (1) In the procurement of supplies, equipment, construction, and services by grantees and subrecipients, the conflict of interest provisions in 24 CFR 85.36 and OMB Circular A–110 shall apply.

[Copies of OMB Circulars may be obtained from E.O.P. Publications, room 2200, New Executive Office Building, Washington, DC, 20503, telephone (202) 395–7332. (This is not a toll-free number.) There is a limit of two free copies.]

(2) In all cases not governed by 24 CFR 85.36 and OMB Circular A–110, the provisions of this section shall apply. Such cases include the provision of assistance by the recipient or by its subrecipients to businesses, individuals, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities under § 570.202 of this chapter; or grants, loans, and other assistance to businesses, individuals, and other private entities under § 570.203 or § 570.204 of this chapter).

(b) *Conflicts prohibited.* Except for the use of ICDBG funds to pay salaries and other related administrative or personnel costs, the general rule is that no persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to ICDBG activities assisted under this part or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from an ICDBG 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 or appointed official of the recipient, or of any designated public agencies, or subrecipients under § 570.204 of this chapter, receiving funds under this part.

(d) *Exceptions requiring HUD approval*—(1) *Threshold requirements.* Upon the written request of a recipient, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis, when it determines that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the recipient's program or project. An exception may be considered only after the recipient has provided the following:

(i) A disclosure of the nature of the possible 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

(ii) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate Tribal laws on conflict of interest, or applicable State laws.

(2) *Factors to be considered for exceptions:* In determining whether to grant a requested exception after the recipient has satisfactorily met the requirements of paragraph (d)(1) of this section, HUD shall consider the

cumulative effect of the following factors, where applicable:

(i) Whether the exception would provide a significant cost benefit or essential expert knowledge to the program or project which would otherwise not be available;

(ii) Whether an opportunity was provided for open competitive bidding or negotiation;

(iii) Whether the affected person has withdrawn from his or her functions or responsibilities, or from the decision-making process, with reference to the specific assisted activity in question;

(iv) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;

(v) Whether undue hardship will result, either to the recipient or to the person affected, when weighed against the public interest served by avoiding the prohibited conflict;

(vi) Any other relevant considerations.

(e) *Circumstances under which the conflict prohibition does not apply.* (1) In instances where a person who might otherwise be deemed to be included under the conflict prohibition is a member of a group or class of beneficiaries of the assisted activity and receives generally the same interest or benefits as are being made available or provided to the group or class, the prohibition does not apply, except that if, by not applying the prohibition against conflict of interest, a violation of Tribal or State laws on conflict of interest would result, the prohibition does apply.

(2) All records pertaining to the recipient's decision under this section shall be maintained for HUD review upon request.

Subpart H—Program Performance

§ 571.700 Reports to be submitted by grantee.

Grant recipients shall submit an annual status report of progress made on previously funded open grants at a time determined by the field office. The status report shall be in narrative form addressing three areas:

(a) *Progress.* The progress in completing activities, the work remaining, changes in the implementation schedule, and a breakdown of funds expended on each approved project;

(b) *Grantee assessment.* Description of the effectiveness of funded activities in meeting the recipient's community development needs; and

(c) *Environment.* (1) Compliance with the conditions under § 58.34 of this title for exempt projects; and

(2) If appropriate, environmental reviews of emergency projects under § 58.33 of this title.

(Approved by the Office of Management and Budget under Control No. 2506–0043)

§ 571.701 Review of recipient's performance.

(a) *Objective.* HUD will review each recipient's performance to determine whether the recipient has:

(1) Complied with the requirements of the Act, this part, and other applicable laws and regulations;

(2) Carried out its activities substantially as described in its application;

(3) Made substantial progress in carrying out its approved program;

(4) A continuing capacity to carry out the approved activities in a timely manner; and

(5) The capacity to undertake additional activities funded under this part.

(b) *Basis for review.* In reviewing each recipient's performance, HUD will consider all available evidence which may include, but not be limited to, the following:

(1) The approved application and any amendments thereto;

(2) Reports prepared by the recipient;

(3) Records maintained by the recipient;

(4) Results of HUD's monitoring of the recipient's performance, including field evaluation of the quality of the work performed;

(5) Audit reports;

(6) Records of drawdowns on the line of credit;

(7) Records of comments and complaints by citizens and organizations; and

(8) Litigation.

§ 571.702 Corrective and remedial action.

(a) *General.* One or more corrective or remedial actions will be taken by HUD when, on the basis of the performance review, HUD determines that the recipient has not:

(1) Complied with the requirements of the Act, this part, and other applicable laws and regulations, including the environmental responsibilities assumed under section 104(g) of title I of the Act;

(2) Carried out its activities substantially as described in its applications;

(3) Made substantial progress in carrying out its approved program; or

(4) Shown the continuing capacity to carry out its approved activities in a timely manner.

(b) *Action.* The action taken by HUD will be designed, first, to prevent the continuance of the deficiency; second, to mitigate any adverse effects or consequences of the deficiency; and third, to prevent a recurrence of the same or similar deficiencies. The following actions may be taken singly or in combination, as appropriate for the circumstances:

(1) Request the recipient to submit progress schedules for completing approved activities or for complying with the requirements of this part;

(2) Issue a letter of warning advising the recipient of the deficiency (including environmental review deficiencies and housing assistance deficiencies), describing the corrective actions to be taken, establishing a date for corrective actions, and putting the recipient on notice that more serious actions will be taken if the deficiency is not corrected or is repeated;

(3) Advise the recipient that a certification of compliance will no longer be acceptable and that additional information or assurances will be required;

(4) Advise the recipient to suspend, discontinue, or not incur costs for the affected activity;

(5) Advise the recipient to reprogram funds from affected activities to other eligible activities, provided that such action shall not be taken in connection with any substantial violation of Part 58 and provided that such reprogramming is subjected to the environmental review procedures of Part 58 of the title;

(6) Advise the recipient to reimburse the recipient's program account or line of credit in any amount improperly expended;

(7) Change the method of payment from a line of credit basis to a reimbursement basis; and/or

(8) Suspend the line of credit until corrective actions are taken.

§ 571.703 Reduction or withdrawal of grant.

(a) *General.* A reduction or withdrawal of a grant under paragraph (b) of this section will not be made until at least one of the corrective or remedial actions specified in § 571.702(b) has been taken and only then if the recipient has not made an appropriate and timely response. Before making such a grant reduction or withdrawal, the recipient also shall be notified and given an opportunity within a prescribed time for an informal consultation regarding the proposed action.

(b) *Reduction or withdrawal.* When the field office determines, on the basis of a review of the grant recipient's

performance, that the objectives set forth in § 571.701(a) (2) or (3) have not been met, the field office may reduce or withdraw the grant, except that funds already expended on eligible approved activities shall not be recaptured.

§ 571.704 Other remedies for noncompliance.

(a) *Secretarial actions.* If the Secretary finds a recipient has failed to comply with any provision of this part even after corrective actions authorized under § 571.702 have been applied, the following actions may be taken provided that reasonable notice and opportunity for hearing is made to the recipient. (The Administrative Procedure Act (5 U.S.C. 551 et seq.), where applicable, shall be a guide in any situation involving adjudications where the Secretary desires to take actions requiring reasonable notice and opportunity for a hearing.)

(1) Terminate the grant to the recipient;

(2) Reduce the grant to the recipient by an amount equal to the amount which was not expended in accordance with this part; or

(3) Limit the availability of funds to projects or activities not affected by such failure to comply; provided, however, that the Secretary may on due notice revoke the recipient's line of credit in whole or in part at any time if the Secretary determines that such action is necessary to preclude the further expenditure of funds for activities affected by such failure to comply.

(b) *Secretarial referral to the Attorney General.* If there is reason to believe that a recipient has failed to comply substantially with any provision of the Act, the Secretary may refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted. Upon such a referral, the Attorney General may bring a civil action in any United States district court having venue thereof for such relief as may be appropriate, including an action to recover the amount of the assistance furnished under this part which was not expended in accordance with this part or for mandatory or injunctive relief.

Dated: February 24, 1992.

Randall H. Erben,

Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 92-7514 Filed 4-6-92; 8:45 am]

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Tuesday
April 7, 1992

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary For Community Planning and Development

Community Development Block Grant Program for Indian Tribes and Alaskan Native Villages; Notice of Fund Availability

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-92-3369; FR-3180-N-01]

Community Development Block Grant Program for Indian Tribes and Alaskan Native Villages; Notice of Fund Availability

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of fund availability for fiscal years 1991 and 1992.

SUMMARY: This Notice of Fund Availability (NOFA) announces HUD's funding for the Community Development Block Grant Program for Indian tribes and Alaskan native villages for Fiscal Years 1991 and 1992. In the body of this document is information concerning the following:

(a) The purpose of the NOFA, and information regarding eligibility, available amounts, and selection criteria;

(b) Application processing, including how to apply and how selections will be made; and

(c) A checklist of steps and exhibits involved in the application process.

DATES: Applications may be mailed to HUD, provided that they are postmarked no later than midnight on the deadline date: July 31, 1992. Applications that are physically delivered to HUD must be received by the appropriate Office of Indian Programs (OIP) no later than the close of business July 31, 1992. Application materials will be available from each field OIP.

FOR FURTHER INFORMATION CONTACT: Applicants should contact the Office of Indian Programs serving their geographic area.

Isaac Pimentel, Chicago Regional Office, Office of Indian Programs, Housing and Community Development Division, 77 West Jackson Blvd., Chicago, Illinois 60604. Telephone (312) 353-1684.

Jules Valdez, Oklahoma City Office, Indian Programs Divison, CPD Branch, Murrah Federal Building, 200 NW. 5th St., Oklahoma City, OK 73102-3202. Telephone (405) 231-5968.

Gloria Dale Lewis, Denver Regional Office, Office of Indian Programs, Housing and Community Development Division, Executive Tower Bldg., 1405 Curtis St., Denver, CO 80202-2349. Telephone (303) 844-6481.

Gerald Hammon, Office of Indian Programs, Region IX, CPD Division, Two Arizona Center, suite 1650, 400 N. Fifth Street, Phoenix, Arizona 85004-2361. Telephone (602) 379-4197.

Robert Barth, Office of Indian Programs, CPD Division, Program Management Team, (San Francisco) Phillip Burton Federal Bldg. and U.S. Courthouse, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102-3448. Telephone (415) 556-9200.

Jeanne McArthur, Seattle Regional Office, Office of Indian Programs, CPD Division, Arcade Plaza Bldg., 1321 Second Ave., Seattle, WA 98101-2054. Telephone (206) 553-0760.

Colleen Craig, Anchorage Office, CPD Division room A-19, Module G, 222 W. 8th Avenue, #64, Anchorage, AK 99513-7537. Telephone (907) 271-4684.

With general program questions, contact Stephen M. Rhodeside, State and Small Cities Division, Office of Community Planning and Development, Department of Housing and Urban Development, room 7184, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 708-1322. The Telecommunications Device for the Deaf (TDD) number is (202) 708-2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Requirements

The information collection requirements contained in this notice have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and have been assigned OMB control number 2506-0043.

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I. Purpose and Substantive Description

(a) Authority

Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); 24 CFR part 571.

(b) Funding

Amendments to title I of the Housing and Community Development Act of 1974 have required that the allocation

for Indian Tribes be on a competitive basis in accordance with selection criteria contained in a regulation promulgated by the Secretary after notice and public comment. Because of this required process the Community Development Block Grant Program for Indian tribes and Alaskan native villages (ICDBG) program has not been funded since the Summer of 1990. The interim regulation containing the selection criteria has been issued today. In order to get the funding back on its regular cycle, this Notice of Fund Availability (NOFA) will distribute funds for both FY 1991 and FY 1992.

All of the Regions have larger grant ceilings which will allow grantees to accomplish larger projects than they have been able to fund in the past. However, the Department has determined that only quality projects are to be funded. In addition, 24 CFR 571.100(b)(2) requires the Regions to not fund applications that do not meet a serious need or which do not impact on the needs identified in the application. Accordingly, even if funds were available to fund a project based on its rating, if that project did not meet this criteria, it would not be funded. The funds would be used to fund the next highest ranking project or could be carried forward to the next funding cycle, if none of the lower ranking projects met a serious need or impacted on the needs identified in the application.

Documentation and Public Access Requirements; Applicant/Recipient Disclosures: HUD Reform Act

Documentation and public access requirements. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period generally less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

1. Allocations

	FY 91	FY 92	Total
Region 5 (Chicago)	$2,317,000	$2,442,000	$4,759,000
Region 6 (Oklahoma City)	5,322,000	5,655,000	10,977,000
Region 8 (Denver)	5,160,000	5,482,000	10,642,000
Region 9 (Phoenix)	14,255,000	15,206,000	29,461,000
Region 10 (Seattle)	1,701,000	1,785,000	3,486,000
Anchorage	3,175,000	3,360,000	6,535,000
TOTAL	31,930,000	33,930,000	65,860,000

2. Grant Ceilings

Region/field offices	*Population*	*Ceiling*
Region 5 (Chicago).	All	$300,000
Region 6 (OK City).	5,001+	700,000
	1,001–5,000	500,000
	1,000 or less	400,000
Region 8 (Denver)	All	800,000
Region 9 (Phoenix).	50,001+	9,000,000
	10,501–50,000	4,500,000
	9,001–10,500	3,600,000
	7,501–9,000	2,700,000
	6,001–7,500	1,800,000
	4,501–6,000	1,350,000
	3,001–4,500	1,107,000
	1,501–3,000	990,000
Region 10 (Seattle).	All	325,000
Anchorage	All	500,000

3. Imminent Threats

The criteria for grants to alleviate or remove imminent threats to health or safety that require immediate solution are described at subpart E of part 571. The following field offices are setting aside funds for imminent threats:

Region 9 (Phoenix) $400,000. These funds will be available until the Phoenix Office receives its FY 1993 ICDBG allocation.

Seattle $250,000. These funds will be available until Seattle completes the rating and ranking process for funds distributed under this NOFA.

Anchorage $500,000. These funds will be available until the Anchorage Office receives its FY 1993 ICDBG allocation.

(c) Eligibility of Activities

Activities that are eligible for CDBG funds are identified at 24 CFR part 570 subpart C. The National Affordable Housing Act (NAHA) (Pub. L. 101–625, approved November 28, 1990) amended the Housing and Community Development Act (HCD) of 1974 in two ways, with respect to eligible activities:

1. Economic Development—Section 105(a)(17)

In the event CDBG assistance to a for-profit entity involves displacement of existing businesses and jobs in neighborhoods, such displacement shall be minimized. Grantees must determine whether assistance to a for-profit entity will result in the displacement of existing businesses and jobs in neighborhoods, and if so, grantees must document what steps were taken to minimize such displacement.

Section 571.305 of ICDBG regulations requires that assistance may be provided to a business only when a financial analysis is done which shows that (a) the assistance is needed to make the project financially feasible, (b) public benefit commensurate with the assistance to the business can reasonably be expected to result from the assisted project, and (c) the project has a reasonable chance of success. This section covers all businesses

including for-profits, non-profits and tribally owned entities.

2. Home Ownership Assistance—Section 105(a)(20)

NAHA added to Title I a new activity: direct assistance to persons of low and moderate income to facilitate and expand home ownership. Assistance provided under this provision shall not be considered as a public service for purposes of the 15 percent cap on the use of CDBG funds.

Under this provision, CDBG funds may be used to (a) subsidize interest rates and mortgage principal amounts for low- and moderate-income homebuyers, (b) finance the acquisition of housing that is occupied by low- and moderate-income homebuyers, (c) acquire guarantees for mortgage financing obtained by low- and moderate-income homebuyers from private lenders (except that assistance under title I of the HCD Act may not be used by recipients or subrecipients to directly guarantee such mortgage financing), (d) provide up to 50 percent of the downpayment required from low- and moderate-income buyers, and (e) pay any reasonable closing costs associated with the purchase of a home incurred by a low-and moderate-income homebuyer. This provision will be terminated on October 1, 1992 unless the Secretary extends it to October 1, 1993.

(d) Applicant Eligibility

To apply for funding in a given fiscal year, an applicant must be eligible as an Indian tribe or Alaskan native village, or as a tribal organization by the application submission date. (See 24 CFR 571.5 for a complete description of eligible applicants.)

(e) Selection Criteria/Rating Factors

1. Rating and Ranking System

Prior to the rating process, field offices will screen applications to ensure that they meet the acceptance criteria in 24 CFR 571.301(a). Field offices will review each application that passes the screening to ensure that each proposed project meets all of the requirements in 24 CFR 571.302(a), as implemented by this NOFA.

The field office will determine the proper category and component (e.g., Housing Rehabilitation) under which to rate each project. Each component is worth 100 points, which is the maximum that a project can receive.

All projects that meet the acceptance criteria and threshold requirements will be reviewed and rated by a field office rating team of at least three voting members. The rating team will normally consist of representatives from the Indian CDBG staff. Voting members may be selected from other HUD divisions, such as the non-CPD portion of the Office of Indian Housing, and non-Indian CPD. The rating panel may solicit technical advice from experts such as attorneys, economists and cost analysts. Experts may be voting or non-voting members.

After each of the applications has been rated, the projects will be ranked in order of the point totals they received, regardless of the rating category or component under which the points were awarded. Projects will be selected for funding based on their ranking, in accordance with the requirements of §§ 571.100(b) and 571.302(c).

2. Thresholds

The ICDBG regulation (24 CFR part 571) contains two types of general thresholds: Those that relate to applicants, and those that address overall community development appropriateness. Project-specific definitions and thresholds will be addressed within the pertinent project selection criteria categories.

Applicant thresholds focus on the administrative capacity of the applicant to undertake the proposed project(s), and on its past performance in the ICDBG and Housing programs. An applicant that has participated in the ICDBG program previously must have performed adequately. In cases of previously documented deficient performance, the applicant must have taken appropriate corrective action to improve its performance prior to submitting an ICDBG application to HUD.

In order for the project(s) contained in applications that have passed the initial screening tests outlined in § 571.301 to be rated and ranked, field offices must determine that the proposed project(s) meets the community development appropriateness thresholds, and

(a) Has costs that are reasonable,

(b) Is appropriate for the intended use,

(c) Will normally be completed within two years, and

(d) Has necessary commitments of tribal and other resources.

If an applicant fails to meet the applicant-specific thresholds, its application cannot be accepted for rating and ranking. Project(s) that do not meet the community development appropriateness or project-specific threshold will not be considered for funding.

A. Applicant-specific thresholds—capacity and performance—(1) *Capacity.* The field office will assume, absent evidence to the contrary, that the applicant possesses, or can obtain the managerial, technical or administrative capability necessary to carry out the proposed project(s). The application should address who will administer the project(s) and how the applicant plans to handle the technical aspects of executing the project(s). If the field office determines, based on substantial evidence, that the applicant does not have or cannot obtain the capacity to undertake the proposed project(s), the project(s) will be rejected from further consideration.

(2) *Performance.* If an applicant has participated in the ICDBG Program previously, the field office shall determine whether the applicant has performed adequately in grant administration and management. Where an applicant was found to be performing inadequately, the field office shall determine whether the applicant is following a schedule to correct performance, to which the applicant and HUD have agreed. In cases of previously documented deficient performance, the field office must determine that the applicant has taken appropriate corrective action to improve its performance.

a. *Community development.* The applicant is presumed to be performing adequately unless the field office makes a performance determination to the contrary by monitoring.

b. *Housing assistance.* The applicant must not take actions to impede the provision of housing assistance for low- and moderate-income members of the tribe or village. Any action that is known to HUD to prevent or obstruct the provision or operation of assisted housing for low- and moderate-income persons shall be evaluated in terms of whether it constitutes inadequate performance by the applicant.

In addition, tribes have certain responsibilities and obligations to Indian Housing Authorities (IHAs), outlined in Article VIII of HUD's Model Tribal Ordinance. In instances where a tribe has established or joined an IHA, and has obtained housing assistance from HUD, its compliance with the resolution set forth in article VIII will be a performance consideration.

Applicants will not be held accountable for the poor performance of Indian Housing Authorities (IHAs). However, if inadequate performance is found to be a direct result of the applicant's action or inaction, the application will be rejected from further consideration. Applicants who are members of "umbrella" IHAs will be judged only on their individual performance and will not be held

accountable for the poor performance of other tribes that are represented by the IHA.

In the case of tribes that have not established or are not members of housing authorities, HUD will consider in making its determination, whether the tribe received CDBG funds for the provision of new housing, and if so:

(i) Whether the proposed units were constructed;

(ii) Whether housing assistance was provided to the beneficiaries identified in the application, and if not, why not;

(iii) Whether the tribe followed the provisions of its housing plan and procedures; and

(iv) Whether there were sustained complaints from tribal members regarding provision and/or distribution of CDBG housing assistance.

c. *Audits.* This threshold requires the applicant to meet the following performance criteria:

(i) The applicant cannot have an outstanding ICDBG obligation to HUD that is in arrears, or it must have agreed to a repayment schedule. An applicant that has an outstanding ICDBG obligation to HUD that is in arrears, or one that has not agreed to a repayment schedule, will be disqualified from the current competition and from subsequent competitions, until the obligations are current. If a grantee that was current at the time of application submission becomes delinquent during the review period, the application may be rejected.

(ii) The applicant cannot have an overdue or unsatisfactory response to an audit finding(s). If there is an overdue or unsatisfactory response to an audit finding(s), the applicant will be disqualified from current and subsequent competition until the applicant has taken final action necessary to close the audit finding(s). The field office director may provide exceptions to this disqualification in cases where the applicant has made a good faith effort to clear the audit finding(s). Only when a satisfactory arrangement for repayment of the debt has been made, and payments are current, will an exception be granted when funds are due HUD.

(iii) The grantee must not be more than one year year behind in obtaining a required audit unless an exception is granted by the field office or cognizant agency, for good cause.

B. Community development appropriateness.—(1) *Costs are reasonable.* HUD will ensure that costs are reasonable by determining that:

a. The funds request from the CDBG program and all other sources are adequate to complete the proposed activity(ies);

b. The method(s) proposed for addressing the identified need(s) is cost effective, taking into account initial construction, operation and maintenance costs, as well as durability and site constraints.

c. The cost estimates fairly and accurately indicate the costs required to complete the activity, based on the costs of comparable projects.

d. The cost estimates are prepared by a qualified individual and are in sufficient detail.

(2) The project(s) is appropriate for the intended use.

(3) The project(s) is usable or achievable in a timely manner, generally within a two-year period. The applicant must indicate its timetable for project implementation and completion. A period of more than two years is acceptable in certain circumstances, which are beyond the applicant's control. For example, a construction season may be limited by severe weather, or extra time may be required to coordinate different funding dates for other entities assisting the same project.

(4) Commitment of tribal and other funds and resources. To the extent that the applicant will be committing its own funds or resources (e.g., services or staff), a current Tribal Council resolution, passed within one year of the application deadline, committing such funds and resources should be submitted. If the applicant expects funds or resources from other sources, letters of commitment must be submitted.

3. Tiebreakers

When rating results in a tie among projects, field offices shall approve projects that can be fully funded over those that cannot be fully funded. When that does not resolve the tie, the following factors should be used in the order listed to resolve the tie:

A. *Chicago office.* (1) The application that benefits the highest percentage of low- and moderate-income persons.

(2) The application that benefits the most low- and moderate-income persons.

B. *Oklahoma City office.* (1) The application that benefits the highest percentage of low- and moderate-income persons.

(2) The applicant with the fewest active grants.

(3) The application that benefits the most low- and moderate-income persons.

C. *Denver office.* (1) The application that benefits the highest percentage of low- and moderate-income persons.

(2) The application that benefits the most low- and moderate-income persons.

D. *Phoenix office.* (1) The applicant with the fewest active grants.

(2) The applicant that has not received a block grant over the longest period of time.

(3) The application that benefits the highest percentage of low- and moderate-income persons.

E. *Seattle office.* (1) The applicant that has not received a block grant over the longest period of time.

(2) The applicant that has received the fewest CDBG dollars since the inception of the program.

(3) The application that benefits the highest percentage of low- and moderate-income persons.

F. *Anchorage office.* (1) The applicant that has not received a block grant over the longest period of time.

(2) The application that benefits the highest percentage of low- and moderate-income persons.

(3) The application that benefits the most low- and moderate-income persons.

4. General Definitions

Adopt. To approve by formal tribal resolution no more than one year prior to the application deadline.

Assure. To comply with a specific NOFA requirement. The applicant should state its compliance or its intent to comply in its application.

Document. To supply supporting written information and/or data in the application, which satisfies the NOFA requirement.

Leverage. Resources the grantee can use in conjunction with CDBG funds to achieve the objectives of the project. Resources include, but are not limited to: Tribal trust funds, loans from individuals or organizations, state or federal loans or guarantees, other grants, as well as noncash contributions and donated services. Funds from any source must be documented by a written commitment and may be contingent on approval of the CDBG award. Resources will be counted only if they are currently available or will be available within 3 months of grant notification. If delays in the Federal funding process preclude an agency from making a firm funding commitment, resources will be counted if the agency issues a written statement indicating that it is extremely likely that the applicant will be funded within 6 months of the date of grant notification. For projects in the Economic Development category, land value will be counted as a contribution only where the land was acquired to support the

project. Land value will be counted as a contribution for all other grant categories if it meets the criteria set forth in this definition. Donated services will be accepted, provided:

(1) The costs are demonstrated and determined necessary and directly attributable to the actual development of the project; and

(2) Comparable costs and time estimates are submitted which support the donation.

Project Cost. Total cost to implement the project. Project cost includes both CDBG and non CDBG funds.

Tribe. Indian tribe, band, group or nation, including Alaskan Indians, Aleuts, Eskimos and Alaskan native villages.

5. Project Definitions, Thresholds and Selection Criteria

A. *Housing.* (1) Definition

Section 8 standards. Standards contained in the Section 8 Housing Assistance Payments Program—Existing Housing (24 CFR 882.109).

(2) General thresholds. a. There are no impediments known to HUD to delay or prevent project implementation.

b. Households that have been evicted from HUD housing within the past 5 years may not be assisted, except in emergency situations, which will be reviewed by field offices on a case-by-case basis.

(3) Rehabilitation. a. Thresholds.

(i) All single-family units to be rehabilitated must be occupied by low- and moderate-income households. If a structure contains two units, at least one must be occupied by a low- or moderate-income household. If a structure contains more than 2 units, at least 51 percent of the units must be occupied by low- and moderate-income households. When two or more rental buildings being assisted are or will be located on the same or contiguous properties, and the buildings will be under common ownership and management, the grouped buildings may be considered a single structure for the purpose of calculating low- and moderate-income occupancy. Low- and moderate-income tenants shall pay no more than 30 percent of their household income in rent to meet this threshold.

(ii) All applicants for housing rehabilitation grants shall adopt by current tribal resolution, rehabilitation standards and rehabilitation policies, prior to submitting an application.

(iii) Any units to be rehabilitated must be the permanent non-seasonal residence of the occupant(s). The resident(s) must live in the unit at least 9 months per year.

(iv) Housing units slated for eventual replacement may only receive repairs essential for health and safety.

(v) The applicant shall provide an assurance that it will use project funds to rehabilitate HUD assisted units only where the tenant/homeowner's payments are current or the tenant/homeowner is current in a repayment agreement that is subject to approval by the field office. The field office may grant exceptions on a case-by-case basis, to the requirement that beneficiaries be current to permit housing rehabilitation in emergency situations. Houses that have received comprehensive rehabilitation assistance from any CDBG or federal grant within the past 8 years cannot receive CDBG funds to make the same repairs if the repairs are needed as a result of abuse or neglect.

b. Grant limits.

(i) Region 5 (Chicago).	60% of replacement cost.
(ii) Region 6 (OK City).	$15,000.
(iii) Region 8 (Denver).	$33,500.
(iv) Region 9 (Phoenix).	$25,000.
(v) Region 10 (Seattle).	$18,000.
(vi) (Anchorage).	Lesser of $35/square feet or $25,000.

c. Selection criteria.

(i) Project Need and Design. (45 points)

a The percentage of CDBG funds committed to bring the housing up to standard condition as defined by the applicant. Standard condition is defined as adoption of standards at least as stringent as section 8. Exceptions, which must be approved by the field office, may be made when local conditions make the use of section 8 standards infeasible. For example, units may be too remote to make the provision of electricity and running water economically feasible, or section 8 standards may not be met for historic preservation reasons. In all cases, to be considered in standard condition, a home must be in safe, sanitary, and physically sound condition with all systems performing their intended functions.

Administration and technical assistance expenditures are excluded in computing the percentage of CDBG funds committed to bring housing up to standard condition. The percentage of CDBG funds not used to bringing housing up to standard condition should be used for emergency repairs, demolition of substandard units, planning related to the particular project or another purpose closely related to the housing rehabilitation project.

Percentage of CDBG funds committed to bring housing up to standard condition	Points
1 91–100	25
2 81–90	10
3 80 and less	0

b The applicant's selection criteria give priority to the neediest households. "Neediest" may be defined as households whose current residences are in the greatest disrepair in the project area, or very low-income households.

1 Yes (10 points)

2 No (0 points)

c Documentation of project need with a housing survey of all of the units to be rehabilitated with CDBG funds. This survey should include standard housing data on each unit surveyed (e.g., age, size, type, rooms, type of heating). The survey should show the number of standard units, the number of substandard units suitable for rehabilitation with the deficiencies listed for each unit, and the number of substandard units unsuitable for rehabilitation. A definition of "suitable for rehabilitation" should be included. At a minimum, this definition should not include units that need only minor repairs, or units that need such major repairs that rehabilitation is structurally or financially infeasible.

Submission of acceptable survey of deficiencies.

1 Yes (10 points)

2 No (0 points)

(ii) Planning and Implementation. (45 points)

a Rehabilitation Policies including:

1 Adopted rehabilitation standards. Adopted rehabilitation standards should be at least equal to Section 8 standards except that the field office can approve lesser standards as provided in Paragraph 1(i). Tribes may submit their request for lesser standards prior to the application due date. If the request is submitted with the application, applicants should not assume automatic approval from the field office.

- Yes (5 points).
- No (9 points).

2 Rehabilitation selection criteria. Rehabilitation selection criteria include property selection standards, cost limits, type of financing (e.g., loan or grant), homeowner costs and responsibilities, procedures for selecting households to

be selected, and income verification procedures.

• Maximum (11 points). The application contains all the selection criteria listed above.

• Moderate (5 points). The application does not contain all the selection criteria listed above, but a sufficient number to enable the project to proceed effectively; OR the application contains all the selection criteria listed above, but in insufficient detail.

• Unsatisfactory (0 points). The submission does not meet the MODERATE criteria.

3 Project planning documents and applicable policies and procedures. Project planning documents include surveys, time schedules, and work priorities. Policies and procedures include: Inspections, contractor payment (an inspection to ensure the work is successfully completed before the contractor is paid), household involvement in the rehabilitation (e.g., helping select the contractor and signing off on inspections), contractor selection, contractor forms, complaints, contract or dispute resolution, and repayment provisions for early sale, (i.e., before 5 years).

• Maximum (5 points). The application contains all the documents and applicable policies listed above.

• Moderate (3 points). The application does not contain all the documents and applicable policies listed above, but it contains a sufficient number to enable the project to proceed effectively; OR the application contains all the documents and applicable policies listed above, but in insufficient detail.

• Unsatisfactory (0 points). The submission does not meet the Moderate criteria.

b Post rehabilitation maintenance policies, including counseling and training homeowners on maintenance.

1 Maximum (7 points). The policy contains a well-planned counseling and training program. Training will be provided for assisted households, and provision is made for households unable to do their own maintenance (e.g., elderly and handicapped). The policy includes follow-up inspections after rehabilitation is completed to ensure the unit is being maintained.

2 Moderate (4 points). The policy contains a well-planned home ownership maintenance training and counseling program.

3 Unsatisfactory (0 points). The submission does not meet the Moderate criteria.

c Quality of cost estimates. Cost estimates have been prepared by a qualified individual.

1 Maximum (12 points). Costs must be documented on a per unit basis and must be justified. Applicants must include work write-ups based on tribal specifications or estimates by a qualified individual. Work write-ups state what needs to be done to correct the deficiency (e.g., provide an oil heater to correct a deficiency of an inadequate heating system). The tribal specifications state the quality and the dimensions of the improvements (e.g., the heating unit must be capable of putting out x BTU's in order to heat the unit to a temperature of 70 degrees when the outside temperature is 0 degrees).

2 High (6 points). Cost estimates developed by a qualified individual have been prepared on each dwelling unit to be rehabilitated to determine the total rehabilitation cost. Costs to rehabilitate each house are documented by a deficiency list.

3 Moderate (3 points). A qualified individual has prepared cost estimates only for the project based on surveys, but not for individual units.

4 Unsatisfactory (0 points). The submission does not meet the criteria in paragraph *3*.

d Cost effectiveness of the rehabilitation program. This measures the efficiency of the expenditures that are made for housing rehabilitation, considering the needs of the unit. Projects should propose rehabilitation that is needed to bring units up to standard in the most efficient manner and at a reasonable cost. Cost savings may be realized through efforts such as energy conservation, or a partnership or affiliation with technical experts to develop an innovative approach.

1 Rehabilitation project is cost effective. (5 points)

2 Rehabilitation project is not cost effective. (0 points)

(iii) Leveraging (10 points). Points under this component will be awarded based on the definition of "leverage" under General Definitions, and the following breakdown:

Non-CDBG percentage of project cost	Points
25 and over	10
20–24	8
15–19	6
10–14	4
5–9	2
0–4	0

(4) Land to support new housing. a. Thresholds.

(i) There are no outstanding reasons why the IHA cannot receive housing units from HUD if units are to be provided by HUD Indian Housing.

(ii) There should be a reasonable ratio between the number of net usable acres for housing to be acquired and the number of families to be served.

(iii) Where a dwelling(s) currently exists on the land to be acquired, and the tribe plans to use that unit for housing for qualified households, the applicant must submit with the application a proposed plan that contains a method for selecting the recipient(s), housing maintenance and a description of the type of housing being acquired. If the unit(s) can be rehabilitated or can be occupied without rehabilitation, the unit(s) must meet tribal or Section 8 standards, whichever is higher.

(iv) Housing assistance needs must be clearly demonstrated, for example, with a survey or an IHA-approved waiting list.

(v) If the CDBG funding cycle is before the Housing Development funding cycle (for housing projects proposed to be constructed with HUD Housing Development funds), successful applicants in Land Acquisition for Housing will be issued a contract for the full amount of the grant. The contract will contain a condition that until the project receives Housing Development approval, CDBG funds may be expended only to secure an option. If the IHA is not selected for Housing Development Program funds, the balance of the CDBG grant will be canceled.

(vi) If it can be demonstrated that a commitment has been made by the Bureau of Indian Affairs (BIA) under the Home Improvement Program (HIP) for funding new housing construction, the 2-year time period for project completion may be extended to be consistent with the commitment identified. The commitment should indicate that the funds committed will be used to build housing on the land to be acquired.

b. Selected Criteria.

(i) Project Need (40 Points)

a Maximum (40 points). The applicant has no suitable land to construct new housing and needed amenities (e.g., water and sewer) for new housing.

b High (30 points). The applicant has land suitable for housing construction and infrastructure, but the land is officially dedicated to another purpose.

c Moderate (25 points). The applicant is acquiring land to construct new housing and to provide needed amenities (e.g., water and sewer) to both new housing and existing housing.

d Low (15 points). The applicant is acquiring land to construct amenities (e.g., water and sewer) for existing housing.

e Unsatisfactory (0 points). The submission does not meet the criteria in paragraph *d*.

(ii) Planning and Implementation. (60 points)

a Suitability of land to be acquired. A preliminary investigation has been conducted by a qualified entity independent of the applicant (e.g., BIA or IHS). Based on the preliminary investigation, the land appears to meet all applicable requirements, soil conditions appear to be suitable for individual and/or community septic systems, if appropriate, and the land has adequate drainage and access to water, electricity and community sewer collection systems. Land has adequate access, and appears to comply with environmental requirements. Land is available at a reasonable price. Future land development costs are expected to be consistent with other area subdivision costs. (Subdivision costs include the cost of constructing each unit, plus the land, water and sewer service, electrical service and roads required to serve the subdivision.) The site complies with all applicable requirements.

1 Yes (18 points).

2 No (0 points).

d Housing resources are committed at the time of project application.

1 Conditional commitment or approvable application submitted. (5 points)

2 No Conditional commitment or approvable application submitted. (0 points)

c Availability/accessibility of supportive services and employment opportunities. Upon completion of construction, fire and police protection, road accessibility and utilities will be available to the site, and medical and social services, schools, employment opportunities, and shopping will be accessible from the site, i.e., according to the community's established norm.

1 Yes (8 points).

2 No (0 points).

s Commitment that families will move into the new housing.

1 Documented commitment from families that they will move into new housing. (5 points)

2 No documented commitment. (0 points)

e Land can be taken into trust or provisions have been made for taxes and fees. There must be a written assurance from the BIA that the land will be taken into trust within one year, or the applicant must be able to show the financial capability and commitment to pay the property taxes and fees on the land for the foreseeable future. This commitment should take the form of a resolution by the governing body indicating that the applicant will pay or guarantee that all taxes and fees on the land will be paid.

1 Documentation that land can be taken into trust or provisions made for taxes and fees. (4 points)

2 Inadequate or no documentation. (0 points)

f A plan for any infrastructure needed to support housing to be developed. This includes a conditional commitment for funds to develop necessary water, sewer, electricity and roads to support the housing to be developed.

1 Financial commitment provided or infrastructure is in place. (10 points)

2 A plan, but no financial commitment, is in place. (5 points)

3 No financial commitment. (0 points)

g The extent to which the proposed site meets the applicant's housing needs. The application shows that the tribe has examined and assessed the appropriateness of alternative sites. The applicant submits comparable sales that show the cost is reasonable.

1 Yes (10 points).

2 No (0 points).

(5) New housing construction/direct home ownership assistance. a. New construction.

(i) Thresholds.

a New housing construction can only be implemented through a nonprofit organization that is eligible under § 571.202 or is otherwise eligible under § 570.207(b)(3).

b All applicants for new housing construction grants must document the following in their application:

1 No other housing is available in the immediate reservation area that is suitable for the families to be assisted.

2 No other funding sources can meet the needs of the household(s) to be served.

3 Rehabilitation of the unit occupied by the family to be housed is not economically feasible, or the family to be housed is currently in an overcrowded unit (sharing unit with other household(s)), or the family to be housed has no current residence.

c All applicants for housing construction grants shall adopt by current tribal resolution, construction standards and construction policies, prior to submitting an application. Applicants must identify the building code they will use to construct the unit(s). The building code may be a locally adopted tribal building code or a nationally recognized model code. If the code is a locally adopted code, it must regulate all of the areas and subareas identified in 24 CFR 200.925(b), and it must be reviewed and approved by the HUD field office. If the code is recognized nationally, it must be the latest edition of one of the codes incorporated by reference in 24 CFR 200.925(c).

d Any units to be constructed must be the permanent non-seasonal residences of the recipient. The residents must live in the unit at least nine months per year.

e The applicant shall assure that it will use project funds to construct units only where the tenant's/homeowner's payments are current or the tenant/homeowner is current in a repayment agreement that is subject to approval by the field office. The field office may grant exceptions, on a case-by-case basis, to the requirement that beneficiaries be current to permit new construction, in emergency situations.

(ii) Selection Criteria

a New construction under Section 248 of the National Housing Act will be rated under the Direct Home Ownership Assistance Selection criteria. The New Construction thresholds will be used for Section 248 New Construction.

b Project Need and Design. (45 points)

1 The applicant either is not a member of an IHA, or the umbrella IHA to which it belongs has not provided assistance to the applicant in a substantial period of time, or the IHA serving the applicant has not received HUD Public and Indian Housing new construction or modernization assistance in a substantial period of time, due to a lack of funds. The period of time during which the IHA serving the applicant does not receive funding for inadequate or poor performance does not count towards the period of time that no assistance has been provided by HUD.

Or—

- No assistance from IHA for 10 years longer. (15 points)
- No assistance from IHA for 6–9.9 years. (10 points)
- No assistance from IHA for 0–5.9 years. (0 points)

2 Adopted housing construction policies and plan. The plan should include a description of the proposed subrecipient and its relationship to the tribe. In addition, the policies and plan should include:

- A selection system that gives priority to the neediest households. Neediest shall be defined as households whose current residences are in the greatest disrepair, or very low-income households, or households without permanent housing.

• A system effectively addressing long-term maintenance of the constructed units.

• Estimated costs and identification of the responsible entity for paying utilities, fire hazard insurance and other normal maintenance costs.

• Policies governing ownership of the units, including the status of the land.

• Description of a comprehensive plan or approach being implemented by the tribe to meet the housing needs of its members.

• Policies governing disposition or conversion to non-dwelling uses of substandard units that will be vacated.

—Acceptable policies and plan. (20 points)

—Unacceptable policies and plan. (0 points)

3 Beneficiary identification (all beneficiaries are low- and moderate-income).

• Beneficiaries to be housed are identified. (10 points)

• Beneficiaries are not identified. (0 points)

c Planning and Implementation. (45 points)

1 Occupancy Standards. The proposed housing will be designed and built according to adopted reasonable standards that govern the size of the housing in relation to the size of the occupying family (minimum and maximum number of persons allowed for the number of sleeping rooms); the minimum and maximum square footage allowed for major living spaces (bedrooms, living room, kitchen and dining room).

• Applicant has adopted reasonable occupancy standards. (10 points)

• Applicant has no occupancy standards or standards are inappropriate. (0 points)

2 Site Acceptability. This includes consideration of land control, access, utilities, infrastructure, physical characteristics, and whether the site is held in trust.

The applicant has control of the land. The applicant has written assurance from the BIA that the land is (or will be) taken into trust within one year, or the applicant must be able to show the financial capability and commitment to pay the property taxes and fees on the land for the foreseeable future. This commitment should take the form of a resolution by the governing body within one year of the application deadline indicating that the applicant will pay or guarantee that all taxes and fees on the land will be paid.

A preliminary investigation has been conducted by a qualified entity independent of the applicant (e.g., BIA or IHS). Based on the preliminary investigation, the land appears to meet all applicable requirements, soil conditions appear to be suitable for individual and/or community septic systems, if appropriate, land has adequate drainage and accessibility to water, electricity and community sewer collection systems. Land has adequate access, and appears to comply with environmental requirements.

• Yes (15 points)

• No (0 points)

3 Energy Conservation Design. The project is designed so that energy consumption will meet or exceed state conservation standards for similar units in the same general area. Special design features and methodology should be described in detail.

• Yes (5 points)

• No (0 points)

4 Housing Survey. The survey should include all of the units in the service area for the new housing. The survey should include standard housing data on each unit surveyed (e.g., age, size, type, rooms, type of heating), as well as the components listed below.

A Total number of existing housing units in the community.

B Number of occupied units.

C Number of vacant units (line *A* minus line *B*).

D The number of standard units.

E The number of substandard units suitable for rehabilitation with the deficiencies listed for each unit. A definition of "suitable for rehabilitation" should be included.

F The number of substandard units unsuitable for rehabilitation.

G Number of vacant units that are in standard condition available and affordable to low- and moderate-income families.

H Number of Indian/native families living with other families resulting in overcrowded conditions.

I Number of Indian/native families living in units which are below standard and that are not cost effective to rehabilitate.

J Number of homeless Indian/native families.

K Number of families living in below standard conditions (Lines *H*, plus *I*, plus *J*, equal line *K*).

• Acceptable survey. (10 points)

• Unacceptable survey. (0 points)

5 Cost effectiveness of new housing construction. This measures the efficiency of the expenditures. Projects should provide new units in the most efficient manner and at a reasonable cost. Cost savings may be realized through efforts such as the use of cost effective construction techniques, a partnership or affiliation with technical experts to develop an innovative approach, or a repayment provision.

• New Housing Construction is Cost Effective. (5 points)

• New Housing Construction is not Cost Effective. (0 points)

• Leveraging. (10 points)

Applicants must provide documentation of the amount and sources of additional funds. Sources may include private contributions including equity and loans, applicant and other non-CDBG governmental funding.

Non-CDBG % of project cost	Points
25 and over	10
20–24	8
15–19	6
10–14	4
5–9	2
0–4	0

b. *Direct Home Ownership Assistance.*

(i) Thresholds.

a No other funding sources can meet the needs of the household(s) to be served.

b The unit occupied by the family to be housed does not meet Section 8 standards, and rehabilitating the unit is not economically feasible, or the family to be housed currently is in an overcrowded unit (sharing unit with other household(s), or the family to be housed has no current residence.

c Any units to be occupied must be the permanent non-seasonal residences of the recipient. The residents must live in the unit at least nine months per year.

d The applicant shall assure that it will use project funds to provide direct homeownership assistance only where the tenant's payments are current or the tenant is current in a repayment agreement that is subject to approval by the field office. The field office may grant exceptions, on a case-by-case basis, to the requirement that beneficiaries be current to permit direct homeownership assistance in emergency situations.

(ii) Selection Criteria.

a Project Need and Design (45 points)

1 Adopted housing policies and plan. The plan should include a description of the proposed subrecipient (if applicable) and its relationship to the tribe. In addition, the policies and plan should include:

• A selection system that gives priority to the neediest qualified households. Neediest may be defined as households whose current residences

are in the greatest disrepair, very low-income households, or households without permanent housing.

• Description of a comprehensive plan or approach being implemented by the tribe to meet the housing needs of its members.

• Policies governing disposition or conversion to non-dwelling uses of substandard units that will be vacated.

• A system effectively addressing long-term maintenance of the units.

• Estimated costs of utilities, fire hazard insurance and other normal maintenance costs.

• Policies governing ownership of the units, including the status of the land.

• The units will meet section 8 standards or another standard approved by the field office.

(a) The policies and plan contain all of the items listed above. (30 points)

(b) The policies and plan contain only the first three items listed above. (20 points)

(c) The policies and plan contain only the last four items listed above. (10 points)

(d) The policies and plan do not meet the criteria of paragraphs a), b), or c). (0 points)

2 Beneficiary identification. (All beneficiaries are low and moderate income.)

• Beneficiaries are identified. (15 points)

• Beneficiaries are not identified. (0 points)

b Planning and Implementation (45 points)

1 Occupancy Standards. The housing units will meet adopted reasonable standards that govern the size of the housing in relation to the size of the occupying family (minimum and maximum number of persons allowed for the number of sleeping rooms); the minimum and maximum square footage allowed for major living spaces (bedrooms, living room, kitchen and dining room).

• Applicant has appropriate occupancy standards. (13 points)

• Applicant has no occupancy standards or standards are inappropriate. (0 points)

2 Site Acceptability. This includes consideration of land control, access, utilities, infrastructure, physical characteristics, whether the site is held in trust, and available services, such as fire and police protection.

The applicant or prospective homeowner has control of the land. Applicant has a written assurance from the BIA that the land is (or will be) taken into trust within one year, or the applicant must be able to show the financial capability and commitment to pay the property taxes and fees on the land for the foreseeable future.

A preliminary investigation has been conducted by a qualified entity independent of the applicant (e.g., BIA or IHS). Based on the preliminary investigation, the land appears to meet all applicable requirements, soil conditions appear to be suitable for individual and/or community septic systems, if appropriate, land has adequate drainage and accessibility to water, electricity and community sewer collection systems. Land has adequate access, and appears to comply with environmental requirements.

• Yes (20 points)

• No (0 points)

3 Energy Conservation Design. The project is designed so that energy consumption will be no greater than that of similar units in the same general area. Special design features and methodology should be described in detail.

• Yes (6 points)

• No (0 points)

4 Cost effectiveness of program. This measures the efficiency of the expenditures that are made for direct home ownership. Cost savings may be realized through efforts such as the use of cost effective construction techniques, a partnership or affiliation with technical experts to develop an innovative approach, provision of the least amount of assistance necessary for each homeowner to acquire the unit, or a provision for the homeowner to repay the tribe.

• Yes (6 points)

• No (0 points)

c Leveraging. (10 points)

Points under this component will be awarded based on the definition of "leverage" under General Definitions, and the following breakdown:

Non-CDBG % of project cost	Points
70 and over	10
60–69	8
50–59	6
40–49	4
30–39	2
0–29	0

B. *Community Facilities.* (1) General thresholds. a. The applicant shall describe the problem, the proposed project and the anticipated impact on the tribe/village if the problem is not solved immediately.

(2) Infrastructure. a. Thresholds.

(i) For all projects which include provision of water, waste water treatment or solid waste disposal facilities, the applicant shall include with the application evidence that the project has been submitted to the Indian Health Service (IHS) for review and comment.

(ii) If the project consists of new or existing community water system improvements (defined as serving more than 25 persons or 15 households), the applicant must provide evidence that the project has been submitted to the Environmental Protection Agency (EPA) for review and comment. Community water systems serving fewer than 25 persons or 15 households are eligible for CDBG funding, but do not require EPA review.

b. Selection Criteria.

(i) Project Need and Design (60 points)

a Meets an essential community development need by addressing a basic need that is critical to the orderly development of the community and to the provision of basic human services. (Example: water/sewer, waste disposal)

1 Permanent solution. The project offers a long-term solution. (17 points)

2 Health and safety intermediate solution. The project responds to a health or safety problem by offering a solution which is not permanent (e.g., providing potable water from elsewhere). (15 points)

3 Intermediate solution. The project responds to a problem which is not related to health or safety by offering a solution which is not permanent (e.g., providing a gravel road to a reservation where no road exists). (12 points)

4 Inadequate solution. (0 points)

b Benefits the neediest segment of the population, as identified below. Applications must include tribal, BIA, IHS or other documentation that:

1 Maximum (22 points). More than 80 percent of the beneficiaries are very low income (50 percent of area median).

2 Moderate (13 points). 51–79.9 percent of the beneficiaries are very low income.

3 Unsatisfactory (0 points). Less than 51 percent of the beneficiaries are very low income.

c Provides infrastructure that does not currently exist for the area to be served OR replaces an existing facility that no longer functions adequately to meet the current needs OR eliminates or substantially reduces a health or safety problem. If the project addresses a health and safety problem, the applicant must provide documentation consisting of a signed study or letter from a reliable independent authority (e.g., state health officials, state fire marshals, BIA, IHS, EPA) verifying that:

(1) A threat to health and safety exists which has caused or has the potential to

cause serious illness, injury, disease or death; and

(2) The threat can be substantially eliminated if the CDBG project is funded.

1 Maximum (21 points). The infrastructure does not exist or no longer functions, or does not meet health and safety standards. (Examples: There is no sewage treatment plant; paved roads do not exist or must be reconstructed due to severe deterioration.)

2 Moderate (15 points). The infrastructure no longer functions adequately or does not meet current needs. (Example: Capacity of existing sewage treatment plant is insufficient to meet the demands of area residents.)

3 Unsatisfactory (0 points). The infrastructure does not meet the criteria of *1* or *2*.

(ii) Planning and Implementation (30 points)

a A viable plan for maintenance and operation. The tribe must adopt by current resolution or ordinance a maintenance plan addressing maintenance, repair and replacement of items not covered by insurance, and operating resources, if applicable. The applicant must submit this plan. The plan must identify a funding source to assure that the facility will be properly maintained and operated. The resolution must identify the total annual dollar amount the tribe will commit, as well as the source and availability of funds, including evidence that funds will be available within sixty days of project completion. If an entity other than the Tribal Council commits to pay for maintenance and operation that entity must submit a letter of commitment which identifies the responsibilities the entity will assume and the amount of funds that will be provided annually to the project. Points will only be awarded if the field office is able to determine that the entity is financially able to assume the costs of maintenance and operation.

1 Yes (15 points)

2 No (0 points)

b An appropriate and effective design, scale and cost. The applicant shows that it has proposed the most appropriate and cost effective approach to address its identified need(s). The applicant shows that it has considered initial construction and lifetime operation costs, as well as the use of existing facilities and resources, and alternatives, including method of implementation and cost. If only one approach is feasible, the applicant should explain why.

1 Yes (15 points)

2 No (0 points)

(iii) Leveraging (10 points)

Points under this component will be awarded based on the definition of "leverage" under General Definitions, and the following breakdown:

Non-CDBG % of project cost	Points
a 25+	10
b 20–24	8
c 15–19	6
d 10–14	4
e 5–9	2
f 0–4	0

(3) Buildings. a. Thresholds.

(i) Tribes proposing a facility which would provide health care services must assure the facility meets IHS requirements.

b. Selection Criteria.

(i) Project Need and Design (60 points)

a Benefits the neediest segment of the population, as identified below. Applications must include tribal, BIA, IHS or other documentation that:

1 Maximum (28 points). More than 80 percent of the beneficiaries are very low income (50 percent of area median).

2 Moderate (18 points). 51–79.9 percent of the beneficiaries are very low income.

3 Unsatisfactory (0 points). Less than 51 percent of the beneficiaries are very low income.

b Provides a building that serves a function that does not currently exist either within or outside (nearby) the community or reservation OR replaces an existing facility that no longer functions adequately to meet current needs. (Examples: health clinic; subsistence food processing facility, Alaska.)

1 Maximum (15 points). The building does not exist or does not meet health and safety standards.

2 Moderate (12 points). The building no longer functions adequately or does not meet current needs.

3 Unsatisfactory (0 points). The building does not meet the criteria of *1* or *2*.

c Provides multiple uses or multiple benefits, or has services available 24 hours a day. The application must show that the proposed facility will house more than one broad category of activity. "Broad category" means a single activity or group of activities which serves a particular group of beneficiaries (e.g., senior citizens) or meets a particular need (e.g., literacy). No one category of activity will occupy more than 75 percent of the available space for more than 75 percent of the time. The use of space must be actually committed and documented in writing. Multipurpose buildings do not automatically meet these criteria, nor do buildings that provide a variety of activities for one client group.

1 Yes (3 points)

2 No (0 points)

d Meets an essential community development need by addressing a basic need that is critical to the orderly development of the community and to the provision of basic human services; OR eliminates or substantially reduces a health or safety problem. If the project addresses a health or safety problem, the applicant must provide documentation consisting of a signed study or letter from a reliable independent authority (e.g., state health officials, state fire marshals, BIA, IHS, EPA) verifying that: (1) A threat to health and safety exists which has caused or has the potential to cause serious illness, injury, disease or death; and (2) the threat can be substantially eliminated if the CDBG project is funded.

1 Yes (14 points)

2 No (0 points)

(ii) Planning and Implementation (30 points)

a A viable plan for maintenance and operation. The tribe must adopt a maintenance plan addressing maintenance, repair and replacement of items not covered by insurance, and operating resources, if applicable. The applicant must submit this plan. The plan must show that adequate funds are available for future replacements and identify a funding source to assure that the facility will be properly maintained and operated. The adopted resolution must identify the total annual dollar amount the tribe will commit, as well as the source and availability of funds, including evidence that funds will be available within sixty days of project completion. If an entity other than the Tribal Council commits to pay for maintenance and operation that entity must submit a letter of commitment which identifies the responsibilities the entity will assume and the amount of funds that will be provided annually to the project. Points will only be awarded if the field office is able to determine that the entity is financially able to assume the costs of maintenance and operation.

1 Yes (15 points)

2 No (0 points)

b An appropriate and effective design, scale and cost. The applicant documents that it has proposed the most appropriate and cost effective approach to address its identified need(s). The applicant documents that it has considered initial construction and lifetime operation costs, as well as the use of existing facilities and resources,

and alternatives including, method of implementation and cost. If only one approach is feasible, the applicant should explain why.

1 Yes (15 points)

2 No (0 points)

(iii) Leveraging (10 points)

Points under this component will be awarded based on the definition of "leverage" under General Definitions, and the following breakdown:

Non-CDBG % of project cost	Points
a 25+	10
b 20–24	8
c 15–19	6
d 10–14	4
e 5–9	2
f 0–4	0

C. *Public Services.* (1) Thresholds.

a. Public services activities may comprise no more than 15 percent of the total grant award. Such projects must therefore be submitted with one or more other projects, which must comprise at least 85 percent of the total grant award. A public service project will be funded only if both the public service project itself *and* the other project(s) with which it is submitted rank high enough to be funded.

(2) Selection Criteria. a. Project Need and Design (45 points).

(i) Meets an essential community development need by addressing a basic need that is critical to the orderly development of the community and to the provision of basic human services.

a Yes (15 points)

b No (0 points)

(ii) Benefits the neediest segment of the population, as identified below. Applications must include tribal, BIA, IHS or other documentation that:

a Maximum (27 points). More than 80 percent of the beneficiaries are very low income (50 percent of area median).

b Moderate (16 points). 51–79.9 percent of the beneficiaries are very low income.

c Unsatisfactory (0 points). Less than 51 percent of the beneficiaries are very low income.

(iii) Provides a service(s) that will eliminate or substantially reduce a health or safety problem. The applicant must provide documentation consisting of a signed study or letter from a reliable independent authority (e.g., state health officials, state fire marshals, BIA, IHS, EPA) verifying that: (1) a threat to health and safety exists which has caused or has the potential to cause serious illness, injury, disease or death; and (2) the threat can be substantially eliminated if the CDBG project is funded.

a Yes (3 points)

b No (0 points)

b. Planning and Implementation (45 points).

(i) A viable plan for continuing provision of the service(s). The tribe must adopt a plan to address continuing provision of the service(s). The applicant must submit this plan. The plan must identify a funding source to assure that the public service(s) will be properly carried out. The resolution must identify the total annual dollar amount the tribe will commit, as well as the source and availability of funds, including evidence that funds will be available within sixty days of project completion.

a Yes (15 points)

b No (0 points)

(ii) An appropriate and effective design, scale and cost. The applicant shows that it has proposed the most appropriate and cost effective approach to address its identified need(s). The applicant shows that it has considered initial and long-term costs, as well as the use of existing services and resourses, or has submitted an analysis from a qualified authority addressing alternatives, method of implementation and cost. If only one approach is feasible, the applicant should explain why.

a Yes (15 points)

b No (0 points)

(iii) An innovative method of using the public service to resolve the problem (e.g., original treatment methods, program delivery system, or use of technology).

a Yes (15 points)

b No (0 points)

c. Leveraging (10 points).

Points under this component will be awarded based on the definition of "leverage" under the General Definitions, and the following breakdown:

Non-CDBG % of project cost	Points
(i) 25+	10
(ii) 20–24	8
(iii) 15–19	6
(iv) 10–14	4
(v) 5–9	2
(vi) 0–4	0

D. *Economic Development.* (1) Thresholds.

a. Economic development assistance may be provided only when a financial analysis is done which shows that the assistance to the business does not exceed the level of financial assistance necessary to make the project financially feasible, public benefit commensurate with the assistance to the business can reasonably be expected to result from the assisted project, and the project has a reasonable chance of success. In making this determination, the example, if the analysis of the financial information indicates an ability to repay the assistance, a grant would not be warranted if the financial assistance is going to a nongovernmental entity. The applicant shall demonstrate the need for grant assistance by providing documentation to support a determination that the assistance is appropriate to implement an economic development project.

b. All economic development projects must meet one of the national objectives. A generl claim of cash flow or benefit to the tribe as a whole does not demonstrate low- and moderate-income benefit.

c. The applicant shall submit a project description which includes the following information:

(i) The product or service: What the enterprise will do or produce.

(ii) The location and physical facilities: Regional, local and site-specific location; description of existing and proposed facilities. If land is to be acquired for the specific economic development project, the applicant must either submit evidence that the land will be taken into trust, or demonstrate compliance with zoning and other local requirements, and show that the tribe or the entity operating the business, has the ability to pay all required taxes on the land.

(iii) Key production factors: Requirements relating to utilities, transportation access, special technical and/or equipment requirements, market, raw materials, and labor force.

(iv) Jobs/labor available: Justification that the number of permanent full time equivalent jobs proposed to be created or retained by the project (full and part-time) is realistic, evidence that the project can support job costs/salaries.

(v) The developmental entity: Identification of entity to be used (e.g., local development corporation, tribe/village, private developer, joint venture).

(vi) Equipment: Projects that include the purchase of equipment must demonstrate the appropriateness and cost effectiveness of purchasing versus leasing. The use of lease financing is encouraged wherever possible to help contain development costs.

(vii) Financial information: Applicants shall submit a detailed cost summary, evidence of funding sources, five year operating or cash flow financial projections and business financial statements for the most recent three year period. Financial statements

include the balance sheet, income statement and statement of retained earnings. For new start-up businesses, current financial or net worth statements on the principal business owners or officers are needed unless the tribe or Alaskan Native Village will be the owner of the business.

(viii) Economic strategy and objectives: The applicant shall demonstrate how the proposed project will meet the tribe's/village's economic development strategy and objectives (e.g., to create or retain permanent, private sector jobs or provide a product and service needed and affordable to native members).

(2) Selection criteria. a. Project Viability. (55 points). The application will be rated on the adequacy and the quality of the following subparts:

(i) Market analysis.

a Maximum (10 points). An independent third party feasibility/market analysis, generally not older than two years, which identifies the market and demonstrates that the proposed activities are highly likely to capture a fair share of the market.

b Moderate (6 points). Feasibility/Market Analysis which identifies the market and demonstrates that the proposed activities are reasonably likely to capture a fair share of the market.

c Low (0 points). The submission does not meet the criteria in paragraph *b*.

(ii) Management capacity.

a Maximum (10 points). A management team with qualifying specialized training or technical/managerial experience in the operation of a similar business has been identified. If the grant is approved, the business will hire the identified team or persons with similar training and experience. Applicants must submit job descriptions of key management positions as well as resumes showing qualifying specialized technical/managerial training or experience of the identified management team.

b Moderate (6 points). A management team with qualifying general business training or experience will be hired if the grant is approved. Applicants must submit job descriptions of key management positions.

c Unsatisfactory (0 points). The submission does not meet the criteria in paragraph *b*.

(iii) Organization.

a Maximum (8 points)

1 The tribe or entity that will operate the business has an on-going successful business enterprise. The applicant must describe this enterprise and provide documentation of its healthy financial condition (e.g., audited financial statements for the past three years); and

2 The tribe or entity that operates the business has an acceptable business management system for project development and operation.

b Moderate (5 points). The tribe or entity that will develop and operate the business has an acceptable business management system for project development and operation.

c Unsatisfactory (0 points). The submission does not meet the criteria in paragraph *b*.

(iv) Viability of the Business (excluding microenterprises). The viability of an economic development project will be determined by an analysis of financial and other project related information. Components of the financial analysis are: Costs, sources of funds, cash flow projections and financial statements. The applicant must submit: A detailed cost summary, evidence of funding sources; five year operating or cash flow financial projections; and business financial statements for the most recent three year period. For start-up businesses, that are not owned by the grantee, current financial or new worth statements on principal business owners or officers are needed. Financial statements include the balance sheet, income statement and statement of retained earnings.

The information derived from the analysis will be reviewed and compared to local or national industry standards to assess reasonableness of development costs, financial need, profitability, and risk as factors in determining overall project viability. In determining whether a project is viable, the field office will also consider current and projected market conditions and profitability measures such as cash flow return on equity, cash flow return on total assets and the ratio of new profit before taxes to total assets. Sources of industry standards include Marshall and Swift Publication Company, Robert Morris Associates, Dun and Bradstreet, the Chamber of Commerce, etc. Local standards may also be used.

a Maximum (15 points). Based on the analysis, the project has excellent prospect of achieving viability.

b Moderate (7 points). The project has an average prospect of achieving viability.

c Low (0 points). The project has a minimal prospect of achieving viability.

(v) Viability of the Microenterprise. Microenterprises employ three or fewer employees, including the entrepreneur. The viability of a microenterprise will be determined by an analysis of financial and other project related information. Components of the financial analysis are: Costs, sources of funds, cash flow projections and financial statements. The applicant must submit: A detailed cost summary, evidence of funding sources; five year operating or cash flow financial projections and monthly projections until the cash flow is positive; and business financial statements for the most recent three year period. For start-up businesses, current financial or net worth statements on principal business owners or officers are needed. Financial statements include balance sheet, income statement and statement of retained earnings.

In determining whether a project is viable the field office will also consider current and projected market conditions and profitability measures such as net profit to total assets ratio, as well as other information that the field office has that will have an effect on the project's potential viability.

a Maximum (15 points)

1 The project will generate income for the entrepreneur, over a minimum of five years, at or above 125 percent of the annual county average individual income; and

2 Based on the analysis, the project has excellent prospect of achieving viability.

b Moderate (7 points)

1 The project will generate income for the entrepreneur at or above 100 percent of the annual county average individual income; and

2 The project has an average prospect of achieving viability.

c Unsatisfactory (0 points). The submission does not meet the criteria in paragraph *b*.

(vi) Leveraging. Points under this component will be awarded based on the definition of "leverage" under General Definitions, and the following breakdown:

Office	Points	Non-CDBG % of total project cost
Chicago	12	80+
	8	40–79
	4	10–39
	0	less than 10
OK City	12	30+
	8	20–29
	4	10–19
	0	less than 10
Denver	12	30+
	8	20–29
	4	10–19
	0	less than 10
Phoenix	12	30+
	8	20–29
	4	10–19
	0	less than 10
Seattle	12	80+
	8	60–79

Office	Points	Non-CDBG % of total project cost
Anchorage	4	40–59
	0	less than 40
	12	30+
	8	20–29
	4	10–19
	0	less than 10

b. *Permanent Full-Time Equivalent Job Creation.* Provide total number of permanent full-time jobs expected to be created and/or retained as a result of the project. Provide a summary of job descriptions and skills required. Identify the number and kind(s) of jobs expected to be available to low and moderate-income persons. (30 points)

(i) CDBG cost per job

a Maximum (13 points). $15,000 or less.

b Moderate (10 points). $15,001–25,000.

c Low (7 points). $25,001–35,000.

d Unsatisfactory (0 points). $35,0001+.

(ii) CDBG cost per job targeted to low- and moderate-income persons.

a Maximum (13 points). $15,000 or less.

b Moderate (10 points). $15,001–25,000.

c Low (7 points). $25,001–35,000.

d Unsatisfactory (0 points). $35,001+

(iii) Quality of jobs targeted to low- and moderate-income persons.

a The jobs offer wages and benefits comparable to area wage and benefits for similar jobs, provide opportunity for advancement, and teach a transferrable skill; OR

b The employer commits to provide training opportunities (submit a description of planned training program.

1 Yes (4 points)

2 No (0 points)

c. *Additional Considerations.* (15 Points) A project must meet three of the following criteria to receive 15 points. Maximum 15 points.

(i) Use, improve or expand members' special skills. Special skills are those that members have developed through education, training or traditional cultural experiences (e.g., technical expertise in electronic assembly; making traditional native crafts).

a Yes (5 points)

b No (0 points)

(ii) Provide spin-off benefits beyond the initial economic development benefits to employees or to the community (e.g., creates new investment opportunities in the area; provide a consumer product or service not currently available on or near the reservation, or provide an available consumer product or service at a significant reduction in cost).

a Yes (5 points)

b No (0 points)

(iii) Provide special opportunities for residents of federally-assisted housing (e.g., employ residents for maintenance services).

a Yes (5 points)

b No (0 points)

(iv) Provide benefits to other businesses owned by Indians or Alaska natives (e.g., increase their sales).

a Yes (5 points)

b No (0 points)

(v) Loan Repayment/Reuse of CDBG funds. If the business is not tribally owned at least 50% of the CDBG assistance to the business will be repaid to the grantee within a 10 year period. If the business is tribally owned, the tribe agrees within a 10 year period to use funds equal to 50% of the CDBG assistance for eligible activities that meet a national objective. These funds should come from the profits of the tribally owned business.

a Yes (5 points)

b No (0 points)

II. Application Process

(a) An application package may be obtained from the HUD Field Offices of Indian Programs in the following geographic locations:

Region V—Chicago Regional Office, Office of Indian Programs, Housing and Community Development Division, 77 West Jackson Blvd., Chicago, Illinois 60604, Telephone: (312) 353–1684 (all states east of the Mississippi River, plus Iowa and Minnesota).

Region VI—Oklahoma City Office, Indian Programs Division, CPD Branch, Murrah Federal Bldg., 200 NW. 5th Street, Oklahoma City, OK 73102–3202, Telephone: (405) 231–5968, (Louisiana, Kansas, Oklahoma, and Texas, except West Texas).

Region VIII—Denver Regional Office, Office of Indian Programs, Housing and Community Development Division, CPD Staff, Executive Tower Bldg., 1405 Curtis Street, Denver, CO 80202–2349, Telephone: (303) 844–6481, (Colorado, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming).

Region IX—Indian Programs Office, Region IX, CPD Division, Two Arizona Center, suite 1650, 400 N. Fifth Street, Phoenix, Arizona 85004–2361, Telephone: (602) 379–4197, (Arizona, New Mexico, Southern California, West Texas).

Indian Programs Office, CPD Division, Program, Management Team (San Francisco), Phillip Burton Federal Bldg. and U.S. Courthouse, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102–3448, Telephone: (415) 556–9200, (Northern California and Nevada).

Region X—Seattle Regional Office, Office of Indian Programs, CPD Division, Arcade Plaza Bldg, 1321 Second Ave., Seattle, WA 98101–2054, Telephone: (206) 553–0760, (Idaho, Oregon, Washington).

Anchorage Office, CPD Division, room A–19, Module G, 222 W. 8th Avenue, #64, Anchorage, AK 99513–7537, Telephone: (907) 271–4684, (Alaska).

(b) Completed applications should be submitted to the appropriate HUD Field Offices of Indian Programs, listed above, from which application information and packages were obtained.

(c) Applications may be mailed to HUD, provided that they are postmarked no later than midnight on the deadline date: July 31, 1992. Applications that are physically delivered to HUD must be received by the appropriate Office of Indian Programs (OIP) no later than the close of business July 31, 1992.

III. Checklist of Pre-Application and Application Submission Requirements

(a) Citizen Participation

Prior to submitting an application, the applicant shall certify, by an official tribal resolution, that it has:

1. Furnished residents with information concerning amounts of funds available and the range of activities to be undertaken;

2. Held one or more public meetings to obtain the views of residents;

3. Developed and published or posted a community development statement which gives affected residents an opportunity to review it and comment on it;

4. Given residents an opportunity to review and comment on the applicant's performance under any active community development block grant;

5. Considered public comments and, if the applicant deems it appropriate, modified the application accordingly; and

6. Made the modified application available to residents.

(b) Applicants shall submit an application to the appropriate field office. In accordance with the requirements of Section 571.300(f) the application should include:

1. Standard Form 424;

2. Community Development Statement which includes:

A. A brief description or an updated description of cummunity development needs (form HUD–4121);

B. A brief description of proposed projects to address needs, including scope, magnitude, and method of implementing the project, as well as a schedule for implementing the project (forms HUD–4122 and HUD–4125);

C. Cost information by project, including specific activity costs, administration, planning, and technical

assistance, total HUD share (form HUD–4123); and

D. Components that address the relevant selection criteria.

3. A map showing project location, if appropriate;

4. If the proposed project will result in displacement or temporary relocation, include a statement that identifies

(A) The number of persons (families, individuals, businesses and nonprofit organizations occupying the property on the date of the submission of the application (or date of initial site control, if later);

(B) The number to be displaced or temporarily relocated;

(C) The estimated cost of relocation payments and other services;

(D) The source of funds for relocation; and

(E) The organization that will carry out the relocation activities.

5. Citizen Participation. Certify, in the form of an official tribal resolution, that citizen participation requirements of section 571.604 have been met;

6. Form HUD–2880, Applicant/Recipient Disclosure/Update Report, as required under subpart C of 24 CFR part 12, Accountability in the Provision of HUD Assistance.

IV. Corrections to Deficient Applications

HUD will not accept unsolicited information from the applicant regarding the application after the application deadline has passed.

HUD may advise applicants of technical deficiencies in applications and permit them to be corrected. A technical deficiency would be an error or oversight which, if corrected, would not alter, in either a positive or negative fashion, the review and rating of the application. Examples of curable technical deficiencies would be a failure to submit proper certifications or failure to submit an application containing an original signature by an authorized official. The field office also may, at its discretion, request information to resolve inconsistencies or ambiguities in the application.

HUD will notify applicants in writing of any curable technical deficiencies in applications. Applicants will have 14 calendar days from the date of HUD's correspondence to reply and correct the deficiency. If the deficiency is not corrected within this time period, HUD will reject the application as incomplete.

V. Other Matters

(a) Environmental Statement

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmnetal Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

(b) Federalism Executive Order

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA will not have substantial, direct effects on states, on their political subdivisions, or on their relationship with the Federal Government, or on the distribution of power and responsibilities between them and other levels of government. While the NOFA will provide financial assistance to Indian tribes and Alaskan native villages, none of its provisions will have an effect on the relationship between the Federal Government and the states or their political subdivisions.

(c) Family Executive Order

The General Counsel, as the Designated Official for Executive Order 12606, The Family, has determined that the policies announced in this NOFA would not have the potential for significant impact on family formation, maintenance and general well-being and thus is not subject to review under the Order.

(d) Registration of Consultants

Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in appendix A of the rule.

Any questions regarding the statute described above should be directed to Arnold J. Haiman, Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–3815; TDD: (202) 708–1112. (These are not toll-free numbers.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

(e) Prohibition of Advance Disclosure of Funding Decisions

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of the applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics, (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

Authority: Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq.); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); 24 CFR 571.

Dated: February 21, 1992.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 92–7515 Filed 4–4–92; 8:45 am]

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federal register

Tuesday
April 7, 1992

Part V

Department of Housing and Urban Development

Office of Assistant Secretary for Housing—Federal Housing Commissioner

Fund Availability for Supportive Housing for Persons With Disabilities; Set-aside for Persons Disabled with Human Aquired Immunodeficiency Virus; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-92-3411; FR-3195-N-01]

Fund Availability (NOFA) for Supportive Housing for Persons With Disabilities—Set-Aside for Persons Disabled as a Result of Infection With the Human Acquired Immunodeficiency Virus

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

ACTION: Notice of fund availability for FY 92.

SUMMARY: On June 12, 1991, HUD announced in the **Federal Register** (56 FR 27138), the 500 unit set-aside established in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriation Act, 1991 (Pub. L. 101–504, approved November 5, 1990) (HUD's Fiscal Year 1991 Appropriations Act) for supportive housing for persons disabled as a result of infection with the Human Acquired Immunodeficiency Virus (HIV). The competition for this set-aside has been completed, and there were not sufficient approvable applications to use all of the set-aside. Rather than make selections from the next approvable applications for any of the other disability categories in rank order as previously announced in the **Federal Register** (56 FR 27144), this NOFA announces another competition for the remaining 285 units in the set-aside.

In the body of this document is information concerning the following: (a) The purpose of the NOF and information regarding eligibility, submission requirements, available amounts, and selection criteria and (b) application processing, including how to apply and how selections will be made, and where that information differs from the Supportive Housing for Persons With Disabilities Program. A checklist of steps and exhibits involved in the application process will be included in the application package which can be obtained from the appropriate Field Office identified in appendix A.

DATES: The deadline date for receipt of applications in response to this NOFA is July 1, 1992. HUD Field Offices will distribute Application Packages and issue notifications inviting applications and stating the July 1, 1992 deadline date and the closing time (hour) for receipt of applications. The application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

ADDRESSES: Applications must be delivered to the HUD Field Office for your jurisdiction. A listing of HUD Field Offices, their addresses and telephone numbers (including TDD telephone numbers) are attached as Appendix A to this NOFA. HUD will date-stamp incoming applications to evidence timely receipt, and upon request, provide the applicant with an acknowledgement of receipt. Applications submitted by facsimile are not acceptable.

FOR FURTHER INFORMATION CONTACT: The HUD Field Office for your jurisdiction.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–220), the information collection requirements have been assigned OMB Control Number 2502–0462.

I. Purpose and Substantive Description

A. Authority

HUD's Fiscal Year 1991 Appropriations Act establishes a set-aside of 500 units for persons disabled as a result of infection with the HIV from the amounts appropriated under section 811 of the National Affordable Housing Act (the NAH Act), which authorizes a new supportive housing program for persons with disabilities. This program replaces assistance for persons with disabilities previously covered by section 202 of the Housing Act of 1959 (section 202 continues, as amended by section 801 of the NAH Act, to authorize supportive housing for the elderly). The purpose of section 811 is to enable persons with disabilities to live with dignity and independence within their communities by expanding the supply of supportive housing that is designed to accommodate the special needs of such persons and provides supportive services that address the individual health, mental health, and other needs of such persons. The Secretary is authorized to provide assistance to private, nonprofit organizations to expand the supply of supportive housing for persons with disabilities. The assistance will be provided as capital advances and contracts for project rental assistance in accordance with the Interim Rule for part 890 published on June 12, 1991 (56 FR 27070). This assistance may be used to finance the new construction, rehabilitation, acquisition with rehabilitation, acquisition without rehabilitation (group homes only), or acquisition of property from the Resolution Trust Corporation (RTC) (group homes and independent living facilities), to be used as supportive housing for person with disabilities in accordance with the Interim Rule.

For supportive housing for persons with disabilities, HUD's Fiscal Year 1991 Appropriations Act provided $106,709,000 for capital advances under section 811, of which 500 units were required to be used for persons disabled as a result of infection with the HIV, and $104,000,000 for project rental assistance, including project rental assistance for 500 units of housing for persons disabled as a result of infection with the HIV.

A NOFA was published on June 12, 1991 (56 FR 27138) for the 500 unit set-aside established in HUD's Fiscal Year 1991 Appropriations Act for supportive housing for persons disabled as a result of infection with the Human Acquired Immunodeficiency Virus (HIV). The competition for this set-aside has been completed, and there were not sufficient approvable applications to use all of the set-aside. Rather than make selections from the next approvable applications for any of the other disability categories in rank order as previously announced in the June 12, 1991 **Federal Register** (56 FR 27144), HUD has decided to conduct another competition for the remaining 285 units in the set-aside. A number of 1991 applications for this set-aside were rejected because of late submission and technical problems. A primary reason for these problems was the newness of the program and the fact that many of these applicants had never participated in the Section 202 program. This additional competition will further the intent of Congress in establishing the set-aside.

Except where noted, this NOFA will follow the same guidance regarding eligibility, submission requirements, available amounts, selection criteria and application processing as previously published in the June 12, 1991 NOFA (56 FR 27138).

Successful recipients (Sponsors) of a section 811 capital advance under this NOFA will be nonprofit entities (with section 501(c)(3) tax exemption status) with experience as health care providers, or significant housing or

supportive services experience, and which have a working or services agreement with a hospital.

Of particular interest is the Department's implementation of section 105 of the NAH Act which requires that all applications for this program include a certification of the responsible public official that the proposal is consistent with an approved Comprehensive Housing Affordability Strategy ("CHAS") for the jurisdiction in which the proposed project is to be located. See 24 CFR 890.265(c)(18).

Also of special interest is a statutory requirement for a certification by the appropriate State or local agency that the provision of services identified in the application is well designed to serve the needs of persons with disabilities. In order to fulfill this requirement, Sponsors must submit one copy of Exhibit 20 (supportive services plan) of their application and the certification form (found in the application package) to the appropriate State or local agency identified by the Field Office in the application package in ample time for the Sponsors to include the certification (as Exhibit 23) with the submission of their application to the appropriate Field Office. Applications which do not contain a certification from the appropriate State or local agency that the provision of supportive services is well designed to serve the special needs of persons with disabilities will not be funded.

Another item of special interest is the recent agreement between HUD and the Farmers Home Administration (FmHA) which facilitates the coordination between the two agencies in administering their respective rental assistance programs. In accordance with this agreement, HUD is required to notify FmHA of applications for housing assistance it receives. The purpose of this notification is to give FmHA the opportunity to comment if it has concern about the demand for additional assisted housing and possible harm to existing projects in the same housing market area. HUD will consider the FmHA comments in its review and project selection process.

B. Allocation Amount

The allocation of capital advance for this NOFA (remainder of the set-aside) is:

285 units..... $20,310,000

C. Eligibility

The only eligible applicants under this program are private, nonprofit organizations. Neither a public body nor an instrumentality of a public body is eligible to participate in the program.

No more than 10 percent of the 285 units will be approved for any single Sponsor unless insufficient units can be funded by applying the 10 percent limit.

D. Preliminary Evaluation and Selection Criteria

1. Preliminary Evaluation

Applications for section 811 fund reservations for Supportive Housing for Persons with Disabilities—Set-Aside for Persons Disabled as a result of Infection with the HIV that meet the following initial threshold requirements at preliminary evaluation will be eligible for technical processing:

(a) Application was received by HUD at the appropriate address by July 1, 1992 and the time (hour) stated in the HUD Field Office Notifications and Application Package, and was complete or at most had technical deficiencies (see section IV.A. for the definition of a technical deficiency);

(b) Sponsor acceptably corrected deficiencies (including furnishing missing certifications) within 14 calendar days from the date of the notification of deficiency letter;

(c) Sponsor, proposed facilities and proposed occupants (i.e., persons disabled as a result of infection with the HIV) are eligible under section 811;

(d) Sponsor is a private nonprofit entity (with 501(c)(3) tax exemption status) with experience as a health care provider or significant housing or supportive services experience related to persons with disabilities, families or minority groups, and has a working or services agreement with a hospital;

(e) There is reasonable expectation that the Sponsor can meet the Minimum Capital Investment requirement and start-up expenses;

(f) Application contains evidence of control of a site or the appropriate identification of a site;

(g) The Sponsor is in compliance with civil rights laws and regulations as follows:

(1) There are no pending civil rights suits against the Sponsor instituted by the Department of Justice;

(2) There are no outstanding findings of noncompliance with civil rights statutes, Executive Orders or regulations as a result of formal administrative proceedings, or where the Secretary has issued a charge under the Fair Housing Act, unless the Sponsor is operating under a compliance agreement designed to correct the areas of non-compliance;

(3) There has not been a deferral of the proceedings of applications from the Sponsor imposed by HUD under title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3), and the HUD title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1) or under section 504 of the Rehabilitation Act of 1973 and the HUD section 504 regulation (24 CFR 8.57);

(h) Even without a site visit, it is reasonable to expect the proposed site meets site and neighborhood standards (24 CFR 890.230), including minority disabled concentration considerations, and is not in a floodway or Coastal High Hazard Area;

(i) There is sufficient market demand for the number and type of units proposed based on preliminary review;

(j) Application included a supportive services plan meeting the requirements of § 890.265(c)(15); and

(k) Application was responsive to the Field Office Notifications.

2. Selection Criteria

Applications for section 811 fund reservations for this setaside that successfully pass preliminary evaluation and technical processing will be rated using the following selection criteria:

(a) The ability of the Sponsor to develop and operate the proposed housing on a long-term basis (20 points);

(1) The scope, extent and quality of the Sponsor's experience as a health care provider or significant housing or supportive services experience related to persons with disabilities, families or minority groups (including providing housing or supportive services to the proposed disabled population) and the Sponsor has a working or services agreement with a hospital (10 points);

(2) The scope, extent and quality of the Sponsor's experience as a health care provider or significant housing or supportive services experience related to the disabled, families or minority groups, and the Sponsor has a working or services agreement with a hospital, and opportunities for minority and women-owned business enterprises participation (5 points); and

(3) The extent of local community support for the Sponsor and its activities, including experience in providing housing and/or supportive services in the area where the project is to be located, and Sponsor's demonstrated ability to enlist volunteers and local funds for its efforts (5 points);

(b) The Sponsor's financial capacity (25 points);

(1) Sponsor's financial history and its current financial outlook (5 points);

(2) The Sponsor's ability and willingness to provide funds for start-up expenses and commit financial

resources beyond the Minimum Capital Investment (10 points); and

(3) The scope of the proposed project in relationship to the financial capacity and commitment of the Sponsor (10 points)

Note: Consideration must also be given to the Sponsor's financial commitment to any projects in the pipeline and other applications submitted in response to notifications under this NOFA, the NOFA for supportive housing for the elderly (57 FR 8218, March 6, 1992), or the NOFA for supportive housing for persons with disabilities (57 FR 8205, March 6, 1992).

(c) The need for supportive housing for persons with disabilities in the area to be served (10 points).

(d) The design of the project (10 points):

(1) The extent to which the proposed design of the housing will meet the special needs of persons with disabilities (4 points);

(2) The extent to which the proposed design of the housing will accommodate the provision of supportive services (that are expected to be needed, either initially or over the useful life of the housing, by the category or categories of persons with disabilities the housing is intended to serve) (3 points); and

(3) The extent to which the proposed size and unit mix (if independent living facility) of the housing will enable the Sponsor to manage and operate the housing efficiently and ensure that the provision of supportive services will be accomplished in an economical fashion (3 points);

(e) The provision of supportive services (20 points):

(1) The extent to which the Sponsor has demonstrated that necessary supportive services will be provided on a consistent, long-term basis (10 points);

(2) The appropriateness of the supportive services to the needs of the proposed disabled population (5 points); and

(3) The quality of the service implementation plan (5 points);

(f) The extent to which the Sponsor has control of the site for the proposed housing (15 points):

(1) Applications with evidence of site control:

(i) The proximity or accessibility of the site to shopping, medical facilities, transportation, churches, recreational facilities, job opportunities and other necessary services to the intended occupants (4 points);

(ii) Suitability of the site from the standpoint of promoting a greater choice of housing opportunities for minority disabled person/families (4 points);

(iii) Freedom of the site from adverse environmental conditions and overconcentration of persons with disabilities (4 points);

(iv) Reasonableness of the site cost per unit and suitability of the property for the intended use and adequacy of utilities and streets (3 points); or

(2) Applications with identification of site:

(i) The proximity or accessibility of the site to shopping, medical facilities, transportation, churches, recreational facilities and other necessary services to the intended occupants as well as freedom of overconcentration of minority persons and persons with disabilities (5 points);

(ii) Suitability of the site from the standpoint of promoting a greater choice of housing opportunities for minority disabled persons/families (5 points); and

(iii) The likelihood that site control will be obtained within six months of fund reservation, if approved (5 points).

II. Application Process

All applications for section 811 fund reservations under the set-aside submitted by eligible Sponsors must be filed with the appropriate HUD Field Office and must contain all exhibits required by this NOFA.

Within three weeks of the publication of this NOFA, Field Offices shall notify minority organizations within their jurisdiction involved in housing and community development, prior-year applicants and groups with special interest in housing for persons disabled as a result of infection with the HIV.

Field Offices will accept applications after notifications are issued. The notifications for applications and Application Packages will state the July 1, 1992 deadline date and the closing time (hour) for receipt of applications. The application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. Applications submitted by facsimile are not acceptable.

Organizations interested in applying for a section 811 fund reservation under the set-aside should provide the appropriate Field Office with their names, addresses and telephone numbers, and advise the Field Office whether they wish to attend the workshop described below. HUD encourages minority organizations to participate in this program as Sponsors. Field Offices, at the date and time specified in the Invitations, will conduct workshops to explain the section 811 program.

Hud strongly recommends that prospective applicants attend the local Field Office workshop. More detailed information covering the time and place of the particular workshops will be set out in the Field Office Invitation. Interested persons with disabilities should contact the Field Office to assure that any necessary arrangements can be made for them to enable their attendance and participation in the workshop. While strongly urged to do so, if Sponsors cannot attend a workshop, application packages and handbooks can also be obtained from the Field Offices. Contact the appropriate Field Office with any questions regarding the submission of applications.

At the workshops, application packages will be distributed, application procedures and requirements (including the Department's equal opportunity, environmental, design and cost requirements and required exhibits) will be explained. Also, concerns such as local market conditions, building codes, historic preservation, floodplain management, displacement and relocation, zoning, housing costs, and states' positions on funding supportive services to group home residents will be addressed.

III. Application Submission Requirements

A. Application

Each application shall include all of the information, materials, forms, and exhibits listed in this section and must be indexed and tabbed. The Field Office will base its determination of the eligibility of the Sponsor for a reservation of section 811 capital advance set-aside funds on the information provided in the application.

In preparing applications, applicants will be able to utilize information and exhibits previously prepared for prior section 202 or 811 applications or for applications for other funding programs. Examples of exhibits that may be readily adapted or amended to decrease the burden of application preparation include among others those on previous participation in the section 202 or 811 program; applicant experience in housing and services; financial capacity; supportive services plan; community ties, and experience serving minorities.

1. Application contents

(a) Each applicant (Sponsor) shall include on a Form HUD–92013, Application for Multifamily Housing Project:

(1) The name, address, and telephone number of the Sponsor(s);

(2) The name, title, address, and telephone number of the officer or director of the Sponsor's Board of Directors to whom communications should be addressed;

(3) The following specific information regarding the project:

(i) Number of units requested by bedroom type (efficiency (415 sq. ft.), one-bedroom (540 sq. ft.) two-bedroom (800 sq. ft.), three-bedroom (1050 sq. ft.), four bedroom (1150 sq. ft.) or if five or more bedrooms are provided, increase unit sizes by up to 100 sq. ft. for each additional bedroom) and the number of residents (if independent living facility) or the number of bedrooms and number of residents to be housed in each group home;

(ii) Dollar amount of the capital advance requested;

(iii) Estimated land cost;

(iv) Number and type of structures;

(v) Number of stories planned and whether an elevator will be included; and

(vi) Development method (new construction, rehabilitation, or acquisition (group homes and RTC properties)).

(b) Additional exhibits must include:

(1) A Housing Consultant's Resumé, Contract (Form HUD 92531A–EH), and an Identity of Interest and Disclosure Certification (if the Sponsor has employed a project consultant).

(2) Evidence of each Sponsor's legal status as a private nonprofit organization, including the following:

(i) Articles of incorporation, constitution, or other organizational documents:

(ii) By-laws;

(iii) A typed incumbency certificate, listing all officers and directors, title, beginning date of each person's term and when that term expires. It must be certified by an officer of the Sponsor that it constitutes all duly qualified and sitting officers and directors as of the date the application is filed with HUD;

(iv) IRS tax exemption ruling (this must be submitted by all Sponsors, including churches). A nonprofit organization organized in the Commonwealth of Puerto Rico and exempt from income taxation under Puerto Rico law, has never been liable for payment of Federal income taxes, and does not pay patronage dividends may be exempt from the requirement set out in the previous sentence if they are not eligible for tax exemption; and

(v) Resolution of the board, duly certified by an officer, that no officer or director of the Sponsor or Owner has or will have any financial interest in any contract with the Owner or in any firm or corporation which has or will have a contract with the Owner.

(3) Satisfactory evidence that the Sponsor:

(i) Has the necessary legal authority to sponsor the project and to assist the Owner to finance, acquire, construct, or rehabilitate and maintain the project; and

(ii) Will form an Owner (as defined in § 890.105) after the issuance of the fund reservation, will cause the Owner to file a request for determination of eligibility and a request for a capital advance under § 890.300, and will provide sufficient resources to the Owner to ensure the development and long-term operation of the project.

(4) A description of the Sponsor's ties to the community, including the minority community, and any statements of support for the project by members of the community in which the project is to be located and state and local organizations familiar with the needs of disabled individuals proposed to be housed.

(5) Evidence of previous participation in HUD programs, by the Sponsor, its officers or directors, on Form HUD 2530. If none, forms must be submitted indicating "No previous experience."

(6) A description of any financial default, modification of terms and conditions of financing, or legal action taken or pending against the Sponsor or its officers, directors, or trustees in their corporate capacity.

(7) A description of the following:

(i) The Sponsor's experience as a health care provider and its working or services agreements with a hospital

Note: A letter of support from a hospital is not considered an agreement. The agreement must describe the relationship between the parties and outline their respective roles and responsibilities.

(ii) Any other rental housing projects, medical and/or other facilities sponsored, owned or operated by the Sponsor, including a description of experience in providing housing, medical and/or other facilities to persons with disabilities and/or to families; and

(iii) The Sponsor's experience in providing housing, medical or other facilities and/or services to minority persons or families and in contracting with minority and women-owned business enterprises.

(8) A description of the Sponsor's past or current involvement in any programs other than housing (including its provision of services) that demonstrates the Sponsor's management capabilities and experience, including a description of the Sponsor's experience in serving persons with disabilities and/or families.

(9) A certified Board Resolution, acknowledging responsibilities of sponsorship, long-term support of the project(s), willingness of Sponsor to assist the Owner to develop, own, manage and ensure the provision of appropriate services in connection with the proposed project, and that it reflects the will of its membership.

(10) A list of the applications, if any, the Sponsor has submitted or is planning to submit to any other Field Office in response to this NOFA, the NOFA for Supportive Housing for Persons with Disabilities (57 FR 8205, March 6, 1992), or the NOFA for Supportive Housing for the Elderly (57 FR 8218, March 6, 1992). Indicate by Field Office, the proposed location by city and state, the number of units requested, and the financial commitments related to each application.

(11) An estimate of start-up expenses for the project and the source of funds to meet these expenses.

(12) Evidence, in the form of a certified Board Resolution, of the Sponsor's willingness to fund the Minimum Capital Investment, estimated start-up expenses, and any associated development or operating costs related to items not covered by the capital advance under § 890.240 and to ensure the development and long-term operation of the project. Also, as evidence of the Sponsor's financial ability to cover these costs, include:

(i) A brief narrative description of financial history;

(ii) Copies of balance sheets and statements of income and expenses for each of the past three years that the Sponsor has operated. The financial statements, at a minimum, must include the information contained in Form HUD–92417, and a certification pursuant to the criminal warning provided in U.S. Criminal Code, section 1001, title 18 U.S.C.;

(iii) Form HUD–2013 Supplement, Application for Project Mortgage Insurance, listing current bank and trade references; and

(iv) A list of all FY 1991 and prior year projects to which the Sponsor(s) is a party, identified by project number, Field Office, funding year and month and year of initial closing, current status, (if finally closed, indicate month and year), and financial requirements for closing.

Note: If funds to meet the financial requirements of the applications being submitted are being committed by an organization other than the sponsor, evidence of that organization's financial capacity must be included in this exhibit, in addition to the sponsor's financial statements.

(13) A narrative description of the proposed housing including:

(i) Evidence of control of an approvable site, or identification of a site for which the Sponsor provides reasonable assurances that it will obtain control within 6 months from the date of fund reservation (if Sponsor is approved of funding);

(A) If the Sponsor has control of the site, it must submit the following information:

(1) Evidence that the Sponsor has entered into a legally binding option agreement to purchase or lease the proposed site; or has a copy of the contract of sale for the site, a deed, long-term leasehold or other evidence of legal ownership of the site (including properties to be acquired from the RTC). The option agreement period should extend through the end of the current fiscal year and contain a renewal provision to guarantee site availability through the subsequent stage of processing. The Sponsor must also identify any restrictive covenants or reverter clauses. In the case of a site to be acquired from a public body, evidence that the public body possesses clear title to the site, and has entered into a legally binding agreement to lease or convey the site to the Sponsor after it receives and accepts a notification of section 811 Fund Reservation and identification of any restrictive covenants or reverter clauses. However, in localities where HUD determines the time constraints of the funding round will not permit all of the required official actions (*e.g.*, approval of Community Planning Boards) which are necessary to convey publicly-owned sites, a letter in the application from the Mayor or Director of the appropriate local agency indicating their approval of conveyance of the site contingent upon the necessary approval action is acceptable and may be approved by the Field Office if it has satisfactory experience with timely conveyance of sites from that public body. In such cases, documentation shall also include a copy of the public body's evidence of ownership and whether there are any restrictive covenants or reverter clauses.

Note: A proposed project site may not be acquired or optioned from a general contractor (or its affiliate) which will construct the section 811 project or from any other development team member.

(2) A map showing the location of the site and the racial composition of the neighborhood, with any area of racial concentration delineated;

(3) Photographs of the site;

(4) Evidence that the project as proposed is permissible under applicable zoning ordinances or regulations, or a statement of the proposed action required to make the proposed project permissible and the basis for the belief that the proposed action will be completed successfully before the receipt of the conditional commitment application (*e.g.*, a summary of the results of any recent requests for rezoning on land in similar zoning classifications and the time required for such rezoning, preliminary indications of acceptability from zoning bodies, *etc.*);

(5) A statement that (a) identifies all persons (families, individuals, businesses and nonprofit organizations (identified by race/minority group, and status as owners or tenants) occupying the property on the date of submission of the application for fund reservation (or date of initial site control, if later); (b) indicates the estimated cost of relocation payments and other services, and (c) identifies the staff organization that will carry out the relocation activities.

Note: If any of the relocation costs will be funded from sources other than the section 811 capital advance, the sponsor must provide evidence of a firm commitment of these funds. Due to potentially high relocation costs, sponsors are encouraged to utilize sites which involve minimal or no relocation costs.

(6) In the case of a structure built or rehabilitated prior to 1978 that is proposed to be developed as an independent living facility, a statement from the Sponsor indicating that it has inspected the structure for defective paint surfaces. See 24 CFR 890.260(f).

(7) An indication as to whether the Sponsor is willing to seek a different site if the preferred site is unapprovable, and if so, a reasonable assurance that site control will be obtained within 6 months of fund reservation.

(B) If the Sponsor has identified a site, but does not have it under control, it must submit the following information:

(1) A description of the location of the site, neighborhood/community characteristics (to include racial and ethnic data) and amenities, and adjacent housing and/or facilities;

(2) A description of the activities undertaken to identify the site as well as what actions must be taken to obtain control of the site, if approved for funding;

(3) An indication as to whether the site is properly zoned. If it is not, an indication of the actions/time necessary for proper zoning; and

(4) A status of the sale of the site.

(5) An indication as to whether the site would involve relocation.

(ii) If and how the project will promote energy efficiency and if applicable, innovative construction or rehabilitation methods or technologies to be used that will promote efficient construction.

(iii) An identification of all community spaces, amenities or features planned for the housing. A description of how the spaces will be utilized also must be included. If these community spaces, amenities, or features would not comply with the design and cost standards of § 890.220, the Sponsor must demonstrate its ability and willingness to contribute both the incremental development cost and continuing operating cost associated with the community spaces, amenities or features.

(iv) A written description of the design of the proposed housing including any special design features and community space necessary to accommodate the physical needs of the proposed residents and the provision of supportive services. Included with the written description must also be a schematic drawing of each floor of the project noting the location of any special design features as well as a typical bedroom in a group home or a typical unit in an independent living facility with approximate dimensions, and community space for the provisions of supportive services.

Note: Sponsors submitting applications with evidence of site control for acquisition and/or rehabilitation projects may wish to submit a schematic drawing of an alternate design that may be replicated elsewhere if they want to be considered for points for the design of the project in the event the proposed site is rejected.

(v) For group homes to be licensed as intermediate care facilities (in which funding for the intermediate care is provided under title XIX of the Social Security Act) that serve persons with developmental disabilities, the following must be submitted:

(a) Evidence demonstrating that the proposed project will primarily provide housing rather than medical facilities, is or will be licensed by appropriate State agencies;

(b) Written evidence that the State Medicaid Office recognizes the need for a tenant contribution to rent and has agreed to pay the cost of the tenant contribution in the Medicaid payment to the Sponsor;

(c) Description of the medical training of the staff of the proposed facility and any nursing services that will be required by the residents on-site;

(d) Description of the services that will be funded by Medicaid for residents of the proposed project, including their nature, frequency and where the services are to be provided;

(e) Description of any special design features in the application that are not common to other section 811 group homes for the proposed population and the Sponsor's rationale for including them; and,

(f) Statement certifying that the Individual Program Plan for each resident will include participation in an out-of-the-home activity program for at least six hours each weekday.

(14) A narrative description of the anticipated occupancy (i.e., persons disabled as a result of infection with the HIV).

Note: Persons disabled as a result of infection with the HIV are also eligible for occupancy in a section 811 project for persons with physical disabilities, developmental disabilities or chronic mental illness, depending upon the nature of the person's disability.

(15) A supportive services plan that includes:

(i) A detailed description of the housing intended to serve persons disabled as a result of infection with the HIV. Include how and from where persons will be referred and admitted to the project.

(ii) A detailed description of the needs of persons with disabilities that the housing is expected to serve.

(iii) A detailed description of the supportive services proposed to be provided to the anticipated occupancy, including:

(A) The name(s) of the agency(s) which will be responsible for providing supportive services and evidence of the service provider's capability and experience in providing such supportive services;

(B) The manner in which such services will be provided (i.e., how, when and how often, where (on/off-site), including assurances that the proposed residents will receive supportive services based on their individual needs.

(C) The staffing plan, including a description of the qualifications of residential staff, if any, and other staff necessary to provide the proposed services.

(iv) Identification of the extent of state and local funds available to assist in the provision of supportive services.

(v) A letter of intent from each agency that will provide the supportive services (if other than the Sponsor), indicating the source and extent of commitment to provide funding for the supportive services.

Note: A letter supporting the sponsor's efforts is not considered a letter of intent.

(vi) If any state or local government funds will be provided, a description of the state/local agency's philosophy/policy concerning residential facilities for the population to be served as well as a demonstration by the Sponsor that the application is consistent with state or local plans and policies governing the development and operation of facilities to serve individuals of the proposed occupancy category.

(16) Evidence demonstrating that there is effective demand for the proposed housing in the area to be served by the project and demonstrating that this demand is likely to continue throughout the life of the project.

(17) Signed certifications of the Sponsor(s)' intent to comply with Title VI of the Civil Rights Act of 1964, the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Executive Orders 11063 and 11246, section 3 of the Housing and Urban Development Act of 1968, and the affirmative fair housing marketing requirements at 24 CFR part 200, subpart M.

(18) A certification from the appropriate state or local agency that it has reviewed the supportive services plan in the Sponsor's application and that the provision of services identified in the application is well designed to serve the special needs of persons with disabilities to be served by the proposed project(s).

(19) A certification of the Sponsor(s) that the appropriate state agency (single point of contact) under Executive Order 12372, Intergovernmental Review, has been contacted to determine if the section 811 Program is covered under the state review process and, if applicable, the date the application was submitted to the State.

(20) A certification on SF–424, Application for Federal Assistance, that the Sponsor(s) is not delinquent on the repayment of any Federal debt.

(21) A certification by the Sponsor(s) that the section 811 funds will not be used to lobby the Executive or Legislative branches of the Federal government.

(22) A certification that the Sponsor(s) will comply with the requirements of the Drug-Free Workplace Act.

(23) A certification that the Sponsor will comply with the requirements of the Lead-Based Point Poisoning Prevention Act (42 U.S.C. 4821–4846) and implementing regulations at 24 CFR part 35 (except as superseded in § 890.260(f)(2)).

(24) A certification that the project will comply with HUD's design and cost standards, the Uniform Federal Accessibility Standards and HUD's implementing regulations at 24 CFR part 40, section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8, and for new construction multifamily housing projects (independent living facilities), the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100.

(25) A certification by the Sponsor(s) that it will comply (or has complied) with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR part 24, and 24 CFR § 890.260(e).

(26) A complete Form 2880, Applicant Disclosures.

(27) A certification of consistency with an approved housing strategy (CHAS) from the lowest level of government having a full CHAS covering the jurisdiction in which the project is to be located. Should that full CHAS fail to provide a basis for consistency, either a suitable amendment can be prepared or, in the case of a proposed project in a local jurisdiction not having an existing CHAS, that local jurisdiction may prepare an abbreviated strategy appropriate to the project. Such an abbreviated strategy must be submitted prior to or at the time of submission of the section 811 application. See Notice on preparation of an abbreviated strategy published on December 16, 1991 (56 FR 65271).

Note: To assist applicants in meeting the certification requirement where a CHAS or abbreviated housing strategy has not yet been approved, HUD will accept section 811 applications that are accompanied by a certification that the proposed activity is consistent with the CHAS or abbreviated strategy being reviewed.

IV. Corrections to Deficient Applications

A. Preliminary Evaluation

During preliminary evaluation, Sponsors will be provided 14 calendar days from the date of HUD's written notification to cure technical deficiencies in their applications. However, it is not additional time to amend the application to overcome any defects in the original submission. Technical deficiencies are inadvertently omitted documents which have been

executed prior to the application deadline date (such as certifications or articles of incorporation) or clarifications of previously submitted material and are not of such a nature as to improve the competitive position of the application.

Technical deficiencies do not include items which would be considered substantive defects in the original submission. For example, if a Board resolution is missing from the original submission, but it is submitted during the 14-day period, it must have been executed prior to the deadline date for receipt of applications. If it is not submitted during the 14-day period or it is submitted during this time but executed after the deadline date for receipt of applications, it is a substantive defect and the application will be rejected. Sponsors of applications that are missing two or more exhibits will not be afforded an opportunity to submit the missing exhibits and will receive written notification that their applications have been rejected. However, exhibits which are certifications are not counted as missing exhibits in this determination.

Applicants whose applications are found unacceptable during the preliminary evaluation process due to substantive defects and applications which fail to adequately respond to HUD's deficiency letter within the 14-day period, will be notified that their applications are not eligible for further processing, and are rejected.

B. Technical Processing

Applications which are found acceptable during the preliminary evaluation process, or an acceptable response to HUD's deficiency letter was received within the 14-day period, will undergo a more thorough analysis. As part of this analysis, HUD will conduct its environmental review in accordance with 24 CFR part 50 for applications that submitted satisfactory evidence of site control. Examples of reasons for technical processing rejection include a lack of commitment to fund the necessary supportive services or, based on a review of the detailed financial information, the Sponsor(s)' lack of sufficient financial resources. The Secretary will not reject an application based on technical processing without giving notice of that rejection and the basis therefor to the applicant and affording the applicant an opportunity to respond. An applicant will be afforded 10 calendar days from the date of HUD's written notice to appeal a technical rejection. The Field Office shall make a determination on an appeal prior to making its selection recommendations.

Upon completion of technical processing, all acceptable applications will be rated according to the selection criteria in § 890.300(c) (also above in I.C.2.). Applications which have a total score of 50 points or more will be eligible for selection and will be placed in rank order.

V. Additional Information

A. Project Size Limits

The following project size limits are applicable to supportive housing for persons with disabilities:

1. Group homes may house no more than eight (8) persons per home. On a case-by-case basis, however, HUD may approve a group home of up to 15 persons with disabilities if the Sponsor can demonstrate the following:

(a) The increased number of people is necessary for the economic feasibility of the project;

(b) A project of the size proposed is compatible with other residential development and the population density of the area in which the project is to be located;

(c) A project of the size proposed can be successfully integrated into the community; and

(d) A project of the size proposed is marketable in the community.

2. Independent living facilities may house no more than 24 persons with disabilities, except for projects for persons with chronic mental illness which may not exceed 20 such persons. On a case-by-case basis, HUD may approve an exception to the 24-person limit based upon the same criteria set forth in (1) above.

B. Projects for Persons Disabled as a Result of Infection With the HIV

HUD will hold this competition for applications proposing to serve persons disabled as a result of infection with the HIV only. As noted, applications must be submitted to the local HUD field office, and should be identified on the application as intended for the set-aside. However, applications will be selected in rank order on a national basis since it is not feasible to allocate 285 units among smaller allocation areas.

For the purpose of eligibility in a section 811 project for persons disabled as the result of infection with the HIV (as in a section 811 project for persons with physical disabilities, developmental disabilities or chronic mental illness, a person infected with the HIV must meet the definition of one or more of the following: Physically disabled, developmentally disabled or chronic mental illness as found in the definition of person with disabilities (§ 890.105).

C. Sites

The National Affordable Housing Act requires Sponsors submitting applications for section 811 fund reservations to provide either (a) evidence of site control, or (b) reasonable assurances that it will have control of a site within 6 months of notification of fund reservation. Accordingly, if a Sponsor has control of a site at the time it submits its application, it must include evidence of such as described in § 890.265(c)(13)(i)(A). If it does not have site control, it must provide the information required in § 890.265(c)(13)(i)(B) as a reasonable assurance that site control will be obtained within 6 months of fund reservation notification. Sponsors that do not provide satisfactory evidence of site control or the proper identification of a site will be notified that their applications are rejected.

Sponsors may select a site different from the one(s) submitted in their original applications. Selection of a different site will require HUD performance of an environmental review on the new site, which could result in rejection of that site. However, if a Sponsor does not have site control for any reason 12 months after notification of fund reservation, the assistance will be recaptured and reallocated.

Sponsors submitting satisfactory evidence of an approvable site (*i.e.*, site control) will compete against each other in Category A. Sponsors submitting proper identification of a site will compete against each other in Category B. HUD first shall select applications in the descending order of funding priority from Category A that most closely approximates the capital advance authority provided to the allocation area. If capital advance authority remains after selecting all approvable applications from Category A, HUD shall then select applications in the descending order of funding priority from Category B that most closely approximates the capital advance authority remaining in the allocation area.

Applications containing evidence of site control where either the evidence or the site is not approvable will *not* be rejected provided the application indicates the Sponsor's willingness to select another site and an assurance that site control will be obtained within six months of fund reservation notification. Such applications will not be eligible to receive any of the possible

15 points for the extent to which the Sponsor has control of the site for the proposed housing and will compete for selection in Category B.

VI. Other Matters

A. Environmental Impact

A. Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations that implement section 101(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410.

B. Federalism Executive Order

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12612, Federalism, has determined that this NOFA does not have substantial direct effects on States or their political subdivisions, or on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This NOFA merely notifies the public of the availability of capital advances for supportive housing for persons with disabilities.

C. Family Executive Order

The General Counsel, as the Designated Official under Executive Order No. 12606, The Family, has determined that this NOFA does not significantly affect family formation, maintenance, or general well-being, and, thus, is not subject to review under the order.

D. HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters Counsel for the program to which the question pertains.

E. Applicant/Recipient Disclosures; Subsidy-Layering: HUD Reform Act

Documentation and Public Access

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly Federal Register notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

Disclosures

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period generally less that three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Subsidy-Layering Determinations

24 CFR 12.52 requires HUD to certify that the amount of HUD assistance is not more than is necessary to make the assisted activity feasible after taking account of other government assistance. HUD will make the decision with respect to each certification available to the public free of charge, for a three-year period. (See the notice published in the **Federal Register** on January 16, 1992, (FR 57 1942), for further information on requesting these decisions.) Additional information about applications, HUD certifications, and assistance adjustments, both before assistance is provided or subsequently, are to be made under the Freedom of Information Act (24 CFR part 15).

F. Lobbying

Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Any questions regarding the rule should be directed to Arnold J. Haiman, Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–3815; TDD: (202) 708–1112. (These are not toll-free numbers.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

G. Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance Program title and number is 14.181, Supportive Housing for Persons with Disabilities.

Authority: Section 811, National Affordable Housing Act, Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: March 27, 1992.

Arthur J. Hill,

Assistant Secretary for Housing, Federal Housing Commissioner.

Appendix A—HUD Field Offices

HUD FIELD OFFICES

Region I

Boston, Massachusetts Regional Office
(Jurisdiction: Massachusetts)

Harold Thompson (ACTING) Regional Administrator, Regional Housing Commissioner.
HUD—Boston Regional Office, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, room 375, Boston, Massachusetts 02222–1092, (617) 565–5234, TDD (617) 565–5453.

Hartford, Connecticut Office
(Jurisdiction: Connecticut)

William Hernandez, Jr., Manager.
HUD—Hartford Office, 330 Main Street, Hartford, Connecticut 06106–1860, (203) 240–4523, TDD (203) 240–4522.

Manchester, New Hampshire Office
(Jurisdiction: New Hampshire)

James Barry, Manager.
HUD—Manchester Office, Norris Cotton Federal Building, 275 Chestnut Street, Manchester, New Hampshire 03101–2487, (603) 666–7681, TDD (603) 666–7518.

Providence, Rhode Island Office
(Jurisdiction: Rhode Island)

Casimir J. Kolaski, Jr., Manager.
HUD—Providence Office, 330 John O. Pastore Federal Building, and U.S. Post Office—Kennedy Plaza, Providence, Rhode Island 02903–1745, (401) 528–5351, TDD (401) 528–5364.

Region II

New York Regional Office
(Jurisdiction: New York, New Jersey)

Dr. Anthony Villane, Regional Administrator-Regional Housing Commissioner.
HUD—New York Regional Office, 26 Federal Plaza, New York, New York 10278–0068, (212) 264–8068, TDD (212) 264–0927.

Buffalo, New York Office
(Jurisdiction: New York)

Joseph Lynch, Manager.
HUD—Buffalo Office, Lafayette Court, 5th Floor, 465 Main Street, Buffalo, New York 14203–1780, (716) 846–5755, TDD (716) 846–5787.

Newark, New Jersey Office
(Jurisdiction: New Jersey)

Theodore Britton, Jr., Manager.
HUD—Newark Office, Military Park Building, 60 Park Place, Newark, New Jersey 07102–5504, (201) 877–1662, TDD (201) 877–6649.

Region III

Philadelphia, Pennsylvania Regional Office
(Jurisdiction: Pennsylvania)

Michael Smerconish, Regional Administrator.
HUD—Philadelphia Regional Office, Liberty Square Building, 105 South 7th Street, Philadelphia, Pennsylvania 19106–3392, (215) 597–2560, TDD (215) 597–5564.

Washington, DC Office
(Jurisdiction: District of Columbia)

I. Toni Thomas, Manager.
HUD—Washington, D.C. Office, Union Center Plaza, Phase II, 820 First Street, N.E., suite 300, Washington, D.C. 20002–4205, (202) 275–9200, TDD (202) 275–0967.

Baltimore, Maryland Office
(Jurisdiction: Maryland)

Maxine Saunders, Manager.
HUD—Baltimore Office, 10 North Calvert Street, 3rd Floor, Baltimore, Maryland 21202–1865, (301) 962–2121, TDD (301) 962–0106.

Pittsburgh, Pennsylvania Office
(Jurisdiction: Pennsylvania)

Choice Edwards, Manager.
HUD—Pittsburgh Office, 412 Old Post Office Courthouse Bldg., 7th Ave. & Grant St., Pittsburgh, PA 15219–1906, (412) 644–6428, TDD (804) 771–2820.

Richmond, Virginia Office
(Jurisdiction: Virginia)

Mary Ann Wilson, Manager.
HUD—Richmond Office, 400 North 8th Street, Richmond, Virginia 23240, (804) 771–2721, TDD (804) 771–2820.

Charleston, West Virginia Office
(Jurisdiction: West Virginia)

Ron Rash, Manager.
HUD—Charleston Office, 405 Capitol Street, Suite 708, Charleston, West Virginia 25301–1795, (304) 347–7000, (FTS) 930–7036.

Region IV

Atlanta, Georgia Regional Office
(Jurisdiction: Georgia)

Raymond A. Harris, Regional Administrator-Regional Housing Commissioner.
HUD—Atlanta Regional Office, Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, Georgia 30303–3388, (404) 331–5136, TDD (404) 730–2654.

Birmingham, Alabama Office
(Jurisdiction: Alabama)

Robert E. Lunsford, Manager.
HUD—Birmingham Office, 600 Beacon Parkway West, suite 300, Birmingham, Alabama 35209–3144, (205) 731–1617, TDD (205) 731–1617.

Louisville, Kentucky Office
(Jurisdiction: Kentucky)

Verna V. Van Ness, Acting Manager.
HUD—Louisville Office, 601 West Broadway, Post Office Box 1044, Louisville, Kentucky 40201–1044 (502) 582–5251, TDD (502) 582–5139.

Jackson, Mississippi
(Jurisdiction: Mississippi)

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HUD—Jackson Office, Dr. A.H. McCoy Federal Building, 100 W. Capitol Street, room 910, Jackson, Mississippi 39269–1096, (601) 965–4702, (FTS) 490–4702.

Greensboro, North Carolina
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Caribbean Office
(Jurisdiction: Puerto Rico)

Rosa Villalonga, Acting Manager.
HUD—Caribbean Office, San Juan Center, 159 Carlos E. Chardon Avenue, San Juan, Puerto Rico 00918–1804, (809) 766–5201.

Columbia, South Carolina Office
(Jurisdiction: South Carolina)

Ted B. Freeman, Manager.
HUD—Columbia Office, Strom Thurmond Federal Building, 1835–45 Assembly Street, Columbia, South Carolina 29201–2480, (803) 765–5592.

Knoxville, Tennessee Office
(Jurisdiction: Tennessee)

Richard B. Barnwell, Manager.
HUD—Knoxville Office, John J. Duncan Federal Bldg., 710 Locust Street, S.W., Knoxville, Tennessee 37902–2526, (615) 549–9384, TDD (615) 549–9372.

Nashville, Tennessee Office
(Jurisdiction: Tennessee)

John H. Fisher, Manager.
HUD—Nashville Office, 251 Cumberland Bend Drive, suite 200, Nashville, Tennessee 37228–1803, (615) 736–5213.

Jacksonville, Florida Office
(Jurisdiction: Florida)

James T. Chaplin, Manager.
HUD—Jacksonville Office, 325 West Adams Street, Jacksonville, Florida 32202–4303, (904) 791–2626.

Region V

Chicago, Illinois Region Office
(Jurisdiction: Illinois)

Gertrude Jordan, Regional Administrator-Regional Housing Commissioner.
HUD—Chicago Regional Office, 626 West Jackson Boulevard, Chicago, Illinois 60606, (312) 353–5680.

Detroit, Michigan Office
(Jurisdiction: Michigan)

Harry I. Sharrott, Manager.
HUD—Detroit Office, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, Michigan 48226–2592, (313) 226–6280.

Indianapolis, Indiana Office
(Jurisdiction: Indiana)

J. Nicholas Shelley, Manager.
HUD—Indianapolis Office, 151 North Delaware Street, Indianapolis, Indiana 46204–2526, (317) 226–6303.

Grand Rapids, Michigan Office
(Jurisdiction: Michigan)

Ronald C. Weston, Manager.
HUD—Grand Rapids Office, 2922 Fuller Avenue, N.E., Grand Rapids, Michigan 49505–3409, (616) 456–2100.

Minneapolis-St. Paul, Minnesota
(Jurisdiction: Minnesota)

Thomas Feeney, Manager.
HUD—Minneapolis-St. Paul Office, 220 Second Street, South, Bridge Place Building, Minneapolis, Minnesota 55401–2195, (612) 370–3000.

Cincinatti, Ohio Office
(Jurisdiction: Ohio)

William J. Harris, Manager.

HUD—Cincinnati Office, Federal Office Building, room 9002, 550 Main Street, Cincinnati, Ohio 45202–3253, (513) 684–2884.

Cleveland, Ohio Office
(Jurisdiction: Ohio)

George L. Engel, Manager.
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Columbus, Ohio Office
(Jurisdiction: Ohio)

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Milwaukee, Wisconsin Office
(Jurisdiction: Wisconsin)

Delbert F. Reynolds, Manager.
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Region VI

Fort Worth, Texas Regional Office
(Jurisdiction: Texas)

Sam R. Moseley, Regional Administrator-Regional Housing Commissioner.
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Houston, Texas Office
(Jurisdiction: Texas)

William Robertson, Jr., Manager.
HUD—Houston Office, National Bank of Texas Building, 2211 Norfolk, Suite 300, Houston, Texas 77098–4096, (713) 229–3589.

San Antonio, Texas Office
(Jurisdiction: Texas)

A. Cynthia Leon, Manager.
HUD—San Antonio Office, Washington Square Building, 800 Dolorosa Street, San Antonio, Texas 78207–4563, (512) 229–6781, TDD (512) 299–6885.

Little Rock, Arkansas Office
(Jurisdiction: Arkansas)

Roger Zachritz, (ACTING) Manager.
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New Orleans, Louisiana Office
(Jurisdiction: New Orleans)

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Oklahoma City, Oklahoma Office
(Jurisdiction: Oklahoma)

Edwin I. Gardner, Manager.
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Region VII

Kansas City, Missouri Regional Office
(Jurisdiction: Missouri)

William H. Brown, Regional Administrator-Regional Housing Commissioner.
HUD—Kansas City Regional Office, Gateway Tower II, 400 State Avenue, Kansas City, KS 66101–2406, (913) 236–2162, TDD (913) 236–3972.

Omaha, Nebraska Office
(Jurisdiction: Nebraska)

Roger M. Massey, Manager.
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St. Louis, Missouri Office
(Jurisdiction: Missouri)

Kenneth G. Lange, Manager.
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Des Moines, Iowa Office
(Jurisdiction: Iowa)

William McNarney, Manager.
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Region VIII

Denver, Colorado Regional Office
(Jurisdiction: Colorado)

Michael Chitwood, Regional Administrator-Regional Housing Commissioner.
HUD—Denver Regional Office, Executive Tower Building, 1405 Curtis Street, Denver, Colorado 80202–2349, (303) 844–4513.

Region IX

San Francisco, California Regional Office
(Jurisdiction: California)

Robert De Monte, Regional Administrator-Regional Housing Commissioner.
HUD—San Francisco Regional Office, Philip Burton Federal Building & U.S. Courthouse, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, California 94102–3448, (415) 556–4752, TDD (415) 556–8357.

Honolulu, Hawaii Office
(Jurisdiction: Hawaii)

Gordon Y. Furutani, Manager.
HUD—Honolulu Office, 300 Ala Moana Boulevard, room 3318, Honolulu, Hawaii 96850–4991, (808) 546–2136, TDD (808) 551–1348.

Los Angeles, California Office
(Jurisdiction: California)

Charles Ming, Manager.
HUD—Los Angeles Office, 1615 W. Olympic Boulevard, Los Angeles, California 90015–3801, (213) 251–7122, TDD (213) 251–7038.

Sacramento, California Office
(Jurisdiction: California)

Anthony A. Randolph, Manager.
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Phoenix Office
(Jurisdiction: Arizona)

Dwight A. Peterson, Manager.
HUD—Phoenix Office, One North First Street, Suite 300, Post Office Box 13468, Phoenix, Arizona 85002–3468, (602) 261–4434, TDD (602) 379–4461.

Region X

Seattle, Washington Office
(Jurisdiction: Washington)

Richard Bauer, Regional Administrator-Regional Housing Commissioner.
HUD—Seattle Regional Office, Arcade Plaza Building, 1321 Second Avenue, Seattle, Washington 98101–2058, (206) 442–5414.

Portland, Oregon Office
(Jurisdiction: Oregon)

Richard C. Brinck, Manager.
HUD—Portland Office, Cascade Building, 520 SW Sixth Avenue, Portland, Oregon 97204–1596, (503) 221–2561, (FTS) 423–2561.

Anchorage, Alaska Office
(Jurisdiction: Alaska)

Arlene Patton, Acting Manager.
HUD—Anchorage Office, 222 W. 8th Avenue, #64, Anchorage, Alaska 99513–7537, (907) 271–4170, (FTS) 907–271–4170.

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federal register

Tuesday
April 7, 1992

Part VI

Department of Education

Upward Bound Program; Inviting Applications for the Math and Science Initiative Under the Upward Bound Program for Fiscal Year (FY) 1992; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.047M]

Upward Bound Program; Inviting Applications for the Math and Science Initiative Under the Upward Bound Program for Fiscal Year (FY) 1992

Purpose of Program: The Upward Bound Math and Science Initiative provides financial assistance to applicants wishing to establish math and science regional centers. Each regional center will offer an intensified math and science curriculum for a six-week period, without regard to 34 CFR 645.10(b), during the summers of 1993, 1994, and 1995 to students who are currently participating in an Upward Bound project and to other students who meet the criteria for participating in Upward Bound. Students selected for this math/science initiative must have completed the 9th grade by the time they participate in regional center activities. The Upward Bound Math and Science Initiative supports AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals. The Initiative seeks to strengthen the mathematics and science education of participating students and assist them to demonstrate competency in mathematics and science. It also seeks to encourage students to pursue postsecondary degrees in mathematics or science.

Eligible Applicants: The following are eligible for awards under this program: Institutions of higher education, public and private agencies and organizations, and, in exceptional cases, secondary schools.

Deadline for Transmittal of Applications: June 5, 1992.

Deadline for Intergovernmental Review: August 5, 1992.

Applications Available: April 10, 1992.

Available Funds: $14,200,000.

Estimated Number of Awards: 70–75.

Estimated Range of Awards: $150,000–$200,000.

Estimated Average Size of Awards: $185,000.

Note: The Department is not bound by any estimates in this notice, except as otherwise provided by statute.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 645.

The math and science regional centers will include some of the characteristics of a comprehensive center funded by the National Science Foundation (NSF), but will not have the same scope or serve as many students as the NSF funded centers. The Department, in collaboration with the NSF, will disseminate resource materials to regional centers that are similar to the resource materials that the NSF disseminates to its funded centers.

Priority: The priority in the notice of final priority for this program, as published elsewhere in this issue of the **Federal Register**, applies to this competition.

For Applications or Information Contact: Goldia D. Hodgdon, Chief, Education Outreach Branch, Division of Student Services, U.S. Department of Education (room 3060, ROB–3), 400 Maryland Avenue SW., Washington, DC 20202–5249. Telephone number: (202) 708–4804. 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.

Program Authority: 20 U.S.C. 1070d, 1070d–1a.

Dated: February 18, 1992.

Carolynn Reid-Wallace,

Assistant Secretary for Postsecondary Education.

[FR Doc. 92–7891 Filed 4–6–92; 8:45 am]

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federal register

Tuesday
April 7, 1992

Part VII

Department of Education

Upward Bound Math and Science Initiative; Notice

DEPARTMENT OF EDUCATION

Upward Bound Math and Science Initiative

AGENCY: Department of Education.

ACTION: Notice of final priority for Fiscal Year 1992.

SUMMARY: The Secretary of Education announces a priority for fiscal year 1992 for a special Math and Science Initiative to be supported under the Upward Bound Program. This priority sets aside $14,200,000 for the Secretary to fund applications to establish and operate regional centers that will offer intensive mathematics and science instruction for six-week periods during the summers of 1993, 1994, and 1995. The Upward Bound Math and Science Initiative supports AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals. The Initiative seeks to strengthen the mathematics and science education of participating students and assist them to demonstrate competency in mathematics and science. It also seeks to encourage students to pursue postsecondary degrees in mathematics or science.

EFFECTIVE DATE: This priority takes effect either 45 days after publication in the **Federal Register**, or later if the Congress takes certain adjournments. If you want to now the effective date of this priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Goldia Hodgdon, Division of Student Services, U.S. Department of Education, 400 Maryland Avenue SW., (room 3060 ROB–3), Washington, DC 20202–5249. Telephone (202) 708–4804. Deaf and hearing-impaired individuals may call 1–800–877–8339 (in the Washington, DC, 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., eastern time.

SUPPLEMENTARY INFORMATION: The Upward Bound Program is designed to generate the skills and motivation necessary for success in education beyond high school among low-income and potential first-generation college students who are enrolled in high school or who are veterans seeking to prepare themselves for entry into postsecondary programs.

The Secretary has decided to set aside $14,200,000 of Upward Bound Program funds in fiscal year 1992 for a special Math and Science Initiative and to establish an absolute priority in the competition for funding under the initiative. A funded regional center under this initiative will provide intensive math and science instruction to students who are eligible program participants under the Upward Bound Program. The instruction will be provided during a six-week period during the course of the summer. The regional center is expected to pay the round-trip costs of the students participating in the summer program. Each center will establish cooperative working relationships with other math and science projects serving the same geographic area.

On August 7, 1991, the Secretary published a notice of proposed priority in the **Federal Register** (56 FR 37620).

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register**.

Analysis of Comments and Changes

In response to the Secretary's invitation for public comment in the notice of proposed priority, seven parties submitted comments. An analysis of the comments and of the changes in the priority since publication of the notice of proposed priority follows. Technical and other minor changes—and suggested changes the Secretary legally is not authorized to make under the applicable statutory authority—are not addressed.

Comments: Three commenters recommended that current grantees under the Upward Bound Program be given first priority under this initiative to receive additional math and science funds to upgrade or add math and science components to existing projects.

Discussion: The purpose of the Math and Science Initiative is to fund regional centers that will provide intensive math and science instruction during the summer. The purpose of the initiative is not to include or strengthen a math or science component in an existing Upward Bound project.

Changes: None.

Comments: One commenter recommended that the regional centers be funded for periods longer than 12 months to yield maximum benefits.

Discussion: The Secretary agrees with this comment and will make awards to regional centers for a three-year period under this priority, subject to the availability of funds and the regulatory criteria that apply to continuation awards. (See 34 CFR 75.253.)

Changes: Applications will be accepted for projects for a three-year duration.

Comments: One commenter recommended that priority be given to those projects that establish cooperative relationships with other Federal and non-Federal math and science teaching and learning activities and that applicants not be required to establish those relationships with projects or groups that may not be willing or able to cooperate.

Discussion: All funded projects will be required to establish a cooperative relationship with other Federal and non-Federal math and science projects in their areas. The Math and Science Regional Centers must work cooperatively with these projects in addressing this national initiative.

Changes: None.

Comments: One commenter recommended that students should be required to have at least a 2.5 grade-point average on a 4.0 point scale in math and science and have completed the ninth grade.

Discussion: The Secretary agrees that students should have completed the ninth grade to participate in one of the regional centers. By the end of the ninth grade, students have completed their first secondary-level science and math courses, and, therefore, are better prepared to participate in an intensive math and science project.

On the other hand, the Secretary believes that a minimum grade-point average may not be the best predictor of a student's interest or ability to achieve competency in a mathematics or science course of study. Further, grade-point averages vary widely among school systems, when they are used at all, and, therefore, are not the most objective means of identifying disadvantaged students with the potential to excel in math or science. There are other and equally appropriate indicators such as level of accomplishments as a participant in a regular Upward Bound project, interest in reading in the subject areas, extracurricular math and science activities, and evidence of a strong motivation to achieve in a focused environment.

Changes: Students must have completed the ninth grade to participate in a regional center project.

Comments: One commenter recommended that regional centers also serve Upward Bound bridge students by placing them in research and work sites under the guidance of trained math and science professionals. (An Upward Bound bridge student is an Upward Bound participant who has graduated from secondary school and intends to enroll at a postsecondary institution in the upcoming fall semester.) The commenter also recommended that the Centers pay tuition, room and board, and stipends for these participants.

Discussion: Only bridge students who have participated in a regional center project may be served. While the

secretary agrees that bridge students might benefit from on-site research training opportunities, the Secretary believes that the primary focus of the regional centers is providing intensive mathematics and science instruction to eligible students rather than research training. Therefore, centers must provide that instruction to any bridge student served rather than simply placing them in a research or laboratory work site. There are other Federal programs that provide students who already have demonstrated competency in mathematics and science with the opportunity to participate in research internships.

A regional center serving bridge students may pay any costs cited as allowable costs for bridge students by the Upward Bound Program regulations in 34 CFR 645.40.

Changes: None.

Comments: One commenter recommended that local school districts be allowed to submit proposals under this competition.

Discussion: Local school districts qualify as public agencies and, therefore, under 34 CFR 645.2 of the Upward Bound Program regulations are eligible to apply for grants under this initiative.

Changes: None.

Comments: Two commenters stated that the projects sending students will have difficulty carrying out the follow-up activities they will be required to conduct in cooperation with the regional centers. (Projects sending students are the regular Upward Bound projects that nominate their students to participate in the regional centers and will work with the regional centers to provide follow-up activities for their center participants during the academic year.) Concerns raised included: (1) The lack of comparable or state-of-the-art equipment of projects sending students; (2) the limited facilities and resources of some projects sending students; (3) the substantial cost of transporting students back to the regional centers for participation in follow-up activities; and (4) grant cycles that are not conducive to providing adequate follow-up activities once the students leave the regional centers.

Discussion: The commenter misconstrued the nature of the follow-up activities the regional centers will be expected to arrange. The Secretary expects the projects sending students to work cooperatively with the regional centers in arranging for appropriate follow-up activities. These are to take place at the sites of the projects sending students to reinforce the activities the centers provided during the summer. Examples of appropriate follow-up activities include, but are not limited to, assigning a mentor to each student; ensuring the students enroll in science and math courses during the school year; requiring the students to participate in science fairs or independent study; and arranging for the students to serve as laboratory assistants. The Secretary does not expect each project sending students to be able to duplicate the equipment, facilities, and resources of the regional centers. As the follow-up activities will occur at the projects sending students, rather than at the regional centers, the projects should not incur substantial costs for transporting students.

To the extent possible, the Secretary will make awards that start early in the calendar year. This will allow sufficient time for the regional centers to plan, hire staff, and recruit participants prior to the six-week summer session. It also will allow them to coordinate the follow-up activities to be conducted during the fall semester of the academic year with the projects that send students.

Changes: The regional centers are to work with the projects sending students to ensure that the students participate in follow-up activities that will reinforce the activities the centers provided.

Comments: Two commenters stated that requiring a regional center to serve a multi-state geographic area, for example, one of the Department's 10 regions, places an undue burden on grantees and may be impractical in some instances. They recommended that an applicant be allowed to define and justify its target area.

Discussion: Individual grantees will not be required to serve an entire region, and, therefore, the comment is in agreement with the Secretary's intent. The Secretary will consider the applicant's definition and justification for the regional area it proposes to serve. To the extent possible, the Secretary also will provide for an equitable geographic distribution of regional centers throughout the United States.

Changes: None.

Priority

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications for grants under a special Math and Science Initiative that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority.

Under this priority, the Secretary will make awards for a three-year period to establish and operate regional centers. Funding after the first budget period is subject to the criteria in 34 CFR 75.253. These regional centers shall, for six weeks during the summers of 1993, 1994, and 1995, provide intensive math and science instruction to students who have completed the ninth grade. The regional centers shall arrange follow-up activities for the participants to reinforce the instruction the students received during their summer program. Notwithstanding 34 CFR 645.10(b), regional centers will not have to provide an academic year component. The regional centers also shall encourage participants to major in science and math in college and pursue careers in science and math following college.

Regional centers shall establish cooperative relationships with other federally and non-federally funded programs in their areas that teach science and mathematics, such as the Eisenhower Mathematics and Science Education and National Science Foundation programs, and with laboratories and science facilities participating in the Federal Government's initiative to improve elementary and secondary-school science training. Cooperative relationships may be used, for example, to recruit project participants, share teaching strategies and approaches, provide enrichment activities, share faculty, and evaluate project activities.

Intergovernmental Review: This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Applicable Program Regulations: 34 CFR part 645.

Program Authority: 20 U.S.C. 1070d–1a.

Dated: January 28, 1992.

Lamar Alexander,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number: 84.047—Upward Bound Program)

[FR Doc. 92–7889 Filed 4–6–92; 8:45 a.m.]

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federal register

Tuesday
April 7, 1992

Part VIII

Office of Government Ethics

5 CFR Part 2638

Executive Agency Ethics Training Programs; Final Rule

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2638

RIN 3209-AA07

Executive Agency Ethics Training Programs

AGENCY: Office of Government Ethics.

ACTION: Final rule.

SUMMARY: The Office of Government Ethics (OGE) is issuing a final rule establishing new subpart G of 5 CFR part 2638. This subpart requires executive branch departments and agencies to maintain a program of ethics training designed to ensure that all of their employees are aware of the Federal conflict of interest statutes and the principles of ethical conduct. The Office of Government Ethics is issuing this new regulation to ensure uniformity of executive branch agency ethics training programs. This regulation will require agencies to provide an initial ethics orientation for all employees, as well as to provide annual ethics training for employees occupying certain sensitive positions.

EFFECTIVE DATE: May 7, 1992.

FOR FURTHER INFORMATION CONTACT: Dr. Stuart Gilman or John C. Condray, Office of Government Ethics, telephone (202/FTS) 523-5757, FAX (202/FTS) 523-6325.

SUPPLEMENTARY INFORMATION:

A. Summary of Comment Letters and Rule Changes Adopted

In accordance with Section 301 of Executive Order 12674 of April 12, 1989 (as amended by Executive Order 12731 of October 17, 1990), and consistent with its authority under the Ethics in Government Act (as amended), the Office of Government Ethics first published this subpart as a proposed rule on September 18, 1990 at 55 FR 38335-38337, and invited interested persons to file comments on or before November 17, 1990. The Office of Government Ethics received comments from 30 executive branch departments and agencies, an organization of small agencies, a labor union representing Federal employees, and a private organization.

After a careful review of the 33 sets of comments received, this final rule retains the basic structure of the proposed rule. Executive agencies will be required to provide all incoming employees with an initial ethics orientation. Certain employees must receive annual ethics training beginning in calendar year (CY) 1993. Each executive branch agency must file a written plan for its annual ethics training by August 31 of every year, with the first plan (covering CY 1993) to be filed in 1992. The final rule contains modifications made in response to a number of comments, including a deferral of the requirement to begin initial ethics orientation until January 2, 1993. It is expected that before that date, the new executive branch standards of ethical conduct regulations (to be issued under section 201(a) of Executive Order 12674 for codification at part 2635 of this Chapter) will be published by OGE as a final rule. If more time is needed for the publication of the final ethical standards, OGE will amend section 2638.703 of this rule to further defer the requirement for ethics orientation so that this requirement will become effective after the ethical standards are published.

The minimum official duty time requirement for both the initial ethics orientation and the annual ethics training has been reduced from 90 minutes to one hour. The final regulation also gives agencies greater flexibility in providing annual training to special Government employees and to officers of the uniformed services who serve on active duty for 30 or fewer consecutive days. It adds a definition of the term "qualified individual" for training, and drops the acknowledgement requirement for ethics orientation contained in the proposed rule. Other minor changes have been made to clarify the requirements of the regulation. A section by section review of the significant comments submitted and the changes made to the regulation is provided below.

1. Section 2638.701 General

One commenter recommended that OGE's authority to order corrective action by an executive agency for failure to comply with the training requirements be stated in the regulation. Because subpart D of part 2638 already alerts agencies to the possible consequences of failure to meet the training requirements, this suggestion was not adopted. One agency suggested that the regulation be revised to state that training must be made accessible to individuals with disabilities, in accordance with 29 U.S.C. 794(a) and 29 CFR 1613.704. Because agencies are already required by statute and regulation to provide such access, explicit inclusion of this requirement in the regulation would be redundant. The Department of Defense requested that the coverage of active duty members of the military be clearly stated in the final regulation. Because the definition of the term "employee" in Executive Order 12674 does not include enlisted members of the uniformed services, § 2638.701 was revised to indicate that the term "employee," as used in the regulation, includes officers of the uniformed services. The coverage of special Government employees has also been noted in § 2638.701 of the final rule.

2. Section 2638.702 Responsibilities of the Designated Agency Ethics Official; Review by the Office of Government Ethics

Four commenters indicated that there was some confusion over the term "qualified individual" as used in § 2638.704(d) of the proposed rule. A definition of the term "qualified individual" was placed into the final regulation at § 2638.702(a)(2) of this subpart to make it clear that a qualified individual is a person with sufficient knowledge of the executive branch ethics program to respond to routine employee questions likely to be raised during annual training. This definition also makes it clear that the designated agency ethics official (DAEO) is responsible for determining whether an individual is so qualified.

Seven commenters addressed the proposed requirement at § 2638.702(a)(3) that each DAEO provide OGE by August 31 of each year with a written plan for annual ethics training for the following calendar year. One suggested that this requirement would be redundant because the annual ethics program questionnaire that OGE obtains from executive agencies collects similar information. Three of the commenters objected to the requirement that the written plan include an estimate of the number of training classes to be provided and an estimate of the average class size. These commenters felt that, because the availability of facilities is subject to change, these estimates would serve no purpose. The final rule retains the requirement for submission of a written training plan. The Office of Government Ethics feels that there is a benefit in requiring agencies to prepare ethics training plans in advance. Many agencies already engage in planning which enables them to assess their needs for the coming year and to reserve use of facilities. Submission of agency plans assists OGE in meeting its oversight responsibilities. It provides OGE with the means to ensure initially that agency plans will meet the requirements of the regulation; it also provides a template to use in auditing an agency's ethics program. The Office of Government Ethics recognizes that circumstances may force some alterations in the actual execution of the

training plan. Thus, a good faith failure to meet a projection stated in a written plan will not, itself, provide a basis for criticism of an agency's training program. While OGE has retained the basic requirement for submission of a written plan for annual ethics training for the succeeding calendar year, we have revised § 2638.702(a)(3) to specify that the first such plan shall be filed by August 31, 1992. This is a conforming change necessitated by the revision to § 2638.704(a) which, as discussed below, will require annual ethics training beginning in 1993.

The other three comments concerning the submission of a training plan were comparatively minor. One commenter felt that the proposed rule was unclear as to whether the first plan was due in the fiscal or calendar year in which the initial ethics orientation is first required. Because the timing of the written plan for annual ethics training is no longer tied to the timing of the initial ethics orientation, this concern is moot. Another commenter felt that requiring the plan to be submitted each year in August was inadvisable because of the number of employees who take vacations at that time of year. While recognizing that the date may pose some minor inconvenience, OGE has retained the requirement for submission of the plan each August to allow OGE adequate time to communicate any deficiencies in the plan to the agency and still permit the agency to adjust the plan before the start of the next calendar year. The final commenter on this issue stated that the rule as proposed seemed to limit the type of training to be provided to "classes" by requiring an estimate of the number of classes to be provided. This language, which has not been changed, is not intended to limit the format for annual ethics training. Insofar as the requirements set forth in § 2638.704 of this subpart are met, training may be provided other than in a traditional classroom setting, as through individual use of video recordings or interactive computer programs.

The final rule also adds a requirement at § 2638.702(a)(3)(iii) of this subpart to provide OGE with an estimate of the number of special Government employees and certain officers of the uniformed services for whom annual ethics training will be provided in accordance with new paragraphs (d)(2)(ii) and (iii) of § 2638.704 of this subpart. This change was made to reflect the changes made in § 2638.704(d)(2).

3. Section 2638.703 Initial Agency Ethics Orientation

All of the comments OGE received concerning the initial agency ethics orientation section of the proposed regulation favored the concept, but suggested various changes in the requirements. The proposed regulation would have required each executive agency employee to be provided by his or her agency with a copy of subparts A, B, and C of 5 CFR part 735, or of part 2635 of this chapter and any supplements thereto once that part 2635 supersedes the specified subparts of part 735. Four commenters believed that requiring distribution of portions of part 735 that are soon to be superseded would not be a productive use of agency resources. Five commenters indicated that they felt that the proposed requirement that the initial ethics orientation take place within 60 days of the effective date of this regulation would allow insufficient time for agencies to prepare and distribute the required materials to all employees, particularly for agencies with many employees serving overseas. In response to these comments, OGE has dropped the requirement that employees be provided with a copy of subparts A, B, and C of 5 CFR part 735. We have also amended § 2638.703(a) of this subpart to require initial ethics orientation on or before January 2, 1993, which is after the expected publication date of the new standards of ethical conduct as a final rule at 5 CFR part 2635. New employees who enter on duty with their agencies on or after May 7, 1992, are to be provided ethics orientation within 90 days of their entrance on duty, or on or before January 2, 1993, whichever is later.

The proposed Standards of Ethical Conduct for Employees of the Executive Branch were published by OGE for comment on July 23, 1991. 56 FR 33778–33815 (July 23, 1991). When that regulation becomes a final rule, it will replace subparts A, B, and C of 5 CFR part 735 (except for 5 CFR 735.106) and the agency regulations promulgated thereunder. However, until the new ethical standards are published as a final rule, a final regulation such as this training regulation cannot cross-reference them under the procedures of the Office of the Federal Register. The Office of Government Ethics decided to publish this regulation in final before the new ethical standards are published as a final rule in order to allow agencies as much time as possible to plan their training programs. When the new ethical standards are published in the Federal Register as a final rule, OGE will amend § 2638.703 (a) and (b) of this rule to include the new standards among the orientation materials that must be made available to all executive branch employees. At that time, § 2638.704(c) of this rule will also be amended to include the new standards as part of the minimum requirements for annual ethics training. The new standards will be critical to ethics orientation and training. Because the new standards of ethical conduct will be such a major focus of the initial ethics orientation, agencies should not implement ethics orientation until after the new standards are published as a final rule and this training regulation is amended so that the new standards can be included among the ethics materials distributed.

Three of those commenting pointed out that their agencies had already established an ethics training program for all incoming employees. These commenters felt that the regulation should be changed to exempt those agencies that already provided such training. Because § 2638.703(a) has been amended so that the initial ethics orientation will not be required until after the new standards of ethical conduct regulation has been published as a final rule, and because section 301(b) of Executive Order 12674 requires agencies to ensure that all employees review the Executive order and the new standards of conduct regulation, OGE did not adopt this particular recommendation.

Two commenters felt that the proposed requirement for distribution of written materials as the means to accomplish the initial agency ethics orientation was not the best way to ensure employee understanding of the standards of ethical conduct. Both suggested that initial orientation be provided verbally. The Office of Government Ethics agrees that a course or some kind of verbal or interactive training may be preferable to merely distributing written materials, and encourages agencies to develop such training for their new employees whenever feasible. In light of limited agency resources, however, OGE believes that requiring initial ethics orientation to be presented verbally would not be realistic. In a similar vein, one commenter requested that the regulation be amended to extend the time requirement for the initial orientation for new employees from 60 to 90 days after entrance on duty with the Government to allow agencies to conduct training classes on a quarterly basis. While OGE does not consider that the proposed requirement for distribution of materials within 60 days

from the date an employee enters on duty would have been burdensome, the suggestion was adopted to encourage agencies that wish to provide training courses.

Nine commenters felt that the initial ethics orientation would be more effective if agencies were allowed to substitute a "plain language" pamphlet or similar documents for the materials required under § 2638.703(a) of this subpart. Many of these commenters cited the OGE publication "How to Keep Out of Trouble" as a model of what such a document would look like. The requirement stated in the proposed rule has been retained to comply with section 301(b) of Executive Order 12674, which contains a specific requirement for agencies to ensure review by all employees of the Executive order and any regulations promulgated thereunder. This does not preclude agencies from developing supplementary materials, including synopses, to assist employees in relating the standards to agency-specific situations. The Office of Government Ethics is currently preparing a successor to "How to Keep Out of Trouble" that may prove useful for providing employees with a general overview of ethical standards. However, review of supplementary materials will not of itself meet the requirement for employees' review of the Executive order and regulations issued thereunder. A new § 2638.703(c) has been added to the final rule to clarify that, if the material is provided to the employee for the required amount of official duty time for the purpose of review, agencies may satisfy the requirement to provide the material specified in § 2638.703(a)(1) by retaining copies of those documents in the employee's immediate office for use by several employees.

The proposed regulation would have required agencies to provide one and one half hours of official duty time for each employee to review the written materials distributed, with a provision for reducing the 90 minute period by the time an employee spends in an initial training course provided by the agency. Ten commenters suggested that 90 minutes is too long. Most of these commenters felt that the time requirement should be reduced to either 45 mintues or an hour; the rest felt that the requirement should be deleted entirely to allow the DAEO full flexibility in administering the regulation. The Office of Personnel Management suggested that, for ease of administration, the time requirement be rounded off to one hour. After careful consideration, OGE has reduced the minimum official duty time requirement for initial ethics orientation to one hour to provide agencies with more flexibility in their administration of the initial orientation. The Office of Government Ethics believes that retaining a minimum time requirement will best ensure that each executive branch employee receives sufficient time on the job to become familiar with the ethics materials. It should be emphasized that this time requirement is a minimum figure; agencies are encouraged to provide additional training beyond the one hour minimum.

One who commented on the time requirement suggested that agencies be allowed to adjust the time provided for the review of materials by the amount of time an employee spends in initial orientation training provided by OGE or the White House Office as well as by the agency. This recommendation has been adopted in the final regulation in § 2638.703(a)(3) of this subpart.

The proposed rule would have required each employee, after receiving initial ethics orientation, to provide a written acknowledgement that he or she had received the materials and had been provided the required amount of duty time to review them. As an alternative, an agency official could have certified that the materials and the appropriate amount of time had been provided to the employee. These acknowledgements and certifications would then have become part of the employee's Official Personnel Folder. Ten commenters addressed this proposed requirement. Three recommended various steps to improve the proposed system or ease the burden on the agencies; seven advocated that the final rule delete this requirement entirely. The seven commenters who recommended deletion all stated that the acquisition, tracking and oversight of the resulting acknowledgements and certifications would be administratively burdensome and would add little to the employees' understanding of the materials provided. In addition, many of these commenters stated that the proposed requirement could actually be counterproductive by misplacing the emphasis of the orientation and focusing scarce agency resources upon fulfilling a paperwork requirement rather than upon training agency employees on the rules and regulations governing their conduct. These commenters felt that such an emphasis trivialized the ethics program. Based on these comments, OGE has deleted the proposed acknowledgement/certification requirement. Nevertheless, OGE expects agencies to adopt appropriate means to ensure that each employee receives the required orientation.

Section 2638.704 Annual Agency Ethics Training

Twenty-five of the commenters addressed the annual ethics training requirement contained in the proposed regulation. Only two of these commenters questioned the basic requirement for annual training; the remainder addressed individual aspects of the annual ethics training requirement. As for the two comments questioning the need for annual ethics training, we note that section 301(c) of Executive Order 12674 requires executive agencies to coordinate with OGE in developing annual agency ethics training plans, and further states that such training shall include mandatory annual briefings for certain covered employees. Furthermore, the language of the rule in § 2638.704(b) of this subpart, concerning who is a covered employee, is derived almost word for word from Executive Order 12674. For the reasons noted above with respect to the future standards of ethical conduct regulations, OGE has dropped, for the time being, the reference in § 2638.704(b)(4) of this rule to OGE's future executive branch confidential financial disclosure regulation (the current system under 5 CFR part 735, subpart D, is still referenced). Once the future confidential regulation is published in the **Federal Register** and becomes effective, OGE will amend § 2638.704(b)(4) of this rule to refer to the new regulation, which will supersede the current one on confidential disclosure.

The most frequent comment about annual training concerned the proposed requirement that one and one half hours of official duty time be set aside for it. Nine commenters felt that this requirement should be deleted entirely, with the amount of time spent on annual training left to the discretion of the DAEO. Seven other commentators felt that, although a minimum time requirement should be retained, it should be reduced to one hour. Section 2638.704(a) of the final regulation adopts a one hour minimum time requirement for annual ethics training. The Office of Government Ethics reduced the minimum time requirement in order to provide agencies more flexibility in establishing their annual training plans while still providing time for covered employees to review applicable standards and to focus on their ethical responsibilities. The one hour minimum time requirement also parallels the one hour minimum time requirement for the initial ethics orientation at

§ 2638.703(a)(3) of this subpart. As noted in the explanation of the one hour minimum for the initial ethics orientation, this time requirement is a minimum figure; agencies are encouraged to provide additional annual training beyond the one hour minimum.

Six commenters addressed the content requirements contained in § 2638.704(c) of the proposed regulation. Of these, four indicated their concern with the requirement that annual training courses, at a minimum, review employees' responsibilities under the standards of conduct. Each of these commenters was concerned that this requirement would lead to a repetition each year of material that is already familiar to the employees participating in the training. They suggested that the regulation should allow agencies to vary their programs every year to hold the attention and interest of those taking the course. This would also allow agencies to accentuate training in areas where there may have been changes in the law, or where particular problems may have developed.

These commenters seem to have misunderstood the nature of this requirement. Executive Order 12674 and the regulations governing ethical conduct in accordance with it contain the fundamental ethics rules that apply to employees who will be receiving annual ethics training. They are the starting point for all annual ethics training. Their importance is reflected in the Executive order itself, which requires ethics training to "include mandatory annual briefings on ethics and standards of conduct." This is not the sum total of the content of annual training, and does not mean that annual training must include rote repetition, year after year, of the same information. The Office of Government Ethics expects that the first sessions of annual training will focus on the Executive order and the new standards of ethical conduct regulations (once these regulations are published as a final rule). In the unlikely event that the new standards of ethical conduct regulations have not been issued as a final rule before the initial annual ethics training takes place (in calendar year 1993), then OGE would expect that agencies would focus the training on the standards of conduct that govern their employees. After the first session, however, a brief overview of the basic principles and standards of ethical conduct will serve to remind employees of their obligations under applicable laws and regulations. This type of annual review, given to employees who are already familiar with the restrictions, could be accomplished in 10 to 15 minutes. The content of the rest of the annual training is entirely at agency discretion. This should allow agencies to vary their approach from year to year to keep the program fresh and to best meet the needs of their employees. However, the basic obligations under the Executive order and the future standards of ethical conduct regulation (together with any agency supplemental regulation) should still be emphasized, and those taking the annual training for the first time should be fully briefed thereon.

One commenter suggested that annual ethics training should include instruction covering the restrictions imposed under the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423). The Office of Government Ethics did not adopt this suggestion in the final rule. Training regarding the procurement integrity restrictions would primarily benefit procurement officials, for whom such training is separately mandated by 41 U.S.C. 423(1). While it would be appropriate to include a review of these restrictions as a portion of the annual training provided to employees who are likely to become procurement officials, it would be an inappropriate use of the limited time set aside for their annual ethics training to require other employees to review restrictions that, for the most part, are not directly applicable to them.

Under § 2638.704(d) of both the proposed and final regulation, the general requirement is that the annual training course is to be presented verbally, either in person or by recorded means. Four commenters indicated their belief that the requirement that the training generally be presented "verbally" constitutes a misreading of Executive Order 12674, which requires annual "briefings" on ethics and the standards of conduct. These commenters took the position that the term "briefings" could be read to include written materials. While a broader definition of "briefing" would have been possible, after careful consideration OGE has retained the general requirement that the training be presented verbally as the best way to provide agency employees with an understanding and awareness of the standards of ethical conduct. Written briefings on ethics, without more, are unlikely to provide covered employees with the necessary understanding and retention of the Government ethics restrictions applicable to them. By requiring that the training normally be verbal, while allowing this requirement to be met by recorded means as well as through traditional classroom-style presentations, OGE is attempting to provide for annual training in a way that will stress the importance of the executive branch ethics program, while still giving agencies flexibility in meeting the annual training requirement.

Five commenters expressed concern over the general requirement that a qualified individual be present during and after the verbal briefing to answer questions. Three of these commenters stressed the burden that this requirement would impose on smaller agencies. Another commenter felt that requiring a qualified individual to be present was not feasible given limited agency resources. While recognizing that the regulation will require the investment of additional agency resources for ethics training, OGE concluded that the presence of an individual qualified to answer questions at the presentation was the best way to address employee questions and concerns raised by the training. Section 2638.704(d)(2) of this subpart provides for exceptions, in appropriate cases, to the general requirement that a qualified individual be present and that the training be verbal. The first of these exceptions, at § 2638.704(d)(2)(i), provides that annual ethics training may be provided to a covered employee without the presence of a qualified individual where a designated agency ethics official, or his or her designee, makes a written determination that circumstances make it impractical to provide training in accordance with the general requirements. This exception is meant to be interpreted narrowly; mere administrative inconvenience or cost to an agency, standing alone, will not justify a determination under § 2638.704(d)(2)(i). The Office of Government Ethics notes that, in accordance with § 2638.702(a)(3)(ii), agencies must include an estimate of the number of agency employees that will receive annual ethics training under this section, as well as a written description for allowing an exception, as part of the agency's written plan for annual ethics training to be furnished to OGE annually.

Another commenter expressed concern over the difficulty in providing qualified individuals for overseas training, and suggested that OGE should amend the final rule to allow agencies to pool their resources in remote or overseas locations in order to meet the annual training requirement. This would be allowable since under § 2638.702(a)(2)(v) of this subpart a "qualified individual" may be someone other than an employee of the agency whose employees are receiving training.

One commenter requested that OGE provide trainers in field locations for agencies to use as advisors and resource people for their training sessions. The Office of Government ethics currently provides periodic regional ethics training for ethics practitioners in cities in the various Federal regions as well as in Washington, DC, and expects to continue to do so.

In addition to the above changes, the final rule changes the effective date of the requirement to begin annual ethics training. Whereas the proposed rule would have required annual ethics training to begin in the first calendar year after the first initial agency ethics orientation required by § 2638.703 had been given, § 2638.704(a) of this subpart now specifies that annual ethics training will begin in 1993. This change is necessitated, in part by the delay of initial agency ethics orientation until after the publication date of the new standards of ethical conduct as a final rule at 5 CFR part 2635. As noted above, OGE expects to issue a final ethical standards rule in the near future. For this reason, the initial ethics orientation is to take place on or before January 2, 1993. So that the requirement for annual ethics training will not be unduly delayed, we have specified that annual ethics training will begin in 1993. In the likely event that the effective date of the initial ethics orientation requirement is deferred until after annual ethics training has been given, § 2638.703(a)(3) of this subpart provides that such annual training will meet the requirement of that section to provide one hour of duty time for employees to review the initial orientation materials.

B. Matters of Regulatory Procedure

Executive Order 12291

As Director of the Office of Government Ethics, I have determined that this is not a major rule as defined under section 1(b) of Executive Order 12291, Federal Regulation.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant economic impact on a substantial number of small entities because it will effect only Federal executive branch agencies and employees.

Paperwork Reduction Act

The Paperwork Reduction Act (5 U.S.C. chapter 35) does not apply to this regulation because it does not contain information collection requirements that require the approval of the Office of Management and Budget thereunder.

List of Subjects in 5 CFR Part 2638

Administrative practice and procedure, Conflict of interests, Government employees, Reporting and recordkeeping requirements.

Approved: March 18, 1992.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending part 2638 of subchapter B of chapter XVI of title 5 of the Code of Federal Regulations as follows:

PART 2638—[AMENDED]

1. The authority citation for 5 CFR part 2638 is revised to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

2. A new subpart G of part 2638 is added to read as follows:

Subpart G—Executive Agency Ethics Training Programs

Sec.

2638.701 Executive agency ethics training programs; generally.
2638.702 Responsibilities of the designated agency ethics official; review by the Office of Government Ethics.
2638.703 Initial agency ethics orientation.
2638.704 Annual agency ethics training.

Subpart G—Executive Agency Ethics Training Programs

§ 2638.701 Executive agency ethics training programs; generally.

Each executive branch agency shall maintain a program of ethics training designed to ensure that all of its employees are aware of the Federal conflict of interest statutes and principles of ethical conduct. As a minimum, each agency program shall consist of initial ethics orientation required by § 2638.703 of this subpart and annual ethics training required by § 2638.704 of this subpart. For purposes of this subpart, the term "employee" shall include special Government employees (as defined in 18 U.S.C. 202(a)) and officers of the uniformed services.

§ 2638.702 Responsibilities of the designated agency ethics official; review by the Office of Government Ethics.

(a) It shall be the responsibility of the designated agency ethics official of each executive agency or his or her designee to make any written determinations provided for in this subpart and to:

(1) Direct the agency ethics training program to ensure that it meets the requirements of E.O. 12674 (as modified by E.O. 12731) and of this subpart and that the course content is legally correct;

(2) Ensure the availability of qualified individuals to provide the annual training required by § 2638.704 of this subpart. For the purposes of this subpart, the following shall be considered qualified individuals:

(i) The designated agency ethics official described in § 2638.201;

(ii) The alternate agency ethics official described in § 2638.202(b);

(iii) A deputy ethics official described in § 2638.204;

(iv) Any employee of the Office of Government Ethics whose services are made available by the Office of Government Ethics; and

(v) An individual determined by the designated agency ethics official or his or her designee to possess sufficient familiarity with the conflict of interest statutes and standards of ethical conduct regulations applicable to agency employees to respond to routine questions raised during training; and

(3) Furnish to the Office of Government Ethics by August 31 of each year a written plan for annual ethics training by the agency for the following calendar year. The first written plan for annual ethics training for calendar year 1993 shall be submitted by August 31, 1992. Each training plan shall include:

(i) An estimate of the total number of agency employees described in § 2638.704(b) of this subpart who must be provided annual ethics training;

(ii) An estimate of the number of agency employees to whom the annual ethics training course will be presented without the presence of a qualified individual under the exception provided at § 2638.704(d)(2)(i) of this subpart, together with a written description of the basis for allowing an exception;

(iii) Estimates of the number of special Government employees and the number of officers in the uniformed services to whom the annual ethics training course will be presented without the presence of a qualified individual under the exceptions provided at § 2638.704 (d)(2)(ii) and (iii) of this subpart;

(iv) An estimate of the number of training classes to be provided during the calendar year;

(v) An estimate of the average class size; and

(vi) Any other information that the designated agency ethics official believes will facilitate OGE's review of

the agency's planned program of ethics training.

(b) Each agency's annual ethics training plan will be reviewed by the Office of Government Ethics and any deficiencies shall be communicated in writing to the designated agency ethics official concerned by November 15 of each year, or 75 days after receipt of the agency plan, whichever occurs later.

§ 2638.703 Initial agency ethics orientation.

(a) Each agency employee shall, on or before January 2, 1993, be provided:

(1) A copy of part I of Executive Order 12674, Principles of Ethical Conduct for Government Officers and Employees, dated April 12, 1989, as amended by E.O. 12731, 3 CFR, 1990 Comp., p. 306;

(2) The names, titles, office addresses, and telephone numbers of the designated agency ethics official and other agency ethics officials available to answer questions regarding the employee's ethical responsibilities; and

(3) A minimum of one hour of official duty time for the purpose of permitting the employee to review the written materials furnished pursuant to this section. Where, within the period specified, the agency provides an ethics training course during official duty time, including annual ethics training provided in accordance with § 2638.704 of this subpart, or a new entrant receives ethics training provided by the Office of Government Ethics or the White House Office, the period of official duty time set aside for individual review may be reduced by the time spent in such training.

(b) Each new agency employee who enters on duty after May 7, 1992, shall, within 90 days of the date of his or her entrance on duty, or on or before January 2, 1993, whichever is later, be provided with the materials and time specified in paragraph (a) of this section.

(c) When copies of the material described in paragraph (a)(1) of this section are retained and readily accessible in the employee's immediate office for use by several employees, the requirement of paragraph (a)(1) of this section may be met by furnishing each employee a copy for the purpose of review.

§ 2638.704 Annual agency ethics training.

(a) *Annual ethics training.* Beginning in calendar year 1993, and in every year thereafter, each employee identified in paragraph (b) of this section shall be provided a minimum of one hour of official duty time for ethics training consisting of a course the content of which is described in paragraph (c) of this section and which is presented in accordance with the requirements of paragraph (d) of this section.

(b) *Employees covered.* Executive branch agency employees to whom this section applies include all of the following:

(1) Employees appointed by the President;

(2) Employees employed within the Executive Office of the President;

(3) Employees required to file public financial disclosure reports under part 2634 of this chapter;

(4) Employees required to file confidential (nonpublic) financial disclosure reports under subpart D of part 735 of this title, and any implementing agency regulations thereunder;

(5) Contracting officers within the meaning of 41 U.S.C. 423(p)(4);

(6) Procurement officials within the meaning of 41 U.S.C. 423(p)(3); and

(7) Other agency employees designated by the head of the agency or his or her designee based on a determination that such training is desirable in view of their particular official duties.

(c) *Course content.* Although the emphasis and course content of annual agency ethics training courses may change from year to year, each training course shall include, as a minimum:

(1) A review of the employees' responsibilities under part I of Executive Order 12674 and any supplemental agency regulations thereto. This review shall include examples that relate specifically to agency programs and operations and any ethics-related, agency-specific statute or regulatory restrictions of the particular agency; and

(2) A review of the employees' responsibilities under the conflict of interest statutes contained in 18 U.S.C. chapter 11.

(d) *Course presentation.* The training course shall be presented in accordance with the following requirements:

(1) Except as provided in paragraph (d)(2) of this section, annual ethics training shall be presented verbally, either in person or by recorded means. A qualified individual, as defined in § 2638.702(a)(2) of this subpart, shall be available during and immediately following the presentation.

(2) An agency may provide annual ethics training by means other than those specified in paragraph (d)(1) of this section under the following circumstances:

(i) Where the designated agency ethics official, or his or her designee, has made a written determination that circumstances make it impractical to provide training to a particular employee or group of employees in accordance with paragraph (d)(1) of this section. In such cases, annual ethics training may be presented by recorded means, without the presence of a qualified individual, or by means of written materials, provided that a minimum of one hour of official duty time is set aside for employees to attend the presentation or review written materials;

(ii) In the case of special Government employees covered by paragraph (b) of this section, an agency may meet the annual training requirement without the presence of a qualified individual by presenting the information verbally, as through a recording, by distribution of written materials, or by other means at the agency's discretion; and

(iii) In the case of officers in the uniformed services who serve on active duty for 30 or fewer consecutive days and who are covered by paragraph (b) of this section, an agency may meet the annual training requirement without the presence of a qualified individual by presenting the information verbally as through a recording, by distribution of written materials, or by other means at the agency's discretion.

[FR Doc. 92-7942 Filed 4-6-92; 8:45 am]

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Tuesday
April 7, 1992

Part IX

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

NOFA for the Neighborhood Development Demonstration Program; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-92-3387; FR-3146-N-01]

NOFA for the Neighborhood Development Demonstration Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Fund Availability for Fiscal Year 1992.

SUMMARY: This NOFA announces the availability of $1,900,000 in funding for the 1992 Neighborhood Development Demonstration Program. In the body of this document is information concerning:

(1) This year's round of funding for this Demonstration, involving funds appropriated for Fiscal Year 1992;

(2) The purposes and objectives of the Program;

(3) The method of allocation and distribution of funds;

(4) Eligibility requirements for neighborhood development organizations;

(5) Eligible neighborhood development activities;

(6) Selection criteria for the award of funds;

(7) Application requirements for the funds;

(8) Grantee reporting requirements; and

(9) Other applicable administrative requirements associated with the Program.

DATES: Application due date: Applications must be submitted by the specific date and hour to be specified in the application package. In no event will the specified date be earlier than May 18, 1992, and applicants will have at least 30 days to prepare and submit their application. This application deadline stated in the application package will be firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

FOR FURTHER INFORMATION CONTACT: Gene Hix, Office of Technical Assistance, Community and Neighborhood Management Division, CGTC, Department of Housing and Urban Development, room 7220, 451 Seventh Street, SW., Washington, DC 20410; telephone number (202) 708-2186. The TDD number is (202) 708-0564. (These are not toll free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in this Notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The control number for information collections described in this document is 2535-0084.

National Environmental Policy Act

A finding of no significant impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969. (42 U.S.C. 4332). The finding of no significant impact is available for public inspection and copying Monday through Friday during regular business hours at the Office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

I. Purpose and Substantive Description

A. Authority

Section 123 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181) authorized the Neighborhood Development Demonstration Program. Two million dollars were appropriated for a sixth round of the Program under the Departments of Veterans Affairs and Housing and Urban Development Appropriations Act of 1992 (Pub. L. 102-139, approved October 28, 1991). Under section 123(e)(6)(E), HUD may use no more than five percent of the appropriation for HUD administrative or other expenses in connection with the demonstration. The remaining funds are to be used to match monetary support raised over a one-year grant period from individuals, businesses, and nonprofit and other organizations located within established neighborhood boundaries.

The purpose of the program is to determine the ability of neighborhood organizations to support eligible neighborhood development activities using cooperative efforts and monetary contributions from individuals, businesses, and nonprofit and other organizations located within established neighborhood boundaries. The Federal funds are incentive funds to promote the development of this concept, and to encourage neighborhood organizations to become more self-sufficient in their development activities. Up to 30 percent of the 1992 awards may be to previous grantees in the program; the remaining 70 percent of the awards will be made to organizations selected from among new applicants. Applications will be selected for funding on the basis of evaluation criteria which reflect these priorities and which are contained in this notice.

The Neighborhood Development Demonstration Program has the following objectives:

To evaluate the degree to which new monetary contributions and other private sector support can be generated and new activities to benefit low- and moderate-income persons undertaken at the neighborhood level through Federal incentive funding;

To determine the correlation, if any, between the demographics of a neighborhood and the neighborhood organization's ability to raise funds within the neighborhood boundaries;

To determine the correlation, if any, between the type of neighborhood improvement activities proposed and the success of fund-raising efforts; and

To determine the correlation, if any, between the characteristics of an organization and the success of its fund-raising efforts.

B. Allocation Amounts

The Department proposes to make grants, in the form of matching funds, to eligible neighborhood development organizations. Under section 123(e)(3), grantee organizations may receive no more than $50,000 in Federal matching funds in a single Program year. The amount of Federal matching funds that an organization may receive depends in part upon the amount of monetary contributions raised from within the established neighborhood boundaries in the preceding quarter. Funds raised from organizations or persons not residing in or conducting business within the grantee's neighborhood, loans, in-kind services, contributions by owners of properties to be improved, fees for services, public funds, and any in-lieu-of-cash contributions cannot be used to match Federal funds. Such contributions may, however, be used to carry out project activities. The neighborhood monetary contributions for matching purposes must be raised within the one-year grant period. However, grant activities may be programmed over a period of one to three years.

Maximum Federal matching ratios are established in accordance with the statutorily required "smallest number of households or greatest degree of economic distress" criteria. Subject to

the statutory maximum of $50,000, the Federal match will range from one to six Federal dollars for each qualifying dollar raised by the grantee. Applications selected to receive Federal funds will be rank-ordered, and the matching ratio determined, based on application of these two criteria.

Applications best satisfying either criteria will be placed in the matching ratio categories eligible to receive proportionally more, with those in the matching ratio category least satisfying either test being eligible to receive one Federal dollar for each neighborhood dollar.

Any application selected for the award of Federal funds that proposed a matching fund ratio in excess of the ratio HUD determines for it will be offered an award of funds at the HUD-determined ratio. However, any application selected for award that proposed a match below the maximum ratio HUD determines for it will be funded at the level proposed by the applicant.

Federal payments to participating neighborhood, organizations will be made on a quarterly basis following receipt of quarterly performance and financial reports. The maximum Federal payment will be governed by the amount of verified, qualifying monetary contributions received in the preceding quarter, multiplied by the appropriate matching funds ratio.

C. Eligibility

1. Eligible Applicants

An eligible neighborhood development organization must be located in and serve the neighborhood for which assistance is to be provided. It cannot be a city-wide organization, a multi-neighborhood consortium, or, in general, an organization serving a large area of the city.

It must meet all of the following statutory requirements:

a. The organization must be incorporated as a private, voluntary, nonprofit corporation under the laws of the state in which it operates.

b. The organization must have conducted business for at least three years before the date of its application.

c. The organization must be responsible to the residents of the neighborhood it serves, with no less than 51 percent of the members of its governing body being residents of the neighborhood.

d. The organization must have conducted one or more eligible neighborhood development activities, as defined in Section B below, which primarily benefit low- and moderate-income residents of the neighborhood. For the purposes of the preceding sentence, "low- and moderate-income residents" means families and individuals whose incomes do not exceed 80 percent of the median income of the area involved, as determined by HUD, with adjustments for smaller and larger families.

e. Urban Development Action Program (UDAG) Eligibility Determinations. Although the UDAG Program is no longer operational, organizations wishing to apply under the Neighborhood Development Demonstration Program must continue to meet eligibility tests established for UDAG.

(i) The organization must carry out its activities in a city or county that meets the UDAG Program eligibility requirements for Federal assistance under section 119(b) of the Housing and Community Development Act of 1974 (42 U.S.C. 5218) and the Department's implementing Regulation at 24 CFR part 570, subpart G.

(ii) The organization must be in a city or an urban county that meets the distress criteria required as a condition for assistance under the Urban Development Action Grant Program, under section 119(b)(1) of the Housing and Community Development Act of 1974, as amended, and the Department's implementing regulation at 24 CFR 570.452; or

(iii) The organization must be in an area that has been approved by the Department for assistance under the Urban Development Action Grant Program as a "pocket of poverty" under section 119(b)(2) of the Housing and Community Development Act of 1974, as amended, and the Department's implementing regulation at 24 CFR 570.466.

(iv) The further test of UDAG eligibility, which assesses the localities' demonstrated progress in providing housing and equal opportunity in employment must have also been performed previously or a finding will be necessary by the HUD Field Office. This finding must be made by the application due date. In order to meet this deadline, the local unit of government, if not previously certified as UDAG-eligible, must submit a "Request for Determination of UDAG Eligibility" no later than one month prior to the application due date. The nonprofit applicant should contact the community development department of its local unit of government as soon as possible after the date of publication of this NOFA to notify the local government of the applicant's intent to apply. The applicant should coordinate with the locality to provide them adequate time to submit to HUD a "Request for Determination of UDAG Eligibility" to allow the applicant to participate in the Demonstration, (if the locality is not already certified as eligible to participate in the UDAG Program). The UDAG eligibility requirements are set forth at section 119(b)(1) of the Housing and Community Development Act of 1974 and the Department's implementing regulations at 24 CFR 570.453.

2. Eligible Neighborhood Development Activities

Eligible activities must serve low- and moderate-income persons as the primary beneficiaries. These eligible activities included but are not necessarily limited to the following examples:

a. Developing economic development activities which include creating permanent jobs in the neighborhood, and establishing or expanding businesses within the neighborhood;

b. Developing new housing, rehabilitating existing housing, or managing housing stock within the neighborhood;

c. Developing delivery mechanisms for essential services that have lasting benefits for the neighborhood, such as fair housing counseling services, child care centers, youth training, or health services; or

d. Planning, promoting, or financing voluntary neighborhood improvement efforts, such as establishing a neighborhood credit union, demolishing abandoned buildings, removing abandoned cars, or establishing an on-going street and alley cleanup program.

D. Selection Criteria/Ranking Factors

Applications will be evaluated on the basis of the Factors for Award outlined below.

1. Neighborhood/Organizational Qualifications

a. The degree of economic distress within the neighborhood; (10 points).

b. The extent of neighborhood participation in the proposed activities, as indicated by the percent of the households and businesses in the neighborhood involved that are members of the eligible neighborhood organization; (5 points)

c. The record of demonstrated measurable achievements in one or more of the activities specified under paragraph I.C.2., including benefits to low- and moderate-income residents, plus evidence of promoting fair housing activities, if the applicant has previously

sponsored projects involving housing; (15 points) and

d. The extent to which the governing body of the organization reflects the demographics of the neighborhood (education, age, sex, race, income level, types of employment, etc.). (5 points)

2. Project Qualifications

a. The extent of monetary contributions available that are to be matched with Federal funds, supported by reasonable evidence that private funding sources within the neighborhood have been realistically identified. (HUD will waive scoring under this provision and assign full points in the case of an application submitted by a small eligible organization, an application involving activities in a very low-income neighborhood or an application that is especially meritorious); (5 points)

b. The extent to which a strategy has been developed for increasing the capacity of the organization and achieving greater long-term private and public sector support for this demonstration and future funding; (15 points)

c. The extent to which the proposed activities will benefit persons of low- and moderate-income, including promotion of equal employment and fair housing objectives. If emphasis is to be placed on economic development, low- and moderate-income relationships should be described; (15 points) and

d. The quality of the management plan submitted for accomplishing one or more of the activities specified under I.C.2, including evidence of sound financial management of organizational activities, the experience and capability of the organization's director and staff, and coordination efforts involved, including working relationships with local governments when applicable. (30 points)

II. Application Process

A. For Application Package Contact

Gene Hix, Office of Technical Assistance, Community and Neighborhood Management Division (CGTC–GH), Department of Housing and Urban Development, room 7220, 451 Seventh Street, SW., Washington, DC 20410. Telephone number (202) 708–2186. (This is not a toll-free number.) Requests must be in writing using this mailing address or FAX number (202) 708–0299 to obtain copies of the application kit which provides further information on the Demonstration. (See Parts III and IV of this Notice.) The RFGA contains the forms and other information regarding the application process and the administration of the demonstration, including relevant provisions from OMB Circulars A–110 and A–122. (This Notice of Fund Availability summarizes major provisions of the RFGA.)

B. Application Submission

An original and three copies of an application must be submitted to the same address that is stated in Section A (above) of this notice to initiate the application review process. HUD will accept only one application per neighborhood organization.

C. Application Deadline

Applications must be submitted by the date and hour specified in the application package, but in no event will this occur before May 18, 1992. Applicants will have at least 30 days to prepare and submit their application. The response period will begin from the first day upon which the application kit is made available. Application packages may be requested by mail or FAX to the address noted in Section A (above) immediately after the date of publication of this notice.

III. Checklist of Application Submission Requirements

A. Preapplication Determination of Eligibility

Before preparing an application, the applicant should carefully check the eligibility requirements described in section I.C. Organizations that are uncertain whether the city or urban county in which they are located meets the current minimum standards of physical and economic distress (used in determining which cities and urban counties are potentially eligible applicants under the Urban Development Action Grant Program) are advised to consult two notices published by the Department in the **Federal Register.** These notices are entitled, "Urban Development Action Grant: Revised Minimum Standards for Small Cities" (52 FR 37876, October 9, 1987) and "Urban Development Action Grant; Revised Minimum Standards for Large Cities and Urban Counties" (52 FR 38174, October 14, 1987).

Organizations that need further help in determining their eligibility should contact the nearest Department of Housing and Urban Development Field Office (Community Planning and Development Division). The city or county community development office serving a neighborhood organization should be able to provide the HUD Field Office contact number if assistance is needed. If unable to obtain a local contact, the HUD Headquarters contact for this information is Mrs. Stella Hall, telephone number (202) 708–2186. (This is not a toll-free number.)

B. Application Checklist

Each application must contain the following as required by the Request for Grant Application:

1. A transmittal letter, a table of contents referenced to numbered pages, a signed copy of Standard Form SF–424; and a signed copy of SF–424B, "Assurances for Non Construction Programs".

2. An abstract describing, among other things, the applicant and its achievements, the proposed project, its intended beneficiaries, its projected impact on the neighborhood, and the manner in which the proposed project will be carried out;

3. A completed fact sheet that lists neighborhood and organizational characteristics contained elsewhere in the application narrative;

4. Evidence that the applicant meets eligibility and other criteria, including the following:

a. A legible map, with street names, delineating the applicant's neighborhood boundaries with indications where project activities will take place;

b. Census tract, block or enumeration district references and zip code references must also be delineated on the map or on other maps submitted;

c. A copy of the applicant organization's corporate charter, along with the incorporation papers, bylaws, and a statement of purpose;

d. The size of the neighborhood population, including the number of low- and moderate-income persons and the size of the minority population, broken down by its ethnic composition;

e. A list of the names of the neighborhood governing body members and their addresses (with zip codes), noting those who reside and (separately) those who conduct business, in the neighborhood;

f. A statement of the percentage of the members of the neighborhood organization who are neighborhood residents, the percentage of neighborhood residents who conduct business in the neighborhood, and the percentage of neighborhood businesses conducted by nonresidents;

g. Identification of the applicant organization's past and current neighborhood projects, including those eligible as neighborhood development activities as defined under paragraph I.C.2;

h. A description of the means by which the governing body members account to residents of he neighborhood, including the method and frequency of

selection of members of the governing body, the consultation process with residents, the frequency of meetings, and a statement showing how the board is representative of the demographics of the neighborhood (*i.e.*, a breakdown by tenants, homeowners, race, sex, ethnic composition, etc. and the addresses of the board as evidence that at least 51% reside in the neighborhood);

i. Evidence of the applicant's sound financial management, determined from its financial statements or audits;

j. A letter from the Chief Executive Officer of the unit of general local government in which assisted activities are to be carried out, certifying that the activities are not inconsistent with the government's housing and community development plans. (In lieu of this certification, evidence may be presented that the local government did not respond within 30 days of the organization's request for such a letter)

(Note: The Neighborhood Development Demonstration Program (NDDP) is not related directly to the Comprehensive Housing Assistance Strategy contained in the Cranston-Gonzalez National Affordable Housing Act of 1990. Housing is only one of the eligible activities under NDDP. The maximum $50,000 NDDP grant is not expected to have a strong impact on any local government's CHAS. However, NDDP applicants are required to coordinate with the local government to determine that their application is for activities that are not inconsistent with local plans. HUD's experience is that NDDP funds usually are used for funding core staff to plan neighborhood-level economic or housing activity. Implementation funds for future housing are likely to come from CDBG, HOPE or HOME programs. This would be the point at which CHAS consistency would be determined);

k. A certification that the applicant will comply with the requirements of Federal law governing the application, acceptance, and use of Federal funds;

l. A narrative statement defining how neighborhood matching funds will be raised and their anticipated sources; what neighborhood development activities will be funded; and a strategy for achieving greater long-term private sector support;

m. A project management plan, including a schedule of tasks for both fund raising and project implementation;

n. A project budget and budget narrative;

o. A certification that a potential grantee will comply with the drug-free workplace requirements in accordance with 24 CFR part 24 subparagraph F.

IV. Corrections to Deficient Applications

Applications must be submitted in complete form and on time. However, HUD may provide applicants an opportunity to cure deficiencies that are not necessary for HUD to evaluate in the evaluation/ranking process. Such deficiencies must be corrected within 14 days from the date of HUD's written notice to the applicant of the deficiencies. Failure of an applicant to respond within the 14 day period may result in rejection of the application.

Deficiencies which may be corrected are items which would not interfere with HUD's ability to assess the merits of the application under the evaluation factors. An applicant, however cannot be permitted to improve the substantive requirements of the application after the due date for submission.

Examples of deficiencies which may be cured are:

—Omitted or improper signatures;

—Omitted certifications or assurances; and

—Omitted financial statements or audits.

V. Other Matters: (To Be Complied With if a Grant is Received)

A. Reporting Requirements

In addition to complying with relevant provisions of OMB Circulars A–110 and A–12, grantees will be required to submit quarterly performance and financial reports. These reports should inform HUD of any changes that may affect the outcome of the demonstration, such as changes in any of the following—the governing body membership, staffing, working relationships with local government and private organizations, fund raising activities, volunteer efforts, the management plan, and the budget. The quarterly reports must also verify the amount of monetary contributions received from within the neighborhood, as a basis for Federal disbursement of matching funds. Grantees must certify that none of the monetary contributions originated through public funding sources.

Grantees will be required also to submit a final report at the completion of the grant period. This final report must describe fully the successes and failures associated with the project, including the reasons for the successes and failures. It should also describe possible improvements in the methods used. The quarterly and final reports will be used for evaluation purposes, reports to the Congress on the demonstration, and a report on successful projects that will be distributed to other neighborhood organizations.

B. Environmental Reviews

For all proposed actions or activities that are not considered a categorical exclusion as set forth in 24 CFR 50.20, HUD will perform the appropriate environmental reviews under the National Environmental Policy Act (NEPA). Whether the action or activity is categorically excluded from NEPA review or not, HUD will comply also with other appropriate requirements of environmental statues, executive orders, and HUD standards listed in 24 CFR 50.4. The environmental reviews will be performed before award of a grant. Grantees will be expected to adhere to all assurances applicable to environmental concerns as contained in the RFGA and grant agreements.

C. Equal Opportunity Requirements

The neighborhood development organization must certify that it will carry out activities assisted under the Program in compliance with:

1. The requirements of title VIII of the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations at 24 CFR parts 100, 108, 109, 110, and 115; part 200, subpart M; and Executive Order 11063 (Equal Opportunity Housing 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 the prohibition against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). The requirements of Executive Order 11246 and the regulations issued under at 41 CFR chapter 60;

3. The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (see 1570.607(b) of this chapter); and

4. The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, the grantee must make efforts to encourage the use of minority and women's business enterprises in connection with activities funded under this notice.

D. Other Federal Requirements

In addition to the Equal Opportunity Requirements set forth above, grantees must comply with the following requirements:

1. Ineligible contractors. The provisions of 24 CFR part 24 relating to

the employment, engagement of services, awarding of contracts or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

2. Flood insurance. No site proposed on which acquisition, construction, repair or improvement of a building which is to be assisted under this demonstration may be located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless the community in which the area is situated is participating in the National Flood Insurance Program and the regulations thereunder (44 CFR parts 59 through 79) or less than a year has passed since FEMA notification regarding such hazards, and the grantee will ensure that flood insurance on the structure is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 142 U.S.C. 4001 et seq.).

3. Lead-based paint. The requirements, as applicable, of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846) and implementing regulations at 24 CFR part 35.

4. Applicability of OMB Circulars. The policies, guidelines, and requirements of OMB Circular Nos. A–110 and A–122 with respect to the acceptance and use of assistance by private nonprofit organizations.

5. Relocation. The requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and implementing regulations at 49 CFR part 24, which govern the acquisition of real property for the project and the provision of relocation assistance to persons displaced as a direct result of acquisition, rehabilitation or demolition of the project.

E. Documentation and Public Access Requirements: HUD Reform Act

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

Section 103 of the HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) was published on May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

Section 112 of the Reform Act

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in appendix A of the rule.

Any questions about the rule should be directed to Arnold J. Haiman, Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–3000. Telephone: (202) 708–3815; TDD: (202) 708–1112. (These are not toll-free numbers.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

Authority: Sec. 123, Housing and Urban-Rural Recovery Act of 1983, 42 U.S.C. 5318 note; sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: March 24, 1992.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

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federal register

Tuesday
April 7, 1992

Part X

Department of Transportation

Federal Railroad Administration

Owners of Railroad Tank Cars; Railroads Emergency Order Requiring Inspection and Repair of Dual Diameter Tank Cars; Notice

Department of Transportation

Federal Railroad Administration

[FRA Emergency Order No. 16; Notice No. 1]

Owners of Railroad Tank Cars; Railroads Emergency Order Requiring Inspection and Repair of Dual Diameter Tanks Cars

The Federal Railroad Administration (FRA) of the United States Department of Transportation has determined that public safety compels issuance of this Emergency Order requiring the owner of certain tank cars to perform inspections and, as necessary, repairs as specified in this Order. The affected tank cars (known as "dual diameter" tank cars) are used to transport some of the most lethal hazardous materials in very large quantities. Some of these cars have been found to have defects that threaten their structural integrity, and there is reason to believe that others of this type may have similar defects.

Authority

Authority to enforce the Federal railroad safety laws, including laws pertaining to the transportation of hazardous materials by railroad, has been delegated by the Secretary of Transportation to the Federal Railroad Administrator. 49 CFR 1.49. Railroads, shippers of hazardous materials, and owners of tank cars are subject to FRA's safety jurisdiction under the Federal Railroad Safety Act of 1970, 45 U.S.C. 421, 438, and the Hazardous Materials Transportation Act, as amended, 49 App. U.S.C. 1804. FRA is authorized to issue emergency orders where an unsafe condition or practice creates "an emergency situation involving a hazard of death or injury to persons." 45 U.S.C. 432(a). These orders may immediately impose "such restrictions or prohibitions as may be necessary to bring about the abatement of such emergency situation." (*Ibid.*)

Background

Shortly after noon on January 18, 1992 tank car CONX 9101, loaded with a liquefied petroleum gas, was in the consist of Norfolk Southern Corporation freight train 326A8, standing in a siding near Dragon, Mississippi, awaiting the passage of another train. When the main track was clear, train 326A8 began to move; when it had proceeded about two engine lengths, it had an emergency brake application. Readouts from the event recorders indicate that the train was traveling at less than 5 mph when the emergency brake application occurred.

A member of the train crew, standing near the locomotives, saw a white vapor cloud at the far end of the train that, within seconds, ignited into a fireball. Subsequent investigation showed that CONX 9101, the 72nd car in an 84-car train, had separated and released its entire load. Due mostly to the remote location of the train, there were no injuries or evacuations; fire and radiant heat damage affected a vacant home and the facilities of two gas terminals adjacent to the tracks. The National Transportation Safety Board (NTSB) estimates property damage to be about $400,000.

CONX 9101 was a Department of Transportation (DOT) specification 112J340W tank car built in 1965 by General American Transportation Corporation (GATC) as one of 34 DOT112A340W cars on the same Certificate of Construction. Conversion from an "A" specification to a "J" took place in 1979 and involved application of half-head shields, thermal protection, and a jacket. CONX 9101 was designed and built as a dual-diameter, 32,878 gallon, 125-ton car, larger in the midsection than at the ends over the trucks (thus the "dual diameter" description). It was not overdue for periodic tests or inspections under current regulations.

Failure occurred when the tank separated in the heat-affected zone of the weld joining the large diameter section and the transition sheet at the A-end of the tank. Preliminary examination of the circumferential break disclosed a discolored crescent region, typically indicative of a large preexisting crack, about 21 inches long and centered at the bottom centerline of the tank. This crack began along the inside diameter surface of the tank at the weld/transition sheet junction. At its deepest point, the crack extended through 95 percent of the tank wall thickness before separation. Preliminary metallurgical examination by the NTSB's materials laboratory showed that the crack fracture surface was extensively oxidized, thus indicating a crack with long-term exposure to the atmosphere. Oxidization was so extensive that the original fracture surfaces were obliterated. The NTSB's laboratory notes the possibility of a small undercut at the toe of the weld in the area of crack initiation.

GATC has indicated that, using the same design, it had built the 34 cars in the series CONX 9100–9133, 31 cars in the series VICX 9001–9031 (née CONX 9001–9031), and 50 cars in the series GATX 30750–30799, for a total of 115 cars. On January 21, 1992, the Association of American Railroads (AAR), a private trade association representing the nation's largest railroads, issued an "Early Warning" letter to members and private car owners directing them to immediately stop and inspect cars in the series CONX 9100–9133, the series that included CONX 9101, whether loaded or empty. On March 4, 1992, AAR expanded its "Early Warning" letter to include the remainder of the 115 cars identified by GATC as having been built to the same design as CONX 9101.

On January 30 and February 10, 1992, FRA sent letters to CONOCO, Inc., Vista Chemical Company, and GATC, owners of the CONX, VICX, and GATX cars, respectively. In these letters and through subsequent telephone contacts, FRA requested the owners to remove the cars from service and inspect each car for cracks in an area extending on both sides of the bottom centerline of the circumferential welds between the transition sheet and the large and small diameter portions of the tank. Owners were to use non-destructive methods and were to notify FRA prior to each tank inspection. Inspection protocols were reviewed and agreed upon by FRA, the owners, and the AAR. In letters to the three owners dated March 19, 1992, FRA formalized the inspection and test procedures.

Based on its preliminary investigation, the NTSB, on March 13, 1992, issued the following recommendation to the FRA:

> Require owners and operators of dual-diameter pressure tank cars to inspect by X-ray radiography and/or other appropriate means a representative sampling of their dual-diameter cars for evidence of cracks and other serious defects in the circumferential welds between the transition and larger diameter tank shell plates. Based on these inspections, assess whether the total fleet of dual-diameter pressure tank cars should be inspected immediately for evidence of cracking, and if periodic inspections should be required. (Class I, Urgent Action) (R–92–7)

FRA agrees with the NTSB and, as the chronology of this matter shows, began acting along the lines suggested by the Board immediately following the January 18 accident in consultation with Transport Canada, the Canadian agency with safety authority corresponding to that of FRA. Actions taken by several entities in the industry, including the AAR Tank Car Committee, the members of the Railway Progress Institute, and the Tank Car Safety Research Project also demonstrate a unanimity of purpose among public and private sector interests in the wake of this very serious safety threat.

As of March 26, 1992, thirty-eight of the 115 tank cars that FRA requested the owners to immediately remove from service and inspect had been inspected. Of the thirty-eight, twenty-two bore defects in areas analogous to the car that failed. The defective cars have

cracks ranging from two to forty-eight inches in length and up to ⅜ inch in depth, weld inclusions, incomplete weld fusion and other defects. While it is clear that these cars represent a threat to the public safety, at least until their defects are corrected, it is not clear that this series of cars is representative of the dual-diameter portion of the North American tank car fleet.

Dual-diameter tank cars are among the older tank cars in the fleet. The design requires building the car with draft sills attached to each end of the tank (instead of attaching the tank to a continuous center sill) and uses the tank itself to function as the main structural member of the car. Consequently, the tank, in addition to the force resulting from the pressurized lading, is subject to loaded and empty static forces and cyclic loadings introduced through the coupler and wheel/rail interface.

These cars carry some of the most volatile products transported on North American railroads. For example, these cars carry compressed gases such as liquefied petroleum gas, anhydrous ammonia, and vinyl chloride. Because of their long service, these cars may have been subjected to stresses in the transition sheets and associated welds sufficient to initiate cracks through fatigue and/or propagation of minor fabrication defects. As in the case of the non-continuous center sill tank cars generally, vertical loadings may be particularly suspect as a factor in crack initiation and propagation.

FRA understands that there are somewhere between 5,000 and 5,500 dual-diameter cars in the North American fleet and that they probably represent fewer than 12 design types. In addition to obtaining the removal from service and inspection of 115 cars of the same design as the car that released its contents at Dragon, Mississippi, FRA has elicited the cooperation of affected parties in inspecting 100 other dual-diameter cars that are in shops or in route to shops. This process is now under way. Until owners inspect these 100 cars and inspect a representative sample of the remainder of the dual-diameter fleet, there is no certain way to assess the safety threat they pose; nor is there any way to exclude the possibility that this problem is endemic to all dual-diameter designs. FRA does not yet know whether the car that failed near Dragon, Mississipppi, and those of its same design that have been inspected and found to be nearly 60 percent defective are typical of dual-diameter cars. While the hazardous materials release at Dragon caused no injuries, the consequences of such a release in a more populous area are so obvious and so potentially catastrophic that all concerned must move without delay.

In summary, the order requires that car owners determine and remove from service for inspection a statiscally valid sample for each dual-diameter design and inspect each design so to achieve a 99 percent confidence level that no more than one percent of the cars permitted in service have defects. Car owners may undertake this activity individually or in cooperation with other owners of cars of the same design. Owners are to inspect the initial sample immediately. If no imperfections as defined in Appendix W of the Tank Car Manual are found, further inspections are not required. If any car is found to have such an imperfection, then no car of that design may be loaded with any product prior to being inspected. Upon inspection and discovery of such an imperfection, the car may be returned to service only after repairs sufficient to return it to specification. FRA estimates that a mimimum of 1,000 cars will be subject to inspection under this order.

Finding and Order

The continued use of uninspected dual-diameter tank cars poses an imminent and unacceptable threat to public safety. I find that the unsafe conditions discussed above create an emergency situation involving a hazard of death or injury to persons. Accordingly, pursuant to the authority of section 203 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 432), delegated to me by the Secretary of Transportation (49 CFR 1.49), it is ordered that:

1. Starting on the effective date of this order, no owner of a dual-diameter tank car may permit its further loading or its further offering into transportation until the owner has submitted to FRA the sampling program required by paragraph 3, below. If the owner is a lessor of the car, the owner shall, as soon as possible, notify the respective lessee of this Order and instruct the lessee not to load the car or offer it for transportation until the owner complies with this Order. The owner shall notify the railroad currently in possession of any dual-diameter car it owns of the provisions of this Order and instruct the railroad not to accept for transportation any such car until the owner has complied with this Order. When the owner has complied with paragraph 3 of this Order, it shall inform any lessee of its cars or railroad having possession of its cars of how each car is to be routed. Upon notification by the car owner or the FRA, each railroad upon whose line a subject car is located shall route such car, or refrain from placing such car for loading, as prescribed herein.

2. Any report or program required to be submitted to FRA by this Order should be submitted to: Chief, Hazardous Materials Division, RRS–12, Office of Safety Enforcement, Federal Railroad Administration, 400 Seventh Street SW., room 8326, Washington, DC 20590.

The report or program may be submitted by facsimile to (202) 366–7136.

3. Owners of dual-diameter tank cars shall determine a statistically valid sample for inspection of each design type that will assure a 99 percent confidence level that, within each design type, no more than one percent of the cars not selected for the sample contain an imperfection as defined in the 1990 Association of American Railroads Manual of Standards and Recommended Practices, Section C—Part III, Specifications for Tank Cars, Appendix W in the inspection areas required by this order. Sampling shall be based on a hypergeometric distribution as described in Bishop, Flienberg, and Holland, Discrete Multrivariate Analysis: Theory and Practice, The MIT Press, Cambridge, Massachusetts (1975). As soon as possible after issuance of this Order, owners shall report the identity of the sample (including the identity of the design types and the reporting marks of all cars built to the same design), to the Chief, Hazardous Materials Division, FRA. The submission to FRA shall also contain a proposed schedule for completion of the inspection of the sample.

4. Each owner shall ensure that each car selected as part of the sample required under paragraph 3 is immediately routed to expedite its inspection. Once identified as part of the sample, such a car may not be loaded until it has been inspected. Inspection of the entire representative sample shall be completed as soon as possible, but no later than 60 days after the effective date of this order. The inspection of any car that was subject to the 100-car immediate sampling under way at the time this Order was issued may be counted toward the completion of the inspection of the larger sample of the design type to which that car was constructed.

5. Owners shall furnish daily reports to the Hazardous Materials Division, Office of Safety Enforcement, FRA of the cars inspected the previous day and the car number, certificate of construction number, built date, accumulated mileage, last periodic tank hydrostatic test date, and results of the inspection.

6. If any sample car of a particular design type is found with an imperfection as defined in Appendix W of the Tank Car Manual, the owner shall immediately notify FRA and any other owners of cars built to that design type (to the extent the owner knows of such other owners). Thereafter, owners of cars of that design type must ensure that all such cars are inspected in accordance with paragraph 8 of this Order before permitting any further loading of such cars.

7. Owners shall periodically inspect (under the procedures set forth in paragraph 8, below) all of those dual-diameter cars built to the same designs as any car found to have a crack (as defined at 49 CFR 215.5). To determine future inspections, owners shall estimate the car's anticipated mileage and choose the year the car will reach 150,000 miles or ten years, which ever comes first, from the date of the inspection required by this Order.

8. Except as otherwise provided, owners shall inspect each car required to be inspected under this Order as follows:

a. Clean the interior of each car.

b. Remove the tank jacket and insulation/thermal protection from the draft sill reinforcement pad and the transition sheet weld areas at least twenty-four inches on each side of the tank car longitudinal centerline (see Figure 1).

c. Use a wire brush on all interior and exposed exterior welds and visually inspect for defects.

d. Radiograph A1, A2, B1, and B2 circumferential weld areas two inches on each side of each weld and at least twenty-four inches on each side of the tank car longitudinal centerline. (See Figure 1)

e. Inspect the draft sill pad and pad-to-tank welds near the termination of the non-continuous center sill using dye penetrant testing methods.

f. Use ultrasonic examination to find the tank shell thickness in internal and exposed external areas showing mechanical or corrosion damage and to determine the depth of defects found.

g. The nondestructive examinations and acceptance standards of Appendix W of the Tank Car Manual apply.

h. For repaired areas, the requirements of Appendix R of the Tank Car Manual apply.

i. The standards for non-destructive test technicians of Appendix W of the Tank Car Manual apply.

j. The requirements of Rule 88, "Mechanical Requirements for Acceptance," of the 1992 AAR Field Manual of Interchange Rules apply.

FRA realizes that some car designs may not be appropriate for some inspection techniques. For instance, radiography may not be possible in areas hidden under structural elements. Owners who cannot comply with the protocol above may establish an alternative, equivalent protocol that, after submission to and approval by the Chief, Hazardous Materials Division of FRA, may be used in lieu of the inspection protocol in this paragraph.

9. If, during the inspection, a car is found to have any imperfection as defined in Appendix W of the Tank Car Manual, the car may be returned to service only after the car has been repaired in accordance with Appendix R of the Tank Car Manual.

10. Cars inspected as required by this Emergency Order shall have the marking DDI followed by the month and year of inspection stenciled in 1-inch (minimum) letters in association with the stenciling for specification and test dates as set forth in Appendix C of the Tank Car Manual. Any car requiring periodic inspection under this Order shall also have the due date stencilled in 1-inch (minimum) letters to the right or below the inspection date.

11. Records of inspections performed under this Emergency Order, including radioscopy films, be retained by the owner for the life of the car.

Relief

Tank car owners may obtain relief from this Order by informing the Federal Railroad Administration, as directed, of the identity of the representative sample and by performing the inspections and making the reports as required.

Penalties

Each violation of this Emergency Order shall subject the respondent committing such violation to a civil penalty of up to $20,000. 45 U.S.C. 432, 438. FRA may, through the Attorney General, also seek injunctive relief to enforce this order. 45 U.S.C. 439.

Future Action

FRA believes that this Emergency Order may be only the first step in achieving safety with dual-diameter tank cars. The results of the car inspections will be studied and additional notices under this Emergency Order may be issued, and/or other enforcement actions, as appropriate, may be taken.

Notice to Affected Persons

Notice of this Order will be provided by publishing it on an emergency basis in the **Federal Register**. Copies of this Emergency Order were sent by mail or facsimile prior to publication to the Association of American Railroads, the American Short Line Railroad Association, the Regional Railroads of America, the Railway Progress Institute, all members of the AAR Tank Car Committee, and to owners of dual-diameter tank cars as follows: PLM Transportation Equipment Corp.; Chevron, U.S.A., Inc.; Continental Tank Car Corporation; General American Transportation Corp.; Phillips 66 Company; Suburban Propane; ACF Industries, Inc.; CGTX Inc.; Procor Limited; Union Tank Car Company; and U.S. Rail Services, Inc.

Review

Opportunity for formal review of this Emergency Order will be provided in accordance with section 203(b) of the Federal Railroad Safety Act of 1970, 45 U.S.C. 432(b), and section 554 of title 5 of the United States Code. Administrative procedures governing such review are found in 49 CFR part 211 (*see* § 211.47, .71–.75).

Effective Date

This Order shall be effective at 12:01 a.m. (e.s.t.) on April 4, 1992.

Issued in Washington, DC on April 2, 1992.

Gilbert E. Carmichael,

Administrator.

[FR Doc. 92–8185 Filed 4–6–92; 8:45am]

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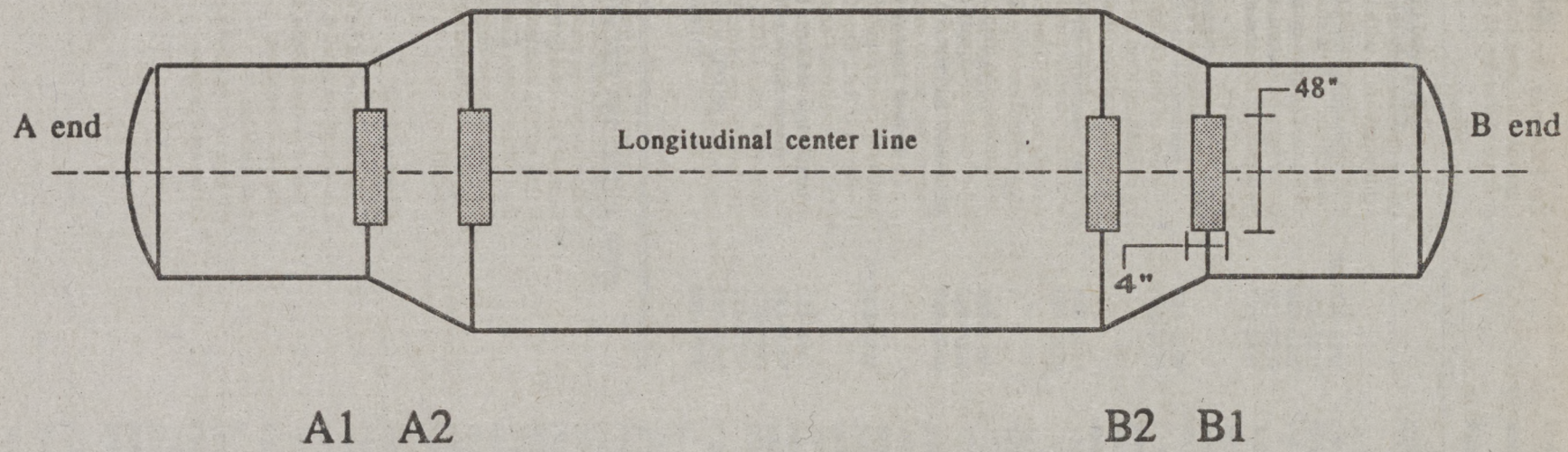
Radiograph Inspection and Test Zones



[FR Doc. 92–8185 Filed 4–6–92; 8:45am]

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Federal Register

Vol. 57, No. 67

Tuesday, April 7, 1992

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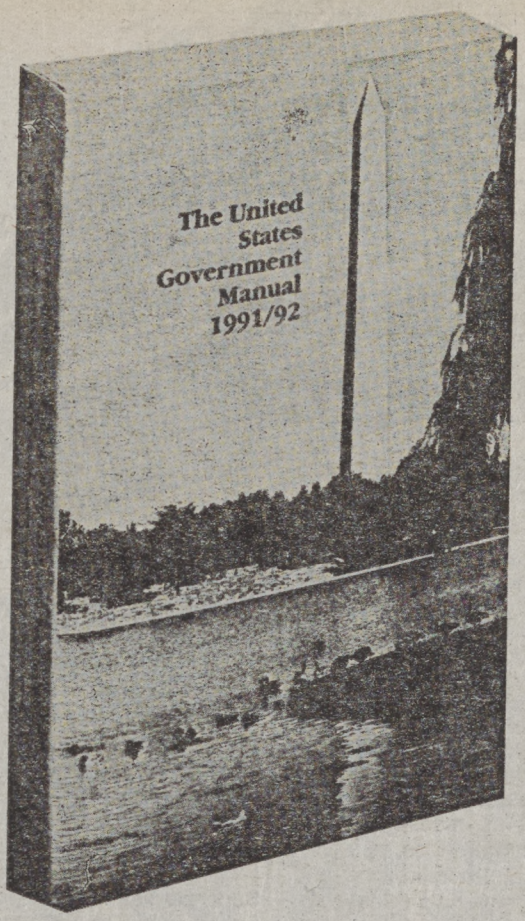

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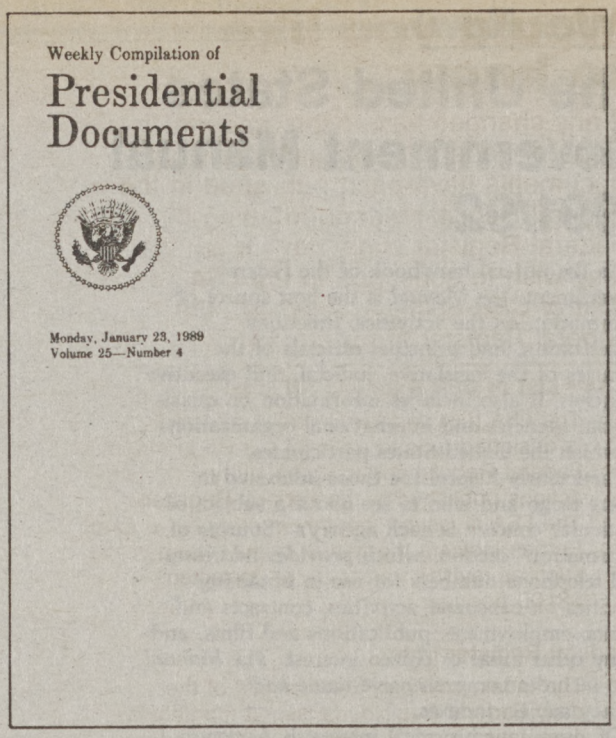

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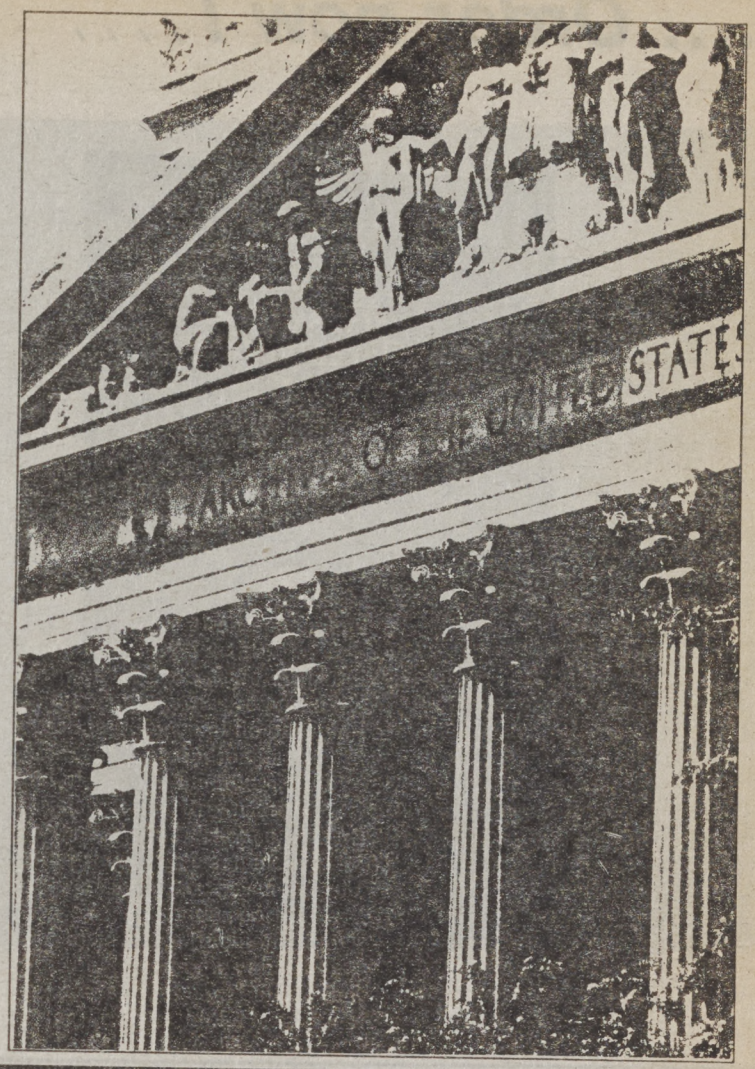

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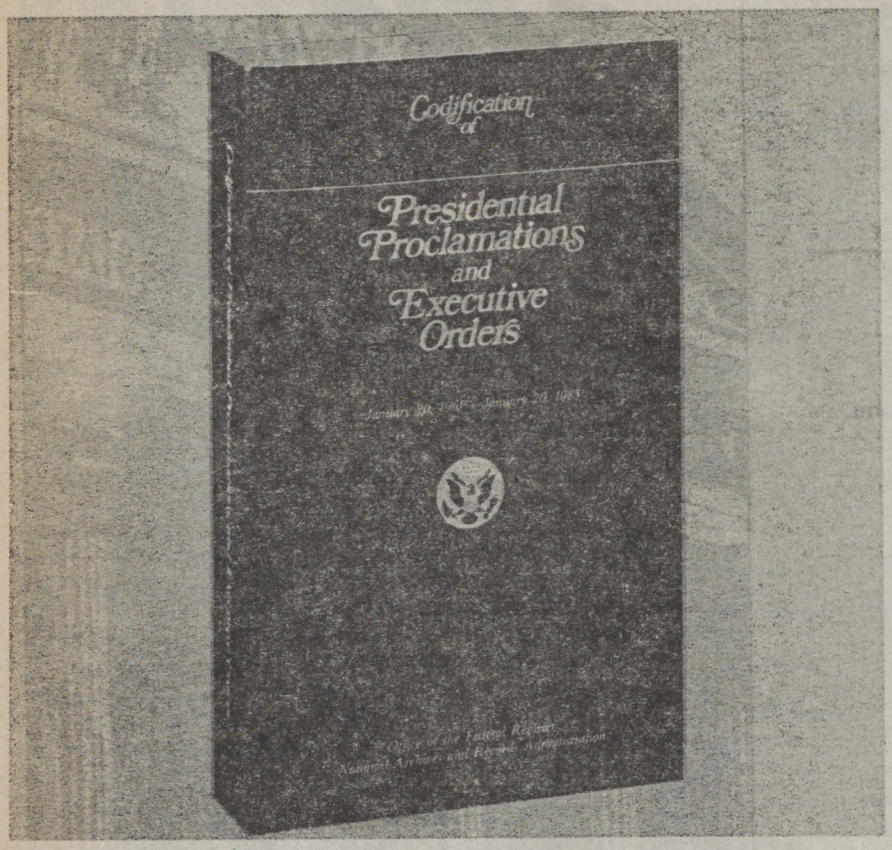

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